

EU– MONTENEGRO INTERNAL MARKET AND COMPETITION SUBCOMMITTEE 20 June 2018

LOCATION: Brussels, CCAB - Centre de Conference Albert Borschette, rue Froissart 36, 1040 Brussels Room 0B

AGENDA

Opening: Introductory remarks and approval of the agenda (9.00 – 9.15).

1. Competition (9.15 – 10.30).

1.1. Antitrust.

- Legislative and administrative developments.
- Competition Authority and implementation/enforcement of community *acquis*.
 - Why were the proposed modifications prepared under the completed ALA project not included in the amendment on the Law for Competition Protection adopted in February 2018?
 - When will the remaining legislation and amendments be aligned with the EU *acquis*?
 - Have the proposals made by the APC with respect to the extension of the statute of limitations period for the initiation of proceedings and with respect to the definition of the infringement moment from which the time starts running been taken into account by the relevant authorities? What is the timeline envisaged for their adoption?
 - When will the strategy for the APC drafted under the ALA project be adopted?
 - How is the yearly budget of the ACP defined?
 - Has the assistance project to increase knowledge of national courts in antitrust and mergers offered by the EBRD been confirmed?
 - Can Montenegro confirm the number of antitrust and mergers decisions taken in recent years and explain the reasons for the decrease in the figures? How many ex-officio investigations have been conducted? How many decisions against vertical agreements have been taken?
 - What efforts are undertaken by the APC to raise awareness/understanding about the leniency policy towards self-reporters of cartels? And to increase cooperation with public procurement officials?
 - How are the levels of the fines imposed by the Misdemeanour courts defined?
 - How many decisions of the ACP have been annulled by higher courts? What are the main reasons for these rejections?
 - What actions is the ACP taking to increase the number of complaints received and eventually translated in investigations?

1.2. State Aids.

- State Aid Authority: independence.
- Legislative and administrative developments, enforcement record.
 - The initial timing envisaged for the appointment of the President and of the Council for the State aid authority was April 2018. Can Montenegro provide an update as regards timing of establishing President and Council? What next steps need to be taken?
 - What is so far the experience in applying the new Law on State aid control?
 - In addition to the IPA funded technical assistance project which should start in September, are further trainings envisaged?
 - Following the transfer of the current 7 staff members to the ACP, is an increase in the number of staff envisaged?
 - What was the nature of the decisions taken in 2017?

- Of the 12 schemes approved, how many were considered to be compatible aid and how many no aid schemes? In which sectors is the aid granted under those schemes? Through which instruments was the aid granted?
- SACU also took 2 decisions on individual cases which did not comply with State aid rules. Who were the beneficiaries? Which sectors were concerned? Did the SACU open a formal investigation procedure in these cases? Were they notified ex-ante? If not, has a negative decision taken ordering recovery?
- More generally, why has the number of decisions been decreasing? How many negative decisions were taken? Have any investigation procedure been opened? Has the SACU dealt with restructuring or privatisation cases?
- Furthermore, did SACU receive any complaints? If so, were cases started on the basis of such complaints?
- So far, Montenegro has not replied to the questions raised in the context on the 2017 SC. We would appreciate to receive an update on the cases mentioned (Montenegro Airlines, Bar Boljare Highway, TPP Pljevlja Termoplant, the VAT exemption for hotels, Tivat airport, and other cases/laws). In particular, we would like to know whether SACU is assessing these cases.
- Specifically, is SACU looking into cases such as Montenegro Airlines and Bar Boljare Highway?
- On the 2016 annual report on State aid granted in Montenegro:
 - What are the main reasons for which the overall level of State aid spending has decreased over the last years?
 - What level of Granting Authorities grant the majority of the aid?
 - It is said that the undeclared state aid in 2016 was 12.38% of total state aid granted, while this figure for 2015 was of 4.98%. Can you clarify if by undeclared aid you intend illegal aid granted without the authorisation of the SACU? If so, has such aid been analysed and recuperated, if declared incompatible? Why has this figure increased over the last year?
 - It is said that rescuing and restructuring aid is not recorded. Does this mean that this type of aid is rarely notified, and thus often illegal, or does this mean that this type of aid is not included in the figures contained in the report?

2. Intellectual, industrial and commercial property rights (10.45–11.15).

2.1. Institutional issues and administrative capacity (possibility of establishing the IP Council to steer and coordinate IPR reform; possibility of court appeals against IPR-related administrative decisions; possibility to establish an IPR-database search engine on the website of the IP Office).

- It was stated on several occasions by the Montenegrin Intellectual Property Office (MIPO) that it intends to prepare a new national IPR strategy, possibly with the support of the WIPO. Preparations were expected to start in September 2018. Would you have any update?

2.2. Copyright and related rights.

- We take note of the fact that the works on new amendments harmonising the national copyright framework with the Directive 2014/26/EU (CRM Directive) have started. We would welcome more details on the timeline for their adoption.
- In the context of the collective rights management, could we have some more information on the collective licensing in Montenegro? How many organisations are active, do they need any kind of authorisation to operate, how the tariffs are set?

2.3. Industrial property.

- On Industrial property we invite you to indicate what your priorities are for the coming years (follow-up to the Activities Plan for 2018). What are your predictions for the registration of trade marks, designs and patents (national and international) in the next years?

2.4. Enforcement (update on statistics).

- For the statistical report we will recommend to take into consideration some further improvements, in case they may help Montenegro to better understand developments in the sector –

on parallel imports, data on cases, fines and sanctions in the areas of patents, trademarks, copyright and on data for counterfeit pharmaceuticals.

2.5. Update of information regarding accession to relevant multilateral conventions.

- Please inform us about steps taken towards accession to European Patent Convention.

3. Right of establishment and freedom to provide services (11.15-11.45).

3.1. Establishment & cross-border services, legislative developments and administrative capacity, in particular as regards preparations for implementing the Services Directive.

- Commission Experts assessed in May/June 2018 (4/6) the adopted law on services and found amendments beyond its previous comments as well as missing alignment with the Services directive. Comments were therefore provided to Montenegro. Montenegro is invited to provide explanations at this SC meeting.
- Commission invites Montenegro to explain how the new law on services is being implemented. Several times the law is making reference to follow-up measures to be adopted by the Government or other entities. Were these measures adopted?
- Is the Point of Single Contact operational?
- Montenegro indicated that a Department for Services has been set up in March 2018. Its aim is to address the alignment with EU law. Montenegro is invited to explain the state of play of the screening process of sectoral legislation for alignment with the Law on Services / Services Directive.

3.2. Mutual recognition of professional qualifications (legislative developments and administrative capacity, training requirements and curricula of universities, strategy / action plan).

- After our comments on 19 April 2018, the Commission is interested to know at which stage is the adoption of Montenegro's draft law on recognition of professional qualifications, since the national authorities have stated that the planned deadline for adoption of the Law is the second quarter of 2018. The Commission will appreciate receiving an exact timetable for the adoption of the new draft law.
- The Commission also invites the national authorities to submit an updated list of all regulated professions containing justifications for each of the regulated professions. Can you confirm that the list will be prepared by the end of the year?
- Finally, important for authorities to ensure a dynamic and open professional services sector in Montenegro even before Montenegro's accession to the EU; this will allow the country to tap early on the services markets opportunities, both internally and externally, for the benefit of the Montenegrin economy and society.

3.3. Provision of postal services, legislative developments and administrative capacity.

- Will the amendment to the law on postal services to prevent cross-financing of the universal postal service losses from the Agency's resources be adopted as planned in the 2nd quarter of 2018?
- Can you give an update on your plans to prepare a new Strategy for the development of the postal sector for the period 2019-2023, is there a timetable, what are the main elements, and how will it be relevant for further alignment with EU postal acquis?

4. Public procurement (11.45 – 12.15).

4.1. Progress in legislative alignment including for classic procurement, utilities and concessions, developments concerning international agreements, progress towards e-procurement and implementation of strategy and action plan.

4.2. Administrative capacity and enforcement: PP Directorate, State Commission for the Control of PP Procedures; Concessions Commission; new inspection service; helpdesk at the PP Directorate.

4.3. Montenegro (written) report on statistical data and information on PPL implementation (number of procurement procedures including review procedures, split between supply, works and services, according to open, restricted or negotiated procedure applied).

Questions in public procurement will follow from the current expert's mission to Montenegro.

LUNCH BREAK

5. Capital movement and payment systems (13.45-14.00).

5.1. Recent developments and outlook in liberalising capital movements

- Montenegro's Parliament has not adopted yet the new version of Law on Ownership Rights so as to remove limitations in the acquisition of ownership rights by EU citizens in Montenegro, even though the draft law is finalised. When do you plan to proceed with Parliamentary adoption?
- The operational conclusions of the closing benchmarks' meeting from November 2014 mention that Montenegro "will provide an action Plan (a document) for different amendments envisaged under closing benchmark 1". Did Montenegro provide this Action Plan, and, if not, when could it provide it?

5.2. Payments system

6. Banking, insurance and other financial services (14.00-14.15).

6.1 Banking.

- Latest developments in regulation and supervision of the banking sector and plans for further alignment, including resolution.
- Administrative capacity (Central Bank, functioning of the Council for Financial Stability).
 - Are Montenegro authorities currently trying to improve the definition of NPL?
 - Do Montenegro authorities plan general asset quality reviews?

6.2 Non-banking sector (insurance/occupational pensions, securities markets and investment funds).

- Latest developments in regulation and supervision of insurance sector: legislative developments and administrative capacity (Insurance Supervision Agency) and plans for further alignment.
- Latest developments in regulation and supervision of the securities and investment funds sector: legislative developments (including the new Capital Market Law), administrative capacity (Securities and Exchange Commission) and plans for further alignment.

insurance

- The report mentions Montenegro's intention to implement Solvency 2, do you already have a timeline?

Securities markets

- The national authorities mention that the Capital Market Law has a "significantly higher level of compliance with the EU Acquis which regulates this segment of financial system and sets the basis for further alignment with implementing directives and regulatory technical standards".
- It would be very useful if the national authorities could provide the Commission with the following:
 - Regarding Directive 2014/65/EU (MiFID II): An updated "Table of Correspondence", comparing, article by article, the national legal system to the provisions of MiFID II ;

- Reference is made to future adoption of “implementing directives and regulatory technical standards”, could you be more specific?
- Is there any draft of these implementing legislation and RTSs, and if so
 - What is the stage of discussion / procedure
 - is it possible to obtain the draft

7. Company law (14.15-14.45).

7.1. Company law: Legislative developments and implementation, and plans for further alignment

- We remarked from the input received from Montenegrin authorities that it expects to adopt the draft Law on Business Organisations in the third quarter of 2018. The draft law should be accompanied by a comprehensive Table of Correspondence to the codified Direct 2017/1132. On this note, please inform us on the current status of this draft law? Were some issues particularly challenging?
- Last year you informed the Commission that online registration via the Central Business Register was limited to single member companies. We would be interested in hearing about progress in this area. What is the capacity of Central Registry of commercial entities?

7.2. Accounting and Statutory Audit: Legislative developments and implementation and plans for further alignment

Accounting

- Montenegro reports full compliance with the Accounting Directive 2013/34/EU, including the Non-Financial Information (2014/95/EU). However, “full compliance will be achieved through adoption of bylaws which will further define certain areas”. In this frame, can you provide us with a correlation table including bylaws that would enable proper analysis and decision on this part of the Chapter. DG NEAR already requested this from you on 8 May - thank you for updating us on this request.

Transparency

- Concerning the Transparency Directive the Montenegrin legislation seems at first sight quite encouraging in this regard. Can you provide us with an updated/final correlation table?

Audit

- Montenegro reports harmonisation with the Audit Directive 2014/56/EU. However, “full compliance will be achieved through adoption of bylaws which will further define certain areas”. Which are the areas that the legislator is planning to further define in the future? In this frame, can you send us a correlation table including bylaws that would enable proper analysis and decision on this part of the chapter?
- Montenegro makes reference to several recommendations, guidelines and rulebooks already issued or to be issued in the future in the area of audit. What is the legal value of the respective documents?
- What are the 'certain authorities' that the Ministry of Finance transferred (delegated?) to the Institute of Certified Accountants of Montenegro? Under which circumstances are these duties transferred?
- What is the capacity of the system for investigation and penalties? Have there been any cases to date?

7.3. Institutional/administrative capacity: (1) Public audit oversight body and related quality assurance system, and system for investigation and penalties; (2) capacity of Central Registry of commercial entities.

Covered as last 2 points under 7.2.

8. Consumer and health protection (14.45 -16.15).

Consumer protection

8.4. Progress in legislative alignment: Consumer protection law, consumer credit law, legislative framework for general product safety and market surveillance.

- The EU repeats its interest in knowing details about the alignment with the Directive on Unfair Commercial Practices (2005/29/EC) and the Guidance on the application of the Unfair Commercial Practices Directive (published in 2016).

8.5. Administrative capacity building including the reform of the inspectorate for market surveillance.

- The EU will request further details on the inspection capacities in the Administration for Inspection Affairs.

8.6. Cooperation with NGOs and consumer education.

- Independence, adequate operational capacity are essential to the effective operations of NGOs. The EU would welcome information on how many consumer NGOs exist in Montenegro and how they are financed and supervised.

8.7. Current assistance project provided to Montenegro by other national or international institutions and information on planned EU assistance.

If there is nothing to address by Montenegro we can drop this point.

Health protection

8.1 Health protection legislation and plans for implementation (tobacco control, blood, tissues, cells and organs, patients' rights in cross-border healthcare, communicable diseases, mental health, drug abuse prevention, health inequalities, nutrition, alcohol related harm reduction, cancer screenings, healthy environments including prevention of injury, promotion of safety as well as European action in the field of rare diseases, eHealth).

8.2. Montenegro's administrative capacity building regarding health protection.

8.3. State-of-play public health projects in Montenegro.

General

- underline the need to provide for adequate and sustainable funding in the field of public health in order to facilitate health care reforms and provide for well-managed, good quality accessible public healthcare for all citizens; also to marginalized groups such as people with disabilities, people living with HIV, children and adults who use drugs, prisoners, women in prostitution, LGBTI people, internally displaced persons and Roma.
- Highlight that the lack of fiscal sustainability continued to impact negatively on the work of public health bodies, programmes and actions.

IPA/TAIEX

- Commission will encourage to use the EU technical assistance (IPA funding and TAIEX) in a coordinated way for the different fields of public, taking into account as well possible ECDC support and actions in the field of communicable disease prevention and control.

Tobacco

- Please inform about enforcement of the smoking ban in public places in line with the 2009 Council Recommendation on smoke free environments and its commitments under the Framework Convention on Tobacco Control.

Antibiotics

- The control of antibiotic use is not evenly applied in the country. The general over-prescription of medicines continues, and the prescription of antibiotics needs to be strictly controlled to strengthen the fight against anti-microbial resistance.
- The Commission will underline that the antimicrobial resistance does not affect solely locals, but has impacts globally.

Blood, tissues, cells and organs

- The planned action plan on the field of substances of human origin needs to be finalised, adopted and implemented.
- The Commission would like to thank Montenegro for the correspondence table on the transposition of the tissues and cells directive and note that Montenegro indicates that it is fully aligned with all provisions in the Directive except those not applicable at this stage. The Commission did not yet study in detail the table, but hopes that the indications given are correct. However, the Commission notes that the table does not refer to the implementing legislation on tissues and cells.

Communicable diseases (ECDC)

- We will suggest to organise the meeting for discussing the Action Plan at the technical level with the aim to facilitate EU pre-accession assistance.

Infectious diseases/HIV

- We acknowledge that the work on awareness raising and educating the population about public health in connection with HIV/AIDS has been intensified. However, the country needs to do more to ensure funding regarding HIV/AIDS.