

# **Screening report**

# **Montenegro**

## **Chapter 9 – Financial services**

**Date of screening meetings:**

Explanatory meeting: 17-18 April 2013

Bilateral meeting: 10-11 June 2013

## I CHAPTER CONTENT

The *acquis* on financial services includes rules for the authorisation, operation and supervision of financial institutions in the areas of banking, insurance, supplementary pensions, investment services and securities markets as well as with regard to financial market infrastructure. The new European System of Financial Supervisors (ESFS) entered into force in January 2011. It consists of a network of national financial supervisors working together with three new European Supervisory Authorities – a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA). In addition, a European Systemic Risk Board (ESRB) was established to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole.

In the field of **banks and financial conglomerates**, the *acquis* sets out requirements for the authorisation, operation and prudential supervision of credit institutions, as well as requirements concerning the calculation of capital of credit institutions and investment firms. The current Capital Requirements Directives, which translate the Basel II international standards into EU law, will be replaced as of 2014 by a package based on the Basel III agreement. The *acquis* in this sector also lays down rules relating to supplementary supervision of financial conglomerates and to the taking-up, pursuit of and prudential supervision of the business of electronic money institutions. Credit institutions are required to join an officially recognised deposit guarantee scheme, which must provide for a protection of EUR 100,000 per depositor within 20 working days following the determination by administrative or judicial authorities that deposits are unavailable. The *acquis* lays down rules regarding the annual and consolidated accounts of banks and other financial institutions. It also organises the mutual recognition of reorganisation and winding up of credit institutions throughout the internal market.

In the field of **insurance and occupational pensions**, several Directives set out rules concerning the authorisation, operation and supervision of life and non-life insurance and re-insurance undertakings. The *acquis* establishes rules for the supplementary supervision of insurance groups. Specific provisions exist in the non-life sector for co-insurance, tourist assistance, credit insurance and legal expense insurance. The *acquis* also incorporates a prudential regulatory framework for reinsurance activities in the EU aiming at removing barriers to the pursuit of reinsurance business. A Directive on insurance mediation establishes a legal framework for the taking-up and pursuit of insurance and re-insurance mediation by natural and legal persons operating in the EU. In the field of motor insurance requirements concerning insurance against civil liability in respect of motor vehicles are harmonised with a view to facilitating the free movement of goods and people, in particular by abolishing frontier controls on motor insurance. Likewise, the activities and supervision of institutions for occupational retirement provision are regulated. The insurance *acquis* also lays down rules regarding annual and consolidated accounts of insurance undertakings and certain provisions on reorganisation and winding up of insurance undertakings with branches in more than one Member State.

In relation to **financial market infrastructure**, the *acquis* aims to remove barriers in the post-trading area, enhancing market infrastructure resilience and promoting financial stability. The Directives in this area aim at reducing systemic risks linked to the insolvency in

settlement systems, at creating and enforcing collateral arrangements across the EU and at strengthening the protection of financial collateral arrangements. The European Market Infrastructure regulation (EMIR) improves financial stability by setting out rules for the mandatory clearing of standardised over-the-counter (OTC) derivatives through Central Counterparties (CCPs).

In the field of **securities markets and investment services**, the Markets in Financial Instruments Directive (MiFID) on markets in financial instruments together with its amendments and implementing measures set out a comprehensive regulatory regime covering the authorisation, operation and supervision of investment firms and trading venues. The Prospectus Directive together with its amendments and implementing measures reinforces the transparency and thus protection for investors. The Directive on market abuse together with its amendments and implementing measures introduce a harmonised and comprehensive administrative regime for prohibiting and prosecuting insider dealing and market manipulation. The *acquis* also requires that Member States ensure that at least one officially recognised investor compensation scheme is established offering compensation up to EUR 20,000. The legislation on undertakings for collective investment in transferable securities (UCITS) sets out common basic rules for the authorisation, supervision, structure and activities of investment funds to facilitate the cross-border distribution of units of funds in the EU and to ensure adequate investor protection. Finally, the *acquis* has a comprehensive regulatory and supervisory framework for alternative investment, venture capital and social entrepreneurship funds, increasing transparency towards investors and public authorities.

In the wake of the financial crisis, the EU regulatory landscape in the financial services sector is changing fundamentally and very fast. One major point in the regulatory agenda is the "banking union" project. Once completed, it is to consist of revised or new legislation: a single rulebook, a single supervisory mechanism (SSM), a European deposit guarantee system and a European resolution framework for banks.

## **II COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY**

This part summarises both the information provided by Montenegro and the discussion at the screening meetings. Montenegro indicated that it can accept the *acquis* regarding chapter 9 - Financial Services, and it does not expect any difficulties to implement the *acquis* by the time of accession.

### **a) Banks and financial conglomerates**

Montenegro stated that Directive 2006/48/EC on rules associated with the **taking up and pursuit of the business of credit institutions** is largely transposed through its Banking and Central Bank Laws and the related implementing decisions. They regulate the conditions for establishment, authorisation, operation and termination of operations of credit institutions, as well as their supervision. Montenegrin credit institutions need an authorisation from the Central Bank for their establishment and operation in Montenegro. The Banking Law provides for an exhaustive list of conditions to grant, refuse, withdraw or revoke an operating licence. The elements of Directive 2006/48/EC concerning best practices regarding liquidity management, internal auditing units, stress-testing, concentration and interest rate risk, harmonization of the application of the Supervisory Review Process, as well as internal control and risk management of financial undertakings are implemented in Montenegro through Central Bank decisions. Provisions on capital measurement approaches remain to be transposed, as well as on home-host cooperation (consultation, exchange of information,

conflict resolution). However, the Central Bank of Montenegro signed several Memoranda of Understanding with supervisory bodies in the neighbouring countries, as well as with some EU supervisors<sup>1</sup>.

On 31 December 2012, there were 11 banks operating in Montenegro with 2.325 employees, as well as six micro-credit financial institutions. Any bank from the European Economic Area (EEA) may be authorised by the Central Bank to establish a branch in Montenegro to pursue any activity it is authorised for in its home state. There are currently no branches of foreign banks in Montenegro, only subsidiaries. The cross-border provision of services, for example via the internet, is not allowed.

Montenegro stated that **capital adequacy** requirements for investments firms and credit institutions, as foreseen by Directive 2006/49/EC, are included in the Banking Law and Capital Adequacy Decision. The Banking Law prescribes that a bank shall determine its capital adequacy on the basis of its own funds as absolute indicator, and its solvency ratio as relative indicator. Between 2007 and 2012, the solvency ratio of Montenegrin banks was constantly above the legally prescribed minimum. The Central Bank Decision on minimal standards for liquidity risk management establishes the minimum standards for liquidity risk management that banks must follow in their operations. Banks are obliged to perform liquidity tests in different situations using several types of stress test scenarios, as well as to adopt the contingency plan for liquidity risk management in emergency situations. The bank shall establish, maintain and enhance effective internal controls system and shall organize the internal audit as an independent function in the bank. The Central Bank performs consolidated supervision.

As regards EU implementing/amending legislation, Directives 2010/76/EU and 2009/111/EC Montenegro states that they have not been transposed, except for the large exposure regime in the latter case.

In 2006 and 2007, a joint IMF-World Bank team performed an assessment of the Basel Core Principles for Effective Banking Supervision, which found Montenegro as being largely compliant. Montenegro stated that a new Law on Credit Institutions should be adopted by the end of 2015, in order to take on board the newest EU *acquis* in this field in line with Basel III standards, and shall enter into force on 1 January 2017.

Montenegro stated that it has not transposed Directive 2002/87/EC on the comprehensive framework for the supplementary supervision of **financial conglomerates** and a transposing law is planned for early 2018.

Montenegro considers its legislation to be partially aligned with the Directive 94/19/EC on **deposit-guarantee schemes**, as amended by the Directive 2009/14/EC. The Deposit Protection Law (Official Gazette of Montenegro No. 44/10, 40/11) and specific secondary legislation regulate the national deposit protection scheme covering deposits placed in all banks with offices in Montenegro. According to Montenegro, the law is compliant with the EU *acquis* except for the (only partially compliant) definition of an event triggering the right to invoke deposit protection and the amount of secured deposits (the deposit guarantee fund covers deposits up to EUR 50,000 per depositor, per bank, regardless of the number and amount of deposits, whereas the Directive provides for a coverage level of EUR 100,000 per depositor per credit institution). The total amount of deposits in Montenegro's banks was

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<sup>1</sup> Slovenia, Hungary, Greece, Bulgaria, Cyprus, Romania, France and Croatia

almost EUR 2 billion in December 2012. Montenegro stated that full compliance in this area shall be achieved by the date of accession with the adoption of a new law that will amend the existing Deposit Protection Law.

Montenegro stated that EU legislation on **bank and branch accounts** is partly transposed into Montenegrin law through the Law on Banks and the Law on Audit and Accounting, as well as several implementing Central Bank Decisions. Together, these laws determine how banks shall maintain business books, draw up accounting statements, evaluate assets and liabilities, prepare financial statements – in accordance with International Accounting Standards and IFRS – subject them to mandatory external audit. Implementing decisions determine the content of and structure of accounts, operation reports and financial positions submitted to the Central Bank. Full alignment is envisaged by the end of 2016 through the adoption of a new Law on Credit Institutions, as well as a new Decision on Charts of Accounts for Banks.

According to Montenegro, EU legislation on **reorganisation and winding-up of credit institutions** is partly transposed through the Bank Bankruptcy and Liquidation Law, the Banking Law and the Central Bank Law. The scope of national legislation is aligned with the *acquis*, while Montenegro stated that most of the other provisions of Directive 2001/24/EC shall be applied only upon the adoption of a new law expected towards the end of 2016. Overall, the banking sector is stable with respect to banks' asset quality. However, non-performing loan ratios are relatively high, as 17.6 % are in non-performing status<sup>2</sup>.

As regards **administrative capacity**, the institution mandated to exercise and share the regulatory and supervisory powers in this area is the Central Bank of Montenegro, an independent authority which oversees the maintenance of stability of the financial system as a whole and performs micro prudential supervision through off-site and on-site inspections. The parties subject to direct Central Bank supervision are commercial banks and micro-credit financial institutions.

In order to fulfil its functions, Montenegro explained that the Central Bank's institutional organisation is guided by a risk-based supervision concept, although there is no clear division between on-site and off-site duties and responsibilities. The annual plan of on-site inspections is based on a bank's size, its risk profile, measures imposed against the bank and the number and result of on-site inspections performed in the previous year. Banks submit reports to the Central Bank on a daily and ten-day basis (liquidity indicators), a monthly and a quarterly basis, which are used for analytical and statistic purposes as well as for supervisory purposes (off-site inspections). All banks have been supervised at least once in 2011. In 2012, the Central Bank performed 26 on-site inspections, 8 of which in the area of money-laundering.

The total number of employees in the Central Bank amounted to 301 in 2011 and 334 in 2012. The Supervision Department currently has 44 employees, one more than in 2011 and 2012. 24 out of a total of 44 employees in the Supervision Department participate in on-site inspections.

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<sup>2</sup> Non-performing loans are calculated on the basis of a Central Bank Decision that classifies assets and establishes a statistical formula based on the category of the collateral, repayment delays, and the financial status of the borrower.

In performing its supervisory function, the Central Bank cooperates with bank supervisory authorities of various foreign countries, including the South East Europe Network of Supervisors. Cooperation with domestic takes place mainly within the Financial Stability Council, as well as based on MoUs concluded with specific ministries or authorities. The Council, established in 2010, is chaired by the Governor of the Central Bank, and includes the Minister of Finance. The Council passes the National Contingency Plan based on individual plans for financial crisis management defined by the competent authorities.

## **b) Insurance and occupational pensions**

According to Montenegro, the basic legal act of its legislation on insurance and occupational pensions consists of the Insurance Law, which includes most of the elements defined by the **Solvency I** regime. Additionally, there are other laws regulating specific fields such as the Law on Compulsory Insurance in Transport, the Law on Bankruptcy and Liquidation of Insurance Companies, the Law on Obligations, the Company Law, the Bankruptcy Law and the Law on Administrative Procedures. Montenegro stated that its legislation is largely compliant with Solvency I, except for the following aspects: single licence rules, EU branches rules, compulsory consultations with other competent authorities and the Commission, group supervision rules, reinsurance rules, manner and principles of investing/depositing of assets and matching rules, applicable law, general good provisions, winding-up rules relating to Community relations. The conditions for branches of third country entities are referred to in articles 42 to 45 of the Insurance Law. Montenegro stated that full harmonisation with the Solvency I regime will be achieved by the end of 2015 (with delayed application of some of the provisions by the day of EU accession). After this date, a second stage of harmonisation will focus on the **Solvency II** requirements, with full compliance aimed for by the date of accession. In this regard, Montenegro emphasised that its domestic insurance market specificities have to be considered, while aligning with Solvency II, and requested cooperation with EU experts from Member States with similar markets.

Montenegro stated that insurance undertakings need an operating licence from the Insurance Supervision Agency (ISA) for their establishment and operation in Montenegro. Foreign insurance companies with head offices in EU Member States or third countries may establish a branch in Montenegro or provide services in Montenegro without having an establishment in the country, provided they are authorised by the ISA for insurance activities in the same classes and sub-classes of insurance as in their home state.

Insurance undertakings must regularly provide information to the supervisory authority. This relates in particular to capital requirements, the solvency margin and technical provisions. Insurance undertakings must regularly inform the ISA about general acts, policy conditions and premium bases, as well as other business policy acts. In addition, insurance undertakings which perform compulsory insurance must regularly provide policy conditions and minimum premium bases for approval by the ISA. The minimum solvency margin varies according to the type of service provided. Acquisitions beyond certain thresholds require the permission of the ISA. The Insurance Law contains an exhaustive list of circumstances for license refusal by the ISA. Life insurance undertakings have a transitional period of 7 years since August 2012 for alignment with their minimum share capital level. In 2012, there were 11 insurance companies performing insurance business, whereof 6 companies were in the life insurance business and 5 companies in the non-life insurance business. Insurance agency activities and insurance brokerage activities in 2012 were conducted by 28 legal and natural entities.

Montenegro stated that Directive 2002/83/EC on **life insurance** has been implemented to a large extent in Montenegro by means of the Insurance Law. Implementing Directive 2008/19/EC has not yet been transposed. Montenegro has not transposed Directive 98/78/EC on the **supplementary supervision** of insurance undertakings in an insurance group. Montenegro stated that it applies, to a large extent, Directive 2005/68/EC on **re-insurance** by means of the Insurance Law. There are currently no domestic reinsurance companies in Montenegro.

Montenegro stated that its legal and institutional framework is almost fully aligned with Directive 2002/92/EC on **insurance mediation** by means of the Insurance Law and associated bylaws except for the level of the professional indemnity cover against negligence for insurance brokerage activity. Insurance intermediaries are important subjects in the process of selling insurance products in Montenegro along with those sold also directly by insurance companies.

According to Montenegro, Directive 2009/103/EC on **motor insurance** is almost fully implemented in Montenegro through the Law on Compulsory Insurance in and associated implementing bylaws. There are two aspects which are not yet implemented: (1) the sums insured in respect of loss due to death, bodily injury and impaired health or in respect of loss due to material damage or destruction – the amounts shall be risen gradually and shall be fully compliant by the day of EU accession – and (2) single premium rules (i.e. rules regulating territorial validity of the third party insurance policy), which shall be introduced in Montenegro by the time of accession. No direct registry exists for the number of uninsured vehicles, which is estimated statistically by the National Association of Insurers at 9411 (about 5%).

As regards **occupational pensions**, Montenegro stated that it is not compliant with Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision. Current legislation provides for some of the conditions for carrying out pension insurance activity, the requirements for a custodian and an investment manager of the fund, some of the requirements for information disclosure and reporting of the funds as well as for some of the requirements for permitted investments. Montenegro stated that full compliance with the EU *acquis* shall be achieved with the adoption of the new Law on Occupational and Voluntary Pension Funds by the time of accession.

Directive 91/674/EEC on the **annual accounts and consolidated accounts of insurance undertakings** was partly implemented though the Law on Accounting and, the Insurance Law, the Law on Business Organizations and several implementing measures issued by the ISA. The ISA regulates technical specificities of financial reports. Several gaps with the EU *acquis* exist with regard to the layout of balance sheets, as well as the layout of profit and loss accounts. Montenegro stated that the outstanding issues will be addressed through a new bylaw by the end of 2015.

According to Montenegro, Directive 2001/17/EC on **reorganisation and winding-up** of insurance undertakings was largely implemented through the Law on Bankruptcy and Liquidation of Insurance Companies. The Commercial Court is the competent authority for the re-organisation and winding-up of insurance undertakings. Winding-up rules relating to Community relations, information to the competent authorities of other member states and branches of third countries still need to be addressed in an amended law by 2015.

As regards **administrative capacity**, Montenegro explained that the ISA was established in January 2008, under the Insurance Law. It is an independent organization with legal personality and has a wide range of competences which include regulatory activities, licensing and on-site and off-site supervision. It can impose sanctions such as the withdrawal of licenses, referral of cases to the judicial authorities and it can put undertakings in the insurance sector under special administration. According to Montenegro, the ISA has constantly increased its human resources over the last years from 8 employees in 2009 to 19 employees as of 2012. The supervised entities by the ISA are: insurance/reinsurance companies, insurance brokerage companies, insurance agency companies, entrepreneurs-insurance agents, ancillary insurance service providers, and the National Association of Insurers. The supervisory activities and operational expenses of the ISA are financed through fees levied on the sector. The ISA's off-site inspections are performed annually and quarterly by analysing reports, data and notices that the insurance company is obliged to submit to the regulatory authority. The ISA's on-site inspections are performed by direct insight into books, contracts, internal statistics and other documentation and data relating to companies' operations. These are both comprehensive inspections, which are normally performed every three years, and targeted inspections which are based on off-site findings. The mandate of the ISA Council is currently 5 years whilst the director's mandate is 4 years. The ISA has concluded bilateral cooperation agreements with regulatory authorities in Slovenia, Croatia, the Former Yugoslav Republic of Macedonia, Austria and the South East Europe Network of Supervisors. Since 2009, the ISA has been a member of IAIS and since 2011 it has participated in the South East Europe network of Supervisors (CESEE).

### c) Financial market infrastructure

Montenegro stated that it partly implements Directive 98/26/EC on **settlement finality** in payment and securities settlement systems and its amending Directive 2009/44/EC. Key terms such as “system”, “central counterparty”, “settlement agent” or “clearing house” are not clearly defined. There are also no provisions regarding insolvency proceedings against a participant in the system and the outcome of such proceedings towards the system. Montenegro states it will fully align through a new Law on Capital Market in 2014.

According to Montenegro, Directive 2002/47/EC on **financial collateral** arrangements as regards linked systems and credit claims has been almost fully transposed in Montenegro by the Law on Financial Collateral Arrangement. However, the Law does not define an authority in charge of overseeing its implementation and enforcement. Moreover, the rights and obligations arising from the giving and receiving of collateral are not regulated by this law, but instead by provisions of other Montenegrin laws that regulate the right of pledge on movables. As the Law on Financial Collateral Arrangement was adopted in July 2012, its implementation remains to be assessed. According to Montenegro, full compliance with European Market Infrastructure Regulation ("**EMIR**") (EU) No 648/2012 on over the counter (OTC) derivatives, central counterparties and trade repositories will be achieved through the new Law on Capital Market in 2014.

### d) Securities markets and investment services

Montenegro's legislation in the area of **securities markets** is specified by the Law on Securities. This law regulates the types of securities, the issue of securities and trade in those securities, the rights and obligations of entities on the securities market, the general provisions regulating the identification and the management of conflicts of interests by firms providing the services and their organisational requirements, the conduct of business rules aimed at

protecting investors and the organisation, scope of work and responsibilities of the Montenegrin Securities and Exchange Commission.

Montenegro stated that its legislation is aligned with Directive 2004/39/EC on markets in financial instruments ("**MiFID**") to a limited extent. The national legislation is specified by the Law on Securities and implementing rules for market participants. According to Montenegro, full alignment shall be achieved with the adoption of the new Law on Capital Market in 2014. Montenegrin legislation is aligned with Directive 2003/71/EC ("**Prospectus directive**") to a limited extent. Some aspects of the Prospectus Directive are implemented through the Law on Securities and implementing rules for issuers. Directive 2010/73/EC (Prospectus II) has not yet been transposed. Montenegro stated that full compliance shall be achieved with the adoption of the new Law on Capital Markets in 2014.

Directive 2003/6/EC on insider dealing and market manipulation ("**Market Abuse**") is partially implemented in Montenegrin national law through the Law on Securities and implementing rules adopted by the Securities and Exchange Commission in August 2012. The adoption of amendments to the Criminal Law is, according to Montenegro, currently in parliamentary procedure. Prohibition of market manipulation and unlawful use, disclosure and recommendation of inside information will be defined as criminal offenses. Montenegro has stated that full compliance will be achieved with the adoption of the new Law on Capital Market in 2014.

According to Montenegro, its legislation is partially aligned with Directive 97/9/EC on **investor compensation schemes**. National legislation in this area consists of the Law on Securities and implementing rules on the Central Depository Agency. Full compliance is aimed to be achieved with the adoption of the new Law on Capital Market in 2014.

Montenegro's legislation is partly aligned with Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to **UCITS**. National legislation on UCITS consists of the Law on Investment Funds. This law regulates conditions for establishment, issuing and redemption of investment units, funds' transformation and other issues relevant to fund operations. Gaps exist with respect to, among others, the following elements: definitions, authorisation of UCITS, obligations regarding management companies, depositary, mergers, investment policies, Master-Feeder Structures, information to investors, and general obligations for UCITS. 6 investment management companies and 6 investment funds are currently established in the country. Montenegro stated that it is not aligned with Directive 2011/61/EC on Alternative Investment Fund Managers ("**AIFMD**").

As regards **administrative capacity**, supervision of securities markets and investment services in Montenegro is carried out by the Securities and Exchange Commission ('SEC'). The Commission is an independent organization with the status of a legal person, created by Law on Securities and reports to the Parliament of Montenegro. The Commission is a full signatory of IOSCO's Multilateral Memorandum of Understanding and as such is committed to the highest standards in supervisory cooperation. The Commission consists of 5 members including the chairman, the deputy chairman. It is appointed by the Parliament at the proposal of Government of Montenegro. Members of the Commission are appointed for the term of five years and may be re-appointed. It has a staff of 32 employees, divided in six departments. Supervision of market participants is performed through direct controls (daily, periodic and annual reports as well as ad hoc requests) and indirect controls (through statistical analysis, 5 times a year).

### III ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Montenegro has already reached an advanced level of alignment and partly applies the *acquis* in the fields covered by this chapter. However, in order to be well prepared to take on the obligations of membership, Montenegro will have to continue its efforts through further ambitious legislative reforms to incorporate the substantial EU *acquis* in the financial services area. In this sense, preparations will need to continue so as to ensure alignment and full implementation by the time of accession.

Further alignment with the *acquis* and its correct implementation are expected to take place on a regular basis, especially taking into account the evolving nature of the *acquis* in the financial services field.

Montenegro's overall **administrative capacity** in all financial services areas is currently satisfactory. However, it will need to be strengthened in view of the increasing responsibilities and future obligations of each supervisor deriving from the application of the *acquis* in this chapter. In addition to the potential reinforcement in staff numbers, these institutions need to make further efforts to build upon the existing professional quality of their employees and continuously increase their technical expertise through targeted trainings. The same applies to supervisory practices and IT systems used to ensure effective and reliable prudential supervision, which will need to be updated to comply with the new *acquis*.

Finally, steps need to be taken in view of Montenegro's attendance as observer in the work of the three European Supervisory Authorities –EBA, ESMA and EIOPA – closer to the time of accession.

#### a) Banks and financial conglomerates

Montenegro has reached a moderately advanced level of alignment with the *acquis* in this area. However, progress towards further alignment with recent legislative developments, particularly those transposing Basel III standards, will need to take place progressively in the coming years.

Montenegro has partially transposed Directive 2006/48/EC on rules associated with the **taking up and pursuit of the business of credit institutions**. Montenegro still needs to adopt provisions related to the advanced capital measurement approaches<sup>3</sup>, as well as align with Directive 2009/111/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

Montenegro has reached a good level of alignment with the *acquis* requirements on **capital adequacy** for investment firms and credit institutions. However, Montenegro needs to start alignment with the implementation of Basel '2.5' rules within the EU via Directive 2010/76/EU, as well as with the new package on capital requirements composed of Regulation (EU) 575/2013 and Directive 2013/36/EU transposing Basel III.

Montenegro needs to align with Directive 2002/87/EC on the comprehensive framework for the supplementary supervision of **financial conglomerates**.

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<sup>3</sup> IRB, IMM, AMA

Montenegro has only reached an early stage of alignment with *acquis* requirements on the coverage level of the **deposit guarantee scheme**. Steps need to be taken in order to transpose Directive 2009/14/EC amending Directive 94/19/EC, defining a public guarantee of €100.000 for deposits.

Montenegro partly applies the *acquis* requirements on **bank and branch accounts**. Full alignment is envisaged by the end of 2016.

EU legislation on **reorganisation and winding-up** is only partly transposed. Montenegro needs to align with most provisions of Directive 2001/24/EC, including the universality in the winding up and re-organisation of credit institutions with branches on other EU countries, mutual recognition of measures and proceedings, cooperation of authorities and treatment of the interim administration in banks as the measures of re-organisation.

The Central Bank of Montenegro is well equipped to perform its current regulatory and supervisory tasks. However, in view of its increasing responsibilities and future obligations deriving from the application of the evolving EU *acquis*, the Central Bank needs to continue its efforts to maintain and increase the quality of their technical expertise, supervisory systems and practices, and IT systems so as to ensure effective and reliable prudential supervision in line with the Basel Core Principles for Effective Banking Supervision. Constant attention needs to be given to the existence of proper supervisory tools (e.g. data collection from supervised institutions, data verification and expert evaluation, frequency of on-site inspections, supervisory review process of institutions, etc.) and the close cooperation of the Central Bank with regulatory bodies from EU member states and the region.

## **b) Insurance and occupational pensions**

Montenegro has in general reached a good level of alignment in the insurance sector and partly applies the *acquis* in this area. Montenegro's legislation is largely compliant with the Solvency I regime but will still need to align with the identified outstanding gaps. In addition, work needs to start towards full alignment with Solvency II.

Montenegro has reached a good level of alignment with the *acquis* requirements for **life insurance**. Montenegro needs to start preparations towards full alignment by the time of accession with Directive 2008/19/EC amending Directive 2002/83/EC on the implementing powers conferred on the Commission.

Montenegro will need to align with Directive 98/78/EC on **supplementary supervision** of insurance groups.

Montenegro has reached a good level of alignment with the *acquis* requirements for **re-insurance** by having largely transposed Directive 2005/68/EC. However, Montenegro still needs to align with Directive 64/225/EEC on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession; and will need to align with Directive 2008/37/EC on reinsurance, as regards the implementing powers conferred on the Commission.

Montenegro has reached a good level of alignment with the *acquis* requirements for **insurance mediation** by having largely transposed Directive 2002/92/EC. Legislative aspects

related to professional indemnity cover against negligence for insurance brokerage activity will have to be adopted.

Montenegro has reached a good level of alignment with the *acquis* requirements for **motor insurance** by having largely transposed Directive 2009/103/EC. The two gaps already identified will need to be gradually closed.

Montenegro's legislation is aligned to a very limited extent with *acquis* requirements for **occupational pensions** and the **supervision** of institutions for occupational retirement provision. Steps need to be taken towards full alignment, notably through transposition of Directive 2003/41/EC.

Montenegro's legislation is partly aligned with the *acquis* requirements for **annual accounts and consolidated accounts of insurance undertakings**. It will need to take steps towards full alignment with Directive 91/674/EEC regarding the layout of the balance sheet as well as the layout of the profit and loss account.

Montenegro applies to a large extent Directive 2001/17/EC on **reorganisation and winding-up** of insurance undertakings. However, legislative amendments need to be adopted in order to specify winding-up rules relating to Community relations, information to the competent authorities of other member states and branches of third countries.

In terms of **administrative capacity**, the ISA needs to maintain a good level of human resources and take the necessary steps so that appropriate training is provided to its employees in view of implementing Solvency II requirements. On-site and off-site insurance inspections need to continue on a regular basis.

### c) Financial market infrastructure

Montenegro has reached a moderate level of alignment in the field of financial market infrastructure and partly applies the *acquis* in this area.

Montenegro is partly aligned with the *acquis* requirements for **settlement finality** in payment and securities settlement systems. Legislative amendments will need to clearly define key concepts of the Directive 98/26/EC and include provisions regarding the insolvency proceedings against a participant in the system and the outcome of such proceedings towards the system.

Montenegro is largely aligned with the *acquis* on **financial collateral** arrangements by having almost fully transposed Directive 2002/47/EC. An authority in charge of overseeing the implementation and enforcement of the Law on Financial Collateral Arrangement needs to be defined.

Montenegro will need to meet the requirements of Regulation (EU) No 648/2012 ("**EMIR**") by the time of accession. Despite the fact that the requirements on CCPs and trade repositories may not be directly relevant due to the lack of such infrastructure in Montenegro, the clearing obligation of OTC derivative contracts and the reporting obligations set out in this text are relevant for financial institutions such as credit institutions, investment funds, and insurance undertakings.

#### **d) Securities markets and investment services**

Montenegro has reached a moderate level of alignment in the field of securities markets and investment services and partly applies the *acquis* in this area.

Montenegro's legislation is partly aligned with Directive 2004/39/EC on **markets in financial instruments** (MiFID) Montenegro needs to take steps towards full alignment including by transposing its related Implementing directives and Regulations. In addition, Montenegro will need to catch up with legislative changes to the MiFID framework soon to be adopted at EU level.

Montenegro is partly aligned with Directive 2003/71/EC on **prospectuses** to a limited extent. It will need to fully implement Implementing Regulations as well as transpose the amended Prospectus Directive 2010/73/EU.

Montenegro has reached a moderate level of alignment with Directive 2003/6/EC on **market abuse**. However, it needs to take steps towards full alignment by transposing its implementing Directives. Further progress is needed to close the identified legislative gaps (obligation to notify suspicious transactions, exceptions for buy-back or stabilisation programmes). Montenegro will also need to catch up with legislative changes to the Market Abuse framework soon to be adopted at EU level

Montenegro is partly aligned with Directive 97/9/EC on **investor compensation schemes** and needs to continue preparation towards full alignment with new EU amendments to the existing legislation.

Montenegro is partly aligned with the *acquis* requirements for **UCITS**. Future legislative work towards full alignment with Directives 2007/16/EC and 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to UCITS will have to take place. Montenegro needs to ensure it aligns with Directive 2011/61/EC on **Alternative Investment Fund Managers** and can meet the requirements of Regulations 345/2013 and 346/2013 on **European Venture Capital Funds** and **European Social Entrepreneurship Funds** by the time of accession. Even though there are currently no such funds in the country, all these legislations allow for "passporting" rights into other EU Member States, therefore Montenegro would have to meet its obligations should it becomes a host Member State for any of these funds.

In terms of **administrative capacity**, the SEC is well equipped in order to fulfil its current regulatory and supervisory functions. However, overall administrative and institutional capacity will need to be strengthened to account for the expanding responsibilities which the new *acquis* entails.