

Screening Report

Montenegro

Chapter 3 – Right of Establishment and Freedom to Provide Services

Date of screening meeting:

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Bilateral meeting: 29 and 30 November 2012

I. CHAPTER CONTENT

Member States must ensure that the right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services as laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) is not hampered by national legislation, subject to the exceptions set out in the Treaty. The core piece of *acquis* in this area is Directive 2006/123/EC on services in the internal market ("Services Directive"). The case law of the European Court of Justice regarding Articles 49 and 56 of the TFEU is also part of the *acquis* and needs to be respected.

As regards **the mutual recognition of professional qualifications**, Directive 2005/36/EC sets the rules concerning the recognition of diplomas and other qualifications between Member States to facilitate access to regulated professions for European citizens who wish to exercise their profession in a Member State other than the one in which they gained their qualifications. The Directive also facilitates the temporary and occasional provision of services by professionals (Title II of the Directive). For certain regulated professions, a common minimum training curriculum must be followed (Chapter III of Title III of the Directive). Additional directives govern the exercise by lawyers of their profession in Member States other than those in which they obtained their qualifications, the activities of commercial agents, as well as the recognition of professional qualifications for activities related to the use, trade and distribution of toxic products. In terms of administrative capacity, a national contact point is needed to receive enquiries related to the recognition of professional qualifications and to ensure administrative cooperation with authorities in other Member States.

As regards **the right of establishment and the freedom to provide services**, the Services Directive contains provisions which aim to make it easier for service providers to establish themselves in other Member States as well as to provide cross-border services into the territory of Member States other than their State of establishment. The implementation of the Services Directive requires a combination of legislative and non-legislative, i.e. organisational or practical, measures. The Directive is a horizontal instrument which covers a broad range of different services and which is likely to affect a significant number of national laws and regulations. For this reason, and as far as implementing legislation is concerned, a mix of specific and horizontal legislative measures is required. The provisions of the Directive are, to a large extent, based upon the case law of the European Court of Justice relating to the freedom of establishment and the free movement of services and complement existing EU instruments. Member States are obliged by the Directive to set up a Point of Single Contact (PSC) and to take part in an electronic information system between administrative authorities (Internal Market Information System or IMI) which allows for cooperation in the supervision of services activities and information exchange between EU Member States.

In the field of **postal services**, the first (framework) Postal Directive 97/67/EC as amended by the second Postal Directive 2002/39/EC and the third Postal Directive 2008/6/EC are aimed at ensuring the provision of a universal postal service, the establishment of an internal market for postal services and a high quality postal service for end users. In terms of administrative capacity, the establishment of an independent National Regulatory Authority (NRA) in this field is required to ensure the proper implementation of EU legislation.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarizes the information provided by Montenegro and the discussion at the screening meeting. Montenegro indicated that it accepts the *acquis* under this chapter and that it does not expect any difficulties to implement the *acquis* by the time of accession.

II. a. Mutual recognition of professional qualifications

Alignment of Legislation - EU Directive 2005/36/EC

Montenegro stated that it has partly aligned its legal framework with Directive 2005/36/EC on the recognition of professional qualifications by adopting the Law on Recognition of Foreign Qualifications for Access to Regulated Professions. It enters into force upon Montenegro's accession to the EU. Under this Law, evidence of formal education of nationals of EU Member States is recognised as if it had been acquired in Montenegro.

Health sector professions with minimum training requirements

a) Doctor of Medicine:

In Montenegro the title of doctor of medicine is awarded after 6 years of higher education which amounts to 360 ECTS points, followed by one year of professional practice.

In Montenegro, training in two medical specialisations is offered: radiology and family medicine. Both programmes last for four years.

b) Dentist

Montenegro stated that the professional title of "doctor of stomatology" is awarded after 5 years (300 ECTS points) of higher education followed by one year of professional practice.

c) Nurse responsible for general care

According to the Montenegrin legislation, this professional title is obtained after the completion of a secondary medical school (4 years) followed by a six month long practice and after a professional exam has been passed. In Montenegro, there are several routes to qualify for this profession.

d) Midwife

Montenegro indicated that the professional title of midwife cannot be acquired in Montenegro. There exists a possibility for nurses to specialise in obstetrics and professional qualifications in midwifery acquired in other countries are recognised.

e) Veterinary surgeon

According to Montenegro, no training is provided for veterinary surgeons in Montenegro. The access to the profession of veterinarian is governed by the Law on Veterinary [Medicine] (Official Gazette of Montenegro 30/12 of 8 June 2012) and several other pieces of horizontal legislation. The responsible bodies for this profession are the Ministry of Agricultural and Rural Development, the Ministry of Education and the Veterinary Chamber. The detailed conditions for issuing permits to graduates (i.e. doctors in

veterinary medicine) are regulated by the Rulebook on detailed conditions for issuing a licence for veterinary practice. The recognition of foreign high education certificates is under the competence of the Ministry of Education.

f) Pharmacist

According to Montenegro, the professional title of "graduated pharmacist" is awarded after 5 years of study (300 ECTS points) and one year of professional practice.

Architects

Montenegro stated that the Faculty of Architecture of the University of Montenegro in Podgorica offers a three-year (180 ECTS-point) bachelor academic study programme, followed by a one-year post-graduate specialist study programme, followed by one year academic master study programme.

Craft professions

Montenegro stated that the primary pieces of legislation governing the practice of craft professions in Montenegro are the Skilled Crafts Law and the Law on Vocational Education. The Skilled Crafts Chamber was founded on 28.03.2011 under the Skilled Crafts Law (Art. 14, § 1) to act as the competent authority. It keeps a register of craftsmen and issues certificates of registration in the register.

Alignment of Legislation – Specific Sectoral Legislation

Professions governed by specific sectoral Directives:

The overall legal framework in Montenegro consists of three general Laws, namely: 1) The Law on Recognition of Foreign Qualifications for Pursuing Regulated Professions (Official Gazette of Montenegro, Number 08/11), 2) the Law on Recognition of Foreign Educational Credentials and Harmonization of Qualifications (Official Gazette of Montenegro, Number 57/11) and 3) the Law on National Vocational Qualifications (Official Gazette of Montenegro, Number 80/08).

According to the Montenegrin legislation, a "regulated profession" is defined as a profession for which qualifications attested by formal education are needed, as well as professional training, and/or working experience following the formal education in accordance with the law.

The recognition of foreign qualifications for pursuing regulated professions is conducted by the Ministry of Labour and Social Welfare. During the recognition procedure, the competent professional association or another competent authority gives its opinion on the comparability of a foreign qualification and, where appropriate, defines adequate compensation measures. The law foresees a deadline of 1 month for the issuance of the opinion from the receipt of the application for recognition.

According to Montenegro, a person whose foreign qualification is recognised has the right to pursue a regulated profession in Montenegro, under the same conditions as a Montenegrin citizen.

- **Lawyers:**

Montenegro stated that access to the list (Directory) of Lawyers is only granted to lawyers with Montenegrin citizenship.

The Bar Association in Montenegro is an independent professional organisation whose membership is mandatory for lawyers based in Montenegro.

- **Commercial agents:**

Directive 86/653/EEC aims to harmonise legislation governing the relationship between commercial agents and principals, so as to facilitate contracts within the internal market.

Montenegro stated that it has partially transposed this Directive with the Law on Obligations (Official Gazette, No 47/08 and 04/11). Under this Law the concept of the commercial agents generally follows the same concept as in Directive 86/653/EEC. Montenegro indicated that the definition of the commercial agents in the Montenegrin legislation is essentially matching with the one from the Directive 86/653/EEC (although not the same wording). The Law on Obligations is also in conformity with the exemptions from the definition of the commercial agents, as stipulated in the abovementioned EU Directive. According to Montenegro, no major difficulties should be expected in fully aligning with the Postal Directive.

Implementation and administrative capacity

Montenegro stated that its administrative capacity needs to be strengthened not only in the Ministry of Health but also in all medical institutions, particularly in the Chamber of Physicians, in the Chamber of Pharmacists and in the Chamber of Nurses and Midwives currently under development.

II.b. The right of establishment and the freedom to provide services

Alignment of Legislation

Regarding the transposition of the Services Directive, Montenegro indicated that it is preparing to begin with the implementation of the Services Directive, supported by an IPA project. The agreed results of this project shall be:

- 1) The comprehensive screening of all legislation
- 2) The preparation of an umbrella law on services
- 3) Further harmonization of the national legislation in this area (30% of total non-compliant sectoral legislation) and
- 4) Building administrative capacities in Montenegro for the continuous screening and amending of the legislation according to the requirements of the Services Directive.

According to Montenegro, the project will also help prepare the launching of the technical phase of the Point of Single Contact, i.e. realise a comprehensive mapping of all the authorisation procedures (regarding access and exercise of services activities – *including qualifications procedures*) in Montenegro for the services activities covered by the services

directive. This mapping should identify both the competent authorities involved in the procedures and also at which stage of the procedures the competent authorities are involved (and the deadline for each competent authority to proceed for its part of the process). Montenegro indicated that it plans to apply for IPA 2014 funds in order to facilitate the establishment of the Point of Single Contact.

The first steps of the screening of all legislation have already been undertaken with the submission of a legal questionnaire (elaborated with the help of the European Commission) to all relevant institutions at the beginning of 2013. All ministries and relevant institutions were trained on the requirements of the Services Directive and how to fill in the questionnaire during a TAIEX/DG MARKT workshop on 6 March 2013.

On 1 February 2013, Montenegro established a coordination structure for the Services Directive. At political level, Montenegro stated that the Council for Improvement of Business, Environment, Regulatory and Structural Reforms will be in charge of the implementation of the Services Directive. According to Montenegro, the Council can initiate all the necessary amendments of relevant legislation (laws and by-laws) as required by the Services Directive. At technical level, a Working Group, established by the Council and consisting of 8 members, is responsible for implementation; the President of the group is the Deputy Minister of Economy in charge of multilateral relations. Montenegro stated that the main task of this Working Group is the development of an Action Plan for the transposition of the Services Directive on the internal market and the implementation of the above-mentioned IPA project. According to Montenegro, the Council's advice needs to be sought before any new legislation is adopted or any legislation is amended. Likewise, any amended or newly drafted legislation is sent to the Directorate for Harmonization of the Ministry of Foreign Affairs, which determines the level of compliance with the Services Directive.

Regarding the legislative framework, Montenegro stated that there have been some initial steps in adopting relevant laws and complying with the *acquis*. Montenegro has adopted the Law on Improving the Business Environment (Official Gazette of Montenegro, No 40/10), the Law on Electronic Signature (Official Gazette No 55/03, 31/05 and 41/10) and the Law on Electronic Documents (Official Gazette No 05/08), in order to simplify administrative procedures.

As concerns the right of establishment and the freedom to provide services, Montenegro has adopted the Law on General Administrative Procedures (Official Gazette No 60/03 and 32/11), the Law on Business Organisation (Official Gazette, No 06/02, 17/07, 80/08, 40/10, 36/11 and 40/11), the Law on Foreign Investments (Official Gazette, No 18/11) and the Law on Employment and Work of Foreigners (Official Gazette, No 22/08 and 32/11).

According to Montenegro, the Regulatory Reform "Guillotine" (2010-2012) established the one stop shop registration of the companies, the electronic submission of applications for the registration of new businesses, the one stop shop construction permits, the establishment of the credit bureau within the Central Bank of Montenegro, registering of Property and employment of foreigners.

Montenegro stated that it has so far identified in total 85 Regulations (53 Laws and 32 by-laws) that need to be aligned with the Services Directive, which are in the competence of 13 Ministries. Most of the regulations that need to be amended concern the Ministry of Agriculture and Rural Development, the Ministry of Economy, the Ministry of Labour and Social Services and the Ministry of Education.

Implementation and administrative capacity

Montenegro stated that the approximation of the Montenegrin legislation with the Services Directive and its implementation will be a very demanding process.

II.c. Postal services

Alignment of Legislation

Regarding the postal services sector, Montenegro indicated that its primary legislation follows the principles and objectives laid down in the *acquis* and that legislative alignment is very advanced. According to Montenegro, its legal framework consists of the Postal Services Act (Official Gazette of Montenegro, No 57/11) and the strategy for the development of the postal services in Montenegro for the period 2008-2018 (Action Plan), which take into account the Third Postal Directive (2008/6/EC). The full liberalization of the postal markets, which has been achieved with the Third Postal Directive, has also been implemented in Montenegro. Following the full market opening on 1 January 2013, there is no more statutory monopoly.

According to Montenegro, its national postal operator changed its legal status (from limited liability) into a joint stock company and preparations are on-going for the Public-Private-Partnership tender, in order to privatise the Montenegrin Post by attracting foreign investors.

The strategy for the development of postal services in Montenegro for the period 2008-2018 laid down the foundations for the full liberalisation of the market, the restructuring of the Montenegrin Post and the adoption of the new Postal Services Act. Montenegro stated that the body responsible for the implementation of the Restructuring Programme is the Ministry for Information Society and Telecommunications.

Regarding the quality of services Montenegro stated that it applies the defined standards for mail flows in international traffic (speed – J+3 – 85% and reliability – J+5 – 97%, Article 58) as defined in Annex II of the Postal Services Directive, and the defined standards for mail flows in domestic traffic (speed – J+3 – 95%, Article 59).

Montenegro indicated that the complaint procedures in the Montenegrin legislation are governed by Articles 44-57 of the Postal Services Act and that the complaint procedures have been substantially shortened after accepting the European Commission's recommendations on limiting the length of the complaint procedures. The beneficiary has the right to appeal to the postal service providers (10 days deadline) and if the party is not satisfied by the outcome, it can then submit a complaint to the independent regulatory body.

Regarding price controls, Montenegrin legislation distinguishes between universal postal services, where prices shall be set by the postal operator according to the criteria prescribed by the Agency, and reserved postal services, where prices shall be set by the Agency, upon a proposal from the universal postal operator and upon previous approval from the Ministry and the state administration authority in charge of finance (Article 15 of the Postal Services Act).

The main parts of the legal framework for the provisions of postal services in Montenegro (Postal Services Act) include the Special Licences (Art. 72), the Licences (Art. 72) and the Application (Art. 75) as requested by the Postal Directive.

Implementation and administrative capacity

Montenegro assesses that its National Regulatory Authority (NRA) is fully independent from all operators and the Government. The tasks of the NRA are carried out by the Agency for Electronic Communication and Postal Services. The members of the managing body of the Agency are nominated by the Parliament. The tasks of the Agency in the area of postal services are defined by the Law and Statute of the Agency and according to Montenegro they are clearly separated from its tasks in the area of electronic communication. Montenegro assesses the administrative capacity of the agency as satisfactory and the financial resources as prescribed by the Law and Statute of the Agency as sufficient.

The main tasks of the Agency include the following:

- determining the criteria on the basis of which prices of universal postal services are set,
- issuing and revoking special licences and licences for the provision of universal postal services,
- deciding upon users' appeals,
- verifying the calculation of net costs of universal postal services,
- monitoring the implementation of prices of postal services,
- settling disputes between operators with regard to access to the USO network,
- monitoring developments of the postal service market and taking measures to ensure competitiveness in the market,
- participating in the work of administrative bodies and task forces of the relevant European and international organisations.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Montenegro has partially aligned its national legislation with the *acquis* in the field of the right of establishment and the freedom to provide services. Montenegro has yet to align its legislation with the *acquis* on mutual recognition of professional qualifications and to adopt a clear strategy. In addition, the nationality requirement for access to certain professions should be removed as it infringes the non-discrimination principle. Moreover, Montenegro should further align its national legislation with the Services Directive.

Although there are sectors where administrative capacity can be considered as adequate (i.e. postal services), overall, Montenegro's administrative capacity is limited and should be strengthened.

III.a. Mutual recognition of professional qualifications

Montenegro has only partially aligned its national legislation with the *acquis* in the field of mutual recognition of professional qualifications.

In particular, Montenegro has yet to align with the training requirements for the professions in the health sector for which minimum training conditions have been defined at EU level. Since this a complex, sensitive and lengthy process, Montenegro should draw up a detailed and comprehensive strategy covering all the actions necessary to fully implement the *acquis*. Montenegro submitted a draft action plan for 2013, covering a limited number of activities necessary to comply with the *acquis*.

The horizontal legislation governing the recognition of professional qualifications in Montenegro requires amendments and completion, in particular by:

- extending the definition of regulated professions to cover also professions, the access to which requires either only academic qualifications or only professional experience (the current definition covers only those professions which have both types of requirements);
- transposing Title II of Directive 2005/36/EC on temporary and occasional provision of services (the Montenegrin authorities informed the Commission during the bilateral meeting that this would be done through the legislation transposing Directive 2006/123/EC);
- transposing the provisions of Directive 2005/36/EC relating to the recognition of professions listed in Annex IV of the Directive (crafts) on the basis of professional experience; and
- transposing the provisions of Chapter III of Title III of Directive 2005/36/EC to allow for the automatic recognition of titles of doctor of medicine, dentist, nurse, midwife, pharmacist, veterinary surgeon and architect acquired in other Member States.

Nationality requirements for access to the profession of lawyer and any other profession for which they exist and are not justified under the Treaty must be removed.

The legal framework applicable to the access to the profession of lawyer must be adjusted to comply with Directives 98/5/EC and 77/249/EEC. This means that lawyers registered with the Bar in any Member State should gain automatic admission to the Montenegrin Bar to exercise under their home country professional title if they wish to become established in Montenegro. Those lawyers registered with the Bar in any Member State who wish to provide services in Montenegro on a temporary or occasional basis must be allowed to do so without registering with the Montenegrin Bar. The Law on the Lawyer Profession which governs the access to the profession in Montenegro will need to be amended in order to implement the relevant *acquis*. The nationality requirements must be removed.

Training programmes for the professions in the health sector for which minimum training requirements are harmonised at EU level must be brought in line with the EU Directive 2005/36/EC on the recognition of professional qualifications. Detailed curricula of all the training programmes for the above listed professions must be submitted to the Commission to allow for a comprehensive assessment. This must include the overall number of hours of training, the number of hours allocated to each subject, descriptions of the content of each relevant subject and information about the internship, notably whether it takes place within the basic academic training (within the given number of years of study) or whether it takes place following completion of the academic studies.

Administrative capacity is still limited and must be strengthened; IT infrastructure should be provided in order to support cooperation with competent authorities in other Member States through the IMI system as well as to provide advice to citizens and allow them to complete procedures online.

III.b. The right of establishment and the freedom to provide services

Montenegro is still at a very early stage regarding its alignment with the Services Directive. A number of initial steps have been taken as a result of the "Guillotine of Regulations" reform, as well as the submission of the legal questionnaire to all institutions concerned and a first training of those institutions.

A major part of the transposition of the Services Directive into national legislation will take place in the framework of the IPA project which is expected to start in September 2013 and will last for two years. In addition, the Point of Single Contact will need to be developed allowing future entrepreneurs and existing businesses to easily obtain online all relevant information relating to their activities (applicable regulations, procedures to be completed, deadlines, etc.) and to complete electronically the relevant administrative procedures. Some preparatory work for the Point of Single Contact will be carried out under the IPA project. Montenegro intends to apply for supplementary IPA assistance to complete the establishment of the PSC.

However, further actions will need to be taken in order to further implement the recommendations of the European Commission and to create a specific Action Plan for the "Guillotine of Regulations" reform. This project represents a prompt and overall regulations analysis, from the aspect of simplifying administrative procedures, business environment improvement, as well as a faster and high quality exercising of citizens' rights before state administrative bodies. In addition, Montenegro will need to create a registry system for the licenses, reform the fees at the local level, establish a full online registration system for the companies and create a business friendly regulation.

III.c. Postal services

In the area of postal services, Montenegro is highly aligned with the EU *acquis*. This is largely the result of the close cooperation of the Montenegrin authorities with the European Commission in the course of the preparation of the new Postal Services Act adopted in 2011.

Furthermore, the independence of the National Regulatory Authority is ensured, including its supervisory functions over main regulatory areas (e.g. universal service; tariff setting), and the resources of the NRA are satisfactory.