

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

NOTE: Please note that terms “property gain” and “material benefit” are interchangeable in the context of the information provided. This is due to the differences in the translations into English of the cited legal documents. The Law on seizure and confiscation of material benefit derived from criminal activity provides the definition of “material benefit” in its article 3.

“Material benefit derived from criminal activities means each increase or prevention of decrease of property acquired from criminal activities, as well as revenues or other benefit acquired directly or indirectly from criminal activities, as well as the property it has been converted into or merged with.

Property implies property rights of all types, irrespective of whether they relate to assets of tangible or intangible nature, movables or immovables, securities and other documents which serve to prove property rights.”

The same applies to the terms “confiscation” and “seizure”, whereby “confiscation” generally denotes permanent confiscation, while “seizure” denotes temporary confiscation of material benefit. The Law on seizure and confiscation of material benefit derived from criminal activity, in its article 4 para 2 states:

“(2) The seizure and confiscation of material benefit derived from criminal activities shall be deemed to mean seizure of such material benefit (temporary measures to secure assets and seizure of movable assets) or confiscation of such material benefit.”

General provisions on confiscation of property gain are regulated by the **Criminal Procedure Code** (Official Gazette of Montenegro, no. 57/09, 49/10, 47/14, 02/15, 35/15, 58/15, 28/18).

General provisions on confiscation of property gain

Article 478

(1) Property gain obtained as a result of the commission of a criminal offence shall be established as such in the investigatory proceedings, preliminary proceedings and at the trial by virtue of an office.

(2) In the course of the investigatory proceedings, preliminary proceedings and at the trial, the court and other authorities shall obtain evidence and investigate circumstances that are relevant to the establishment of property gain.

(3) If the damaged party submits a property law claim regarding the recovery of items acquired in consequence of the commission of a criminal offence or regarding the amount which corresponds to the value of the items, the property gain shall only be established for the part which exceeds the property law claim.

Confiscation of property gain from third parties

Article 479

(1) When the confiscation of property gain obtained as result of the commission of a criminal offence from third persons is being considered, the person to whom the property gain was transferred or the person for whom it was obtained, or the representative of the legal entity shall be summoned for interrogation in the pre-trial proceedings and at the trial. The summons shall contain an admonition that the proceedings will be held even in his/her absence.

(2) The representative of the legal entity shall be heard at the trial after the interrogation of the accused person. The court shall proceed in the same manner regarding other person referred to in paragraph 1 of this Article, unless s/he is summoned as a witness.

(3) The person to whom the property gain was transferred or the person for whom it was obtained or the representative of the legal entity is entitled to propose presentation of evidence concerning the establishment of the property gain and, upon the authorization of the Chair of the Panel, to pose questions to the accused person, witnesses and expert witnesses.

(4) Exclusion of the public from the trial shall not relate to the person to whom the property gain was transferred or for whom it was obtained or the representative of the legal entity.

(5) If the Court establishes that the confiscation of property gain comes into consideration while the trial is in progress, it shall recess the trial and summon the person to whom the property gain was transferred or for whom it was obtained, or the representative of the legal entity.

Determining the amount of property gain by a free estimate

Article 480

The amount of property gain shall be determined at the discretion of the court if its assessment entails disproportionate difficulties or a significant delay in the proceedings.

Article 481

When the conditions for the confiscation of property gain are fulfilled, the court shall, ex-officio or upon the proposal of the State Prosecutor, impose provisional measures on securing assets, pursuant to the provisions governing the enforcement proceedings. In such a case, the provisions of Article 243 of the present Code shall accordingly apply.

Imposing confiscation of property gain

Article 482

(1) Court may order the confiscation of property gain by a conviction, by a penal order issued without trial, by a ruling on a judicial admonition or by a ruling on the application of a corrective measure, as well as by a ruling on the imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment out of the institution.

(2) In the pronouncement of the judgement or the ruling the court shall state which valuable item, money amount, or other property gain is to be confiscated.

(3) A certified copy of the judgement or the ruling shall also be delivered to the person to whom the property gain was transferred or for whom it was obtained, as well as to the representative of the legal entity, provided that the court orders the confiscation of property gain from such a person or a legal entity.

A request for a repeated proceeding regarding confiscation of property gain

Article 483

The person referred to in Article 479 of the present Code may submit a request for a repeated proceeding regarding the decision on the confiscation of property gain.

Appropriate Application of Provisions Regulating an Appeal

Article 484

The provisions of Article 383, paragraphs 2 and 3 and Articles 391 and 395 of the present Code shall be applied accordingly in regard to an appeal filed against the decision on the confiscation of property gain.

The Criminal Procedure Code also contains provisions on temporary (provisional) and permanent confiscation of property gain acquired by criminal activity. Temporary confiscation of objects and property gain is regulated by article 85 of the Criminal Procedure Code.

Provisional confiscation of objects and property gain

Article 85

(1) Objects which have to be seized according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor, and by way of a court ruling, be provisionally seized and delivered for safekeeping to the court or their safekeeping shall be secured in another manner.

(2) The ruling on the provisional seizure of objects shall contain:

1) the name of the court rendering the ruling;

2) legal grounds for the seizure of objects;

3) indication and description of objects that are to be provisionally seized;

4) the first and the last name of the person from whom the object is provisionally seized and the place at or in which a certain object should be provisionally seized.

(3) Anyone who is in possession of objects referred to in paragraph 1 of this Article shall hand them over. Persons refusing to hand over the objects may be punished by a fine of up to €1.000, and in case of further rejection, they may be detained. Detention shall last until the object is handed over or until the criminal procedure is completed, and at the longest for two months. The procedure as regards a person in an official capacity or a responsible person in a public authority, enterprise or another legal entity shall be the same.

(4) Provisions of paragraphs 1 and 3 of this Article shall be applied to the data saved in devices for automatic or electronic data processing and media wherein such data are saved, which shall, upon the request of the court, be handed over in a legible and comprehensible form. The court and other authorities shall abide by the regulations on maintaining data secrecy.

(5) The following objects cannot be provisionally seized:

1) papers and other documents of public authorities, publication of which would violate the obligation to keep data secret in terms of regulations laying down data secrecy, until the competent authority decides otherwise;

2) the accused persons' letters to their defence attorney or the persons referred to in Article 109, paragraph 1, items 1, 2 and 3 of the present Code unless the accused decide to hand them over voluntarily;

3) recordings, extracts from the register and similar documents that are in possession of persons referred to in Article 108, item 3 of the present Code and that are made by such persons in relation to the facts obtained from the accused person while performing their professional service, if publication thereof would constitute violation of the obligation to keep a professional secret.

(6) The prohibition referred to in paragraph 5, item 2 of this Article shall not apply to the defence attorney or persons exempted from the duty to testify pursuant to Article 109, paragraph 1 of the present Code if reasonable doubt exists that they aided the accused parties in committing the criminal offence or they helped them after the criminal offence was committed or if they acted as accomplices by virtue of concealment.

(7) The ruling referred to in paragraph 3 of this Article shall be made by the investigative judge during the investigation and by the Chair of the Panel after an indictment has been brought.

(8) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal against a ruling referred to in paras. 2 and 3 of this Article. An appeal against the ruling on imprisonment shall not stay the execution.

(9) Authorized police employees may seize objects referred to in paragraph 1 of this Article when proceeding pursuant to Articles 257 and 263 of the present Code or when executing a court warrant.

(10) When seizing objects, it shall be indicated where they were found and they shall be described, and where appropriate, their identity shall be established in another way as well. A receipt shall be issued for the seized objects.

(11) Measures referred to in paragraph 3 of this Article may not be enforced against the suspects or accused parties or persons relieved of duty to testify.

(12) Provision of Article 481 of the present Code shall be applied on the provisional seizure of property gain.

As for permanent seizure of assets of which the legal origin has not been established, it is prescribed by the special law - the **Law on seizure and confiscation of material benefit derived from criminal activity** (Official Gazette of Montenegro, no. 58/15 and 47/2019). This law governs the conditions for seizure and confiscation of material benefit derived from criminal activities, seizure and confiscation procedure and other matters of importance for the seizure and confiscation of such material benefit, as well as the management of such seized and confiscated material benefit (hereinafter: "seized material benefit"), of instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail.

The Law on seizure and confiscation of material benefit derived from criminal activity entered into force in September 2015. In accordance with the international standards, contained in the acts of the European Union, United Nations and the Council of Europe, this Law has been, inter alia, aligned with the UNCAC.

Article 2 of the Law on seizure and confiscation of material benefit derived from criminal activity prescribes a list of criminal offences for which such seizure and confiscation can be enforced.

Conditions and the Manner of Confiscation of Material Benefit Derived from Criminal Activities

Article 2

(1) Material benefit may be confiscated from the perpetrator where well-founded suspicion exists that such material benefit has been derived from criminal activities, whereby the perpetrator fails to make plausible the legal origin of such material benefit (extended confiscation) and if the perpetrator was convicted by a final judgment for a crime laid down in the Criminal Code of Montenegro, as follows:

1) abduction referred to in Article 164;

2) criminal offences against sexual freedom referred to in Articles 206, 208, 209, 210, 211, 211a and 211b;

- 3) *criminal offences against property referred to in Articles 240, 241, 242, 243, 244, 244a; 249, 250, 251, 252;*
 - 4) *criminal offences against payment transactions and business operations referred to in Art. 258, 259, 260, 261, 262, 263, 264, 265, 268, 270, 272, 273, 274, 276, 276a, 276b, 281 and 281a;*
 - 5) *unauthorized production, possession and release into circulation of narcotic drugs referred to in Art.300;*
 - 6) *criminal offences against environment and spatial planning referred to in Articles 303, 305 and 307;*
 - 7) *criminal offences against security of computer data referred to in Articles 350, 352, 353 and 354;*
 - 8) *criminal offences against public law and order referred to in Articles 401, 401a, 402, 404 and 405;*
 - 9) *criminal offences against legal procedures referred to in Articles 412, 413 and 414;*
 - 10) *criminal offences against official duty referred to in Articles 416, 419, 420, 422, 422a, 423 and 424;*
 - 11) *criminal offences against humanity and other values guaranteed by international law referred to in Art. 444, 445, 446, 447, 447a, 447b, 447c, 447d, 449, 449a and 449b.*
- (2) *The material benefit referred to in para. 1 of this Article shall also be seized and confiscated from legal predecessors, legal successors and family members of the perpetrator referred to in para. 1 of this Article, as well as from third persons.*
 - (3) *If the material benefit was derived from criminal activities for another person, that material benefit shall be confiscated as well.*
 - (4) *Provided that the confiscation referred to in paragraph 1 of this Article is not possible, the value that shall be confiscated will be equal to the value of the material benefit derived from criminal activities.*

Articles 19 - 34 of the Law on seizure and confiscation of material benefit derived from criminal activity contain **the provisions on temporary security measures and temporary seizure of movable property**. Furthermore, articles 35 - 46 of the referred Law prescribe the **provisions on permanent confiscation of material benefit derived from criminal activity**.

This Law, in its article 70, prescribes the **restitution (recovery) of seized material benefit**.

Article 70

(1) *Where a provisional measure to secure assets or seizure of movable property were imposed in accordance with this Law, the holder shall be entitled to restitution of seized material benefit and damages in accordance with the law governing contractual relations, in the case where:*

(1) *A decision was issued to reject the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence;*

(2) A judgment of acquittal or judgment of rejection were rendered with regards to the offence referred to in Art. 2 para. 1 of this Law.

(2) In the case referred to in paragraph 1 item 1 of this Article, the competent body shall return the seized material benefit without delay and at the latest within 15 days from the date of the receipt of the decision rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.

(3) In the case referred to in para.1 item 2 of this Article, the competent body shall return seized material benefit without delay and at the latest within 15 days of the receipt of a final judgment of acquittal or of dismissal.

(4) An appeal regarding incurred damage may not be brought after the expiration of the time-limit of three months as of the date of delivery of the final judgment rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.

(5) A written record shall be drawn up concerning the restitution of property referred to in paras. 1, 2 and 3 of this Article, which shall be signed by the director of the competent body and the holder.

(6) State of Montenegro shall be accountable for compensation of damages referred to in paragraph 4 of this Article.

This Law further prescribes:

Scope of restitution of material benefit

Article 71

(1) In the case of restitution of material benefit, the revenues and all other benefits generated during the management of seized material benefit shall be handed over to the holder.

(2) If the entire material benefit or part of it was sold during the management of seized material benefit, the competent body shall transfer to the holder the amount of the sales price increased by the amount of average interest rate calculated on basis of a vista deposits in Montenegro.

(3) If the material benefit against which a seizure order was issued was gifted or destroyed during management, the holder shall be entitled to compensation of damages in accordance with the law governing contractual relations.

(4) The competent body shall act in accordance with paras. 1 and 2 of this Article, within 15 days as of the date of delivery of the decision referred to in Art. 70 paragraph 1 of this Law.

Basis for international cooperation

Article 78

(1) International cooperation with a goal of seizing, confiscating and managing material benefits shall be exercised in accordance with an international treaty.

(2) If there is no international treaty or if some matters are not governed by an international treaty, international cooperation shall be exercised in accordance with this

Law, under the condition that reciprocity exists or if one can expect that the foreign country would act upon a mutual legal assistance request of the domestic judicial authority.

(3) The provisions of the act governing mutual legal assistance in criminal matters shall apply accordingly to international cooperation matters not governed by this Law.

(4) Division of confiscated material benefit with other countries may be governed by an international treaty.

Scope of international cooperation

Article 79

(1) International cooperation within the meaning of this Law shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit.

(2) The organizational police unit competent for financial investigations shall act upon requests in accordance with the Council Decision 2007/845/JHA of 6 December 2007.

Delivery of requests for cooperation

Article 80

(1) The request of the competent foreign authority for mutual cooperation shall be delivered to the competent body of Montenegro through the public administrative authority competent for judicial affairs.

(2) The request of the competent body of Montenegro shall be delivered to the competent foreign authority in the same manner.

Contents of requests for cooperation

Article 81

(1) A request for international cooperation shall contain:

1) name of the requesting authority;

2) legal basis for mutual cooperation;

3) data on the person to whom the request relates (name, date and place of birth, nationality and place of temporary residence), and if it concerns a legal person, also data on its main office;

4) data on the material benefit subject to the request for cooperation and its connections to the person referred to in paragraph 1 item 3 of this Article;

5) specific actions that should be taken; and

6) extract from the text of the Law of the other state which is the basis for taking specific measures.

(2) In addition to the data referred to in paragraph 1 of this Article, the request for international cooperation which relates to tracing material benefit, to prohibiting the disposal of material benefit and to seizing and confiscating material benefit shall also

contain a description of circumstances affording reasonable suspicion that the material benefit has been derived from criminal activities.

(3) In the case referred to in paragraph 2 of this Article, evidence shall be attached to the request showing that criminal proceedings have been instituted on account of the crime referred to in Article 2 para. 1 of this Law or that a financial investigation has been instituted.

(4) The final judgment ordering confiscation of material benefit shall be attached to the request for confiscation of material benefit.

Procedure

Article 82

(1) After receiving the request of the competent foreign authority for mutual cooperation, the state prosecutor and the court shall check whether the terms and conditions referred to in Articles 79 and 81 of this Law have been fulfilled.

(2) If the request of the competent foreign authority for mutual cooperation does not contain all the prescribed elements, the foreign authority shall be asked to supplement the request and a time-limit shall be fixed for it to do so.

(3) If the competent foreign authority fails to act in accordance with paragraph 2 of this Article, the request of the foreign authority shall be rejected.

Duration of the measures to secure assets

Article 83

(1) The provisional measure to secure assets imposed under a mutual cooperation request shall last until the completion of the procedure for confiscation of material benefit in the requesting country.

(2) If the procedure referred to in paragraph 1 of this Article is not completed within two years as of the date of issuance of the ruling imposing a provisional measure to secure assets, the court shall abolish the provisional measure to secure assets ex officio.

(3) Six months before the expiry of the time-limit referred to in paragraph 2 of this Article, the court shall inform the competent foreign authority of the consequences of expiry of time-limit.

(4) Upon a substantiated request of the competent foreign authority, the court may decide to extend the duration of the provisional measure to secure assets for one more year at the longest.

The Ministry of Justice, in accordance with the recommendations from the European Commission Report on Montenegro from April 2018, had initiated the procedure to amend the Law on seizure and confiscation of material benefit derived from criminal activity. Namely, the proposed amendments referred to articles 8 and 35 of the Law on seizure and confiscation of material benefit derived from criminal activity, as follows:

Article 1 of the Draft Law on amendments to the Law on seizure and confiscation of material benefit derived from criminal activity, proposed deleting item 1, since the goal has been to

facilitate initiating financial investigations. Thus, there are two requirements, instead of three, needed for initiation of financial investigation, and this article is harmonized with other articles of the Law.

Article 2 of the Draft Law on amendments to the Law on seizure and confiscation of material benefit derived from criminal activity amended the deadline for submission of request for permanent seizure to be within two years, instead of one year following the final decision that finds the defendant guilty for a criminal offence from article 2 paragraph 1 of this law, and the final decision that establishes the circumstances ending the criminal proceedings, and the day it has been established that criminal proceedings cannot be continued due to the death of the perpetrator of the criminal offence. The reason to amend the article 35 in terms of the deadline has been identified in practice in financial investigations, as the defendant and persons related to him/her often have assets abroad (e.g. real estate both on behalf of other people, deposits in foreign banks, etc.), which requires mutual legal assistance to collect evidence of such assets, which requires time and often cannot be done within one year. The Draft Law received positive opinion from the European Commission, and the Parliament of Montenegro adopted the Law on amendments to the Law on seizure and confiscation of material benefit derived from criminal activity in July 2019.

Moreover, national legislation incorporates the UNCAC standards on the recovery of assets. In its article 112, the **Criminal Code of Montenegro** (Official Gazette of Montenegro, no. 44/2017, 49/2018 and 3/2020) prescribes that no one shall retain the material benefit acquired through a wrongful act that is laid down by law as criminal offence, and that such benefit shall be subject to confiscation under the conditions laid down in this Code and a court decision.

Furthermore, **Law on mutual legal assistance in criminal matters** (Official Gazette of Montenegro, no. 4/2008, 36/2013 and 67/2019) governs the provision of legal assistance during temporary and permanent seizure of material benefit. According to this law, mutual legal assistance includes the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, as well as other forms of mutual legal assistance provided for by this law. Article 42 of this Law prescribes other forms of mutual legal assistance, including temporary seizure of assets. In regard to temporary or permanent seizure of assets acquired by criminal activities, article 38 of the Law on mutual legal assistance in criminal matters is relevant in cases of mutual legal assistance.

Article 42

Other forms of mutual legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on the judgement and other procedural actions.

Article 38

(1) Competent Montenegrin court shall, to enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity, make a decision on the imposition of criminal sanction, or a decision ordering the suspension or revocation of property obtained by criminal activity, in accordance with domestic law.

(2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a panel composed of three judges without presence of the parties.

(3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.

(4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence upon letter of request. In the particulars of judgement, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is to be enforced.

(5) State prosecutor and the sentenced person or his defence attorney may lodge a complaint against the verdict.

Furthermore, Montenegro has developed system to prevent depositing funds of unknown origin to the banks and financial institutions, which consists of two parts:

1) Concerning the import, export or transfer of the cash funds in an amount of EUR 10.000.00 or more over the state border, the obligation to report such funds is prescribed, and competent customs authorities keep records of such cash funds (described in the information provided on article 14 paragraph 2 UNCAC). In addition, customs authorities perform the control of import, export and transfer of cash funds within their regular duties.

2) Concerning the depositing of funds to the banks, the **Law on prevention of money laundering and terrorist financing** (AMLCTF Law) in several provisions (articles 8, 26, 41 and 79 paragraph 1 item 12) prescribes the actions of the reporting entities (banks), aimed at preventing the depositing of funds from unknown origin from abroad.

The measures for establishing and verifying the identity of the customer and monitoring of business relationships and the control of the transactions of the customer (article 8 of the AMLCTF Law) must be implemented by all reporting entities identified in the AMLCTF Law (subjects of the Law), especially by banks and financial institutions. The law stipulates the obligations of the reporting entities to obtain data on the purpose and nature of a business relationship or purpose of transaction and other data in accordance with this Law; to monitor regularly the business relationship, including control of the transactions undertaken with the reporting entity by the customer during the business relationship. The reporting entities are obliged to verify their compliance with the nature of a business relationship and the usual scope and type of customer's affairs, which in practice refers to the obligation of obtaining

documents on the origin of funds being deposited in an amount of EUR 15.000 or more, and also, regardless of the amount, when there are grounds to suspect money laundering and terrorist financing. Concerning the transactions, the obligation is prescribed to collect data on the source of assets and funds, which are or which will be the subject of a business relationship or a transaction.

The reporting entity is obliged to submit the report to the competent authority, containing complete and accurate data on each cash transaction in an amount of at least EUR 15.000 without a delay, and not later than three business days from the day the transaction was made.

The **Law on Banks**, which in its article 85 regulates the banking secret, prescribes that all data which represent banking secret may be submitted to the competent authority for preventing money laundering and countering terrorist financing, in accordance to the law regulating money laundering and terrorist financing.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Ministry of Justice, as a central authority for mutual legal assistance, does not keep statistics on these criteria.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please also see the relevant information provided on article 14 sub-paragraph 1 (a) UNCAC.

In accordance to the **Law on prevention of money laundering and terrorist financing (AMLCTF Law)**, (Official Gazette of Montenegro, no. 33/14, 44/18, and 73/2019), the reporting entities are legal and natural entities, who are obliged to implement the measures

and actions for preventing money laundering and countering terrorist financing. The list of reporting entities is defined in article 4 of the said law.

Reporting entities

Articles 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 are reasons to suspect 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 branches of foreign banks;

2) financial institutions that perform the following activities;

b) financial leasing;

c) provision of safe deposit boxes;

d) factoring;

e) issuance of guarantees and other assurances;

f) crediting and credit mediation;

g) currency exchange services;

3) payment service providers and institutions dealing with electronic money seated in Montenegro;

4) Post of Montenegro;

5) companies for the management of investment funds, branches of foreign companies for the management of investment funds and companies from EU member states that are authorized to be directly engaged in the management of investment funds on the territory of Montenegro;

6) companies for the management of pension funds:

7) investment companies and branches of foreign investment companies whose business activities are prescribed by the law that defines the capital market and that provide:

a) investment services on the capital market in Montenegro which include: the reception and transmission of orders in relation to one or more financial instruments; the execution of orders on behalf of customers; dealing on own account; portfolio management; investment advice; underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; placing of financial instruments without a firm commitment basis; operation of multilateral trading facility (hereinafter referred to as: MTF); operation of organized trading facility (hereinafter referred to as: OTF);

b) ancillary services on the capital market in Montenegro which include: safekeeping and administration of financial instruments for the account of customers, including custodianship and related services such as cash/collateral management; granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, in case the transaction involves the company which grants credit or loan; providing general

recommendations on capital structure, business strategy and related matters and services relating to merger and acquisition of parts in undertakings; foreign exchange services where these are connected to the provision of investment services; research and financial analysis or other forms of general recommendations related to transactions in financial instruments; services related to underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; investment services and activities, as well as ancillary activities related to the underlying assets contained in the financial derivatives, if related to investment and ancillary services.

- 8) *life insurance companies and branches of foreign life insurance companies;*
- 9) *insurance mediation companies and insurance representation companies, and insurance mediators and insurance representatives in the part related to life insurance;*
- 10) *organizers of lottery and special games of chance and online games of chance or games of chance which use other telecommunications means;*
- 11) *pawnshops;*
- 12) *legal entities, business organizations and natural persons engaged in activity or affairs of issuance and management of virtual currencies, including the services of exchanging virtual currencies into conventional currencies and vice versa;*
- 13) *other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:*
 - *forfeiting;*
 - *auditing, independent auditor, accounting and providing tax counselling;*
 - *providing services of founding legal persons and other business organizations, as well as business and fiduciary services;*
 - *management of property for third persons;*
 - *issuance and management of payment instruments (e.g. checks, traveler's checks, credit card, bank promissory notes, payment orders, debit cards), which are not considered payment services in accordance with the law governing payment operations;*
 - *granting loans and mediation in contracting granting loans activities;*
 - *investment, trade and mediation in real estate trade;*
 - *trade of motor vehicles if the payments are made or received in cash in the amount of €10,000 or more, regardless of whether it is one or several linked transactions;*
 - *trade of vessels and aircraft if the payments are made or received in cash in the amount of €10,000 or more regardless of whether it is single or several linked transactions;*
 - *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 or received in cash in the amount of at least €10,000, in single or several linked transactions.*

(3) The Government of Montenegro (hereinafter: 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 higher 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, when they carry out certain financial activities on an occasional or limited basis, and that are related to lower risk of money laundering and terrorist financing.

Lawyers and public notaries are specifically indicated as the reporting entities, since they also carry out measures for detection and prevention of money laundering (articles 49-52 of the AMLCTF Law), when:

- 1) they assist in planning and executing transactions for a customer related to:
 - purchase or sale of real estates or a business organization;
 - managing money, securities or other property of a customer;
 - opening and managing a banking account, savings deposit or the account for dealing with securities;
 - collecting funds for founding, dealing with or managing a business organization;
 - founding, dealing with or managing an institution, fund, business organization or other similar form of organization.
- 2) they execute a financial transaction or transaction concerning real estate on behalf and for a customer.

If reporting entities assess that a customer, business relationship, transaction, product, service, distribution channel, state or geographic area present higher risk of money laundering or terrorist financing, they shall apply enhanced measures for establishing and verifying the identity of the customer, monitoring of the business relationships and the control of transactions, in accordance with this Law (Article 7a AMLCTF Law).

The reporting entities are requested to apply enhanced measures for verification of customers, and in accordance with this Law, identification and verification of the customer's identity may be carried out through third parties (articles 22, 23, 24 and 25 of the AMLCTF Law). Article 22 states that under the conditions provided for by this Law, when establishing business relationship with a customer, a reporting entity may entrust the implementation of the said enhanced measures to a third party that meets the requirements defined by this Law. The Law also stipulates that identification and verification of the customer's identity carried out by a third party will not be accepted, if not done in the customer's presence. Furthermore, a reporting entity must not entrust the application of the measures for identification and verification of customer's identity to a third party when the third party is a shell bank or anonymous company, or to a third party from a country that is on the list of countries that do not apply the standards in the area of money laundering and terrorist financing. Such list of countries that do not apply the standards from Paragraph 2 of this article is published by the financial intelligence unit on its website based on the data of international organizations. The list of such countries is published by a competent authority on its website, based on the data provided by international organizations.

In accordance with article 30 of the AMLCTF Law, the reporting entities are obliged to undertake enhanced measures for identification and verification of customer's identity, monitoring of business relationships, and the control of the customers' transactions in the following cases:

- 1) *on entering into correspondent relationship with a bank or other credit institution, with registered office outside the European Union or in a country that is not on the list of countries applying international standards in the area of money laundering and terrorist financing that are on the level of EU standards or higher;*
- 2) *on entering into business relationship or executing transactions from Article 9 Paragraph 1 Items 2 to 6 of this Law with a customer that is a politically exposed person or the beneficial owner of a customer is a politically exposed person; 2a) when a customer or beneficial owner of a customer is domestic or foreign politically exposed person referred to Article 32 paragraphs 1 and 2 of this Law*
- 3) *when the user of life insurance policy or other insurance policy linked with investment or when the beneficial owner of a user is a politically exposed person in the case from Article 32a Paragraph 3 of this Law;*
- 4) *in cases of complex and unusual transactions;*
- 5) *in cases of electronic money transfer.*

Furthermore, reporting entities are obliged to apply enhanced measures for identification and verification of customers, monitoring of business relationships, and control of their transactions, when, pursuant to the national risk assessment, there is a higher degree of risk of money laundering and terrorist financing identified (article 30 para 4 of the AMLCTF Law).

The obligations of reporting entities concerning politically exposed persons (PEPs) are laid down in articles 32, 32a and 33 of the AMLCTF Law. With respect to this category of customers, the reporting entities are obliged to apply enhanced measures for identification and verification of the customer, monitoring of the business relationships, and control of their transactions.

Article 32 provides the definition of politically exposed persons, and lists all categories of domestic and foreign politically exposed persons to which the obligations of the reporting entities apply same for all, while article 33 prescribes additional measures for verification and monitoring of the PEPs.

In the AMLCTF Law, Montenegro has prescribed the lists of domestic and foreign PEPs with certain differences in that regard, but the measures applied to both domestic and foreign PEPs are the same.

Politically exposed persons

Article 32

(1) A politically exposed person, in the context of this Law, is a Montenegrin citizen performing public function, as follows:

- 1) *the president of Montenegro, president of the Parliament of Montenegro, prime minister and members of the Government;*
- 2) *member of Parliament;*
- 3) *2a) members of management bodies of political parties;*
- 4) *state secretary, general director and secretary in the ministry, head of the financial intelligence unit; 4) mayor, his deputy and the president and vice-president of the municipality, president of the Assembly of the municipality, the Capital and the Old Royal Capital;*

- 5) *the president and judges of the Supreme Court of Montenegro and the president and judges of the Constitutional Court of Montenegro;*
 - 6) *member of the Senate of the State Audit Institution and the Council of Central Bank;*
 - 7) *ambassador, consul, Chief of Staff of the Military of Montenegro, the general and admiral of the Military of Montenegro;*
 - 8) *director, deputy and member of the managing or supervisory bodies of legal persons whose majority owner is the State;*
- (2) *A politically exposed person is also a foreign citizen nominated or assigned public function by a foreign state or international organization, such as:*
- 1) *president of a state, prime minister, ministers and their deputies;*
 - 2) *members of Parliament;*
 - 3) *2a) members of management bodies of political parties;*
 - 4) *members of the Supreme and the Constitutional courts or of other high-level judicial bodies whose judgments are not subject to further regular or extraordinary legal remedies, save in exceptional cases; 4) members of courts of auditors, or supreme audit institutions and of the councils of central banks;*
 - 5) *ambassadors, consuls and high-ranking officers in the armed forces;*
 - 6) *members of the managing or supervisory bodies of legal persons whose majority owner is the State; 7) directors, deputies or director deputies and members of board or equivalent functions in an international organization.*
- (3) *Close family members of the person from Paragraph 1 and 2 of this Article and their close associates shall also be deemed politically exposed persons.*
- (4) *Close family members of the person from Paragraphs 1 and 2 of this Article shall include the spouse or extra-marital partner and the children born in a marital or extra-marital relationship and adoptees, their spouses or extra-marital partners, parents, brothers and sisters.*
- (5) *Close associate of the person from Paragraph 1 and 2 of this Article shall include:*
- 1) *any natural person who is known to have joint ownership of legal entities, established business relationship or any other close business relationships, with a politically exposed person;*
 - 2) *any natural person who has ownership of a legal person or has established business relationships for the benefit of the politically exposed person.*
- (6) *A person from Paragraphs 1, 2, 4 and 5 of this Article shall be considered as a politically exposed person for the period of time not less than 12 months since the date of ceasing to hold the office, and after the expiry of this period, a reporting entity shall implement the risk assessment measures until it determines that there is no risk of money laundering and terrorist financing.*
- (7) *The list of politically exposed persons from Paragraph 1 of this Article shall be defined by the Agency for Prevention of Corruption and published on its website.*

In accordance with article 33 AMLCTF Law, when implementing enhanced verification measures of politically exposed persons, in addition to the measures in article 8 of this Law, the reporting entities also:

- (1) *undertake appropriate measures and obtain data on a customer's sources of property (wealth) and funds;*
- (2) *obtain a written consent from a senior management before establishing business relationship with a customer, and if the business relationship has already been*

- established, obtain a written consent from a senior management for continuing the business relationship;
- (3) determine whether the politically exposed person referred to in Article 32 of this Law is a beneficial owner of a legal person, business organization, trust and other person, i.e. entity or a natural person equal to it with the registered office in a foreign country, on whose behalf a business relationship is being established or a transaction carried out or other customer's activity performed and obtain data from Items 1 and 2 of this Paragraph;
 - (4) after establishing a business relationship, monitor with special attention transactions and other business activities carried out with a reporting entity by a politically exposed person or the customer whose beneficial owner is a politically exposed person.

A reporting entity must, in accordance with the guidelines of a competent authority referred to in article 94 of the AMLCTF Law, develop an internal act containing the procedures that are based on risk analysis and apply them when carrying out identification of the customer or beneficial owner of the customer who is a politically exposed person. (article 33 of the AMLCFT Law)

The AMLCTF Law obliges the financial institutions and other reporting entities in Montenegro to apply the risk-based approach when carrying out enhanced measures for identification and verification of customers.

The reporting entities must prepare the risk analysis following the guidelines on risk analysis, determined by the competent authorities referred to in article 94 of the AMLCTF Law, in accordance with the regulation passed by the Ministry of Finance and on the findings of the National Risk Assessment.

When making any significant changes in their business processes, such as, introduction of new products, new practice, including new distribution channels, introduction of new technologies for new and existing products, services, or organizational changes, the reporting entities must carry out adequate impact assessment of such changes on the risk exposure to money laundering and terrorist financing.

If reporting entities assess that a customer, business relationship, transaction, product, service, distribution channel, state or geographic area present lower risk of money laundering or terrorist financing, they can apply simplified measures for establishing and verifying the identity of the customer, monitoring of business relationships and the control of the transactions in accordance with the provisions of this Law.

Pursuant to article 7b of the AMLCTF Law, in order to effectively manage risks of money laundering and terrorist financing, the reporting entities must establish effective policies, controls and procedures that are proportional to the scope of their activity, sizes and types of customers they deal with, as well as the types of products.

Those policies, controls and procedures include:

- 1) adoption of internal policies and procedures related to:
 - risk management models;
 - establishing and verifying the identity of the customer, monitoring of business relationships and control of the transactions;
 - submission of data to the financial intelligence unit in accordance with the Law;

- protection and preservation of the data and record keeping;
- internal control in the area of detection and prevention of money laundering and terrorist financing;
- security checks of employees in accordance with the law that regulates data confidentiality;

2) establishment of an independent audit department or nomination of a person for the review of the internal policies, controls and procedures from Item 1 of this Paragraph, if the reporting entity is a large legal person in accordance with the law regulating auditing.

Pursuant to article 78 of this law,

(1) Reporting entity shall keep:

- 1) data records on customers, business relationships, accounts and transactions (carried out in the country and with foreign countries) from article 9 of this Law;
- 2) data records from Article 41 of this Law;
- 3) data records from Article 35 of this Law;
- 4) records of orders on temporary suspension of transactions referred to in Article 61 of this Law;
- 5) records of requests for the ongoing monitoring of customer's financial status referred to in Article 63 of this Law.

(2) The reporting entity shall keep records referred to in Paragraph 1 of this Article in a manner that will ensure the reconstruction of individual transactions (including the amounts and currency) that could be used as evidence in the process of detecting customer's criminal activities.

In accordance with article 80 of this law, a lawyer or notary must keep the following records:

- 1) records on customers, business relationships and transactions from Article 9 of this Law;
- 2) records on data from Article 51 Paragraph 1 of this Law;
- 3) records on complex and unusual transactions referred to in Article 35 of this Law.

The following data are kept and processed by the reporting entities:

- 1) name, address, registered office and tax identification number of a legal person that establishes business relationship or executes a transaction, or a legal person for whom a business relationship is established or transaction is executed;
- 2) name, address of permanent or temporary residence, date and place of birth and tax identification number of a representative or an authorized person who concludes the business relationship or executes transaction for the legal person, foreign trust or other person i.e. entity equal to them from Article 18 of this Law, and number, type and name of the authority that issued the personal identification document;
- 3) name, address of permanent or temporary residence, date and place of birth and tax identification number of an authorized person, which requires or executes transaction for a customer, and number, type and name of the competent authority that issued the personal identification document;
- 4) name, address of permanent or temporary residence, date and place of birth and tax identification number of natural person or, tax identification number of his/her representative, entrepreneur or a natural person carrying out the activity, that

- establishes business relationship or executes a transaction, or a natural person, for whom business relationship is established or transaction executed, and number, type and name of the competent authority that issued the personal document;
- 5) name, address of permanent or temporary residence, date and place of birth of the natural person who enters in the premises for organizing the games of chance in the casinos, accesses a safe deposit box or games of chance through the Internet or other telecommunications means, cash desk or other locations (points) where the transactions are executed in accordance with the type of games of chance;
 - 6) purpose and presumed nature of a business relationship, including information on customer's businesses activity;
 - 7) date of establishing a business relationship or date and time of entering the casino or accessing safe deposit box;
- 7a) registration of identification number of each customer's account
- 8) date and time of the transaction execution;
 - 9) the amount of the transaction and currency of the executed transaction;
 - 10) the purpose of the transaction and personal name and address of permanent or temporary residence, or the name and registered office of the person who the transaction is intended to;
 - 11) method of executing the transaction;
 - 12) data on the sources of property and funds that are or will be the subject of the business relationship or transaction;
 - 13) reasons for suspicion of money laundering and related predicate offences or terrorist financing;
 - 14) name, address of permanent or temporary residence, date and place of birth of the beneficial owner of the legal person or in case from Article 20 Paragraphs 5 and 6 of this Law, data on the category of the person, in whose interest is the establishing and operating of the legal person or similar foreign legal person;
 - 15) company name or name of trust, other person i.e. entities equal to them, address of permanent or temporary residence, date and place of birth and tax identification number of a person referred to in Article 18 of this Law.

The AMLCTF Law regulates in detail the obligation of identifying the beneficial owner and establishing the register of beneficial owners (articles 8, 10, 20, 21, 21 a, 21 b and 21 c). Those provisions prescribe clear obligation for the reporting entities to identify the beneficial owner of the customer and to verify its identity, including the measures necessary to determine the ownership and control structure of the customer in cases established by law. The provisions provide a precise definition of the beneficial owner, as well as the manner of its identification. If the beneficial owner cannot be identified as stipulated by the law, the business relationship cannot be established, and if the business relationship has been established, the reporting entity must terminate such business relationship.

Establishment of the **Register of Beneficial Owners** is underway in Montenegro. It will be an electronic database, where accurate data on beneficial owners are kept, with a view to ensuring the transparency of ownership structures and conducting measures for prevention of money laundering and terrorist financing. Establishment of the register is in line with the EU DIRECTIVE 2018/843 of the European Parliament and of the Council of 30 May 2018, amending the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending the Directives 2009/138/EC and 2013/36/EU.

The register will be kept and maintained by the Tax Administration of Montenegro (articles 21a, 21b and 21c of the AMLCTF Law).

Beneficial owners register

Article 21a

- (1) Beneficial owners register (hereinafter: the Register) is the electronic database where accurate data on beneficial owners are kept with a view to ensuring the transparency of ownership structures and conducting measures for prevention of money laundering and terrorist financing.*
- (2) Access to the data from the Register is available for:*
 - 1) reporting entities from Article 4 of this Law with a view to conducting measures of establishing and verifying customer's identity;*
 - 2) financial intelligence unit, supervisory authorities from Article 94 of this Law and other authorities for carrying out activities related to prevention and detection of money laundering and terrorist financing;*
 - 3) legal and natural persons who prove the legal interest.*
- (3) The Register is kept and maintained by the administrative authority competent for collection of taxes (hereinafter: Tax Administration).*
- (4) Business organizations, legal persons, associations, institutions, political parties, religious communities, artistic organizations, chambers, trade unions, employers' associations, foundations or other business organizations, a legal person that receives, manages or allocates the funds for certain purposes, foreign trust, foreign institution or similar foreign legal entity that receives, manages or allocates the funds for certain purposes, shall enter in the Register the data on beneficial owners and changes of owners 8 days since the changes on owner have been made, except:*
 - entrepreneur;*
 - one-member limited liability company, and*
 - direct and indirect budget user.*
- (5) The provision from Paragraph 4 of this Article shall not apply to legal persons and business organizations at more-membered stock-companies whose shares are traded on the regulated securities market where they are obliged to comply with the obligation of disclosing data and information on beneficial ownership in accordance with law governing rights and obligations of the subjects on the securities market and other law.*
- (6) The persons from paragraph 4 of this Article are responsible for the accuracy of entered data.*

In accordance with article 21b, the persons from Article 21a Paragraph 4 of this Law, shall deliver to the Register the data on:

- 1) business organization or legal person:
 - name, address, registered office, registered number, identification number, registration date and date of deleting the business organization for legal entities registered in CBR;
 - name, address, registered office, tax identification number, registration date and date of deleting persons from Article 21a Paragraph 4 from the tax register for subjects registered in the tax register;
- 2) beneficial owner:

- personal name, resident or temporary address, birth date, tax identification number, nationality, ownership interest or other type of control, registration date and date of deleting the beneficial owner from the Register;
- 3) category of persons with an interest for establishing foreign trust, foreign institution or similar foreign legal entity when individuals who benefit from foreign trust, foreign institution or similar foreign legal entity are to be determined.

Establishment of a register of beneficial owners will provide the reporting entities access to relevant information - for the purposes of taking measures to determine and verify the identity of the customer, as well as the supervisory authorities, courts, prosecutors and other bodies - for the purposes of fulfilling obligations in the area of preventing money laundering and countering terrorist financing.

The Ministry of Finance adopted the Rulebook on the manner of keeping of the Register, collecting and entering of data, updating and accessing the data in the register.

Article 22 of the AMLCTF Law regulates identification and verification of customers through third parties.

Under the conditions provided for by this Law, when establishing business relationship with a customer, a reporting entity may entrust the implementation of the measures from Article 8 Paragraph 1 Items 1, 2 and 3 of this Law to a third party that meets the requirements defined by this Law.

A reporting entity must not entrust the application of measures of identification and verification of customer's identity to a third party when a third party is a shell bank or anonymous company.

A reporting entity must not entrust the application of measures of identification and verification of customer's identity to a third party from a country that is on the list of countries that do not apply the standards in the area of money laundering and terrorist financing.

The third party that carries out customer identification and verification in accordance with Article 22 of this Law, is obliged to submit the obtained data and documents on the customer to the reporting entity.

If the reporting entity assesses that there is doubt about the authenticity of the conducted identification and verification of the customer's identity by a third party, or the truthfulness of the obtained customer information, the reporting entity shall directly carry out the identification and verification of the customer's identity.

Upon request of reporting entity, third party, without delay, provides copies of identification and other documents, based on which it carried out identification and verification of the customer's identity and obtained data and documents;

Third party is obliged to keep the copies of obtained identification and other documents, in accordance with this Law.

Reporting entity is obliged to develop an internal act establishing procedures on acceptance of the identification of the customer and the beneficial owner of the customer through a third person.

In addition, article 18 of the AMLCTF Law regulates identification and verification of the identity of a foreign trust, other person, or an equal subject of foreign law, that include also legal arrangements, and which also applies to the mandatory identification of the founder's

identity; all trustees; representatives; users or groups of users of the assets it manages, if future users are already identified or identifiable; another natural person who directly or indirectly exercises final control over the trust.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The AMLCTF Law stipulates the obligation to develop Risk Analysis for all categories of reporting entities, by which reporting entities (including financial institutions) must establish the system for assessment of certain risk factors. 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”. The Guidelines regulate in more detail the development of risk analysis to be used by the reporting entities licensed and/or authorized and supervised by the Central Bank of Montenegro to assess the risk of an individual customer, a group of customers, a country or geographic area, business relationship, a transaction or a product, services and distribution channels based on risk factors associated with money laundering and terrorist financing and the result of the national risk assessment.

Based on the performed risk analysis, the reporting entity is obliged to determine for each customer a risk category (A, B or C), on the basis of which the type of procedure of verification and monitoring of clients and transactions (CDD) is determined, i.e. whether the enhanced identification and verification measures will be applied.

If the reporting entity assesses that a customer or group of customers, business relationship, transaction, product, service, distribution channel, state or geographic area presents a higher risk of money laundering or terrorist financing, it is obliged to apply enhanced measures of identification and verification of the customer’s identity, monitoring of business relationship, and control of transactions, in accordance with law.

In addition, the Guidelines provide a form that financial institutions supervised by the Central Bank must use when establishing a business relationship that relates to determining if the customer is a PEP.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

For details on enhanced measures for identification and verification of customers and beneficial owners, please also see the information provided on article 52 paragraph 1 of the UNCAC.

The AMLCTF Law has implemented the IV EU Directive on AML and FATF recommendations concerning the enhanced due diligence and monitoring of business relationship. This Law prescribes the said measures in its articles 29 to 36.

Furthermore, on the basis of this Law, the following documents were adopted:

- 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, 65/18, of 9 October 2018), and
- Guidelines for developing risk analysis for the purposes of prevention of money laundering and terrorist financing, December 2018.

The Rulebook on guidelines for developing risk analysis and risk factors for the purposes of prevention of money laundering and terrorist financing establishes the criteria for the development of such guidelines. The criteria and factors for the development of such guidelines are adopted by the supervisory authorities referred to in article 94 of the AMLCTF Law for their respective reporting entities. Based on the guidelines of the supervisory authority, the reporting entity adopts the internal act for risk analysis and risk factors for the purpose of prevention of money laundering and terrorist financing. According to the guidelines, the internal act contains:

- 1) manner of establishing the possibility of entering into a business relationship with a customer;
- 2) risk assessment of groups and customers;

- 3) manner of establishing the risk of products and services in regard to prevention of money laundering and terrorist financing;
- 4) manner of identification of the customer;
- 5) monitoring of a business relationship and control of transactions, supervision over accounts and transactions of the customers;
- 6) prevention of using new technologies for the purposes of money laundering and terrorist financing (this relates to banks and other financial institutions);
- 7) risk management in the field of money laundering and terrorist financing, to which the reporting entities are exposed to; and
- 8) training plan for employees.

Since the enhanced due diligence is carried out based on establishing the higher risk, Montenegro adopted and added the risk factors contained in the Annexes to the IV Directive.

In December 2018, the Administration for prevention of money laundering and terrorist financing adopted the **Guidelines for developing risk analysis and risk factors for the purposes of prevention of money laundering and terrorist financing**. These guidelines enabled the reporting entities to develop risk analysis for their risk assessment of certain customers, groups of customers, states or geographic areas, business relationships, transactions or products, services or distribution channels, concerning their potential misuse for the purposes 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, 22/19), which clearly defined the assumptions and obligations for such reporting entities, concerning the establishment of a high quality system for prevention of money laundering and terrorist financing. The guidelines represent a mechanism that ensures that the reporting entities implement the provisions of the AMLCTF Law in a unified manner, and to carry out efficient and effective risk assessment of certain customers, groups of customers, states or geographic areas, business relationships, transactions or products, services or distribution channels, aimed at prevention of money laundering and terrorist financing.

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, fairly aligned with the EBA guidelines, elaborate in detail the obligations prescribed by the AMLCTF Law. The Central Bank provides additional advice and instructions to the reporting entities, via regular communication, seminars, meetings and recommendations in the supervision reports, all with the aim of improving the risk assessment and management in the area of prevention of money laundering and terrorist financing.

The Guidelines define the obligations of financial institutions to develop the system that involves carrying out enhanced due diligence on customers, monitoring of business relationships and transaction control for certain categories of customers, business relationships, distribution channels and transactions. The stated obligations are fully aligned with the provisions of the AMLCTF Law.

The overview of special categories set forth in the AMLCTF Law in accordance with which these Guidelines were developed is provided in the information on article 30 of the AMLCTF Law, cited above on article 52 paragraph 1 UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The AMLCTF Law implements the IV Directive and the FATF recommendations concerning the enhanced due diligence of the customer and monitoring of a business relationship, as elaborated in the information above.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see additional information on cooperation and exchange of information on national and international level in the information provided on article 14 para 1 (b) UNCAC.

Montenegro is a signatory of a number of conventions dealing with countering terrorism, adopted by the United Nations and the Council of Europe. In its EU accession efforts, Montenegro is implementing Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism. Montenegro also enhances the cooperation in this area, in accordance with the Resolution 1267 (1999), Resolution 1373 (2001), Resolution 1535 (2004), Resolution 1624 (2005), and other relevant UN resolutions, international conventions and other instruments. Montenegro, through its permanent representative, actively cooperates with the UN Security Council's Anti-Terrorism Committee (ATC), established by the Resolution 1373 (2001). By operating within the framework of various international organizations - in particular the United Nations and the Council of Europe, Montenegro has become a party to a number of international legal instruments, which are set out in Annex I. One of such instruments is the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, which Montenegro ratified in April 2002.

One of the most significant deficiencies identified in the IV evaluation round was the lack mechanisms for freezing of assets of terrorists, terrorist organizations and terrorist financiers. This deficiency was eliminated by the adoption of the Law on international restrictive measures (Official Gazette of Montenegro, 056/18, of 3 August 2018).

Request for ongoing monitoring of customer's financial businesses (Article 63 of the AMLCTF Law)

(1) The financial intelligence unit shall, in writing, request from the reporting entity an ongoing monitoring of customer's financial business, in relation to which there are reasons for suspicion of money laundering and related predicate offences or terrorist financing, or other person, for whom it may be concluded that he/she has cooperated or participated in transactions or businesses activities for which there are reasons for suspicion of money laundering and related predicate offences or terrorism financing, and shall determine deadline within which the reporting entity is obliged to inform the financial intelligence unit and provide the required data.

(2) Reporting entity shall provide or inform the financial intelligence unit on data from the Paragraph 1 of this Article, before carrying out the transaction or concluding the business and state in the report the deadline estimation, within which the transaction or business should be done.

(3) If due to the nature of transaction or business or due to other justified reasons reporting entity is not able to act as it is prescribed in Paragraph 2 of this Article, he/she shall forward the data to the financial intelligence unit as soon as he/she is able to do so, but not later than the next working day from the day of carrying out the transaction or concluding the business activity and they shall state the reasons for not acting in accordance with the provisions of Paragraph 2 of this Article.

(4) Ongoing monitoring of transactions from Paragraph 1 of this Article shall not be longer than 3 months. (5) Deadline from the Paragraph 4 of this Article, if there are reasons for suspicion of money laundering and related predicate offences and terrorism financing shall be prolonged not later than 3 months starting from the day of submitting the request from Paragraph 1 of this Article.

In order to establish and foster international cooperation, the FIU concluded a number of agreements with the authorized authorities of foreign countries and international organizations on the exchange of financial intelligence, information and documentation, which can be used only for the purposes specified by the AMLCTF Law. **Please see Table 3 List of international bilateral treaties concluded by the FIU, provided in the information on article 14 sub-paragraph 1(b) UNCAC.**

International cooperation is regulated in the articles 68 - 72 of the AMLCTF Law.

Request to the competent authority of a foreign state for providing data and information

Article 69

(1) The financial intelligence unit may request, within its competencies, from the competent authority of a foreign state data, information, and documentation necessary for detection and prevention of money laundering and related predicate offences or terrorist financing.

(2) The financial intelligence unit may request from authorities of other foreign state, that are responsible for the detection and prevention of money laundering and terrorist financing, to submit data, information and documentation necessary for detection and prevention of money laundering and terrorist financing, with the provision that such exchange of data, information and documentation must be done via the financial intelligence unit competent for detection and prevention of money laundering and terrorist financing of that state through a secure communications systems, global association of financial intelligence units or via other system of international communication providing the same or higher level of data protection.

(3) The financial intelligence unit may use the data, information and documentation obtained in accordance with Paragraph 1 of this Article, only for the purposes provided for by this Law, and without previous approval of the competent authority of the foreign state from which the data are obtained, it must not provide or disclose them to another authority, legal or natural person, or use them for purposes that are not in accordance with the terms and limits defined by requested authority.

As for providing data and information upon the request of the competent authority of a foreign state (Article 70 AMLCTF Law), the financial intelligence unit may, upon a request, containing sufficient reasons for suspicion on money laundering and related predicate offenses or terrorist financing and a purpose for which data are required, to a foreign financial intelligence unit competent for detection and prevention of money laundering and terrorist financing, provide data, information and documentation about persons or transactions related to reasons for suspicion of money laundering and related predicate offences or terrorist financing.

The financial intelligence unit may, upon a request, submit such data to other bodies of the foreign state, that are responsible for the detection and prevention of money laundering and terrorist financing, with the provision that such exchange of data, information and documentation must be done via the financial intelligence unit competent for detection and prevention of money laundering and terrorist financing of that state through a secure communications systems, global association of financial intelligence units or via other system of international communication providing the same or higher level of data protection.

The financial intelligence unit can request from the reporting entity a continual monitoring of customer's financial business (article 63 AMLCTF Law), whereby the reporting entity is obliged to inform the financial intelligence unit and provide the data on customer's operations, i.e. each transaction, prior to the execution of the transaction or the conclusion of a business arrangement, including on the assessed time when the transaction or the business arrangement will be concluded.

That means that the reporting entity is obliged to continuously monitor all activities of the customer, and to allow the state authority through reporting to provisionally suspend the transaction, if necessary. The request for continuous monitoring of a customer must contain the names of the customers, and other identification data (personal identification number, address...).

Pursuant to article 71 of the AMLCTF Law, the financial intelligence unit may, without a request, provide data, information and documentation on persons or transactions, for which there are reasons for suspicion of money laundering and related predicate offences or terrorist financing, which it has obtained or kept in accordance with this Law, to a foreign country authority competent for the prevention and detection of money laundering and terrorist financing, under the condition of reciprocity.

In accordance with this Law (article 72), the financial intelligence unit may, under the condition of reciprocity, by reasoned written initiative of a foreign competent authority, suspend a transaction, with written order, for the period not exceeding 72 hours.

The financial intelligence unit may, within its competencies in the area of detection and prevention of money laundering and terrorist financing, submit written initiative for temporary suspension of transaction to a foreign authority competent for the prevention of money laundering and terrorist financing, if it evaluates that there are sufficient reasons for a suspicion of money laundering and related predicate offences or terrorist financing (article 73).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

For statistical data on exchanged requests between national and foreign FIUs, **please see Table 4 provided in the information on article 14 1 b) UNCAC.**

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please also see the information provided on article 52 paragraph 1 of UNCAC.

The reporting entities and authorities responsible for implementing measures for prevention of money laundering and terrorist financing are required to keep appropriate records, in accordance with the AMLCTF Law. Detailed information on the manner of keeping records, contents of records, storage and protection of data are provided in articles 78 through 93 of this Law.

The articles 78-87 of the AMLCTF Law prescribe the obligations concerning keeping records and storing data in a manner that will provide reconstruction of individual transactions (including amounts and currency) that could be used as evidence in the process of detecting customers' criminal activities.

Article 91 paragraph 1 of the AMLCTF Law stipulates that reporting entity keep records obtained in accordance with this Law, related documentation, data on identification number of each customer's account, data and documentation on wire transfers, documentation on business correspondence and reports at least ten years after the termination of business relationship, executed transaction, entrance of the customer into casino and facilities where other special games on chance are organised or access to the safe deposit box, unless a specific law prescribes longer period for data keeping.

Pursuant to article 78, reporting entities keep the following records:

- 1) data records on customers, business relationships, accounts and transactions (carried out in the country and with foreign countries) from article 9 of this Law;
- 2) data records from Article 41 of this Law;
- 3) data records from Article 35 of this Law;
- 4) records of orders on temporary suspension of transactions referred to in Article 61 of this Law;

5) records of requests for the ongoing monitoring of customer's financial status referred to in Article 63 of this Law.

Pursuant to article 80, a lawyer or notary keeps the following data:

- 1) records on customers, business relationships and transactions from Article 9 of this Law;
- 2) records on data from Article 51 Paragraph 1 of this Law;
- 3) records on complex and unusual transactions referred to in Article 35 of this Law.

Records kept by customs authority (article 82) are:

- 1) records on declared and non-declared cross border transport of money, checks, securities, precious metals and precious stones in amount and in value of 10,000€ or more;
- 2) records on cross border transport or attempt of transport of money, checks, securities, precious metals and precious stones in amount less than 10,000€ if there are reasons for suspicion of money laundering or terrorist financing.

The state authority (FIU) shall keep the following data records and statistics:

- 1) persons and transactions from Article 41 of this Law;
- 2) persons and transactions from Article 51 Paragraph 1 of this Law;
- 3) received initiatives from Article 64 of this Law;
- 4) notifications and information from Articles 65 and 66 of this Law;
- 5) international requests from Articles 69 and 70 of this Law;
- 6) criminal acts and misdemeanours from Article 76 of this Law;
- 7) orders for temporary suspension of transactions referred to in Article 61 of this Law;
- 8) requests for the ongoing monitoring of customers' financial businesses referred to in Article 63 of this Law;
- 9) information on non-residents.

Reporting entity, lawyer or notary keep separate records on access of a competent authority to data, information and documentation referred to in article 88 of this Law.

These records include the following data:

- 1) name of the competent authority;
- 2) personal name of authorized official accessing the data;
- 3) date and time of data checking.

Furthermore, article 55 of the Law on Payment System stipulates that payment system providers safeguard documents on payment system users, payment transactions and the condition and changes at the payment account of the payment service user five years, and electronic data thereof ten years from the execution of payment transaction, and/or from the change at the payment account of the payment service user.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article.]

Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to the Law on Central Bank of Montenegro (Official Gazette of Montenegro, 40/10, 46/10, 06/13 and 70/17), the Central Bank of Montenegro, among other, grants approvals and issues licences for the operations of banks and financial institutions, and supervises banks and financial institutions.

The Law on Banks (Official Gazette of Montenegro, 17/08, 44/10 and 40/11), the Central Bank performs the supervision of the banks' operations, in accordance with the law and internationally accepted standards of efficient bank supervision, with a view to establishing and maintaining a sound banking system and protecting depositors and other creditors of banks, by evaluating their capacity to manage risks and compliance of their operations with the law and the Central Bank's regulations.

The Central Bank performs the supervision of banks by analysing the reports, and by direct review of the banks' business books. The Central Bank prepares annual plans for the supervision of banks and other financial institutions.

The definition of shell banks is provided in article 5 of the AMLCTF Law, whereby shell bank means a credit institution, or other similar institution, registered in a country where it has no physical presence, it does not carry out activity, has no premises, employees, management bodies and management and which is not related to a financial group subject to supervision for the purpose of detecting and preventing money laundering or terrorist financing.

Articles 23, 31 and 44 of the same law prescribe measures and actions for prevention of establishment of shell banks, as well as the correspondent banking relationships with such banks, including with foreign financial institutions that allow their accounts to be used by shell banks.

Article 23 of the AMLCTF Law prohibits entrusting the identification and verification of customer's identity through a third party, when the third party is a shell bank or anonymous company.

As for the correspondent banking relationships with credit institutions of other countries, article 31 stipulates that when establishing a correspondent relationship with a bank or other credit institution that has a registered office outside the European Union or outside the countries from the list of countries that apply international standards in the area of prevention of money laundering and terrorist financing that are on the level of EU standards or higher, the reporting entity must, in addition to the measures referred to in article 10 of this Law, also obtain a written statement that the bank or other credit institution does not operate as a shell bank, and that it has not established or it does not establish business relationships or execute transactions with shell banks.

Article 40 of the AMLCTF Law explicitly prohibits dealing with shell banks: *A reporting entity must not establish, or continue a correspondent relationship with a bank that operates or could operate as a shell bank or with other credit institution known for allowing shell banks to use its accounts.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where

applicable.]

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In accordance with article 42 of the Law on Mutual Legal Assistance in Criminal Matters, mutual legal assistance, among other, includes the provision of banking information. Therefore, if a foreign country requests banking information, such information can be provided to it, while the basis for the submission of the information is not only this Law, but also the relevant international conventions of the United Nations and the Council of Europe, ratified by Montenegro.

For more information on the existing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance, please also see the information provided on article 7 paragraph 2, and article 8 paragraph 5 of the UNCAC.

For the purpose of verification of the Reports on income and assets, the Agency for Prevention of Corruption, has a direct access to several databases maintained by other institutions that keep records of income and assets. Specifically, for verification of financial data, the Agency has direct access to the database of the Tax Administration of Montenegro. In addition, in accordance with the Law on Prevention of Corruption (LPC), a public official can give consent to the Agency to access his/her bank accounts, which is another way to verify the financial data.

Pursuant to Article 24 of the LPC, for the purpose of verification of the data from the Report, the public official may give consent to the Agency to access his/her data on bank accounts and accounts of other financial institutions, in accordance with the law governing banking

operations. Such consent is valid for the period in which the obligation prescribed by this Law apply to the public official.

The procedure for verification of data provided in the Reports on income and assets is prescribed by article 30 of the LPC.

Article 30

- (1) The Agency shall verify the data from the Reports by comparing these data with the data collected on the property and income of public officials from authorities and legal persons possessing such data.
- (2) Authorities and legal persons referred to in paragraph 1 of this Article shall submit the required data and information, i.e. make available the requested documentation in accordance with the law and within the time period and in the manner determined by the Agency.
- (3) If, in the verification process, the Agency determines that the property and income of a public official and persons related to the public official exceed the actual income, at the request of the Agency, the public official shall provide, within 30 days, detailed information on the grounds of acquiring property and income.
- (4) The Agency shall carry out verification of the data from the Reports according to the annual plan of verification for a certain number of public officials and categories of public officials.
- (5) The process of verification of the data from the Report shall not be disclosed to the public.
- (6) The annual plan of verification referred to in paragraph 4 of this Article shall be adopted once a year, by the end of the current year for the following year.
- (7) A more detailed manner of verification of the data referred to in paragraph 1 and 3 of this Article shall be determined by the Rules of Procedure of the Agency.

Concerning the categories of public officials subject to disclosure of income and assets, according to article 3 of the LPC, *public officials shall refer to the persons elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local government body, independent body, regulatory body, public institution, public enterprise or other business or legal person exercising public authority, i.e. activities of a public interest or state-owned (hereinafter: authority), as well as the person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the duration of the office and remuneration. State ownership shall refer to any share in a company in which the state or municipality, Old Royal Capital, or the Capital City (hereinafter: municipality) owns at least 33% of the capital.*

In addition to public officials, certain categories of state employees, specifically from the Police Administration, Administration for inspection affairs, Customs Administration, Tax Administration, are subject to disclosing income and assets, in accordance with a special law (article 23).

Data available to the public

Article 27 LPC

Data from the Register shall be published on the website of the Agency, except for information relating to:

- Personal information referred to in Article 24, paragraph 1, item 1 of this Law, except the names and surnames;*
- Address of immovable assets;*
- Children of public officials under the age of 16;*
- Alimony and other income or payments on the basis of social and child welfare.*

Fines for violations by public officials are regulated by article 103 of the LPC. A fine in the amount ranging from € 500 to € 2,000 shall be imposed on a public official for the misdemeanour offense, if he/she:

- Fails to report to the Agency accurate and complete data on income made by exercising an activity, or tasks referred to in Article 9, paragraph 1 and 2 of this Law;*
- Fails to submit to the Agency a Report on his income and assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household, within 30 days from assuming the function;*
- Fails to include accurate and complete data in the Report;*
- During the exercise of a public function, fails to submit the Report once a year, by the end of March of the current year for the previous year, or when he/she does not report changes from the Report that relate to an increase in assets of more than € 5,000, within 30 days from the day of change or at the request of the Agency in the event of initiation of proceedings referred to in Article 31, paragraph 1 and 2 of this Law, within 30 days from receipt of the request, or the initiation of proceedings ex officio;*
- When moving to another public function, as well as in the case of election, appointment, or assignment to another public function, pursuant to Article 12, paragraph 2 and 4 of this Law, fails to notify the Agency thereon within 30 days from the change;*
- Fails to provide, at the request of the Agency, detailed information on the grounds of acquiring assets and income within 30 days.*

If there are grounds for suspicion that a criminal offense prosecuted ex officio was committed, the Agency shall submit the request with the evidence collected in the exercise of its jurisdiction to the competent public prosecutor's office.

Furthermore, under the auspices of the Regional Anti-Corruption Initiative for South East Europe, Montenegro hosted the 2nd Negotiation Meeting on Draft Treaty on Exchange of Data for the Verification of Asset Declaration in March 2019. The purpose of the International Treaty on Exchange of Data for the Verification of Asset Declarations is to prevent and to combat corruption by providing for direct administrative exchange of information concerning asset declarations between the Parties of the Treaty. The Treaty will enable anti-corruption bodies to communicate formally with each other regarding data on foreign assets and interests, and thus significantly enhance verification of declarations.

The basis of the Treaty is the United Nations Convention against Corruption (UNCAC) and States Parties Resolution 6/4, which encourages Member States to consider the possibility

of concluding multilateral agreements on civil and administrative matters relating to corruption, including international cooperation. The signing ceremony is expected to be held in May 2020.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Below are statistical data on the compliance with the obligation of reporting income and assets by public officials, as well as the data on imposed sanctions for violating this obligation. Source: Annual reports of the Agency for Prevention of Corruption.

Data for 2016

Out of 4.427 public officials, 4.409 or 99,6% of them submitted reports on income and assets for 2015/2016.

For violating the obligations concerning the reports on income and assets, 312 misdemeanour proceedings were initiated against public officials, and fines in an amount of EUR 40.840 were imposed.

Data for 2017

Out of 4.450 public officials, 4.257 or 96% of them submitted reports on income and assets for 2016/2017.

For violating the obligations concerning the reports on income and assets, 312 misdemeanour proceedings were initiated against public officials, and fines in an amount of EUR 42.090 were imposed.

Data for 2018

Out of 5.769 public officials and state employees, 95 % of public officials and 93% of state employees submitted their reports on income and assets for 2017/2018 timely.

For violating the obligations concerning the reports on income and assets, 368 misdemeanour proceedings were initiated against public officials, and fines in an amount of EUR 50.650 were imposed.

In the period from July – December 2018, 17 misdemeanour warrants were issued, of which 6 were executed, in an amount of EUR 2.000.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information provided on article 7 paragraph 2, article 8 paragraph 5, article 52 paragraph 5 of the UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please see the information provided on article 52 paragraph 5 of the UNCAC.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

International cooperation for the purpose of seizure and management of seized assets is implemented in accordance with international treaties. If the international treaty is not in place, or of certain matters are not regulated by an international treaty, international cooperation is implemented in accordance with the Law on seizure of material benefit derived from criminal activity, provided there is reciprocity, or it can be expected that a foreign state would respond to the request for mutual legal assistance sent by a domestic judicial authority. The matters of international cooperation not covered by this Law are regulated by the Law on mutual legal assistance in criminal matters.

Please also see the information provided on article 51 of the UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

International cooperation for the purpose of seizure and management of seized assets is implemented in accordance with international treaties. If the international treaty is not in place, or of certain matters are not regulated by an international treaty, international cooperation is implemented in accordance with the Law on seizure of material benefit derived from criminal activity, provided there is reciprocity, or it can be expected that a foreign state would respond to the request for mutual legal assistance sent by a domestic judicial authority. The matters of international cooperation not covered by this Law are regulated by the Law on mutual legal assistance in criminal matters.

Please also see information provided on article 51 of the UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The mutual legal assistance procedure is applied without difficulties, on the basis of signed and ratified multilateral and bilateral agreements. If no international treaty exists or certain issues are not regulated by an international treaty, international legal assistance is provided in accordance with the Law on Mutual Legal Assistance in Criminal Matters, provided that reciprocity exists or it can be expected that a foreign state would comply with the MLA request issued by a domestic judicial authority. It should also be noted that article 9 of the Constitution of Montenegro stipulates that approved and published international treaties and generally accepted rules of international law are an integral part of the domestic legal order, and they have primacy over domestic legislation and are directly applicable when relations are regulated differently from domestic legislation.

Law on mutual legal assistance in criminal matters

Article 38

(1) Competent Montenegrin court shall, to enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity, make a decision on the imposition of criminal sanction, or a decision ordering the suspension or revocation of property obtained by criminal activity, in accordance with domestic law.

(2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a panel composed of three judges without presence of the parties.

(3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.

(4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence upon the request. In the particulars of judgement, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is to be enforced.

(5) State prosecutor and the sentenced person or his defense attorney may file a complaint against the verdict.

Article 39

(1) If the foreign court pronounced criminal sanction which is not prescribed by the domestic law, the competent Montenegrin court shall pronounce a criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.

(2) In the event referred to in paragraph 1 above, the criminal sanction may not be more severe than the criminal sanction pronounced by a foreign court.

Article 39a

Foreign judicial criminal verdict shall not be enforced, if:

1) the statute of limitation came in force under domestic law;

2) in accordance with the domestic law for the criminal procedure the court in Montenegro has jurisdiction, and there are circumstances which preclude criminal prosecution;

3) the decision was made in the absence of the defendant or if the defendant was not heard or did not have the opportunity to present his defense.

Article 40

The provisions of the domestic law regulating pardon, amnesty and conditional release shall also apply to the persons convicted by foreign criminal verdicts to imprisonment sentence or security measure.

Article 41

(1) If under an international agreement, a criminal verdict of a Montenegrin court may be enforced in a foreign state or if there is reciprocity, the competent authorities of the foreign state shall be delivered a request.

(2) If the foreign national convicted in Montenegro or if a competent authority authorized by an international agreement submits a request to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.

(3) If a Montenegrin citizen who is serving a sentence in a foreign state petitions to a Ministry or the competent authority of that State to be transferred to Montenegro to continue serving a prison sentence, transfer can be made with the consent of the Minister and the competent authority of the country in which Montenegrin citizen is serving his sentence, if he is left to serve more than six-month imprisonment and if there is reciprocity.

Legal provisions that stipulate the recognition of the rights of third parties from states parties in the proceedings concerning the seizure of assets:

Criminal Code of Montenegro (Official Gazette of Montenegro, 44/2017, 49/2018 and 3/2020):

Protection of Injured Party

Article 114

(1) Where the injured party has been awarded his claim for damages in criminal proceedings, the court shall order the confiscation of material benefit only insofar as such material benefit exceeds the adjudicated claim of the injured party.

(2) The injured party that has been referred by the criminal court to bringing his claim for damages in a civil action may request to be reimbursed from confiscated material benefit, provided that he brings a civil claim within six months from the date on which the decision directing him to bring a civil action becomes final and under the further condition that he claims reimbursement from the confiscated material benefit within three months from the date on which the decision awarding his claim becomes final.

(3) An injured party who has not brought a claim for damages in the course of criminal proceedings may request to be reimbursed from confiscated material benefit, provided that he instituted a civil action for the purpose of establishing his claim within three months of the date he learnt of the judgment ordering confiscation of material benefit, but not later than within three years of the date on which the decision ordering confiscation of material benefit becomes final, and provided further that he requests, within three months of the date on which the decision awarding his claim for damages becomes final, to be reimbursed from the confiscated material benefit.

Law on seizure of material benefits derived from criminal activity (Official Gazette of Montenegro, 58/2015 and 47/2019).

Protection of Injured Parties

Article 48

- (1) If a final decision was rendered in criminal proceedings on account of a crime referred to in Article 2 para. 1 of this Law or in civil proceedings, to uphold the injured party's claim for damages, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit, that the claim for damages is to be settled from the confiscated material benefit if the claim for damages has not been not settled otherwise before the ruling becomes final.*
- (2) Where civil proceedings are underway in view of exercising the claim for damages on account of a crime referred to in Article 2 para. 1 of this Law, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit that funds amounting to the claim for damages are to be set aside and kept separately or deposited onto a separate account.*
- (3) Where a judgment is rendered in proceedings referred to in paragraph 2 of this Article to uphold the claim for damages, execution shall be conducted on the funds set aside or deposited, if the claim for damages has not been settled otherwise.*

Rights of Bona Fide Third Parties

Article 49

- (1) Confiscation of material benefit derived from criminal activities shall not affect the rights of bona fide third parties to that property.*
- (2) A bona fide third party may join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final.*

- (3) *A bona fide third party may file a motion to abolish or modify the provisional measure to secure assets, take part in the hearings, lodge an appeal against the ruling imposing a provisional measure to secure assets or against the ruling on seizure of movable assets or confiscation of material benefit derived from criminal activities and take other actions in accordance with this Law.*
- (4) *If the bona fide third party does not join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final, his right to seek the settlement of claims from the confiscated material benefit shall be forfeited.*

Settlement of Claims of Bona Fide Third Parties

Article 50

- (1) *Bona fide third parties whose claim or another right was upheld in the final judgment on confiscation of material benefit derived from criminal activities may file a request to the competent body within two months as of the date of receipt of the final judgment, for the satisfaction of their claim or for exercise of another right stemming from the confiscated property.*
- (2) *If the total value of the claim referred to in paragraph 1 of this Article exceeds the value of confiscated material benefit derived from criminal activities, the competent body shall offer settlement to the bona fide third party in accordance with the rules for satisfying creditors in bankruptcy proceedings.*
- (3) *If the offer referred to in paragraph 2 of this Article is not accepted by the bona fide third party, he may, within two months, file an application for issuing a ruling on settlement to the court which rendered the judgment to confiscate material benefit derived from criminal activities. The court shall order settlement in accordance with the act governing creditor settlement in bankruptcy proceedings.*
- (4) *An appeal may be filed against the ruling referred to in paragraph 3 of this Article to the second instance court within eight days of the receipt of the ruling.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The mutual legal assistance procedure is applied without difficulties, on the basis of signed and ratified multilateral and bilateral agreements. If no international treaty exists or certain issues are not regulated by an international treaty, international legal assistance is provided in accordance with the Law on Mutual Legal Assistance in Criminal Matters, provided that reciprocity exists or it can be expected that a foreign state would comply with the MLA request issued by a domestic judicial authority. It should also be noted that article 9 of the Constitution of Montenegro stipulates that approved and published international treaties and generally accepted rules of international law are an integral part of the domestic legal order, and they have primacy over domestic legislation and are directly applicable when relations are regulated differently from domestic legislation.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Property Administration acted in one case, in accordance with the Decision of the Higher Court in Podgorica no. 139/2016, in the case of mutual legal assistance in a criminal matter of the defendant LAMBERTUS HUBERTUS LEONARDUS VOS, for the criminal offence stipulated by article 225 para. 1 and 2 of the Criminal Code of the Kingdom of Netherlands, article 420 bis and article 420 ter, deciding upon the mutual cooperation request of the Special Prosecutor's Office from Hertgenboch, the Netherlands. The above stated decision stipulated a provisional seizure of a movable asset „Motor Yacht“, which was confiscated and managed by the Property Administration until the conclusion of the proceeding, after which the asset was returned.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to article 268 of the Criminal Code of Montenegro (Official Gazette of Montenegro, 44/2017, 49/2018 and 3/2020), all criminal offences, regardless of where they were committed (at home or abroad) can be predicate criminal offences for the criminal offence of money laundering. By pronouncing a judgement for the criminal offence of money laundering, an obligatory measure is also pronounced for the seizure of funds and assets used while committing the criminal offence of money laundering. This measure is pronounced for all funds and assets, regardless where such funds and assets are located (in Montenegro or abroad). The ML offence in Article 268 has been amended to refer to 'criminal activity', rather than 'criminal offence'. This enables the broadest application of the ML offence to property that is derived from conduct that occurred in another country.

Money laundering

Article 268

(1) *Whoever converts or transfers money or other property knowing them to be derived from criminal activity, for the purpose of concealing or disguising the origin of money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or disguises facts on the nature, source, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison sentence for a term from six months to five years.*

(2) *The penalty set out in paragraph 1 of this Article shall be imposed on the perpetrator of the offence set forth in paragraph 1 of this Article who is at the same time the perpetrator*

or the accomplice in the criminal offence resulting in acquisition of the money or property set out in paragraph 1 of this Article or on whomever assists a perpetrator in view of avoiding his accountability for the offence committed, or undertakes actions, with the same objective, to conceal the origin of money or property set out in paragraph 1 of this Article.

(3) Where the amount of money or value of the property set out in paragraphs 1 and 2 of this Article exceeds forty thousand euro, the perpetrator shall be punished by a prison sentence for a term from one to ten years.

(4) Where the offence set forth in paragraphs 1 and 2 of this Article is committed by several persons who associated for the purpose of committing such offences, they shall be punished by a prison sentence for a term from three to twelve years.

(5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years.

(6) The money and property set out in paragraphs 1, 2 and 3 of this Article shall be confiscated.

(7) Property, within the meaning of this Article, shall imply property rights of every kind, whether tangible or intangible assets, movable or immovable things, securities or other documents evidencing title to or interest in such assets.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Law on seizure and confiscation of material benefit derived from criminal activity prescribes the possibility of non-conviction based confiscation.

Article 10 of that Law states:

- (1) If the person against whom criminal procedure has been instituted of a criminal offence referred to in Article 2 para. 1 of this Law dies or when instituted proceedings cannot be continued due to existence of circumstances which permanently preclude prosecution, material benefit derived from criminal activities shall be confiscated in the material benefit confiscation procedure pursuant to this Law.*
- (2) In case of death of person against whom criminal proceedings were instituted of an offence under Article 2 para. 1 of this Law, material benefit derived from criminal activities shall be confiscated from his successors or from the person against whom criminal procedure may not be continued due to existence of circumstances which permanently preclude prosecution.*
- (3) In cases referred to in paras. 1 and 2 of this Article, material benefit derived from criminal activities may be confiscated if it is probable, on the merit of evidence that instituted proceedings would have ended in a conviction had the person not died or had the circumstances permanently precluding prosecution not arisen.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Articles 38 - 41 of the Law on Mutual Legal Assistance in Criminal Matters prescribe that a competent court in Montenegro, for the purpose of executing a foreign court decision, can issue the decision to provisionally or permanently seize assets derived from criminal activity.

IV. ENFORCEMENT OF FOREIGN CRIMINAL VERDICT

Article 38

(1) Competent Montenegrin court shall, to enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity, make a decision on the imposition of criminal sanction, or a decision ordering the suspension or revocation of property obtained by criminal activity, in accordance with domestic law.

(2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a panel composed of three judges without presence of the parties.

(3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the

Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.

(4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence upon letter rogatory. In the particulars of judgement, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is to be enforced.

(5) State prosecutor and the sentenced person or his defence attorney may lodge a complaint against the verdict.

Article 39

(1) If the foreign court pronounced criminal sanction which is not prescribed by the domestic law, the competent Montenegrin court shall pronounce a criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.

(2) In the event referred to in paragraph 1 above, the criminal sanction may not be more severe than the criminal sanction pronounced by a foreign court.

Article 39a

Foreign judicial criminal verdict shall not be enforced, if:

1) the statute of limitation came in force under domestic law;

2) in accordance with the domestic law for the criminal procedure the court in Montenegro has jurisdiction, and there are circumstances which preclude criminal prosecution;

3) the decision was made in the absence of the defendant or if the defendant was not heard or did not have the opportunity to present his defence.

Article 40

The provisions of the domestic law regulating pardon, amnesty and conditional release shall also apply to the persons convicted by foreign criminal verdicts to imprisonment sentence or security measure.

Article 41

(1) If under an international agreement, a criminal verdict of a Montenegrin court may be enforced in a foreign state or if there is reciprocity, the competent authorities of the foreign state shall be delivered a letter rogatory.

(2) If the foreign national convicted in Montenegro or if a competent authority authorized by an international agreement submits a letter rogatory to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.

(3) If a Montenegrin citizen who is serving a sentence in a foreign state petitions to a Ministry or the competent authority of that State to be transferred to Montenegro to continue serving a prison sentence, transfer can be made with the consent of the Minister and the

competent authority of the country in which Montenegrin citizen is serving his sentence, if he is left to serve more than six months of imprisonment and if there is reciprocity.

National legislation prescribes the provisions governing temporary and seizure of material benefit derived from criminal activity. **Please see the information provided on article 51 of the UNCAC.**

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Above cited articles 38 - 41 of the Law on Mutual Legal Assistance in Criminal Matters prescribe that a competent court in Montenegro, for the purpose of executing a foreign court decision, can issue the decision to provisionally or permanently seize assets derived from criminal activity. **Please see the articles cited above on article 54 subparagraph 2 (a) of the UNCAC.**

National legislation prescribes the provisions governing temporary and seizure of material benefit derived from criminal activity. **Please see the information provided on article 51 of the UNCAC.**

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) 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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Above cited articles 38 - 41 of the Law on Mutual Legal Assistance in Criminal Matters prescribe that a competent court in Montenegro, for the purpose of executing a foreign court decision, can issue the decision to provisionally or permanently seize assets derived from criminal activity. **Please see the articles cited above on article 54 subparagraph 2 (a) of the UNCAC.**

National legislation prescribes the provisions governing temporary and seizure of material benefit derived from criminal activity. **Please see the information provided on article 51 of the UNCAC.**

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In its Chapter VIII. INTERNATIONAL COOPERATION, the Law on confiscation and seizure of material benefit derived from criminal activity prescribes the basis for mutual cooperation, the scope of mutual cooperation, the procedure for filing the request for cooperation and its content, the procedure and the duration of the seizure measures.

Basis for international cooperation

Article 78

- (1) International cooperation with a goal of seizing, confiscating and managing material benefits shall be exercised in accordance with an international treaty.*
- (2) If there is no international treaty or if some matters are not governed by an international treaty, international cooperation shall be exercised in accordance with this Law, under the condition that reciprocity exists or if one can expect that the foreign country would act upon a mutual legal assistance request of the domestic judicial authority.*
- (3) The provisions of the act governing mutual legal assistance in criminal matters shall apply accordingly to international cooperation matters not governed by this Law.*
- (4) Division of confiscated material benefit with other countries may be governed by an international treaty.*

Scope of international cooperation

Article 79

- (1) International cooperation within the meaning of this Law shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit.*
- (2) The organizational police unit competent for financial investigations shall act upon requests in accordance with the Council Decision 2007/845/JHA of 6 December 2007.*

Delivery of requests for cooperation

Article 80

- (1) The request of the competent foreign authority for mutual cooperation shall be delivered to the competent body of Montenegro through the public administrative authority competent for judicial affairs.*
- (2) The request of the competent body of Montenegro shall be delivered to the competent foreign authority in the same manner.*

Contents of requests for cooperation

Article 81

- (1) A request for international cooperation shall contain:*
 - 1) name of the requesting authority;*
 - 2) legal basis for mutual cooperation;*

3) *data on the person to whom the request relates (name, date and place of birth, nationality and place of temporary residence), and if it concerns a legal person, also data on its main office;*

4) *data on the material benefit subject to the request for cooperation and its connections to the person referred to in paragraph 1 item 3 of this Article;*

5) *specific actions that should be taken; and*

6) *extract from the text of the Law of the other state which is the basis for taking specific measures.*

(2) In addition to the data referred to in paragraph 1 of this Article, the request for international cooperation which relates to tracing material benefit, to prohibiting the disposal of material benefit and to seizing and confiscating material benefit shall also contain a description of circumstances affording reasonable suspicion that the material benefit has been derived from criminal activities.

(3) In the case referred to in paragraph 2 of this Article, evidence shall be attached to the request showing that criminal proceedings have been instituted on account of the crime referred to in Article 2 para. 1 of this Law or that a financial investigation has been instituted.

(4) The final judgment ordering confiscation of material benefit shall be attached to the request for confiscation of material benefit.

Procedure

Article 82

(1) After receiving the request of the competent foreign authority for mutual cooperation, the state prosecutor and the court shall check whether the terms and conditions referred to in Articles 79 and 81 of this Law have been fulfilled.

(2) If the request of the competent foreign authority for mutual cooperation does not contain all the prescribed elements, the foreign authority shall be asked to supplement the request and a time-limit shall be fixed for it to do so.

(3) If the competent foreign authority fails to act in accordance with paragraph 2 of this Article, the request of the foreign authority shall be rejected.

Duration of the measures to secure assets

Article 83

(1) The provisional measure to secure assets imposed under a mutual cooperation request shall last until the completion of the procedure for confiscation of material benefit in the requesting country.

(2) If the procedure referred to in paragraph 1 of this Article is not completed within two years as of the date of issuance of the ruling imposing a provisional measure to secure assets, the court shall abolish the provisional measure to secure assets ex officio.

(3) Six months before the expiry of the time-limit referred to in paragraph 2 of this Article, the court shall inform the competent foreign authority of the consequences of expiry of time-limit.

(4) Upon a substantiated request of the competent foreign authority, the court may decide to extend the duration of the provisional measure to secure assets for one more year at the longest.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Montenegro, all necessary measures for detection, monitoring, freezing or seizing of material benefit derived from criminal activity, including property, equipment and other

assets can be implemented, regardless of whether the request is made by domestic competent authorities or by the competent authorities from other States Parties to the UNCAC (collection of necessary notifications, exclusion of documentation, delivering data on bank accounts and transactions, collection of data on movable and non-movable assets).

The Law on mutual legal assistance in criminal matters recognizes the forms of mutual legal assistance, including the delivery of documents, mutual exchange of information, execution of certain procedural actions, delivery of banking data, etc.

Article 42

Other forms of mutual legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on the judgement and other procedural actions.

In addition, it should be noted that the **Criminal Procedure Code** enables detection of assets derived from criminal activity through obtaining data from the competent state authority for temporary suspension of financial transactions (Article 89 of the Criminal Procedure Code).

Obtaining information from the competent state authority for temporary suspension of monetary transactions

Article 89

(1) State Prosecutor may request that the competent public authority performs control over the financial operations of certain persons and to submit them documentation and information which can be used as evidence of a criminal offence or of the proceeds of crime, as well as information about suspicious monetary transactions.

(2) State Prosecutor may request that the competent authority or organization temporarily suspends the payment, or the issuing of suspicious money, securities and objects, at the longest for six months.

(3) State Prosecutor shall specify in the motion referred to in paragraphs 1 and 2 of this Article in more detail the contents of measure of action they are requesting.

(4) Upon the proposal of the State Prosecutor, the court may issue a ruling ordering a temporary suspension of a certain monetary transaction when reasonable doubt exists that it constitutes a criminal offence or that it is intended for the commission or concealment of a criminal offence or proceeds of crime.

(5) Upon the ruling referred to in paragraph 4 of this Article, the court shall order that funds in check or cash form be provisionally seized and deposited into a special account

where they will be kept until the completion of the proceedings with final force and effect or until conditions for their return are met.

(6) An appeal against the ruling referred to in paragraph 4 of this Article may be filed by the parties and the defence attorney, or the owner of funds or his/her proxy or the legal person from whom the funds have been provisionally seized. Such an appeal shall be decided upon by the panel referred to in Article 24, paragraph 7 of the present Code.

Furthermore, in accordance with article **257 paragraph 2 of the Criminal Procedure Code**, the police officers can inspect the premises of commercial entities, other legal entities and entrepreneurs, to examine their documentation and to confiscate the documentation, as needed.

Competences and Actions of Police in Preliminary Investigation

Article 257

(1) Where there are grounds for suspicion that a criminal offence which is subject to prosecution by virtue of office has been committed, the police shall inform the competent State Prosecutor and take necessary measures as a self-initiative or upon a petition by a State Prosecutor, with a view to discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal proceedings successfully.

(2) In order to fulfil the duties referred to in paragraph 1 of this Article, the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist raid, restrict movement or the access to certain persons in a certain area for a relevant period, publicly offer a reward with the view of collecting information, carry out a necessary inspection of the means of transportation, passengers and luggage; undertake measures aimed at locating the persons; undertake necessary measures related to the establishment of the identity of persons and the sameness of items, take a DNA sample for analysis, issue a wanted notice for a person or warrant for seizure of items which are subject to a search, inspect, in the presence of the authorized person, facilities and premises of state authorities, companies, other legal persons and entrepreneurs, have insight in their documentation and seize it where needed, and take other necessary measures and actions in compliance with this Code. Records or an official annotation shall be made on the facts and circumstances established in the course of individual actions, which may be of importance for the criminal proceedings, as well as on discovered or seized items. The police may also make audio or audio-visual recordings of the execution of certain actions from this paragraph, in which case such recordings shall be enclosed with the record or the official annotation thereon.

(3) When conducting a crime scene investigation for the criminal offence against traffic safety for which there are grounds for suspicion that it has caused severe consequences or has been committed with the intent, the police authorities may temporarily, and for to the time not exceeding three days, provisionally seize the driving license of the suspect.

(4) A person against whom some of the actions or measures referred to in paragraphs 2 and 3 of this Article have been undertaken shall be entitled to file a complaint with the competent State Prosecutor.

As for the seizure of material benefit derived from criminal activity, for the purpose of tracing and detecting such material benefit, financial investigations may be conducted (articles 11 and 12 of the Law on seizure and confiscation of material benefit derived from criminal activity). Article 14 of the same Law also stipulates that police can, on its own initiative or upon the state prosecutor's request, undertake measures and actions for tracing and detecting material benefit derived from criminal activity. Thus, the national legislation contains all provisions concerning tracing, detecting, freezing and seizing of material benefit derived from criminal activity, while the Law on mutual legal assistance in criminal matters enables the provision of mutual legal assistance in this area.

Law on seizure and confiscation of material benefit derived from criminal activity

III FINANCIAL INVESTIGATION

Initiating Financial Investigations

Article 11

- (1) *Financial investigations may be instituted under an order of the state prosecutor, provided the following exists:*
- a. reasonable suspicion that the property of the holder is manifestly disproportionate to his lawful income;*
 - b. well-founded suspicion that material benefit was derived from criminal activities; and*
 - c. reasonable suspicion that the criminal offence referred to in Article 2 para.1 of this Law has been committed.*
- (2) *The order referred to in paragraph 1 of this Article shall designate a person against whom financial investigation is to be conducted.*

Purpose and Scope of Financial Investigation

Article 12

- (1) *Data and evidence of property, lawful income and costs of living of the holder, which the state prosecutor needs to submit a motion to confiscate material benefit shall be collected during the financial investigation, as follows:*
- 1) data and evidence of the holder's property or of the holder's lawful income after the deduction of taxes and other dues paid and data and evidence of the relation between the holder's income and property;*
 - 2) data and evidence on the property transferred to third parties or to the legal successor and on the manner of acquiring and transferring property;*
 - 3) other data and evidence of importance for confiscating material benefit derived from criminal activities.*
- (2) *At the request of the state prosecutor, the investigative judge may issue an order obliging a bank or another financial institution to deliver data necessary to detect and identify material benefit derived from criminal activities.*
- (3) *In cases of failure to act upon the order referred to in para. 2 of this Article, the investigative judge may punish the person responsible within a bank or another financial institution with a fine amounting up to EUR 5,000 and the bank or another financial institution itself up to EUR 50,000.*

- (4) *Should the bank or another financial institution fail to enforce the order of the investigative judge even after the imposition of the fine referred to in para. 3 of this Article, the person responsible within a bank or another financial institution may be imposed a prison term until the enforcement of the order, and at the longest for two months.*
- (5) *Should the bank or another financial institution not enforce the order of the investigative judge even after imposing a prison term referred to in para. 4 of this Article, the investigative judge shall enforce the order referred to in para. 2 of this Article coercively.*
- (6) *An appeal may be lodged against the order referred to in paras. 2, 3, 4 and 5 of this Article within 48 hours as of the moment of receiving it.*
- (7) *The appeal referred to in para. 6 of this Article shall be decided by the panel of the competent court referred to in Art. 24 para. 7 of the Criminal Procedure Code. An appeal against the decision imposing a prison term shall not stay enforcement of the order.*

Managing Financial Investigations

Article 13

- (1) *Financial investigations shall be managed by state prosecutors.*
- (2) *The state prosecutor shall issue orders and personally manage the financial investigation thus directing the actions of the police, military police, administrative bodies in charge of taxation, customs, and prevention of money laundering and terrorist financing, as well as of other authorities performing tasks they are competent for, in order to trace material benefit derived from criminal activities and prove that material benefit has been obtained through criminal activity.*

Taking Measures and Actions to Trace and Identify Property Derived from Criminal Activities

Article 14

- (1) *The police shall take measures and actions of their own initiative or under an order of the state prosecutor aimed at tracing and identifying material benefit derived from criminal activities.*
- (2) *State authorities, public administrative authorities, local self-government authorities and other legal entities exercising public authorizations and other entities shall deliver to the police without delay the requested data for tracing and identifying material benefit derived from criminal activities.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of

the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Law on seizure and confiscation of material benefit derived from criminal activity stipulates:

Contents of Requests for Co-operation

Article 81

(1) A request for mutual cooperation shall contain:

- 1) name of the requesting authority;*
 - 2) legal basis for mutual cooperation;*
 - 3) data on the person to whom the request relates (name, date and place of birth, nationality and place of temporary residence), and if it concerns a legal person, also data on its main office;*
 - 4) data on the material benefit subject to the request for cooperation and its connections to the person referred to in paragraph 1 item 3 of this Article;*
 - 5) specific actions that should be taken; and*
 - 6) extract from the text of the Law of the other state which is the basis for taking specific measures.*
- (2) In addition to the data referred to in paragraph 1 of this Article, the request for mutual cooperation which relates to tracing material benefit, to prohibiting the disposal of material benefit and to seizing and confiscating material benefit shall also contain a description of circumstances affording reasonable suspicion that the material benefit has been derived from criminal activities.*
- (3) In the case referred to in paragraph 2 of this Article, evidence shall be attached to the request showing that criminal proceedings have been instituted on account of the crime referred to in Article 2 para. 1 of this Law or that a financial investigation has been instituted.*
- (4) The final judgment ordering confiscation of material benefit shall be attached to the request for confiscation of material benefit.*

The Law on mutual legal assistance in criminal matters stipulates:

Article 6

- (1) Unless otherwise has been provided for by an international agreement or this Law, the letter rogatory for mutual legal assistance of the domestic or of the foreign judicial authority shall be accompanied with the translation of the letter rogatory into the language of the requested state, or one of the official languages of the Council of Europe, if the requested state accepts it. The replies to the letters rogatory of the foreign judicial authorities do not need to be translated.*
- (2) Domestic judicial authority shall also proceed upon the letter rogatory for mutual legal assistance of the foreign judicial authority if the letter rogatory has been presented electronically or by some other means of telecommunication providing delivery receipt, if it may verify its authenticity and if the foreign judicial authority is prepared to deliver the original of the letter rogatory within 15 days at latest.*

Article 7

- (1) Unless otherwise has been provided for by an international agreement or this Law, signed and certified letter rogatory for mutual legal assistance shall contain:*
 - (1) the name and the seat of the authority making the request;*
 - (2) the name of the requested authority, and if its precise name is unknown, an indication that the letter rogatory is being sent to the competent judicial authority, and the name of the country;*

- (3) legal basis for the provision of mutual legal assistance;
 - (4) the form of the mutual legal assistance requested and the reason for the letter rogatory;
 - (5) legal qualification of the criminal offence committed and the summary of the facts, except if the letter rogatory refers to the service of court writs (applications, documents and the like);
 - (6) nationality and other personal details of the person regarding which the mutual legal assistance is requested and his status in the proceedings;
 - (7) in case of service of court writs, their type.
- (2) Except for the information under Paragraph 1 of the Article, national judicial authority may require for additional information and documents necessary to proceed under the letter rogatory.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information provided on article 55 paragraphs 1 (a) and (b), and article 55 paragraph 2 of the UNCAC.

Mutual legal assistance is provided in accordance with the Law on mutual legal assistance in criminal matters, while the Constitution of Montenegro stipulates that ratified and published international agreements are an integral part of the domestic legal order, and have supremacy over the domestic legislation and are directly applicable when they regulate the relations differently than the domestic legislation.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

No

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

The Ministry of Foreign Affairs has not recently furnished the copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations. However, the Ministry of Foreign Affairs is ready, in co-operation with competent authorities, to furnish such documents to the Secretary-General of the United Nations in the following period.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Since the ratified international treaties have the primacy over the domestic legislation and are directly applicable when the relations are governed differently than in the domestic legislation, the UNCAC is considered the necessary and sufficient treaty basis for provision of mutual legal assistance.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Since the ratified international treaties have the primacy over the domestic legislation and are directly applicable when the relations are governed differently than in the domestic legislation, the UNCAC is considered the necessary and sufficient treaty basis for provision of mutual legal assistance.

The Law on seizure and confiscation of material benefit derived by criminal activities

Scope of International Cooperation

Article 79

- (1) International cooperation within the meaning of this Law shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit.*
- (2) The organisational police unit competent for financial investigations shall act upon requests in accordance with the Council Decision 2007/845/JHA of 6 December 2007.*

Contents of Requests for Co-operation

Article 81

- (1) A request for mutual cooperation shall contain:*
 - 1) name of the requesting authority;*
 - 2) legal basis for mutual cooperation;*
 - 3) data on the person to whom the request relates (name, date and place of birth, nationality and place of temporary residence), and if it concerns a legal person, also data on its main office;*
 - 4) data on the material benefit subject to the request for cooperation and its connections to the person referred to in paragraph 1 item 3 of this Article;*
 - 5) specific actions that should be taken; and*
 - 6) extract from the text of the Law of the other state which is the basis for taking specific measures.*
- (2) In addition to the data referred to in paragraph 1 of this Article, the request for mutual cooperation which relates to tracing material benefit, to prohibiting the disposal of material benefit and to seizing and confiscating material benefit shall also contain a description of circumstances affording reasonable suspicion that the material benefit has been derived from criminal activities.*
- (3) In the case referred to in paragraph 2 of this Article, evidence shall be attached to the request showing that criminal proceedings have been instituted on account of the crime referred to in Article 2 para. 1 of this Law or that a financial investigation has been instituted.*
- (4) The final judgment ordering confiscation of material benefit shall be attached to the request for confiscation of material benefit.*

Procedure

Article 82

- (1) After receiving the request of the competent foreign authority for mutual cooperation, the state prosecutor and the court shall check whether the terms and conditions referred to in Articles 79 and 81 of this Law have been fulfilled.*
- (2) If the request of the competent foreign authority for mutual cooperation does not contain all the prescribed elements, the foreign authority shall be asked to supplement the request and a time-limit shall be fixed for it to do so.*
- (3) If the competent foreign authority fails to act in accordance with paragraph 2 of this Article, the request of the foreign authority shall be rejected.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Since the ratified international treaties have the primacy over the domestic legislation and are directly applicable when the relations are governed differently than in the domestic legislation, the UNCAC is considered the necessary and sufficient treaty basis for provision of mutual legal assistance.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article.]

Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Legal provisions that stipulate the recognition of the rights of third parties from states parties in the proceedings concerning the seizure of assets:

Criminal Code of Montenegro (Official Gazette of Montenegro, 44/2017, 49/2018 and 3/2020):

Protection of Injured Party

Article 114

(1) Where the injured party has been awarded his claim for damages in criminal proceedings, the court shall order the confiscation of material benefit only insofar as such material benefit exceeds the adjudicated claim of the injured party.

(2) The injured party that has been referred by the criminal court to bringing his claim for damages in a civil action may request to be reimbursed from confiscated material benefit, provided that he brings a civil claim within six months from the date on which the decision directing him to bring a civil action becomes final and under the further condition that he claims reimbursement from the confiscated material benefit within three months from the date on which the decision awarding his claim becomes final.

(3) An injured party who has not brought a claim for damages in the course of criminal proceedings may request to be reimbursed from confiscated material benefit, provided that he instituted a civil action for the purpose of establishing his claim within three months of the date he learnt of the judgment ordering confiscation of material benefit, but not later than within three years of the date on which the decision ordering confiscation of material benefit becomes final, and provided further that he requests, within three months of the date on which the decision awarding his claim for damages becomes final, to be reimbursed from the confiscated material benefit.

Law on seizure of material benefits derived from criminal activity (Official Gazette of Montenegro, 58/2015 and 47/2019):

Protection of Injured Parties

Article 48

- (4) If a final decision was rendered in criminal proceedings on account of a crime referred to in Article 2 para. 1 of this Law or in civil proceedings, to uphold the injured party's claim for damages, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit, that the claim for damages is to be settled from the confiscated material benefit if the claim for damages has not been not settled otherwise before the ruling becomes final.*
- (5) Where civil proceedings are underway in view of exercising the claim for damages on account of a crime referred to in Article 2 para. 1 of this Law, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit that funds amounting to the claim for damages are to be set aside and kept separately or deposited onto a separate account.*
- (6) Where a judgment is rendered in proceedings referred to in paragraph 2 of this Article to uphold the claim for damages, execution shall be conducted on the funds set aside or deposited, if the claim for damages has not been settled otherwise.*

Rights of Bona Fide Third Parties

Article 49

- (5) Confiscation of material benefit derived from criminal activities shall not affect the rights of bona fide third parties to that property.*
- (6) A bona fide third party may join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final.*
- (7) A bona fide third party may file a motion to abolish or modify the provisional measure to secure assets, take part in the hearings, lodge an appeal against the ruling imposing a provisional measure to secure assets or against the ruling on seizure of movable assets or confiscation of material benefit derived from criminal activities and take other actions in accordance with this Law.*
- (8) If the bona fide third party does not join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final, his right to seek the settlement of claims from the confiscated material benefit shall be forfeited.*

Settlement of Claims of Bona Fide Third Parties

Article 50

- (5) Bona fide third parties whose claim or another right was upheld in the final judgment on confiscation of material benefit derived from criminal activities may file a request to the competent body within two months as of the date of receipt of the final judgment, for the satisfaction of their claim or for exercise of another right stemming from the confiscated property.*
- (6) If the total value of the claim referred to in paragraph 1 of this Article exceeds the value of confiscated material benefit derived from criminal activities, the competent body shall offer settlement to the bona fide third party in accordance with the rules for satisfying creditors in bankruptcy proceedings.*
- (7) If the offer referred to in paragraph 2 of this Article is not accepted by the bona fide third party, he may, within two months, file an application for issuing a ruling on settlement to the court which rendered the judgment to confiscate material benefit derived from criminal activities. The court shall order settlement in accordance with the act governing creditor settlement in bankruptcy proceedings.*
- (8) An appeal may be filed against the ruling referred to in paragraph 3 of this Article to the second instance court within eight days of the receipt of the ruling.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Article 42 of the Law on mutual legal assistance in criminal matters stipulates the mutual exchange of information as one of the forms of mutual legal assistance.

Furthermore, should a State Prosecutor, during a preliminary investigation proceeding or an investigation, obtain information on certain material benefit derived from criminal activity, he or she may submit such data to the foreign state if deemed that such data could be useful to the foreign state for initiating or conducting an investigation or a court action, etc. Such requests may be submitted as notifications supplemented by evidence, or as decisions transferring the criminal prosecution to the foreign state.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Law on seizure and confiscation of material benefit derived from criminal activity:

Basis for International Cooperation

Article 78

- (1) International cooperation with a view to seizing, confiscating and managing material benefits shall be exercised in accordance with an international treaty.
- (2) If there is no international treaty or if some matters are not governed by an international treaty, international cooperation shall be exercised in accordance with this Law, under the condition that reciprocity exists or if one can expect that the foreign country would act upon a mutual legal assistance request of the domestic judicial authority.
- (3) The provisions of the act governing mutual legal assistance in criminal matters shall apply accordingly to international cooperation matters not governed by this Law.
- (4) Division of confiscated material benefit with other countries may be governed by an international treaty.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Property Administration acted in one case, in accordance with the Decision of the Higher Court in Podgorica no. 139/2016, in the case of mutual legal assistance in a criminal matter of the defendant LAMBERTUS HUBERTUS LEONARDUS VOS, for the criminal offence stipulated by article 225 para. 1 and 2 of the Criminal Code of the Kingdom of Netherlands, article 420 bis and article 420 ter, deciding upon the mutual cooperation request of the Special Prosecutor's Office from Hertgenboch, the Netherlands. The above stated decision stipulated a provisional seizure of a movable asset „Motor Yacht“, which was confiscated and managed by the Property Administration until the conclusion of the proceeding, after which the asset was returned.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please also see the information provided on article 55 paragraph 9 of the UNCAC.

The Law on seizure and confiscation of material benefit derived from criminal activity also defines the **management over seized material benefit**, objects derived from criminal activity, as well as objects provisionally seized during criminal and misdemeanour proceedings given in the form of warranties.

This law also stipulates the restitution of the seized material benefit.

Restitution of Material Benefit

Article 70

- (1) Where a provisional measure to secure assets or seizure of movable property were imposed in accordance with this Law, the holder shall be entitled to restitution of seized material benefit and damages in accordance with the law governing contractual relations, in the case where:
 - 1) a decision was issued to reject the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence;*
 - 2) judgment of acquittal or judgment of rejection were rendered with regards to the offence referred to in Art. 2 para. 1 of this Law.**
- (2) In the case referred to in paragraph 1 item 1 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days from the date of the receipt of the decision rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.*
- (3) In the case referred to in para.1 item 2 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days of the receipt of a final judgment of acquittal or of dismissal.*
- (4) An action for damages may not be brought after the expiration of the time-limit of three months as of the date of delivery of the final judgment rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.*
- (5) A written record shall be drawn up concerning the restitution of property referred to in paras. 1, 2 and 3 of this Article, which shall be signed by the director of the competent body and the holder.*
- (6) Montenegro shall be accountable for compensation of damages referred to in paragraph 4 of this Article.*

Scope of Restitution of Material Benefit

Article 71

- (1) In the case of restitution of material benefit, the revenues and all other benefits generated during the management of seized material benefit shall be handed over to the holder.*
- (2) If the entire material benefit or part of it was sold during the management of seized material benefit, the competent body shall transfer to the holder the amount of the sales price increased by the amount of average interest rate calculated on sight deposits in Montenegro.*

- (3) *If the material benefit against which a seizure order was issued was gifted or destroyed during management, the holder shall be entitled to compensation of damages in accordance with the law governing contractual relations.*
- (4) *The competent body shall act in accordance with paras. 1 and 2 of this Article, within 15 days as of the date of delivery of the decision referred to in Art. 70 paragraph 1 of this Law.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see articles 2, 70 - 83 of the Law on seizure and confiscation of material benefit derived from criminal activity cited in the information on article 51 of UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see articles 2, 70 - 83 of the Law on seizure and confiscation of material benefit derived from criminal activity cited in the information on article 51 of UNCAC.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Law on mutual legal assistance in criminal matters

Article 3

Mutual legal assistance shall include the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, as well as other forms of mutual legal assistance provided for by this law.

Article 42

Other forms of mutual legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on the judgement and other procedural actions.

Law on seizure and confiscation of material benefit derived from criminal activity

This Law stipulates the restitution of confiscated material benefit.

Restitution of Material Benefit

Article 70

- (7) *Where a provisional measure to secure assets or seizure of movable property were imposed in accordance with this Law, the holder shall be entitled to restitution of seized material benefit and damages in accordance with the law governing contractual relations, in the case where:*
- 3) *a decision was issued to reject the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence;*
 - 4) *judgment of acquittal or judgment of rejection were rendered with regards to the offence referred to in Art. 2 para. 1 of this Law.*
- (8) *In the case referred to in paragraph 1 item 1 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days from the date of the receipt of the decision rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.*
- (9) *In the case referred to in para.1 item 2 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days of the receipt of a final judgment of acquittal or of dismissal.*
- (10) *An action for damages may not be brought after the expiration of the time-limit of three months as of the date of delivery of the final judgment rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.*
- (11) *A written record shall be drawn up concerning the restitution of property referred to in paras. 1, 2 and 3 of this Article, which shall be signed by the director of the competent body and the holder.*
- (12) *Montenegro shall be accountable for compensation of damages referred to in paragraph 4 of this Article.*

Scope of Restitution of Material Benefit

Article 71

- (5) *In the case of restitution of material benefit, the revenues and all other benefits generated during the management of seized material benefit shall be handed over to the holder.*
- (6) *If the entire material benefit or part of it was sold during the management of seized material benefit, the competent body shall transfer to the holder the amount of the sales price increased by the amount of average interest rate calculated on sight deposits in Montenegro.*
- (7) *If the material benefit against which a seizure order was issued was gifted or destroyed during management, the holder shall be entitled to compensation of damages in accordance with the law governing contractual relations.*
- (8) *The competent body shall act in accordance with paras. 1 and 2 of this Article, within 15 days as of the date of delivery of the decision referred to in Art. 70 paragraph 1 of this Law.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Law on mutual legal assistance in criminal matters

Article 8

(1) Unless otherwise provided by an international agreement, the costs of provision of mutual legal assistance, under the condition of reciprocity, shall be borne by the Requested State, except for costs for:

- 1) expertise;
- 2) a temporary transfer of persons detained for questioning;
- 3) which are extraordinary and disproportionate.

(2) The costs referred to in paragraph 1, points 1 and 2 of this Article shall be borne by the Requesting State and the reimbursement of expenses referred to in paragraph 1, item 3 of this Article shall be as agreed by the Requesting and Requested States.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Article 78 paragraph 4 of the Law on seizure and confiscation of material benefit derived from criminal activity stipulates that the division of permanently seized assets with other states is agreed by an international treaty.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

For the full information on the Montenegrin FIU, please see the information provided on article 14 subparagraph 1 (b) of the UNCAC.

Administration for prevention of money laundering and terrorist financing was established by the Regulation on organization and manner of work of public administration in 2004, as an autonomous state authority, and the financial intelligence unit. Pursuant to the new Regulation on the organization and manner of work of public administration (Official Gazette of Montenegro, 87/18 of 31/12/2018), the operations of this Administration were assigned to the Police Administration, specifically its Division for Prevention of Money Laundering and Terrorist Financing.

The competencies and powers of the FIU are defined by the Law on prevention of money laundering and terrorist financing (AMLCTF Law). The FIU is a central financial intelligence unit that collects, stores, analyses and submits data, notifications, information and documentation, along with the results of operative analyses on suspicious transactions to the competent state authorities for further processing, with the aim of preventing and detecting money laundering and terrorist financing, in accordance with the AMLCTF Law. The FIU is operationally independent in the exercise of its authority in the performance of the tasks set out in this AMLCTF Law, including independent decision-making regarding the receipt, analysis and request for information, data and documentation and the submission of operational analysis results to the competent authorities and foreign financial intelligence units for further action.

Independence and autonomy in performing affairs and exercising of powers

Article 55

- (1) The financial intelligence unit is operationally independent in performing its affairs.*
- (2) The financial intelligence unit is independent in exercising its powers when performing activities prescribed by this Law and independent in decision-making related to the reception, gathering, keeping, analyzing and delivering data, notifications, information and documentation and delivery of the results of its strategic and operational analyses of the suspicious transactions to the competent authorities and foreign financial intelligence units aimed at prevention and detection of money laundering and terrorist financing, in accordance with this Law.*
- (3) The activities or powers from paragraph 2 of this Article shall be conducted or exercised by employees of the financial intelligence unit.*

Powers of the Financial Intelligence Unit

Article 56

The financial intelligence unit is empowered to:

- 1) initiate changes and amendments to regulations related to prevention of money laundering and terrorist financing;*
- 2) prepare and compile the list of indicators for identifying customers and transactions for which there are reasons for suspicion of money laundering and terrorist financing and to submit it to the reporting entities and other subjects that are obliged to act in accordance with this Law;*
 - 2a) conclude cooperation agreements or establish an independent co-operation aimed at exchanging information with other domestic competent bodies and foreign financial intelligence units.*
- 3) participate in training and professional improvement of reporting entity's compliance officers and employees of the competent state authorities;*
- 4) publish on its website the list of countries from Article 30 Paragraph 2 of this Law;*
- 5) publish on its website the list of countries from Article 23 Paragraph 3 of this Law;*
- 6) prepare and issue recommendations or guidelines for unique implementation of this Law and regulations enacted in accordance with this Law;*
 - 6 a) propose to the National Security Council natural and legal persons to be included in the National list of designated persons, as terrorists, terrorist organizations or those who finance terrorists or terrorist organizations, in accordance with the law that regulates international restrictive measures;*

7) at least once a year, publish a report that includes statistical data, trends and typologies in money laundering and terrorist financing area, and especially data related to the number of suspicious transaction reports sent to the financial intelligence unit, the number of investigated cases, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and data on the property that has been frozen or confiscated, and to notify the public, in other appropriate manner, on the phenomenon of money laundering and terrorist financing.

The financial intelligence unit may by the means of a written order require the reporting entity to temporarily suspend transactions, but not longer than for 72 hours, if it evaluates that there are reasons for suspicion of money laundering and related predicate offences or terrorist financing, and is obliged, without delay, to notify competent authorities thereof in order to take measures from their own competence.

The independence of the FIU is also reflected in the following activities:

- processing and analysis of data is performed by analytic tools, after which the information is submitted to the competent authorities and institution based on the assessment of the employees from the Department for analytics and suspicious transactions;
- the risk level of transactions is also analysed (suspicions regarding transactions and entities) and the employees from the Department for analytics and suspicious transactions may initiate an investigation based on their assessment;
- the FIU performs an independent examination of entities and transactions upon requests from other authorities (State Prosecutor and similar.);
- the FIU is impartial in its work, and it is reflected in processing all transactions and entities when there is a suspicion of money laundering and / or terrorist financing, and in a fact that it handles all suspicious transaction reports.

The FIU performs activities related to collecting data from reporting entities, analysing and processing such data, and submitting information to the competent state authorities, when it assesses that there is a reasonable suspicion of a criminal offense of money laundering or a terrorist financing offense in connection with a transaction or person. In addition to the above, the Law also stipulates the other activities of the FIU regarding the establishment of standards and methodologies for determining and developing policies, procedures and practices for the identification of suspicious transactions; developing special programs for the prevention of money laundering and terrorist financing, with procedures and control programs and training of employees to identify suspicious transactions; checking of transactions and entities for which there are reasonable suspicions on money laundering and terrorist financing; temporary suspension of transactions; initiating changes and amendments of regulations in regard to detection and prevention of money laundering and terrorist financing; establishing international cooperation with authorized institutions of other states and international organizations; participation in application and preparation of the list of indicators for recognizing suspicious transactions; participation in training of employees and officials within competent authorities; establishing the guidelines for creating the risk analysis; publishing statistical data in the field of detection and prevention of money laundering and terrorist financing.

On national level, the FIU has excellent cooperation on exchange of data with all competent authorities in charge of detection and prevention of money laundering: Supreme State Prosecutor, National Security Agency, Tax Administration, Customs Administration, Central Bank of Montenegro, Agency for electronic telecommunications and postal

activities, Commission for the Capital Market, Agency for Supervision of Insurance, Administration for Inspection Affairs, Chamber of Lawyers and Chamber of Notaries Public. **See the list of cooperation agreements in the information provided on article 14 subparagraph 1 b) of the UNCAC.**

On international level, the FIU also has a successful cooperation in the exchange of information with financial intelligence units and other competent authorities of foreign countries. In this regard, the FIU also signed a number of cooperation agreements. **See the list of international cooperation agreements in Table 3 in the information provided on article 14 subparagraph 1 b) of the UNCAC.**

Furthermore, the FIU actively participates in the work of international institutions and bodies, such as within one of the committees of the Council of Europe – MONEYVAL.

The Administration for Prevention of Money Laundering and Terrorist financing became a member of the International Financial Intelligence Association - EGMONT on July 1, 2005. It effectively exchanged financial intelligence data with EGMONT Member States through the above mentioned association until May 2019, when it was excluded from this organization due to new organizational changes in the state administration system.

Namely, according to the Regulation on organization and manner of work of state administration of 31 December 2018, the tasks of the Administration were transferred to the Police Administration - Division for prevention of money laundering and terrorist financing. Having in mind that the EGMONT is a network of financial intelligence units, instead of the states whose FIUs are members of EGMONT, the transition from the administrative model into a different functional model represents a structural reason for temporary exclusion of the FIU from EGMONT. Montenegro is currently unable to exchange operative data through safe communication channels with other members of the EGMONT Group, which is, in accordance with the principles of EGMONT, the only and exclusive manner for exchanging data.

The Police Administration – Division for prevention of money laundering and terrorist financing is actively working on amendments to the Law on prevention of money laundering and terrorist financing, in order to define the role and powers of this Division as the central FIU, in line with the EGMONT principles. This is expected to be followed by a re-assessment, or the assessment of impact of such amendments in the functioning of the FIU, and re-application for membership in EGMONT. The latter will require an assessment of the entire system by the sponsor states, and adoption of the decision on the renewed membership.

Namely, EGMONT recognizes four models of financial intelligence units: administrative model, police model, court model and hybrid model. The police model of the FIU, which is being implemented in Montenegro, already exists in a number of countries in the EU (e.g. Austria, Finland, Portugal, Sweden, Slovakia and the Great Britain). As is the case with other models, the police model of the FIU should be independent and autonomous with respect to the host institution (Police Administration in this case) and other state authorities.

The current Law on prevention of money laundering and terrorist financing in Montenegro is quite advanced and it is greatly aligned with the international standards. However, having in mind the stated transition from the administrative model to the police model, amendments are required in order to ensure a smooth transfer of jurisdiction from the administrative to the police model.

With that in mind, the existing Law on prevention of money laundering and terrorist financing should be amended in the following manner:

- the FIU should be operationally independent and autonomous in relation to the Police Administration, which means that it should have the authority and capacity to freely perform its tasks, and to make own decisions on analysing, requesting and publishing certain information. In all cases it means that the FIU should have an independent right to submit to or share information with competent authorities.
- the head of the FIU is to be autonomous and independent in regard to the Director of the Police Administration, and the law should prescribe different employment procedures of the employees within the FIU than those of other police employees, or that the decision of employment should be adopted by the Director of the Police Administration upon the proposal of the head of the FIU. Also, requirements for the head of the FIU, manner of appointment and the office term should be also prescribed by the law.
- the budget allocated to the FIU by the Police Administration should be managed by the head of the FIU and this should be stipulated by an instruction (decision) by the Director of Police Administration.
- the information system for the exchange of data and information of the FIU should be independent from the system of the Police Administration and the access to it and its database should be allowed only to the employees of the FIU.
- it is also recommended that the employees of the FIU cannot be transferred to another organizational unit of the Police Administration without the consent of the head of the FIU.
- the above stated are the international standards and recommendations of the experts of the Council of Europe and the EGMONT which need to be fulfilled in order for Montenegro to re-apply for membership in EGMONT.
- The FIU has an observer status and active participation within the Eurasian group for combatting money laundering (EAG) since 2010.

A regional group of FIUs has been formed in April 2018, upon the initiative of the Montenegrin FIU, by a protocol on regional co-operation on AMLCFT, which was signed by the following states: Albania, Bosnia and Herzegovina, Montenegro, Croatia, Slovenia and Serbia. The meetings of the Heads of the FIUs will be held annually, in the organization of one of the member states, aimed at reviewing the results of the cooperation and directions of future cooperation between the member states.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Montenegro is a member of a number of regional instruments on different forms of international cooperation per se, as well as multilateral instruments on corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters, including mutual legal assistance.

The list of treaties on criminal matters, which Montenegro entered since 2006:

Bilateral agreements

- 1) Agreement between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters (Law on ratification of the Agreement between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters has been published in the Official Gazette of Montenegro – International agreements, number 4/09).
- 2) Agreement between Montenegro and the Republic of Serbia on mutual execution of judicial decisions in criminal matters (Law on ratification of the Agreement between Montenegro and the Republic of Serbia on mutual execution of judicial decisions in criminal matters has been published in Official Gazette of Montenegro – International agreements, number 4/09).
- 3) Agreement between Montenegro and the Republic of Serbia on extradition (Law on ratification of the Agreement between Montenegro and the Republic of Serbia on extradition has been published in Official gazette of Montenegro – International agreements, number 4/09).
- 4) Agreement between Montenegro and the Republic of Serbia on amendments and supplements of the Agreement on extradition (Law on ratification of the Agreement between Montenegro and the Republic of Serbia on amendments and supplements of the Agreement on extradition has been published in Official gazette of Montenegro – International agreements, number 4/11).
- 5) Agreement between Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters (Law on ratification of the Agreement between Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters has been published in Official gazette of Montenegro – International Agreements, number. 15/10).
- 6) Agreement between Montenegro and Bosnia and Herzegovina on mutual execution of judicial decisions in criminal matters (Law on ratification of the Agreement between Montenegro and Bosnia and Herzegovina on mutual execution of judicial decisions in criminal matters has been published in Official gazette of Montenegro – International Agreements, number 15/10).
- 7) Agreement between Montenegro and Bosnia and Herzegovina on extradition (Law on ratification of the Agreement on extradition between Montenegro and Bosnia and Herzegovina has been published in Official gazette of Montenegro – International Agreements, number 4/13).

- 8) Agreement between Montenegro and Croatia on extradition (Law on ratification of the Agreement between Montenegro and Croatia on extradition has been published in Official Gazette of Montenegro – International Agreements, number. 1/11).
- 9) Agreement between Montenegro and Croatia on mutual execution of judicial decisions in criminal matters (Law on ratification of the Agreement between Montenegro and Croatia on mutual execution of judicial decisions in criminal matters has been published in Official gazette of Montenegro – International Agreements, number 17/11).
- 10) Agreement between Montenegro and the Republic of Macedonia on extradition (Law on ratification of the Agreement between Montenegro and the Republic of Macedonia on extradition has been published in Official gazette of Montenegro – International Agreements, number 9/12).
- 11) Agreement between Montenegro and the Republic of Macedonia on legal assistance in civil and criminal matters (Law on ratification of the Agreement between Montenegro and the Republic of Macedonia on legal assistance in civil and criminal matters has been published in the „Official gazette of Montenegro – International Agreements, number 9/14).
- 12) Agreement between Montenegro and the Republic of Macedonia on mutual execution of judicial decisions in criminal matters (Law on ratification of the Agreement between Montenegro and the Republic of Macedonia on mutual execution of judicial decisions in criminal matters has been published in the Official gazette of Montenegro – International Agreements, number 9/14).
- 13) Additional bilateral agreement between Montenegro and Italy on facilitation in applying the provisions of the European convention and mutual provision of legal assistance in criminal matters (Law on ratification of the Additional bilateral agreement between Montenegro and Italy has been published in „Official gazette of Montenegro – International Agreements, number 1/14).
- 14) Additional bilateral agreement between Montenegro and Italy on facilitation in applying the European convention on extradition (Law on ratification of the Additional bilateral agreement between Montenegro and Italy has been published in „Official gazette of Montenegro – International Agreements, number 1/14).

Multilateral agreements

- 1) United Nations Convention against Corruption (UNCAC), entered into force in Montenegro on 23 October 2006 (Law on ratification has been published in the Official gazette of Montenegro - International Agreements, number 11/2005).
- 2) European Convention on Mutual Assistance in Criminal Matters with Additional Protocol (Law on ratification has been published in the Official gazette of the Federal Republic of Yugoslavia - International Agreements, number 10/2001, Official gazette of Serbia and Montenegro - International Agreements, number 2/2006, Official gazette of Montenegro - International Agreements, number 1/2014).
- 3) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Law on ratification has been published in Official gazette of Montenegro - International Agreements number 5/2008)
- 4) European Convention on Extradition with Additional protocol and Second additional protocol (Law on ratification has been published in the Official gazette of the Federal Republic of Yugoslavia - International Agreements, number 10/2001, Official gazette of the Republic of Serbia - International Agreements, numbers 12/2010, 1/2011,

- 13/2013 and Official gazette of Montenegro - International Agreements, number 1/2014).
- 5) European Convention on the International Validity of Criminal Judgments (Law on ratification has been published in Official gazette of Montenegro - International Agreements, number 6/09).
 - 6) European Convention on the Suppression of Terrorism (Law on ratification has been published in Official gazette of Montenegro - International Agreements, number 5/08).
 - 7) European Agreement on the Transmission of Applications for Legal Aid (Published in the Official gazette of the Federal Republic of Yugoslavia - International Agreements, number 9)
 - 8) Convention on the Transfer of Sentenced Persons with and additional protocol (Published in the Official gazette of the Federal Republic of Yugoslavia - International Agreements, number 4/2001)
 - 9) Criminal Law Convention on Corruption (Published in the Official gazette of the Federal Republic of Yugoslavia - International Agreements, numbers 2/2002 and 18/2005).
 - 10) Additional Protocol to the Criminal Law Convention on Corruption (Law on ratification has been published in Official gazette of Montenegro - International Agreements, number 11/07).
 - 11) Civil legal convention of the Council of Europe on corruption (Law on ratification has been published in Official gazette of Montenegro number 1/2008)
 - 12) Convention of the Council of Europe on money laundering, requesting, seizure and confiscation of revenues derived by criminal activities and terrorist financing (Law on ratification has been published in Official gazette of Montenegro number 5/08)
 - 13) Convention on producing evidence to abroad in civil and commercial matters (Law on ratification has been published in Official gazette of Montenegro number 7/11).
 - 14) Additional protocol to the Convention of the Council of Europe on prevention of terrorism (Law on ratification has been published in Official gazette of Montenegro number 6/2017).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Legislative assistance: please describe the type of assistance

Institution-building: please describe the type of assistance

Policymaking: please describe the type of assistance

Capacity-building: please describe the type of assistance

Research/data-gathering and analysis: please describe the type of assistance

Facilitation of international cooperation with other countries: please describe the type of assistance

Others: please specify

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

B. Other information

Article B. Other information

Other information

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of, or difficulties in, implementing the Convention other than those mentioned above.

(a) Summary of information relevant to reviewing the implementation of the article

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of or difficulties in implementing the Convention other

than those mentioned above

((b) Observations on the implementation of the article

[Observations of the governmental experts with regard to the implementation of the article. Depending on the scope of the review cycle, findings with respect to the way in which national law has been brought into line with the article, as well as to the implementation of the article in practice.]

[Observations on the status of implementation of the article, including successes, good practices and challenges in implementation.]

(c) Successes and good practices

[Identification of successes and good practices in implementing the article, where applicable.]



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POSJETA ZEMLJI U CILJU OCJENE PRIMJENE KONVENCIJE UJEDINJENIH NACIJA PROTIV KORUPCIJE U CRNOJ GORI

POGLAVLJE II (PREVENCIJA KORUPCIJE) I V (POVRAĆAJ IMOVINE)

29 - 31. mart 2022

AGENCIJA ZA SPRJEČAVANJE KORUPCIJE
(Podgorica)

DRŽAVA KOJA JE PREDMET EVALUACIJE

CRNA GORA

Gđa Marina Micunovic

Načelnica

Odsjek za međunarodnu saradnju, standarde i
odnose sa javnošću

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Komisija za integritet (Nazaha)
Irak

G. Kadhim Jabbar Abdullah Al-Musawi
Preevodilac
Komisija za integritet (Nazaha)
Irak

UNODC KONTAKTI- SEKRETARIJAT

Gđa Yao Deng
Službenica za prevenciju kriminala i krivično
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G. Mohamed Cherbal
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Dolazak delegacije – 27. mart 2022

AGENDA

Utorak, 29. mart 2022				
Vrijeme	Tema	Učesnici	Predstavnici institucija	Glavne teme o kojima će se razgovarati
08.00-08.30	Uvodni sastanak Uvodna riječ članova UNODC i predstavnika država evaluatora Uvodna riječ kontakt tačke institucije	Agencija za sprječavanje korupcije	Jelena Perović, direktorica Nina Paović, pomoćnica direktorice Boris Vukašinić, pomoćnik direktorice Marina Mićunović, načelnica-međunarodna saradnja	



<p>08.30-10.00</p>	<p>Ocjena poglavlja II UNCAC:</p> <p>Član 5 - Politika i praksa sprečavanja korupcije</p> <p>Član 6. – Tijelo ili tijela za sprečavanje korupcije</p>	<p>Ministarstvo pravde, ljudskih i manjinskih prava</p> <p>Agencija za sprječavanje korupcije</p>	<p>Bojan Božović, državni sekretar,</p> <p>Jelena Perović, direktorica, Nina Paović, pomoćnica direktorice Boris Vukašinić, pomoćnik direktorice Marina Mićunović, načelnica-međunarodna saradnja Milica Popović, načelnica - analiza propisa Goran Durutović, načelnik -Edukacije, Analitika, Kampanje Jasmina Maraš, načelnica– Izvještaji o prihodima i imovini</p>	<p>Član 5.</p> <ol style="list-style-type: none">1. Kako se imenuju koordinatori za praćenje implementacije AP 23? Da li su i koordinatori dio Radne grupe za 23? Kakvu ulogu ASK ima u procesu praćenja?2. Postoje različiti mehanizmi, kao što su Radna grupa za 23, Pregovaračka grupa i Savjet za vladavinu prava? Kako ove agencije/tijela saraduju?3. Kakav je odnos između Zakona o sprečavanju korupcije i AP 23?4. Kakav je odnos između AP 23 i operativnog dokumenta? Ko prati sprovođenje operativnog dokumenta?5. Da li će se operativni dokument redovno ažurirati?6. Kakav je status AP 23? Da li je nedavno ažuriran?
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				<p>7. Koje su praznine koje su identifikovane u implementaciji AP 23? Koje su mjere praćenja?</p> <p>8. Da li i dalje planirate donošenje strategije za borbu protiv korupcije i organizovanog kriminala?</p> <p>9. Da li pored istraživanja javnog mnjenja postoje druge mjere za podizanje svijesti javnosti o borbi protiv korupcije?</p> <p>10. Kakva je procedura za donošenje zakona? Da li postoje neka utvrđena pravila? Da li su resorna ministarstva obavezna da se konsultuju sa ASK-om radi davanja mišljenja na propise iz oblasti antikorupcije? Kako će ASK biti obaviješten o napretku u procesu donošenja zakona?</p> <p>11. Da li će ASK analizirati i</p>
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				<p>postojeće zakone i propise?</p> <p>12. Kakav je status sporazuma o razmjeni podataka u svrhe provjere izvještaja o prihodima imovini? Da li je to regionalni sporazum? Da li je zaključen?</p> <p>Član 6</p> <p>1. Kojih je deset mjera propisanih u AP 23 koje se odnose na Agenciju? Kojih je sedam mjerila koja se odnose na Agenciju u operativnom dokumentu?</p> <p>2. Kako Agencija prati sprovođenje operativnog dokumenta?</p> <p>3. Da li postoje specijalizovane obuke za osoblje ASK-a?</p> <p>4. Možete li dostaviti organogram ASK-a?</p> <p>5. Koliko službenika ima ASK? Da li ASK ima dovoljno službenika?</p>
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10.00- 10.15	Pauza				
10.15- 12.00	<p>Ocjena poglavlja II UNCAC:</p> <p>Član 7 – Javni sektor</p> <p>Član 8 – Etički kodeks javnih funkcionera i član 52, st. 5 i 6 (izvještaji o prihodima i imovini)</p>	<p>Ministarstvo javne uprave, digitalnog društva i medija</p> <p>Uprava za kadrove</p> <p>Agencija za sprječavanje korupcije</p>	<p>Danijela Nedeljković Vukčević, v.d. generalne direktorice Direktorata za normativno uređenje sistema javne uprave i harmonizaciju propisa Jelena Pejović, načelnica Direkcije za službenički sistem</p> <p>Đuro Nikač, pomoćnik direktorice Vladana Miranović, samostalna savjetnica(zapošljavanje, napredovanje..), Jadranka Đurković, pomoćnica direktorice Ivana Vuković, samostalna savjetnica (centralna kadrovska evidencija)</p> <p>Boris Vukasinovic, pomoćnik direktorice Marko Škerović, samostalni savjetnik-integritet i lobiranje Dušan Drakić, načelnik-finansiranje političkih subjekata i izbornih kampanja Stefan Radunović, načelnik-sukob interesa Jasmina Maraš, načelnica – provjera izvještaja o prihodima i imovini</p>	<p>Član 7</p> <p>1.Prema čl. 11 Pravilnika koji reguliše izbor određenih poslova za procjenu rizika, koje su to pozicije identifikovane kao podložnije većem riziku od korupcije? Koje su mjere preduzete za rješavanje ovih rizika? Da li pružate dodatnu obuku zaposlenim na takvim pozicijama? Da li obezbjeđujete rotaciju zaposlenih na takvim pozicijama? Na koji način se ljudi biraju za takve pozicije?</p> <p>2. Kako su regulisani platni razredi državnih službenika?</p> <p>3. Možete li nam dati informacije o standardima (procedure i kriterijume postavljenja na dotičnim pozicijama) izabranih funkcionera, kao</p>	



				<p>što su predsjednik, poslanicii i odbornici? Navedite i pravni citat i tekst. (zakonski osnov)</p> <p>4. Da li pored obaveze otvaranja posebnog žiro računa kandidata izbornih kampanja, postoje još neka posebna pravila za finansiranje kandidatura za izbornu javnu funkciju? (nije za političke stranke)</p> <p>5. Koje agencije mogu izdati obavezujuća mišljenja?</p> <p>6. Da li zahtijevate izjave javnih funkcionera o sukobu interesa?</p> <p>Član 8</p> <p>1. Koliko imate ukupno etičkih kodeksa?</p> <p>2. Da li se Etički kodeks državnih službenika i namještenika primjenjuje i na sve kategorije službenika? Čini se da je ovaj kodeks uopšten.</p>
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				<p>3. U kojoj meri je glavni sadržaj kodeksa uvršten u Zakon o sprječavanju korupcije?</p> <p>4. Mogu li zviždači direktno podnijeti prijavu Agenciji?</p> <p>5. Kako Agencija može saradivati sa različitim subjektima i organima na obradi prijava? Ko se imenuje kao lice zaduženo za prijem prijava?</p> <p>6. Da li je anonimno prijavljivanje dozvoljeno? Koja su posebna pravila u tom pogledu?</p> <p>7. Hoće li biti pružena povratna informacija?</p> <p>8. Da li su javni funkcioneri obavezni da prijave koruptivno ponašanje?</p> <p>9. Da li imate telefonsku liniju ili druga elektronska sredstva za olakšavanje prijavljivanja?</p> <p>10. Molimo objasnite razlike</p>
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				<p>između administrativne kontrole, provjere vjerodostojnosti i dubinske kontrole javnih funkcionera.</p> <p>11. Kako postupate u slučajevima koji nisu usklađeni? Kao što je nepodnošenje ili podnošenje lažnog izvještaja o prihodima i imovini.</p> <p>12. Koja su pravila koja regulišu sekundarno zapošljavanje i spoljne aktivnosti?</p> <p>13. Koje su posljedice za kršenje kodeksa? Upitnik se samo osvrnuo na sankcije javnim funkcionerima na osnovu Zakona o sprječavanju korupcije?</p>
12.00-13.00	Pauza za ručak			



<p>13.00-14.45</p>	<p>Ocjena poglavlja II UNCAC:</p> <p>Član 10 – Javno izvještavanje</p> <p>Član 13 – Učešće društva</p>	<p>Agencija za zaštitu ličnih podataka i slobodan pristup informacijama</p> <p>Agencija za sprječavanje korupcije</p>	<p>Biljana Božić, Rukovodilac Odsjeka za slobodan pristup informacijama , glavni kontrolor</p> <p>Boris Vukašinović, pomoćnik direktorice Goran Durutović, načelnik-analitika, Marko Škerović, samostalni savjetnik - integritet i lobiranje</p>	<p>Članovi. 10 i 13</p> <ol style="list-style-type: none">1. Potrebni su nam engleske verzije citiranih članaka.2. Javni organ će izraditi, objaviti i redovno ažurirati Vodič za pristup informacijama. Koji je djelokrug javnih ovlašćenja? Potreban nam je i prevod člana. 12 Zakona o slobodnom pristupu informacijama.3. Šta se podrazumijeva pod inspekcijom nadležnom za kontrolu rada? Da li je to vladin organ?4. Kako Agencija za zaštitu ličnih podataka koordinira sa nadležnim državnim organima preko određenih lica?5. Pominje se da je javna rasprava o Nacrtu zakona počela 17. septembra 2019. godine. O čemu se radi u ovom nacrtu zakona? Kakav je njegov
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				<p>odnos sa Zakonom o slobodnom pristupu informacijama? Kakav je status ovog zakona?</p> <p>6. Da li imate elektronski portal za državne usluge koje se pružaju javnosti?</p> <p>7. Postoje li druge mjere za olakšavanje pristupa javnosti organima nadležnim za donošenje odluka?</p> <p>8. Koje su funkcije portala e-uprave? Molimo Vas da pojasnite.</p> <p>9. Da li je sistem zaštite zviždača dovoljno blagovremen da zaštiti osobe koje prijavljuju korupciju?</p>
14.45-15.00	Pauza			
15.00-16.00	Ocjena poglavlja II UNCAC: Član 12 – Privatni sektor	Ministarstvo ekonomskog razvoja Uprava prihoda i carina	Zvonko Saveljić, samostalni savjetnik v.d. Dušanka Vujisić, pomoćnica direktorice u Sektoru za usluge i registraciju Stojanka Milošević, načelnica Odsjeka za carinske istrage	Član 12 1. Kako promovišete saradnju između privatnog sektora i organa za



		<p>Privredna komora</p> <p>Agencija za sprječavanje korupcije</p>	<p>Darko Šćekić, koordinator - upravnik Pj carinarnice Bar</p> <p>Dragana Kračković, savjetnica u Sektoru za pravne i opšte poslove</p> <p>Stefan Radunović, načelnik – sprečavanje sukoba interesa</p>	<p>sprovođenje zakona?</p> <p>2. Koje su mjere za očuvanje integriteta relevantnih privatnih subjekata? Da li imate kodekse ponašanja za poslovne subjekte? Kako spriječiti sukob interesa u privatnom sektoru?</p> <p>3. Da li imate registar preduzeća? Da li se zasniva na nekom zakonu? Da li imate zakone koji regulišu različite vrste subjekata privatnog sektora?</p> <p>4. Da li imate registar stvarnog vlasništva?</p> <p>5. Napomenuto je da Ministarstvo ekonomskog razvoja obezbjeđuje sprečavanje zloupotrebe postupka dodjele subvencija u ovoj oblasti službenim poslovnikom o radu komisija. Na</p>
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				<p>šta se pozivaju Komisije?</p> <p>6. Da li su sve aktivnosti navedene pod čl. 12(3) obuhvaćene zakonom? Npr. korišćenje lažnih dokumenata.</p> <p>7. Molimo da dostavite pravni navod o odbijanju poreskog odbitka troškova koji predstavljaju mito.</p>
Srijeda, 30. mart 2022				
08.00-10.00	Ocjena poglavlja II UNCAC: Član 11. Mjere koje se odnose na sudstvo i tužilaštvo	Ministarstvo pravde, ljudskih i manjinskih prava Sudski savjet Tužilački savjet Agencija za sprječavanje korupcije	Ivana Mašanović, načelnica, Blagoje Gledović, samostalni savjetnik prof.dr Vesna Simović-Zvicer, predsjednica Sudskog savjeta Sanja Jovičević, članTužilačkog savjeta iz reda državnih tužilaca Filip Jovović, član Tužilačkog savjeta iz reda uglednih pravnika Stevo Muk, član Tužilačkog savjeta iz reda uglednih pravnika Marko Škerović, samostalni savjetnik-integritet i lobiranje	Član 11 1. U pogledu četvorice uglednih pravnika u sudskom vijeću, da li ih bira Parlament ili ih imenuje konferencija sudija? 2. Koja su pravila u vezi sa sekundarnim zapošljavanjem sudija i dodatnim aktivnostima? Uočavamo da u dostavljenim dodatnim informacijama postoje



				<p>dozvoljene aktivnosti kojima se sudije mogu baviti uporedo sa svojom sudskom funkcijom. Molimo objasnite koje su to dozvoljene aktivnosti.</p> <p>3. Da li je pravosudni informacioni sistem sistem upravljanja predmetima za sudije? Kako bi to funkcionisalo?</p> <p>4. Koje se mjere preduzimaju ako sudije krše svoj kodeks ponašanja? Kakva je procedura za pokretanje disciplinskog postupka protiv sudija?</p> <p>5. Kako se biraju sudije? Šta je sa njihovim uslovima?</p> <p>6. Kako se biraju/imenuju tužioci? Ima li zahtjeva u pogledu njihovih uslova?</p> <p>7. Kakva je procedura u pogledu disciplinskog</p>
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				<p>postupka protiv tužilaca?</p> <p>8. Kako regulišete diskreciono pravo tužilaca u odlučivanju da li će pokrenuti krivično gonjenje? Imate li smjernice za krivično gonjenje?</p> <p>9. Molimo navedite englesku verziju zakonske regulative u vezi sa izuzećem sudija.</p> <p>10. Molimo navedite englesku verziju citiranih članaka prema ovoj odredbi.</p>
10.00-10.15	Pauza			
10.15-12.00	<p>Sastanak sa civilnim društvom</p> <p>NVO Građanska alijansa</p> <p>NVO Centar za razvoj nevladinih organizacija</p> <p>NVO Institut alternativa</p>		<p>Pavle Čupić, pravni savjetnik</p> <p>Zorana Marković, izvršna direktorica</p> <p>Ana Đurnić, istraživačica javnih politika</p>	
12.00-13.00	Pauza za ručak			
13.00-14.45	Član 9. Javne nabavke i	Ministarstvo finansija i socijalnog staranja	Farisa Kardović, načelnica Direkcije za normativno pravne poslove i monitoring u javnim nabavkama	Član. 9



	<p>upravljanje javnim finansijama</p>		<p>1. Koji su glavni načini nabavki propisani Zakonom o javnim nabavkama? U izvještaju su nam potrebni engleske verzije citiranih članova Zakona o javnim nabavkama.</p> <p>2. Kakva je procedura za podnošenje prigovora na postupke javnih nabavki? Da li ponuđač treba prvo da podnese takav zahtjev naručiocu? Molim vas dostavite na engleskom. Da li treća strana može da podnese žalbu? Koja je procedura?</p> <p>3. Molimo da dostavite više informacija u vezi sa analizom rizika i kontrolom u postupcima javnih nabavki.</p> <p>4. Nakon pregleda i ocjene ponuda, Komisija za sprovođenje postupka javne nabavke ocjenjuje i rangira ispravne ponude. Na šta se poziva ova</p>
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				<p>Komisija? Kako je utvrđeno?</p> <p>5. Kako se imenuje inspektor za javne nabavke? Kako ova osoba može da saraduje sa Komisijom?</p> <p>6. Molimo opišite procedure za usvajanje državnog budžeta.</p> <p>7. Koji su uslovi za blagovremeno izvještavanje o prihodima i rashodima?</p> <p>8. U slučaju neispunjavanja uslova, koje bi bile korektivne radnje?</p> <p>9. Što se tiče sistema računovodstvenih i revizorskih standarda, da li iz toga proizilazi da je Zakon o računovodstvu primjenjiv na subjekte javnog sektora? Šta je sa standardima revizije?</p> <p>10. Da li je falsifikovanje dokumenata kriminalizovano u Crnoj Gori?</p>
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14.45-15.00	Pauza			
15.00-16.00	<p>Ocjena poglavlja II i V UNCAC:</p> <p>Član 14. Mjere za sprečavanje pranja novca</p> <p>Poglavlje V:</p> <p>Član 52. Sprečavanje i otkrivanje transfera imovinske koristi stečene kriminalom</p> <p>Član 58. Finansijsko-obavještajna jedinica</p>	<p>Finansijsko-obavještajna jedinica</p> <p>Centralna banka Crne Gore</p> <p>Uprava prihoda i carina</p>	<p>Danijela Miličević, načelnica Međunarodne saradnje u FOJu</p> <p>Gordana Kalezić, direktorica Direkcije za nadzor u oblasti sprečavanja pranja novca i finansiranja terorizma i zaštite korisnika finansijskih usluga Nevena Sekulić, šefica Službe za nadzor u oblasti sprečavanja pranja novca i finansiranja terorizma</p> <p>Dušanka Vujsić, pomoćnica direktorice u Sektoru za usluge i registraciju Stojanka Milošević, načelnica Odsjeka za carinske istrage Darko Šćekić, koordinator - upravnik</p>	<p>Član 14 Uglavnom o međusobnom evaluacionom procesu MANIYVAL-a. Kakav je trenutni status izmjena Zakona o sprječavanju pranja novca i finansiranja terorizma? Pojašnjenja u vezi sa sistemom prekograničnog deklarisanja gotovine i BNI.</p> <p>Član 52 Postoji li zahtjev za subjekte koji podnose izvještaje da osiguraju da relevantna evidencija bude brzo dostupna domaćim nadležnim organima? Pravila koja regulišu format i lokaciju zapisa Posebne mjere vođenja evidencije koje se odnose na politički eksponirana lica ili bilo koju drugu vrstu rizičnih kupaca</p>



				<p>Proces provjere prijave imovine i sprovođenje zakona. Dostupnost podataka javnosti</p> <p>Član 58 Učešće FOJ u slučajevima povraćaja imovine</p> <p>Analizirana i diseminirana statistika o primljenim izvještajima o sumnjivim transakcijama, u zemlji i inostranstvu.</p> <p>Mandat šefa FOJ Budžet FOJ</p>
Četvrtak, 31. mart 2022				
08.00-10.00	<p>Ocjena poglavlja V UNCAC:</p> <p><i>Član 53. Mjere za neposredan povraćaj imovine</i></p> <p><i>Član 54. Mehanizmi za povraćaj imovine kroz međunarodnu saradnju u konfiskaciji</i></p> <p><i>Član 55. Međunarodna saradnja u cilju</i></p>	<p>Ministarstvo pravde, ljudskih i manjinskih prava</p> <p>Sudstvo</p> <p>Tužilaštvo</p>	<p>Ivana Mašanović, načelnica Blagoje Gledović, samostalni savjetnik</p> <p>Hasnija Simonović, sudija Vrhovnog suda Nikola Bošković, kandidat za sudiju Osnovnog suda</p> <p>Jovanka Krunic, stručna saradnica u SDT Igor Šćekić, savjetnik u SDT</p>	<p>Član 53</p> <p>Davanje "locus standi" (pravo na pokretanje postupka pred sudom) stranim državama da utvrde vlasništvo nad imovinom stečenom izvršenjem krivičnog djela utvrđenog u skladu sa ovom Konvencijom</p> <p>Član 54 i 55</p>



	<i>sprovođenja konfiskacije</i>			Praktična pitanja u vezi sa mehanizmom međunarodne saradnje u oblasti konfiskacije, uključujući i one bez pravosnažne sudske presude (NCB) Mjere koje osiguravaju obaveštavanje bona fide (u dobroj vjeri) trećeg lica
10.00-10.15	Pauza			
10.15-12.00	<i>Član 57. Vraćanje i raspolaganje dobrima</i>	Ministarstvo pravde, ljudskih i manjinskih prava Sudstvo Tužilaštvo	Ivana Mašanović, načelnica Blagoje Gledović, samostalni savjetnik Hasnija Simonović, sudija Vrhovnog suda Nikola Bošković, kandidat za sudiju Osnovnog suda Jovanka Krunic, stručna saradnica u SDT Igor Ščekić, savjetnik u SDT	Član 57 Vraćanje i raspolaganje dobrima
12.00-13.00	Pauza za ručak			
13.00-14.45	<i>Član 51. Opšte odredbe</i> <i>Član 56. Posebna saradnja</i> <i>Član 59. Bilateralni i multilateralni</i>	Ministarstvo pravde, ljudskih i manjinskih prava Sudstvo	Ivana Mašanović, načelnica Blagoje Gledović, samostalni savjetnik Hasnija Simonović, sudija Vrhovnog suda Nikola Bošković, kandidat za sudiju Osnovnog suda	Član 56 Statistika o posebnoj saradnji



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	<i>sporazumi i aranžmani</i>	Tužilaštvo Finansijsko-obavještajna jedinica	Jovanka Krunić, stručna saradnica u SDT Igor Ščekić, savjetnik u SDT Danijela Milićević, načelnica Međunarodne saradnje u FOJu.	
14.45-15.00	Pauza			
15.00-16.00	„Debriefing“, sledeći koraci i druga pitanja	Tim ASK i UNODC eksperti		