MFIC | Montenegrin Foreign Investors Council

WHITE BOOK

FOREIGN INVESTORS' VIEW OF THE INVESTMENT CLIMATE IN MONTENEGRO

"Montenegro is full of investment opportunities.
It has tremendous growth potential, but to fully realize it, there is much more that can be done.
This is our contribution to achieving the goal of a prosperous and sustainable country of Montenegro"

2014

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FOREWORD

Already working on the sixth edition of the White Book, I am pleased to say that the successful trend from the year 2013 continued also in 2014 for the Montenegrin Foreign Investors Council (MFIC). We are still attracting new members, the most significant investors in the country, around our mission of improving the business environment in Montenegro.

Looking back over the year 2014 in Montenegro, we can say that it was a very challenging one, but fortunately, some of the key macroeconomic indicators, first of all the level of net FDI inflow, indicate positive trends (9.3% compared to the previous year). On the other hand, total industrial production was 11.4% lower compared to the previous year.

However, it was our pleasure to analyse the Government's document "Montenegro Economic Reform Programme 2015 – 2017" and to learn that the focus of economic policy in 2015 and in the medium term will be removing barriers to economic growth and development and, consequently, an increase in economic competitiveness, creating new jobs and improving the standard of living for all citizens of Montenegro. We hope that the key development projects that have been launched, besides the construction of the highway, will contribute to the anticipated expansion this year and that the Government's projection that foreign direct investments (investments in companies, banks and real estate) in the period 2015–2017 will amount to 13.4% of GDP on average (compared to 7.5% of GDP in 2014) will come to fruition.

Speaking of other positive developments in the period following the publication of the previous White Book, I was very pleased to read that, despite the corrective crisis measures which had to be introduced in the recent past, Montenegro has received recognition from the international community in the form of an improved position on the scale measuring the ease of doing business, which is also reflected in the fact that Montenegro has been the leader in attracting foreign investments when it comes to countries in transition. Namely, the most recent Doing Business Report 2015 positioned Montenegro in 36th place when it comes to the overall business climate, compared to last year's 42nd position (out of 189 economies), i.e. in 2nd place (behind Macedonia) among the comparable economies in the region. We are particularly encouraged by the fact that Montenegro significantly improved its ranking in the area of dealing with construction permits, i.e. 138th place compared to last year's 165th position. Although this progress makes us very happy and definitely shows strong commitment from the Government to persist in reforms in this very important field for foreign investors, the MFIC still labels it as problematic and requiring additional improvements, first of all in terms of costs and the duration of procedures.

It is also our great pleasure that the Montenegrin EU accession process has carried on at a steady pace while making progress with 18 chapters out of 35 opened. Significant progress was achieved in terms of institutions and legislation terms, reflected in the alignment of regulation with the EU acquis, new institutions being established and constant education of human resources, reconfirming thereby that Montenegro is fostering the spirit of Euro-optimism and European values. I hope these achievements will give the Government an additional incentive for continued implementation of reforms that will result in the realization of our common goal: improving the business climate in Montenegro, and thus accelerating economic growth and improving the living standards of the citizens of Montenegro.

Having in mind that during the past four years the MFIC rating has been very well perceived by the readers as a quick, simple and illustrative indicator of local investment and business environment related trends, in this White Book edition we decided to continue to present a perception-based evaluation of the simplicity and effectiveness of doing business in Montenegro. The overall rating is 6.3 (on a scale of 1 to 10), remaining the same as last year. More specifically, the Labour Market, Taxation and Corporate Governance are the focus areas evaluated by our members as developing positively, while on the other hand, the Rule of Law and Property Development has been recording negative trends. Also industry-wise, indicators for Tourism and Banking have increased, for Telecommunications and ICT the indicators have been stable, but Production has been decreasing.

By publishing this edition of the White Book we have kept our promise given to the Prime Minister at our December 2013 meeting and have acted more proactively towards establishing a more stimulating and a more enticing business environment in our country. We sincerely hope that we have provided a more concrete and practical contribution to improving the legal and regulatory framework for doing business in Montenegro and that the Government will find our specific proposals in that regard, including the exact wording of certain articles of such laws, useful and acceptable. Our previous cooperation with the Government has given us reason to believe that our constructive partnership, bearing in mind that we share the same goal, will further develop. We are fully aware of the importance of MFIC member companies' investments contributing to economic development and growth, as well as of the standards and best international practices introduced by MFIC member companies for Montenegrin companies entering international markets. With the responsible institutions sharing this awareness on our side, we are sure that we will be an example of a very successful story, which will be most beneficial for the citizens of Montenegro and their quality of life.

Finally, we take this occasion to thank all contributors to this edition of the White Book, especially to our members.

Rüdiger J. Schulz,

MFIC President

INTRODUCTION

The first MFIC White Book was published in 2010. Today we work in a changed environment which we will try to capture in this year's edition of the White Book. The changes that we have seen over the years have improved the general business environment, as evidenced by numerous research organizations. Nevertheless, some changes were unfortunately for the worse, while there are still important areas that have not seen enough needed improvement.

Montenegro is full of investment opportunities. It has tremendous growth potential, but to fully realize it, there is much more that should be done. This is our contribution to achieving the goal of a prosperous and sustainable Montenegro.

Figure 1: MFCI in numbers

It is our common desire to see Montenegro become one of the most attractive destinations for FDI, something not easily achieved amongst such fierce competition coming from jurisdictions with a much longer tradition of attracting foreign capital and more developed infrastructure, regulatory environment and practices. But we would not be here if we did not believe Montenegro has something to offer that others do not. This is what we need to build our strategy on – the uniqueness that will set this country apart and make it a regional hub for business and investment.

As the number of foreign investors has grown in Montenegro, so has our membership, from the five companies that established the MFIC back in 2009, to 26 in 2015.

MFIC: WHO WE ARE

The Montenegrin Foreign Investors' Council (MFIC) is an association of leading foreign investors in Montenegro established in January 2009. Our aim is to:

Improve the investment climate and support business development in Montenegro;

Promote communication, cooperation and dialogue between the Council and the Montenegrin authorities;

Cooperate with the Montenegrin authorities to help overcome the issues and obstacles that foreign investors may face, including those concerning economic relations with other countries;

Liaise with other investors' organizations within the SEE region.


Montenegro

SUMMARY

In discussing with MFIC members about what their general feeling was about the developments affecting the business environment in 2014, most were not able to clearly define whether the feeling was positive or negative. And perhaps that is exactly the main feature, as some features improved and some were a step back, thus creating largely a similar situation from the previous years.

The Government's comments on MFIC recommendations - a statistical overview

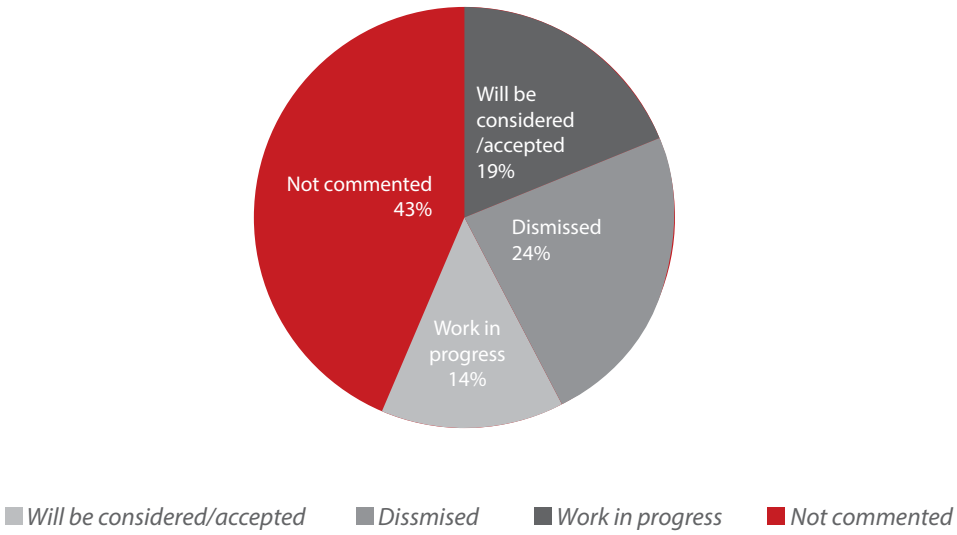


Figure 2: The Government's comments on a total of 92 MFIC recommendations

This year we received comments from the Government on our 92 recommendations from the previous White Book. The Government commented on a total of 52 recommendations while committing itself to consider or accept 17, dismissing 22 and providing general comments on 13. We will continue to keep track of how the recommendations are implemented, and next year we will add the category "Completed".

The Ministry of the Interior was the most efficient in providing comments, while the rest of the Government's institutions provided their comments in a joint document that we found very useful. We have quoted all the comments we received from the Government after each of the recommendations, adding further comments from the members where applicable.

One of the new issues that the MFIC wishes to get more involved in is a cause we have called "Clean Montenegro". Montenegro needs to build on the image of an ecological country, but that calls for more than just a name, and the MFIC will be more involved in activities that contribute to the goal of a clean country.

In the chapter titled "MFIC members' recommendations for improving the regulatory environment" we discuss laws and regulations proposing changes that we believe would bring about a positive impact on the investment and business environment and further align the regulations with the EU and international standards.

As in the previous White Book, we have identified several key issues such as Labour Law, Property Development, Taxation, Corporate Governance and the Rule of Law. Our members noted improvements in the environment in these aspects, however, there were also new challenges.

In the chapter devoted to the Industry Overview, the White Book deals with issues and recommendations that are specifically related to the industries which our members come from and have not been mentioned in the focus areas in the previous chapter.

In the final part we offer further details on the well-established cooperation the MFIC has with the Government and the MFIC's activities relating to education.

1. MFIC BUSINESS ENVIRONMENT INDEX 2014

ABOUT THE INDEX

The MFIC Index is a perception-based evaluation of the ease of doing business in Montenegro. It is derived solely from the opinions of its members who grade the individual industries which they represent on a scale of 1 to 10, where 1 is the poorest score and 10 the best. The aim is to provide foreign investors and local decision makers equally with a quantitative overview of how the investors already running a business in the country perceive the business environment on the basis of several indicators (see below). It is divided into two categories: in the first, investors provide a rating of the industry in which they operate as a whole, and in the second, individual focus areas that the MFIC has identified on the basis of input from our members.

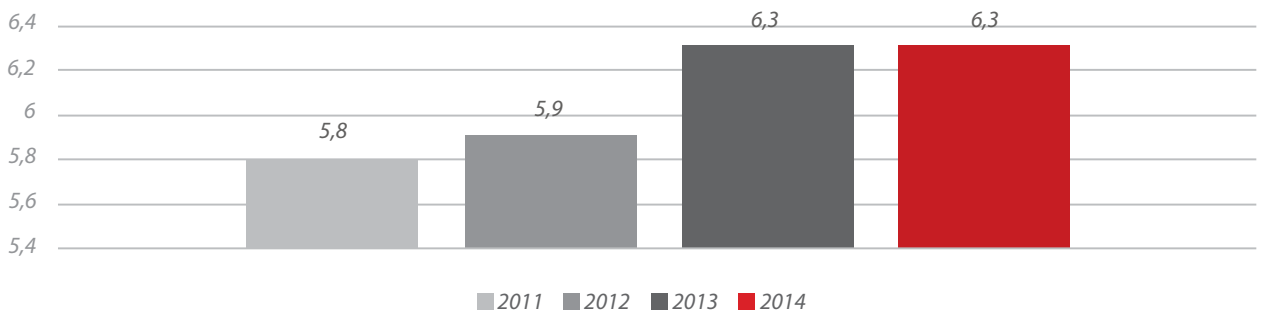
1.1. FOURTH YEAR OF THE MFIC INDEX

In the fourth year of the MFIC index we see the index stabilizing, with the same result as last year. Our members in general felt there were not enough positive changes, and the index is a good reflection of that. But what is more interesting is that this is the first index in which we did not see an increase. How is 2014 different from the previous two years in this sense? This is what we tried to discover talking to our members, and this is what the WB 2014 is about.

OVERALL RATING 2014

MFIC INDEX: *6,3 (6,3[1])*

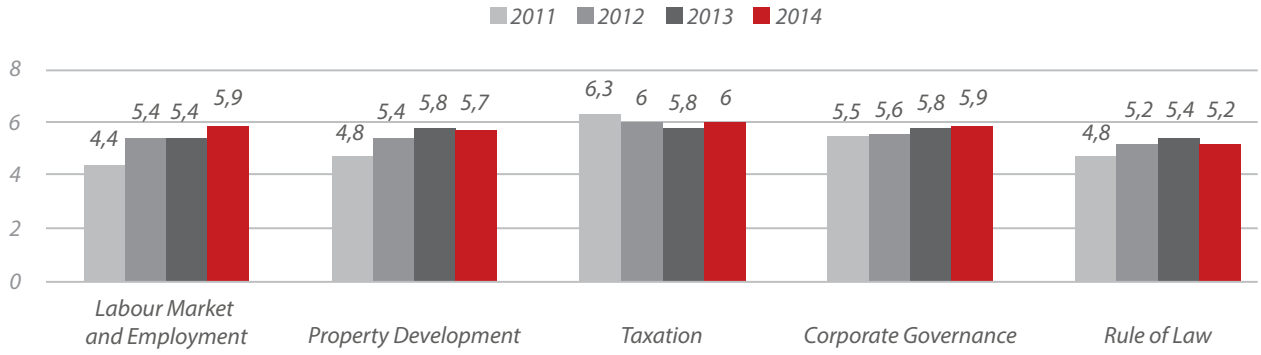
MFIC Index 2011 - 2014



1 2013 result

This is what the results in individual categories of the index looked like over the past four years:

How much positive or negative impact these Focus Areas had on your business:

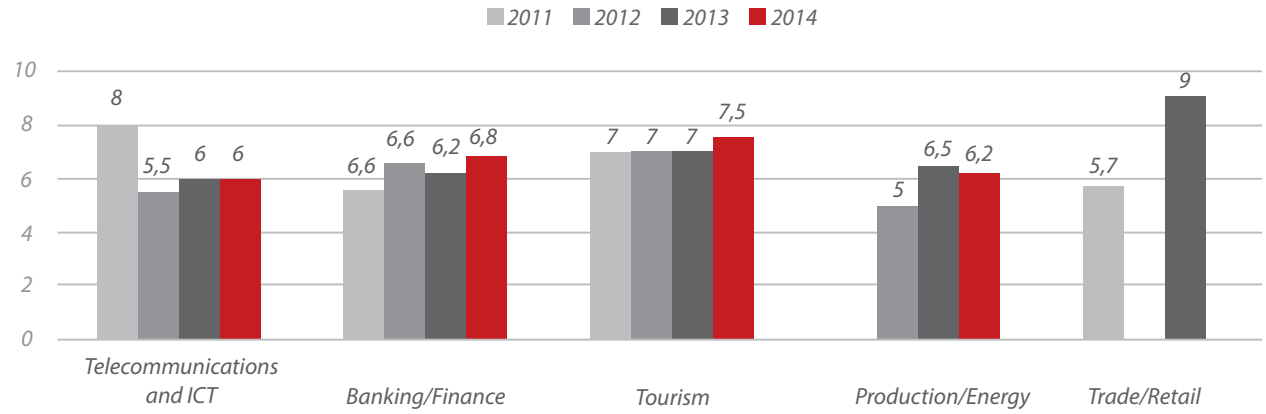


When rating the industry, our members considered how easy or difficult their daily operations are due to the general business climate and regulatory environment, and other factors such as:

- administration,
- the legal framework including laws and institutions,
- other business infrastructure areas like roads, education, etc.

We would like to emphasize that there is no specific methodology behind this ranking, it reflects the subjective perception of MFIC members and not generally accepted facts.

How do you feel in: (Industry Rating)



These represent conditions as "provided" by the state, and do not reflect current conditions or other external factors such as an economic crisis.

For rating the individual focus areas, our members considered how much positive or negative impact to their business each of the categories listed below has:

- **The labour market and employment** include several issues such as severance payments, fixed-term contracts, sick leave, etc.
- **Property development** for this particular purpose relates to construction permits, registration, cadastre, enforcing mortgage contracts, real-estate appraisal, etc.
- **Taxation/contributions** refers to various fees, taxes, levies and the overall consistency and transparency in paying taxes/evasion of payments.
- **Corporate governance** includes financial reports, bankruptcy regulation, VAT harmonization with the EU and audit practices.
- **Rule of Law** and provisioning of public services includes the length of commercial disputes and court cases, permits and licences, temporary residence and work permits, etc.

2. YEAR IN REVIEW

2014 was a year with several significant developments for the business and investment environment. Below is the list of major developments according to the EBRD's annual publication "The Transition Report for 2014", and what the key priorities are for 2015:

Highlights 2014

The current account deficit continued to decline due to a narrowing trade deficit and a rise in revenue from tourism and remittances. Despite this, the current account remains one of the highest in the region at close to 15% of GDP. However, as the country enters a new investment cycle, with several major projects in tourism, energy and infrastructure in the pipeline, the declining current account trend is likely to reverse.

Progress on privatization has been weak over the past year. Several attempts to sell large companies and assets have failed due to a lack of investor interest.

Power sector capabilities have been improving. Plans to build an undersea electricity cable connection with Italy are advancing, contributing to Montenegro's growing status as a regional energy hub.

Key priorities for 2015

Management of public finances should be improved. The level of public debt has risen sharply in recent years and needs to be addressed carefully. Plans to improve public finance governance and impose limits on public deficits and public debt are therefore welcome, provided they are adhered to.

A comprehensive approach is needed to tackle the NPL problem. Many non-performing loans (NPLs) in Montenegro are related to real estate, which makes them harder to resolve. A coordinated approach by the Government, Central Bank and local banks is needed, with a strong emphasis on supervision and enforcement rules.

Further improvements are needed in the energy sector. The main challenges include unbundling the country's vertically integrated electricity holding company, developing renewable sources of energy (mini-hydro and wind), and strengthening the independence and competence of the energy regulator.

After the economy went into recession in 2012, with real GDP contracting by 2.5%, growth resumed in 2013, and according to Monstat data, GDP grew at 3.3%, followed by an even more moderate pace in 2014 at 2.0%[2].

2 Source: Ministry of Finance.

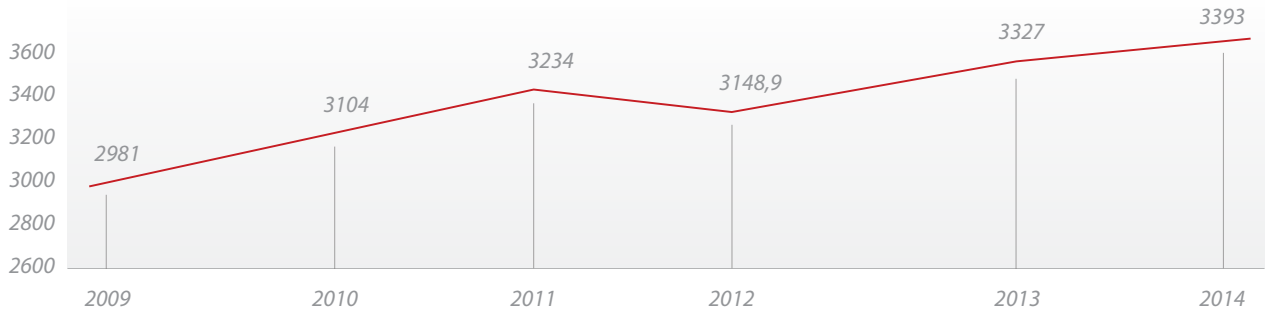


Figure 3: GDP in thousands of euros, Sources: Monstat 2009-2013, Ministry of Finance estimate for 2014

In 2014, an increase in FDI inflow was recorded, thus reversing the negative trends from 2013. According to the Central Bank of Montenegro's preliminary data for 2014, net FDI inflow amounted to €353.9 million, or 9.3% more than in 2013:

	2010	2011	2012	2013	2014
Direct investment, € million[3]	543	389	482	324	353,9

Table 1: Foreign Direct Investment, source Central Bank of Montenegro

Even though there was an increase in FDI, the figures have still not reached the record levels of FDI from the post-independence boom. In relative terms, such as per capita or percentage of GDP, Montenegro remains the regional leader among the five countries of South-East Europe. For example, in 2013, which saw one of the lowest levels of FDI for several years, FDI as a percentage of GDP in Montenegro was the highest in the region at 10.37%.[4] In addition, in 2011, also with one of the lowest levels of FDI during the past five years, per capita FDI at €869 was more than double the next-best result – €341 in Serbia.[5]

In relative terms such as per capita or percentage of GDP, Montenegro remains the regional leader among the five countries of South-East Europe. For example, in 2013, which saw one of the lowest levels of FDI in several years, FDI as percentage of GDP in Montenegro was the highest in the region at 10.37 percent. In addition, in 2011, also with one of the lowest levels of FDI during the past five years, per capita FDI at €869 was more than double the next best result – €341 in Serbia.

3 Source: Central Bank, for 2014 estimates by the Montenegrin Ministry of Finance.
4 Source: United Nations Conference on Trade and Development
5 According to the central banks of the five countries in the region: Montenegro, Serbia, Albania, Macedonia, B&H.

Many research papers and indicators emphasize the importance of FDI for the Montenegrin economy, and this cannot be disputed. The Montenegrin Prime Minister, Milo Djukanovic, also stated this clearly:

"For a country at an economic development level which Montenegro is at today, being also in a socially painful transition and in demanding reforms, attracting foreign investment represents one of the most significant national interests.[6]"

> *"For a country at an economic development level which Montenegro is at today, being also in a socially painful transition and in demanding reforms, attracting foreign investment represents one of the most significant national interests."*
> *Milo Djukanovic, Prime Minister of Montenegro*

In order to achieve this and to return to much needed stronger growth, Montenegro needs a competitive environment for FDI more than ever before.

2.1. MACROECONOMIC BACKGROUND

Montenegro's economy grew at an outstanding pace in the pre-crisis period with an average of almost 7% from 2004 to 2008. This was mainly due to strong domestic demand especially in the area of real estate, fuelled by large FDI inflows and rapid credit growth. The growth proved unsustainable as demand contracted due to the impact of the global crisis and internal factors. The steep decline in demand was followed by a drastic fall in FDI, leading to an almost total freeze in the real estate market and a sudden liquidity shortage. The impact of the crisis on the Montenegrin economy was severe and fully unfolded during 2009, with annual GDP contracting by 5.7% YoY from an already high 6.9%. After contracting for almost two years, the industry began to grow again in the second half of 2010. Nevertheless, industrial production at the end of 2010 was still considerably below its pre-crisis peak, and economic performance remained depressed until 2012, while growth resumed during 2013 at a moderate pace at 3.3%[7], continuing at an even more moderate rate in 2014 at 2.0%[8].

On the fiscal side, policies have become more prudent in the past few years, but the deteriorating economic situation and the activation of state loan guarantees caused a surge in public debt, reaching almost 55% of GDP in 2013 from 27.5% in 2007.[9] Nevertheless, the authorities have made good progress in consolidating Montenegro's public finances in recent years. Even so, with construction of the 41-kilometre (km) priority section of the 164-km Bar-Boljare highway project slated to take off in the first half of 2015, the long-planned construction project is expected to put significant strain on public finances. Thus, Standard and Poor's (S&P) projects that the general government deficit will widen from 0.9% of GDP in 2014 to 5% in 2015, and to over 4% thereafter.

6 The statement given at the ceremony of marking the beginning of construction of Telenor's technical building in Podgorica, on 9 October 2014, as quoted by the local media
7 Source: Monstat.
8 Source: Ministry of Finance – Montenegro Economic Reform Programme 2015–2017
9 Ministry of Finance data.

These unfavourable public debt dynamics have resulted in a sovereign debt rating downgrade (by S&P) from BB- to B+ in November 2014. As the rating company explained, the primary reasons for the further downgrade are the signing of a "loan agreement to finance the construction of a section of the long-delayed Bar-Boljare highway in October, while the stable outlook reflects a balance of risks from worsening external, fiscal, and debt metrics against the country's growth potential."

Sovereign Credit Ratings	Dec 2011	Mar 2012	Jun 2012*	Nov 2014
MNE	BB	BB	BB-	B+

Source: Standard & Poor's. * No change as of June 13, 2012.[10]

10 http://www.standardandpoors.com/prot/ratings/entity-details/en/us/?entityID=384575&sectorCode=SOV

3. WHAT OTHERS THINK

Numerous international organizations and think-tanks have published their research on Montenegro. We would like to take a look at some of them.

According to the Global Competitiveness Index produced by the World Economic Forum (WEF), Montenegrin competitiveness stagnated after a decline in 2013, which followed a significant rise from 2010 until 2012.[11]

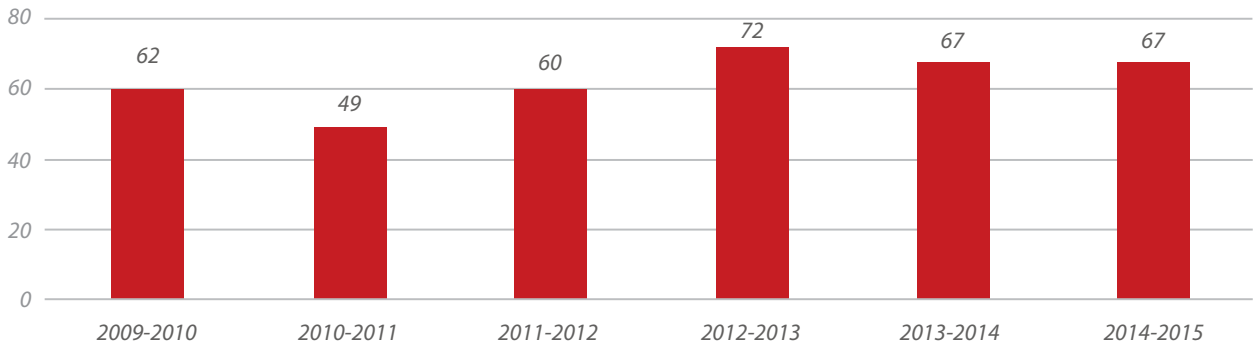


Figure 4: Montenegro's ranking in the Global Competitiveness Index 2009–2014

Interestingly enough, just like the previous year, the findings of the GCI correspond to a great extent to the general perception of our members quantified in the MFIC index. The MFIC index shows that our members feel that the reforms have stagnated, with even a slight decline. This demonstrates that reforms that go deeper into the core issues are needed to achieve results that would turn the lingering progress into more rapidly advancing development.

"…reforms that go deeper into the core issues are needed to achieve results that would turn the lingering progress into more rapidly advancing development."

According to World Bank's Doing Business 2015, Montenegro has made significant progress relative to its regional peers in improving the business environment, according to the survey, which places the country in 36th position out of the 189 economies surveyed.

11 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

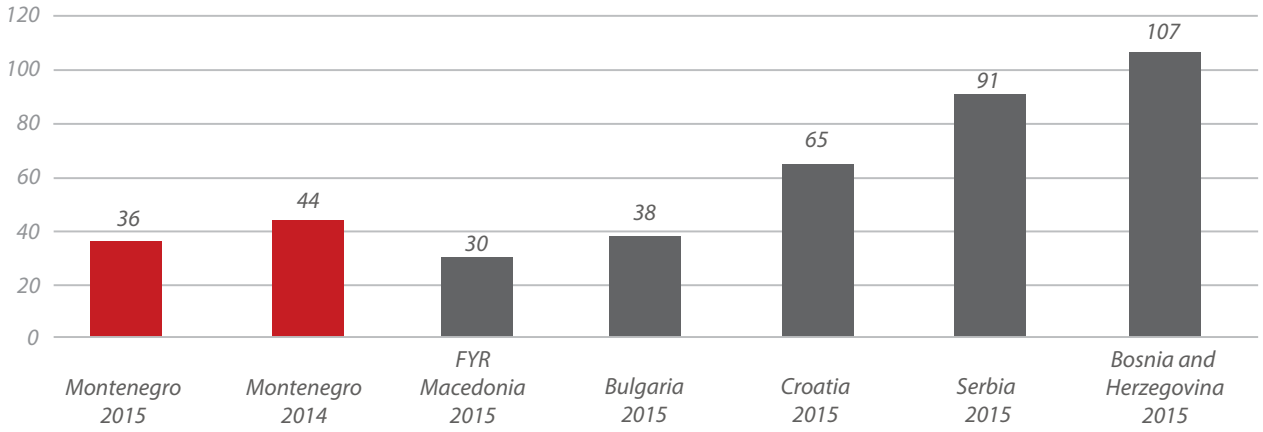


Figure 5: WB Doing Business 2015 – Overall rating, regional comparison

Macedonia retained its position as the regional leader, according to DB, even though its ranking decreased from 25th to 30th, while all the other economies in the region improved their rankings, with Macedonia, Montenegro and Bulgaria retaining the first three positions in the order given.

Thus, Montenegro has continued to improve its business environment over the years, according to the DB report. However, it should be noted that this progress is the result of significant advances in just one of the rated fields, *"Dealing with Construction Permits"*, where Montenegro increased its rank from 165th to a still very poor 138th position, while all other indicators were either on a slight downward trend, or no changes were noted[12].

However, it should be noted that this progress is the result of significant advances in just one of the rated fields, "Dealing with Construction Permits", where Montenegro increased its rank from 165th to a still very poor 138th position, while all other indicators were either on a slight downward trend, or no changes were noted.

According to the Heritage Foundation's 2015 Index of Economic Freedom, Montenegro's economic freedom score is 64.7, making its economy the 66th freest in the 2015 Index, up two positions from the 2014 Index[13].

12 Starting a Business, Getting Electricity, Getting Credit, Registering Property (no change), Protecting Minority Investors (no change), Paying Taxes, Trading across Borders, Enforcing Contracts (no change), Resolving Insolvency.
13 2014 Index of Economic Freedom, Heritage Foundation; http://www.heritage.org/index/country/montenegro

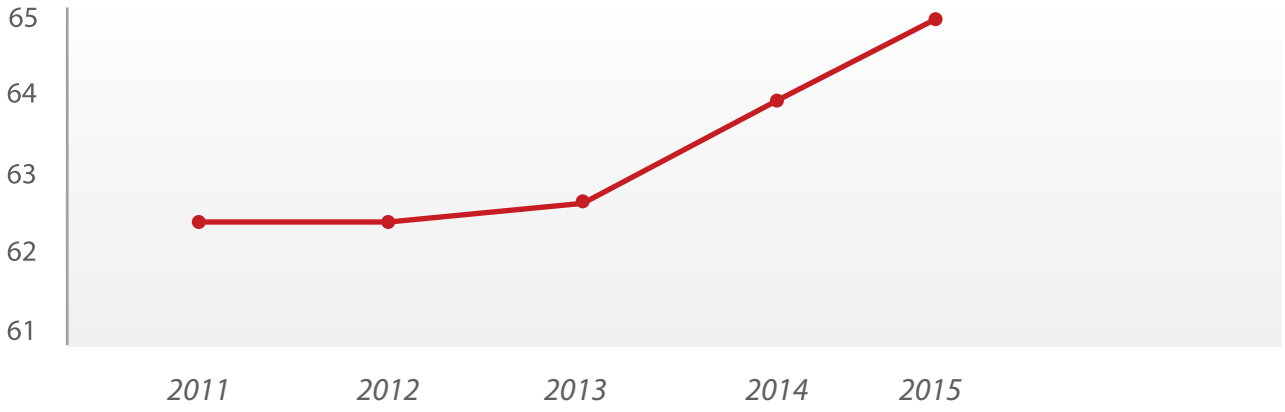


Figure 6: Montenegro's score over time, the Heritage Foundation's Index of Economic Freedom.

As the report states: *"Its score is 1.1 points higher than last year, with gains in half of the 10 economic freedoms, including labour freedom, freedom from corruption and trade freedom, slightly offset by declines in the management of government spending and business freedom. Montenegro is ranked 31st out of 43 countries in the Europe region, and its overall score is above the world average but below the regional average."*

3.1. IN CONCLUSION

Following a generally positive trend from the past few years, Montenegro's global rankings in the most important research works such as Doing Business and the Global Competiveness Index either kept improving or stagnated. However, two points stand out from the findings of the reports and the perception of our members as well:

1. The pace of reforms and improvements is not at a level necessary to produce the desired results.
2. Even though Montenegro is improving the business environment, the starting point is rather low and in absolute terms the results leave significant room for improvement.

In addition, according to the majority of the research presented here, some of the areas such as the rule of law, corporate governance and infrastructure remain underdeveloped.

> *Montenegro 2014 Progress Report by the European Commission on the Legal System:*
>
> *"Overall, simpler and more predictable regulation of business and further efforts to tackle corruption are needed to improve the business climate."*

3.2. CHALLENGES AHEAD

In summary, it is illustrative here to quote the findings of the IMF's staff team's visit to the country[14] which offers a balanced and informed view of what Montenegro will have to deal in the short and medium term:

IMF Executive Board 2014 Article IV Consultation with Montenegro

"...moderate growth continues, but the outlook remains challenging, and risks weigh on the downside, including from external spillovers... (there is) the need for continued fiscal discipline, further efforts to strengthen the banking sector, and comprehensive structural reforms to address macroeconomic vulnerabilities and spur growth."

"While recognizing the potential impact on economic growth, they noted that the Bar–Boljare highway project places a large burden on public finances and exacerbates debt and financing risks."

"Directors underscored the importance of reforms to boost competitiveness and economic flexibility... Directors also encouraged the authorities to sustain progress in improving the business and investment environments so as to promote economic diversification and boost long-term growth"

14 http://www.imf.org/external/np/sec/pr/2015/pr1531.htm

4. MFIC MEMBERS RECOMMENDATIONS FOR IMPROVING THE REGULATORY ENVIRONMENT

The regulatory environment in Montenegro has seen many changes during the past few years primarily related to the EU reform agenda. We will list some of the observations of our members on specific issues that can be further improved to better accommodate the needs of business and economic development. In this edition of the White Book, we will continue by offering more specifics and will add the Government's responses which we received to some of our recommendations.

NOTES:

- *We will number each recommendation using the letter R followed by the recommendation number, such as R1, R2, Rx…*
- *The recommendations from the White Book 2013 keep the numbers that were assigned in 2013, while the new recommendations will continue numbering.*
- *Recommendations from 2013 are marked by a border and font : 2013 recommendations*

4.1. LAWS (R1-R47, R93-R100)

In this section we have compiled the suggestions from our members on how to update the regulation that creates business barriers and bring it in line with modern international standards and best practices. We repeated all the recommendations from the previous WB, adding comments we received from the Government on some of our recommendations.

LAW ON THE ASSESSMENT OF ENVIRONMENTAL IMPACT (R1-R2)

Article 8 of the Law defines stages in the process of producing an assessment of environmental impact which increases the time for approval of the project, thus prolonging the timeframes for obtaining a building permit.

(R1)[15] *Our proposal is to amend the conditions set out in Articles 20 to 24 to shorten the deadlines defined therein, which would greatly shorten the procedure for obtaining the approval for the assessment and consequently the building permit.*

Government's comment: *Phasing is an obligation under the EU Directive, and it must be observed, because Montenegrin law transposes entirely the EU EIA Directive. Changes to the Law on Environmental Impact Assessment (2013) have shortened the deadline substantially, and the entire procedure, all three phases, lasts 99 days.*

15 *As explained in the note above, the symbol (Rx) throughout the document denotes a recommendation and assigns a number to it.*

Our members note here that the three-month deadline is still far too long. Obligations have to be defined more precisely, as well as data processing times for all responsible institutions involved. What in practice seems to be the biggest challenge is that a lot of this process is in the hands of local governments, which then leads to unequal implementation of the law, ranging from relatively easy procedures to almost impossible Therefore, in some municipalities, our members have a problem with fulfilling the UTU conditions, as the first step towards legalization.

***(R2)** In addition, we propose amending the Rulebook on projects which needs to have an assessment of the environmental impact, so that telecommunication facilities are classified in a list that omits Phase I (request for the assessment) and goes directly to Phase II (project development).*

Government's comment: *If the reference is made to phase II, it is anyhow not obligatory under the Law on Environmental Impact Assessment and an investor does not have to implement it, but can proceed immediately to the phase of conducting the Analysis.*
Our members noted that in practice, this procedure depends on the local government, in some cases a more positive experience than in others. However no municipality has thus made an exception in terms of omitting the first phase.

LAW ON COMPANIES (R3)

***(R3)** It is necessary to reinsert the provision in the Law on Companies according to which a **Registrar is not liable for the authenticity** of information from the application for registration, rather the responsibility lies with the requestor.*

The reason is that in the practice, the registration procedure is being delayed while the Registrar is verifying all the submissions including the notarized documents which should not be a part of this institution's responsibility.

Government's comment: *Drafting of the new Law on Business Organizations is planned for Q4 2015, in which this recommendation will be taken into account as well.*

LAW ON SPATIAL PLANNING AND CONSTRUCTION (R4 – R7)

Article 91 established the authority for the issuance of building permits in a way that divides the jurisdiction in this matter between the government administration and local government administration. For example, telecommunication facilities are under the jurisdiction of the local government administration, however some local governments still do not process requests submitted by mobile operators for issuing building permits or construction of temporary buildings which causes significant difficulties for them in conducting business operations in those municipalities.

***(R4)** In this sense, it would be necessary to define timeframes for processing the requests and possible penalties for local governments that do not act in accordance with this law.*

Government's comment: *Article 7 of the Law on Spatial Development and Construction of Structures defines telecommunication structures as structures of general interest. Article 66 provides that structures of general interest shall be exempt from paying fees for utility infrastructure. If recognized by the planning document, permits for them shall be obtained within 30/60 days (depending on whether the Environmental Impact Assessment Analysis is needed). If such structures are not mentioned in the planning document, they must be planned through the Plan of Temporary Structures adopted by the local government. At the level of drafting of the Plan of Temporary Structures, operators must express their needs; otherwise, the authorities of a local government will not have the elements needed for issuing permits for placement thereof.*

Article 128 of the Law defines a Cadastre of ducts (underground and above-ground ducts), in the sense of keeping records on such facilities, but is not applied in practice since the record has not been created. This means that it is impossible to register underground reservoirs of gas stations and similar.

***(R5)** It is necessary to establish unified cadastral maps at the State level, where it would update the information on underground installations and create a unique database that would be accessible to everyone.*

Government's comment: *Remarks relating to the respective Article refer to the Law on State Surveying and Cadastre and are not subject to the recommendation under no. 3 – Law on Spatial Development and Construction of Structures.*

Fees for utility equipment differ from municipality to municipality. Some municipalities have extremely high prices, so the operators do not pay to invest in the construction of new infrastructure.

***(R6)** It is necessary to equalize the Price list on charges for utility equipment in municipalities.*

In accordance with the Law on Spatial Planning and Construction, the administrative authority or local government was mandated to establish a website to make available spatial-technical conditions (UTU) to all interested parties. Such a website has not yet been put into practice, although it would significantly accelerate the procedure for issuing construction permits.

Government's comment: *As previously said, telecommunication structures are exempt from the payment of fees for provision of utility infrastructure for construction land.*

Telecommunications is an area that is rapidly developing in terms of technology, so the replacement of equipment is unavoidable.

***(R7)** However, the current Law on Spatial Planning and Construction deals with construction, reconstruction, renovation of facilities, but not the replacement of equipment, so we think that we should adopt by-laws that deal with this area.*

Government's comment: *Reconstruction means replacement of installations, devices, plants and equipment thus the existing capacity is altered (Article 9). Therefore, the Law regulates the replacement of "equipment" and separate regulations are not needed.*

Taking into consideration the Government's response, we suggest that in the case of replacing the telecommunications room inside the building (according to the Law) in the existing dimensions, when the replacement does not affect the stability and bearing capacity of the building and only increases the telecommunications capacity, it should not be treated as reconstruction and therefore a building permit is not needed.

LAW ON PROTECTION FROM POLLUTION FROM VESSELS (R8)

(R8) *Article 4 of the Law on Protection from Pollution from Vessels should have a new paragraph 2 added as follows:*
"Prohibited activities from paragraph 1 of this Article shall not include washing the outsides of vessels using biodegradable soaps with the required certificates proving the lack of dangerous materials."

Example: Biodegradable "sea-safe" soap produced and sold in Turkey, which brings significant profits to Turkey.

The MFIC welcomes the fact that this recommendation is incorporated into the Draft Law on Changes and Amendments to the Law on Yachts, as explained in the Government's comment below.

Government's comment: *The suggestion was applied in Article 11 (changing Article 33 of the basic law) paragraph 6 of the Law on Protection of the Sea from Pollution from Vessels. However, this Law does not address yachts, but ships only, so an Article of the Proposal of the Law on Changes and Amendments to the Law on Yachts, Article 18 amending Article 33, had a new paragraph added identical to the abovementioned.*

LAW ON PORTS (R9)

Article 26b of the Law on Ports – ***(R9)*** *we propose to change point 15 paragraph 1 to reinstate the wording from the previous Law so that point 15 is as follows:*
"15) conduct repair and reconstruction works on the body, deck and engine, if these activities are part of the regular maintenance of a vessel;"

Government's comment: *We think that the provision of Article 26b paragraph 1 point 15) "carry on the vessel works, repair and reconstruction of body, deck, equipment and machinery, beyond the usual activities" of the applicable Law on Ports should not be changed in the proposed manner for the reason that the term "regular maintenance of a vessel" is a much broader term than the "usual activities" in the given context, and may imply a much wider scope of actions which are not implied by usual activities, for example, painting of a vessel is implied under regular maintenance of a vessel, but not under usual activities.*

Our members find this explanation acceptable.

LAW ON YACHTS (R10 – R15)

(R10) *Article 20 of the Law on Yachts should be amended as follows:*
"The shipmaster, or the skipper of a foreign yacht which is sailing into Montenegrin waters may, prior to sailing into the destination port, send copies of documents via mail, fax or email to the Port Authority or a Branch Office for the purposes of conducting border controls, obtaining a vignette and notarization of the signature of the crew and passengers, in which case he shall warrant by means of his signature on an appropriate form from the Port Authority that the copies of all documents submitted are equal to their originals.

Government's comment: *The Proposal of the Law on Changes and Amendments to the Law on Yachts has rephrased Article 20 paragraph 2 so as to read: "The person referred to in paragraph 1 of this Article may, prior to arrival at the port of destination, submit by post, fax, e-mail or via an authorized person, copies of documents for obtaining a vignette and endorsement of the Crew and Passenger List." The change and amendment has been made in consultations with the MoI since the existing Article 20 paragraph 2 of the Law on Yachts mentions border control, which is under the sole competence of the MoI, Police Directorate - Border Police Sector. The proposal given in the White Book, Recommendation (R10) offers an opportunity for conducting border control by verified documents which is, according to MoI's opinion, outside the one provided under national legislation: It should be kept in mind that border controls of passengers on a yacht may not be carried out on the grounds of documents submitted by fax or e-mail. A person must be present for the purpose of control of a travel document, verification of identity and entry in the registers of travel documents, which is carried out by technical means. This matter is regulated in detail by the Law on Border Control, and Article 55 of the Law provides a separate procedure of border control of persons on a free navigation vessel. Our opinion is that the Law on Yachts, in this way, can define only the procedure of previous submission of documents on a yacht, only for "speeding up the procedure of border controls", and not "for performing border control".*

Our members regret that the Government does not see the merit of our proposal, but nevertheless accept its views.

(R11) *A penalty provision in the Article 42 of this Law should also be added for a person who verifies that copies are authentic for which he knows or must know that they are not equal to the originals.*

Article 20 of the Law on Yachts: paragraph 4 ***(R12)*** *should be amended to define the minimum time frame as follows:*
"The Port Authority of a Branch Office shall, in case not all documentation from paragraph 3 of this Article for obtaining a vignette has been submitted, order the Shipmaster, or the skipper of a foreign yacht that within a timeframe which cannot be shorter than 48 hours to submit the required documentation, and within that time the yacht will stay in the destination port.

Government's comment: *The Ministry of Traffic: We think that the deadline laid down by the Harbour Master's Office should be kept to avoid misuse by an applicant for vignettes. The Ministry of the Interior: Having provided a deadline for submission of necessary documentation of no less than 48 hours, we believe that there also must be a deadline "no longer than...", since otherwise the deadline is not regulated by the Law and the submission of documentation on yachts can take longer.*

***Article 25 of the Law on Yachts** – paragraph 2 **(R13)** should be amended as follows:*
"A foreign yacht that participates in a sports competition or is arriving in Montenegro in order to be presented at a nautical fair does not have to have a vignette, under the condition that the organizers of the sports competition or the nautical fair notify the Port Authority or a Branch Office no later than 48 hours from the beginning of the competition or fair. This exception applies to the period of 48 hours before and after the dates in the organizer's notification.

Government's comment: *The Ministry of Traffic: We have made a change to Article 25 by introducing a new Article in the Draft Amendments to the Law on Yachts: Article 25 paragraph 2 will be changed as follows: "A foreign yacht taking place in a sports competition or arriving in Montenegro to be presented at a nautical fair is not required to have a vignette, provided that the organizers of the sport competition or nautical fair notify the Port Authority or a Branch Office no later than 48 hours prior to beginning of the competition or fair." After paragraph 2 a new paragraph shall be added: "This exception also applies to the period of 48 hours before and after the dates stated in the organizer's notification". Paragraph 3 shall become paragraph 4.*

MoI: This exception must be regulated by a document of the Port Authority or a Branch Office, because in case of a police check on this vessel, there must be a document proving the reason for the exception from holding a vignette.

***Article 28 of the Law on Yachts** – the following should be added: **(R14)** a daily vignette fee and a price list of administrative fees paid with this fee.*

Government's comment: *A one-day vignette has been introduced in the Proposal of Changes and Amendments to the Law on Yachts, Article 14 (which amends Article 28 of the existing Law).*

***Article 29 of the Law on Yachts** – **(R15)** a sentence should be added at the end of paragraph 3:*
"As an exception from paragraph 1 of this Article, pilotage is not mandatory for a yacht commanded by a person who has sailed into the same port more than five times with previous approval from the Port Authority or a Branch Office. The Port Authority or a Branch Office shall respond to a request by the Shipmaster for exemption from mandatory pilotage within 24 hours of the reception of the request. In case there is no response within the given deadline, it shall be considered that the approval has been granted.

Government's comment: *Changes will be made to the Law on Yachts in accordance with the proposed Recommendation.*

We welcome the commitment made by the Government relating to this recommendation quoted above.

LAW ON CONSUMER PROTECTION (R16 – R17)

The user's rights defined in Article 25 are different from the rights of consumer guaranteed by the Law on Contract and Tort and Law on electronic communication, which are *lex specialis* for the area of electronic communications.

***(R16)** It is necessary to harmonize the provisions of the Law on Customer Protection for both users and service providers in order for them to clearly know their rights and obligations.*

Moreover, according to Article 36 of the new Law on Consumer Protection (Official Gazette No. 2/14 and 6/14), public service providers are required to get approval from the Organization for Consumer Protection prior to forming the final price of a service.
As the electronic communications sector is already under a strict regulatory regime, this legal provision creates unnecessary additional obligations for providers, i.e. seeking an opinion from a non-governmental organization, although a regulatory body exists – the Agency for Electronic Communications whose purpose is, among other things, to regulate wholesale and retail prices, and operators of electronic communications are required to notify the Agency of all price changes.

***(R17)** This is why our proposal is to revoke this provision.*

Government's comment (excerpt): *"…we point out that, irrespective of the obligation to seek the relevant opinion, the opinion is not obligatory when setting the final prices of services. The opinion given by the consumer protection organizations is more of a consultative nature. The above provisions are formulated in accordance with the obligations assumed under the Stabilization and Accession Agreement whereby Montenegro committed to ensure and encourage the policy of active protection of consumers, including better information and development of independent organizations… It is (therefore) not acceptable to make changes to the highlighted Articles 25 and 36 of the Law on Consumer Protection with the objective of reducing consumers' rights."*

In a response to the Government's comment from above, our members note that since the Law on Contracts has a general character while the Law on Consumer Protection regulates consumers as a special category, it is essential to harmonize these two laws. This is important not only to enable the normal operation of companies, but also to protect consumers. In addition, the period of 15 days, as is the term for submitting a notice to the Consumer Protection Organizations before changing prices, is simply unnecessarily long. This is especially valid knowing that that the consumer protection organization has until now not replied to the submitted inquiries.

LAW ON FOREIGNERS (R18 – R19, R93-R95)

***(R18) The validity of a residence permit** should be extended to 3 years from the existing 12 months as that would significantly simplify the procedure for employing foreigners.*

Government's comment (excerpt): *At the session of 31 July 2014, the Government of Montenegro consolidated the Proposal of the Law on Foreigners, and it should be referred to the Parliament of Montenegro. The transitional and final provisions of the proposed law provide that enforcement of the Law shall start as of 1 January 2015. According to the new Law, temporary residence permits to foreigners shall be issued with a validity period of up to one year, except in certain cases such as, for example, secondary education, studying, medical treatment, and similar. Regarding employment and residence of foreigners, a uniform permission for residence and work will be issued with a validity period of up to one year and it can be extended for up to two years, which means three years in total. According to the new legal solution, the permission for residence and work of foreigners will be issued in the form of an ID card, which means that the residence and work of foreigners match and will not be written into the travel document."*

In response to the comment from above, the MFIC members noted that the new Law on Foreigners (entering into force on 1 April) contains certain restrictions which are a step backwards in comparison to the existing regulation. The condition for applying for a permit is now a certificate issued by the Employment Agency stating that there are no unemployed persons who fulfil the conditions for engagement in such a position or that an unemployed person has refused employment. What is even more burdening is the 30-day deadline which the Employment Agency is given to issue this certificate. (R93) Even though this condition is not stipulated for managerial positions, such regulations only contribute to increasing the inflexibility of the labour market in Montenegro and therefore we propose that this provision be reconsidered.

In addition, it is stated that a permit for employment and residence of foreigners may be issued for one year and be prolonged for another two years "meaning in total three years". (R94) This requires further clarification, as to whether this is a maximum time, in which case foreigners will not be able to apply for a permit for permanent residence, since the condition for such a permit is a five-year residence period in Montenegro.

***(R19)** There should be a possibility for an employee, when changing employers, to only **obtain a new working permit without revoking the residence permit** when such a permit is still valid.*

(R95) The system of confirmation of foreigners' qualifications needs a complete overhaul that would include not only shortening the entire procedure but streamlining it and introducing more transparency into the process. In addition, there is a clear need for foreign engineers to be able to acquire a licence in Montenegro based on their existing credentials.

LAW ON PENSIONS AND DISABILITY INSURANCE (R20)

Article 82 of the Law on Pensions and Disability Insurance defines that the procedure for pensions and disability insurance is initiated upon a request from an insured person, or the employer of the insured person and upon the proposal of a health organization that has provided the health protection.

In practice this Article cannot be implemented since if an employer initiates the procedure for establishing the right of an employee to a disability pension, and the employee does not respond to the invitation of the Committee of the state Pension Insurance Fund, the procedure is cancelled. The same situation happens when a health organization initiates the procedure, and in practice the only way a disability is established is on the basis of a personal request.

(R20) This Article should be amended with norms that would make an appearance before the Committee mandatory, including the penalty provisions. We propose that failure to appear be considered a breach of work obligation.

Government's comment: *The Pensions and Disability Insurance Law provides that pension and disability rights are personal rights which, as such, may not be transferred to other persons. Disability is established on the basis of full medical, legal and other documents and on the basis of an examination by the Disability Commission. The procedure of exercising pension and disability insurance rights applies the provisions of the Law regulating general administrative procedure, which clearly provides that the omission of an action by a party may be considered to be that party's withdrawal of the request. Violation of labour obligations and possible sanction on such grounds are subject to the Law on Labour Relations, and not the Pensions and Disability Insurance Law.*

The comment we received from the Government dealt with formal aspects, stating that this issue should be regulated by the Labour Law, while not offering any concrete insights into whether this can be or cannot be applied.

LAW ON HEALTH INSURANCE (R21 – R23, R96)

Article 26 of the Law on Health Insurance defines that the earnings during sick leave from work up to 60 days are calculated and paid by the employer, and that after the 60 days the employer continues to pay the earnings but is refunded by the state Fund for Pension Insurance. Too often in practice we witness the situation that employees who are on sick leave for longer periods of time, just a few days prior to expiration of the 60-day deadline interrupt their sick leave only for a day or two and then continue to use sick leave, and their salaries continue to be paid out by the employer with no refund.

(R21) In order to prevent this obvious abuse, we propose Article 26 be amended so as to state that an interruption of sick leave of less than seven days is not considered an interruption but that the sick leave is only resumed.

Government's comment: *"…the Fund for Pension Insurance defines in Article 10 of the Rulebook on the manner and procedure for exercising rights to temporary inability to work and exercising the right to wages during temporary inability to work (Official Gazette of Montenegro 04/14) that, if within three days of the day of conclusion of temporary inability to work by a chosen doctor, or Medical Board, a need arises for temporary inability to work, the chosen doctor shall refer an insured person to the Medical Board for assessment of the need for a continuation of temporary inability to work. We think that such a provision does not have to be a part of the legal provisions, but this will be considered within the ongoing public hearing relating to the new Proposal of the Law on Compulsory Health Insurance. We think that a period of 7 days is too long, and that a period of 3 days is entirely objective. Namely, in practice, if sick leave of an insured period is concluded on Friday by the First Instance Medical Board, a chosen doctor cannot initiate new sick leave on Monday, but must refer the insured person to the First Instance Board for further assessment of justification."*

(R96) In addition to the above recommendation, it would be advisable to consider introducing a provision that would define a definite number of repeated sick leaves in succession after which an employer should have the right to request a Medical Board review.

Article 27 of the same Law defines that the *"Earnings during the sick leave shall not be higher than the average salary of employees in Montenegro in the previous year, according to the state institution in charge of statistics, except for cases of sick leave defined in the Article 28 paragraph 3 of this Law".*

***(R22)** We consider that this Article is contrary to other regulations and the mandatory payment of health insurance for all employees – as these payments vary based on salary levels, those employees who pay significantly larger amounts are, despite that, in case of sick leave, left with an amount far less than what they previously paid.*

It is not clear that an employer can on their own pay a larger sum. Regardless, companies that have higher revenues and pay higher-than-average salaries, will be punished, together with the employees, since they will have salaries during the sick leave that are above the average level and the difference will not be refunded to them.

***(R23)** Therefore, we consider this limitation should be revoked, or, to make the payment of the mandatory health insurance premiums equal for all employees.*

Government's comment: *"In relation to remarks concerning Article 27 of the Law, which refers to the refunding of wages to the amount up to the average wage of employees in Montenegro, the remark cannot be accepted bearing in mind that health insurance, as a part of social insurance, is based on the principles of reciprocity, solidarity and obligation. These principles relate not only to exercising health care as a basic healthcare right, but to exercising the right to wages during temporary inability to work. In the case of a lack of funds for exercising health insurance, the Fund provides a refund of wages to all employers up to a predetermined amount, however this does not relate to cases of sick leave which are highlighted by the Law: injury at work, pregnancy, malignant diseases, voluntary blood donors, etc., where the full amount of the wages is refunded. According to the proposed legal provisions, an employer may pay to an employee a wage of a higher amount, but from their own funds."*

LAW ON ELECTRONIC COMMUNICATIONS (R24 – R29, R97-R99)

***(R24)** The provisions of Article 192 of the new Law on Electronic Communications (2013) stipulate unreasonably high penalties, which we consider to be inappropriate for the offences (for as many as 21 cases of breaking the Law).*

As such penalties in EU regulations are meant for cases of breach of regulation in the area of protection of competition regulation and not electronic communications, we can say that the regulatory and business environment in telecommunications is rather rigid.

Government's comment: *"Although the White Book comments that the penal policy is rigid and states that such penalties are prescribed in the EU only for protection of competition, we point out that the penal provisions relate to violation of competition and jeopardizing of the market, and that they have undergone control by the European Commission from whom we have not received any remarks relating to this segment of the law, except a comment that the Law on Electronic Communications is harmonized with the EU legislation to the highest extent possible. Also, which is very important, our intention with the prescribed measures was not repression but prevention, to avoid disturbance of the market and competition. Therefore, if operators follow the law, penalties may not and will not be activated."*

Our members believe that the penalties as prescribed by the Law on Electronic Communications are unnecessarily high and represent repressive rather than preventive measures. Preventive action is mainly focused on training and education, and not on adopting an arguably unreasonable penal policy. Additionally, we must emphasize that the implementation of paragraph 4 of Article 159 excludes the implementation of paragraph 6, which first leads to confusion in their interpretation, and then in their implementation. **(R97)** For this reason the MFIC wishes to emphasize the need to define the manner for implementation of this article, especially taking into account the high penalties provided in Article 192 of this Law in case of behaviour of operators contrary to Article 159 of the Law.

Article 117, paragraph 3 of the Law on Electronic Communications, regulates the renewal of licences for the use of publicly available frequencies. The Article stipulates that upon expiration of the licence a new tender should be implemented, but such that any new provider can take over the existing operator's frequencies. This puts operators in an extremely disadvantaged position, creating uncertainty for a business in which millions have been invested previously. **(R98)** We encourage the authorities to reconsider this provision.

Article 178 of Law on Electronic Communications, defining the issue of direct marketing, is a constraint for operators as communication with users is brought into question. It negatively impacts everyday technological advances, cost savings, speed of communication, environmental protection, and better-informed users. **(R99)** Therefore, we urge the Government to define this matter in a way that encourages and not discourages technological advances.

***(R25) Article 159 regulates the charging of the services** in a manner that is contradictory because in one part it gives operators certain rights (the existence of several tariff packages) while in paragraph 7 of the same Article makes the existence of tariff packages pointless.*

Government's comment: *The Article is not contradictory, as stated in the White Book, but an opportunity is given to operators to have different packages for users, but they are obliged to design at least one compulsory package for which tariffs are set per 1 second, which constitutes a proper billing of services.*

Article 174 revoked the right operators had according to the previous version of the law to obtain customers' unique citizen's number. This poses a challenge to operators in terms of their efficiency and protection of their rights. This way, the operator cannot identify customers uniquely. This implies several limitations in performing business processes, having in particular an impact on identifying customers' credit eligibility.

(R26) *Countries with similar regulations (e.g. Norway), in order to allow companies to meet their need to identify customers uniquely, have developed an alternative system of unique citizen's numbers (replacing citizen IDs), and have made such replaced numbers available to companies.*

Government's comment: *This practice of operators is now prohibited, since the Law on Electronic Communications is harmonized with the Law on the Protection of Personal Data.*
The Government's comment on Recommendation 26 is rather general and does not address our recommendation. We encourage the Government to consider this proposal again.

(R27) *Operators, other than the Universal Service Operator (USO), should not have an obligation to provide information on subscribers as it is unnecessary after introduction of the Universal Service Operator and the universal service information directory.*

Government's comment: *It is now generally considered that since there is a USO, other operators do not need to provide such information. We highlight that the focus of this provision is the users, keeping them informed. Users already know the numbers of their operator's services for information and are contacting them, and it would certainly cause a blockage in calls only with the USO, which is absolutely unacceptable from the viewpoint of protection of users and their right to information at all times.*

(R28) *The obligation imposed to the Universal Service Operator to print the Directory book should also be revoked, as it is an outdated form in which there is no interest at all. Even more importantly, if a user requests deletion of his or her personal data, this is impossible prior to the printing of a new edition.*

Government's comment: *We do not believe that it is unnecessary to print the Directory, because there is a need to inform users in this way, as well in case they do not have internet or telephone access. In addition, it is prescribed how to leave out personal data from new registries.*

(R29) *The part of* ***Article 151 of the Electronic Communication Law*** *defining the obligation of operators to define in the subscriber agreement a minimum internet access speed that cannot be lower than half of the maximum internet access speed, should be deleted. Our opinion is that this cannot be a subject of the Law; EU Directive 136/EC/2009 does not require the Law to define the speed, except in defining the minimum internet access speed in the subscriber agreement.*

Government's comment: *This provision of Article 151 of the Law on Electronic Communications concerns the contents of the Subscriber Agreement and we do not think it is contrary to EU Directive 136/EC/ 2009, which provides that the agreement should include the minimum internet access speed. For that purpose and for the purpose of the protection of users, or for provision of a minimum quality of services to users, the minimum speed of broadband internet access is defined, and it may not be less than the speed of internet access available to operators of fixed electronic communication networks. This part of the provision of Article 151 should be considered a necessary parameter of the quality of service provided to the end user, because this provision should also be perceived from the aspect of the provision of Article 155 "Quality of services", and from the aspect of obligations imposed by this Law on the regulatory authority referred to in Article 163 "Objection and complaint" ("The user shall have the right to file a complaint to the operator regarding the access to and quality of services*

and regarding the bill for the provided services"). Also, Article 167 of the same Law provides that the operator of electronic communication services shall be obliged to compensate the subscriber if the quality and availability of his services should deviate from the conditions specified by the Subscriber Agreement (and the contents of this Agreement is laid down by this Law).

Our members note that harmonization of content of Subscriber Agreement(s) has already been agreed with the Agency and adopted.

LAW ON PREMIUM TAXES

Among several increases in different tax rates during the previous year introduced in an attempt to prevent further deterioration of public finance over the last two years, the current **draft Law on Amendments to the Law on Premium Taxes proposes yet another tax increase**. This time it is the total insurance premium (life and non-life) to be increased by 9%. The decision was made without adequate analysis of the insurance market in Montenegro which is still in its developing stages, and such measures would surely weaken the insurance market, leading some companies to rethink their investment strategy.

LABOUR LAW[16] (R30, R100)

The **inflexibilities that the current Labour Law incorporates**, may lead to negative consequences for the whole of Montenegro's economy. This is an area that is still subject to criticism from the business community, primarily due to rigid provisions that only serve to inhibit a stronger labour market and to indirectly protect people with inadequate performance, thus contributing significantly to a higher unemployment rate.

***(R30)** The **Labour Law is incomplete and to a large extent relies on the General Collective Agreement,** i.e. the Industry-wide Collective Agreement, which makes managing human resources in companies significantly difficult. In practice, it often happens that regulations of the Labour Law are interpreted differently due to their links to the General Collective Agreement.*

Government's comment: *"The Labour Law provides that the initiating and conducting of procedures for breach of work obligations and other matters of importance for protection of work discipline shall be closely regulated by the collective agreement and employment contract (Article 124)… The main concept of legal solutions provided under the Labour Law, with regard to the responsibility of employees for non-fulfilment of work duties, is a gradual cession of this matter to the regulation of collective agreements… The employer will establish in his collective agreement and contract of employment which breaches of duty will be sanctioned and constitute a violation of work discipline. Also, initiating and conducting a procedure for breaches of work obligations and other matters of importance for the protection of work discipline will be closely regulated by the collective agreement. This Law keeps solutions relating to measures for breaches of work obligations (fines and termination of employment), for minor and serious breaches of work obligations, which are established by the collective agreement. Therefore, in a poorly developed bipartite social dialogue, the intention of legal solutions envisaged like this should be to encourage the development of bipartite social dialogue without the regulation of rights, obligations and responsibilities, which stem from the work relationship, the branch and employer's collective agreements."*

16 *For further information see chapter Labour Market and Employment*

(R100) The MFIC would like to add that it is our position that the rules on disciplinary procedure should not be regulated by the collective bargaining agreement at any level, as this is a very strict and formal procedure similar to court proceedings, for which few employers are properly equipped. An example is the provision from the current General CBA which states that an employer must deliver a request for disciplinary proceedings to an employee within 15 days of the moment such a request was submitted to the responsible person in the Company. Since this document must be delivered to an employee in person, according to the rules on delivery as defined in the Law on General Administrative Procedure, this is very often an impossible task for employers.
The MFIC however shares the Government's view that grounds for initiation of a disciplinary procedure should be subject to negotiations between the employer and trade unions at an adequate level since the grounds as such should be in line with the nature of the business in each particular case.

LAW ON PROTECTION AT WORK (R31 – R33)

(R31) A new paragraph should be added in Article 34 *after paragraph 3 to read as follows:*
"In case an employer has outsourced work safety tasks to a certified agency or individual, joint responsibility will lie with both the employer and a certified agency to whom the work safety tasks are outsourced if this agency did not provide the employer with proper information on the work safety measures to be undertaken. If the certified agency provided the employer in a timely manner with the work safety obligations and if the employer did not follow the instructions, the employer is responsible for the work safety of employees."

Article 19 does not clearly define the deadline for performance of work safety training in cases when a company's regulation risk assessment does not define the risks or danger on the job. It is not clear whether in such situations an employee may start working and later on receive adequate work safety training.

(R32) *The following should be added to* ***Article 19 after paragraph 1****:*
"Training for safe job performance should be conducted within 15 days unless, in accordance with the findings of a certified agency or a certified individual, an employee was not exposed to higher risk due to a transfer to another position, introduction of new technology or assets, or as a result of changes in the job process."

(R33) *Additionally, we consider that it is not necessary to force an employee to again take work safety training after changing position if the level of risk or the tools for performing the job have not changed.*

The Government's comment that we received as a response is a rather long narrative that discusses the details of the current state of affairs, but does not offer a view on our recommendation or propose a different solution, and here we cite only a small part of it:

Government's comment: *The Law on Health Protection and Safety…Paragraph 1 of Article 47 provides: "If an employer contracts an authorized organization to perform the activities of safety and health protection at work, the mutual rights, obligations and responsibilities shall be closely regulated by the contract".*

LAW ON EMPLOYMENT AND WORK OF FOREIGNERS (R34 – R35)

Article 12, according to which an employer may employ a foreigner national only in a position for which a work permit has been granted is not acceptable and may create problems in practice. This provision does not benefit either the employer or the employee.

(R34) *We consider that Article 12 should be formulated in the following manner: "The employer shall hire a foreign national according to the educational level for which the work permit is issued".*

(R35) *A work permit should be issued according to the educational level and not to positions or tasks a foreigner performs, as that should be a part of the employer's and employee's freedom.*

Government's comment: *The provision of Article 12 is a provision from the current Law on the Employment and Work of Foreigners, which is the legal solution also transferred to the Law on Foreigners, meaning that an employer will be allowed to assign the foreigner only to the duties for which the residency and work permit, i.e. certificate of registration of work, has been issued to him/her. Such a legal solution is also represented in EU countries, as well as in the legislation of the countries in the region, which means that the employment of foreigners is based on a system of permissions, issued for a specific period of time and the duration of which depends on the purpose for which they are issued. The institute of a transfer to other jobs or places of work, upon issuance of the work permit, would bring into question the whole concept of the Law and violate the principle of permits and purposes for which they are issued. Bearing in mind that the purpose can be changed only in the procedures conducted by law at the issuing authority, the mentioned recommendation, in our opinion, is unacceptable. This solution is also in the interest of the foreign employee who is guaranteed to perform tasks for which the permit for residence and work is issued, i.e. for which he/she has concluded an employment contract.*

Unfortunately, the Government, as cited above, deems this recommendation unacceptable, stating that it questions the concept of the Law itself. However, no evidence for that is offered, while our recommendation is a practical necessity in a business environment that changes fast and the regulation needs to reflect these changes. The argumentation concerning EU standards may in theory sound reasonable, but as our recommendation emphasizes, it creates issues in practice. It also hinders both employers' and employees' freedom to make business and career decisions.

In addition, the labour market in Montenegro does not treat domestic and foreign employees equally: nationals may be promoted (meaning may change their position without interruptions in employment) but if a foreigner wants to do the same with his employment, work permit and residence permit must be terminated, after which he will have to apply for new ones.

In addition, the labour market in Montenegro does not treat domestic and foreign employees equally: nationals may be promoted (meaning may change their position without interruptions in employment) but if a foreigner wants to do the same with his employment, work permit and residence permit must be terminated, after which he will have to apply for new ones.

LAW ON GENERAL ADMINISTRATIVE PROCEDURE (R36)

*(R36) In this Law **Articles 236–240** should be amended in such a manner that will reduce the procedure for deciding on appeal, and stipulating the second instance should resolve the matter independently after several repetitions of the same procedure, and will do so by removing all serious violations of the rules of procedure, instead of returning the matter to the first instance authority for retrial an unlimited number of times.*

Government's comment: *Practice so far has shown that we have long, exhausting and inefficient procedures which incur high costs to the parties and authorities, and prevent the creation of a favourable business environment. The Draft Law on Administrative Procedure (consolidated by the Government on 12 June 2014 and undergoing Parliamentary procedure) envisages the obligation of the second-instance authority, when it has already annulled once the decision of the first-instance authority on the grounds of a complaint, and the party has filed an appeal against the new decision of the first-instance public law body, to annul the first-instance decision and decide independently on the administrative matter. The objective of this norm is to stop in practice the so-called "ping-pong" effect and the frequent returning of cases to the first-instance authority, which usually makes the same decision in the repeated proceeding. This will ensure for parties a quicker exercising of rights, reduce the number of unlawful administrative acts and, thus, reduce the costs borne by the parties and authorities.*

The MFIC welcomes the fact that the Government has recognized this issue as well. We are looking forward to seeing how much in practice the new Law on Administrative Procedure will effectively change this issue.

LAW ON STATE SURVEYING AND CADASTRE OF IMMOVABLE PROPERTY (R37 – R38)

(R37) The MFIC proposes the addition of four new paragraphs in Article 12 after paragraph 3 as follows:
"Immediately upon receiving the request from paragraph 3 of this Article, the state body shall enter a note on the submitted request to the cadastre of immovable property.

The note from paragraph 4 of this Article shall be deleted after the procedure before the state body is complete.

The state body shall make no special decision on entering and deleting the note from paragraph 4 of this Article.

Entry and deletion of the note from paragraph 4 of this Article may be automated in an information system of the state body".

The current paragraph 4 would become paragraph 8.

Government's comment: *Changes and amendments to the Law on State Surveying and Cadastre are ongoing and the said proposal will be analysed.*

The MFIC welcomes the readiness of the Government to consider this proposal. We hope that in the next WB we will mark this recommendation as accepted.

Fiduciary ownership

Some municipalities levy a tax on immovable property over which banks have fiduciary ownership rights. According to Article 4 of the Law on Tax on Immovable Property, the taxpayer is the owner of the property on 1 January of the year for which the tax is being calculated. As the bank is not an owner of such properties but only has a right (fiduciary) used to secure its outstanding credit, as noted in the information on mortgages and limitations (in the same way a mortgage is registered), it cannot be considered a taxpayer for the relevant properties.
Fiduciary property according to the Law on Property Rights, Article 14 is only a conditionally acquired right to an immovable property which gives the creditor an authorization to collect its debts before other creditors. The debtor continues to use the property, with benefits belonging to him, and thus he is the taxpayer in this case.

(R38) *In order to prevent such cases from occurring in the future, we propose the Law on Property Rights to be amended ("Official Gazette of Montenegro", No. 19/09), so that a new paragraph is added to Article 378 after paragraph 2 as follows:*
"The taxpayer for an immovable property which is subject to a fiduciary transfer of ownership shall be the debtor".

Government's comment: *In relation to the tax obligation through trust, this should be addressed in the Law on Real Estate Tax, not in the Law on Legal Property Relations. It will be considered when making changes to the Law.*

LAW ON PENSION AND DISABILITY INSURANCE (R39)

The Law on Pensions and Disability Insurance ("Official Gazette of Montenegro", No. 54/03, 39/04, 61/04, 79/04, 81/04, 29/05, 14/07, 47/07, 12/07, 13/07, 79/08, 14/10, 78/10, 34/11, 73/10, 40/11, 66/12, 36/13, 38/13, 61/13 and 06/14) in Article 112 stipulates that a beneficiary of an age-limit pension may be employed. If an employer, however, has no need to continue the employment of an employee who is a beneficiary of a pension, the same rules apply for termination of the labour agreement as for an employee who is not a pension beneficiary. We consider it would be advisable to enable employers to decide independently whether they need to continue such an employment, and that the rules for termination of that employment should not be the same as for other employees, especially when it comes to severance payments.

(R39) *Thus, we propose the following amendment to the Labour Law ("Official Gazette of Montenegro", No. 49/08, 26/09, 88/09, 26/10, 59/11 and 66/12), where the following should be added to Article 139 paragraph 1 after point 1:*
"2) the day the employer reaches a decision that the job performed by the employee who is a pension beneficiary is no longer necessary."

Current points 2, 3, 4, 5 and 6 become 3, 4, 5, 6 and 7.

Government's comment: *A provision of Article 139 of the Labour Law provides for reasons for termination of employment by virtue of law. We think that the proposal to terminate the working relationship by applying the law to a beneficiary of the old-age pension, who concluded an employment contract after retirement, which he/she is allowed to do under the provision of the Pension and Disability Insurance, and not under the Labour Law, cannot be accepted because it does not relate to the institute of termination of employment by virtue of the Law. If an employee's employment is terminated by virtue of the Law because he/she has reached the age of 67, and he/she has become entitled to the age-limit pension, the proposed solution would be contradictory to the existing legal solution provided under Article 139 paragraph 1 point 1 of the Labour Law, particularly bearing in mind also Article 140 of the Labour Law which clearly states when employment can be continued for an employee who has reached the age of 67. It is a different question whether the existing provision of the Law on Pensions and Disability Insurance is harmonized with the said provisions of the Labour Law, and whether the Law on Pensions and Disability Insurance should have provided the limitation of entering into employment for retirees who have reached the age of 67. Therefore, it should be kept in mind that the subject of the Labour Law, as a general regulation, is the regulation of the rights and obligations of employees and employers, and that this Law does not address the matter of "lex specialis" legislation, including the Law on Pensions and Disability Insurance, which regulates the rights of the retired, and that all further elaboration and limitations concerning the retired should be prescribed by the law which provides legal grounds for the exercising of such rights.*

Unfortunately the Government, in the comment above, disagrees with our proposal citing formal reasons.

As we mention throughout the document, the MFIC is concerned primarily with creating a business environment in which Montenegro's economic potential will be able to flourish, and we leave it to the lawmakers to decide which particular law should regulate a particular issue.

LAW ON ENFORCEMENT AND SECURITY (R40 – R43)

The Law on Enforcement and Security ("Official Gazette of Montenegro", No. 36/11) lists authentic documents.

(R40) *We consider that it would be necessary to include the loan agreement among the mentioned documents. According to the Law, for a document to be considered authentic and suitable for execution, if it lists the executive creditor and the executive debtor, subject, amount and deadlines for payments (Article 25 paragraph 3 of the Law on Enforcement and Security), all the mentioned elements can be found in the loan agreement. This is especially important for the purposes of simplifying banking operations and to decrease the expenses the clients have in constituting collaterals.*

To that end, to Article 25 paragraph 2 after point 9, a new point should be added as follows: "10) loan agreement".

Government's comment: *In Article 25 of the Law on the Enforcement and Securing of Claims, which provides for authentic documents, paragraph 2 point 8 prescribes that an authentic document shall be the calculation of interest with proof of the grounds for maturity and the amount of the claim. Bearing in mind that matured or outstanding liabilities cannot be seen from the agreement, the Ministry of Justice thinks that point 10 should not be added to the existing Article 25 of the Law on Enforcement and Securing of Claims and prescribes that the credit agreement is a type of authentic document, bearing in mind that this basis is already covered by point 8 which provides that the calculation of interest with proof of the grounds for maturity and amount of the claim is a type of authentic document.*

Execution based on an authentic document

Article 58 of the Law on Enforcement and Security ("Official Gazette of Montenegro", No. 36/11) lists particular instances in which an objection can be made to the ruling on execution on the basis of an authentic document. Although the Law defines that a debtor is required to submit written documents to prove the objection made (Article 59), in practice, the courts often accept as evidence the debtor's statement without any evidence. The creditor has no right of appeal against the court's council decision.
We consider that thus the Law is being misinterpreted and the pending procedure is only being delayed. With this in mind, we propose that the Law on Enforcement and Security should be amended.

(R41) *In Article 60 paragraph 3, after the words: "executive debtor", the following words should be added: "by means of the evidence submitted".*

Government's comment: *The proposal for the amendment to Article 60 paragraph 3 is considered by the Ministry of Justice to be justified, and this proposal has already been introduced in changes to the Law on Enforcement and Securing of Claims.*

The Government already introduced this recommendation in the Draft Law on Enforcement and Securing of Claims as stated in the comment we received from the Government cited above.

The process of enforcement under the Law on Enforcement and Security

The process of enforcement under the Law on Enforcement and Security is supposed to be a short procedure overall as the court must decide upon a motion for execution within 5 days of its submission. This deadline is hardly ever met in practice. Sometimes it takes several months or even a year to block the accounts of the debtor. Furthermore, the law clearly stipulates that the appeal does not suspend the enforcement order, unless it is required by it in some specific cases. However, very often completely ungrounded objections of the debtors are taken into account and the court takes the decision to transfer the case into the litigation process, making it extremely difficult or even impossible for the bank to block the account of the debtor even though it is obviously in default and undoubtedly fulfils the objective criteria for an account block.

Proposal:

(R42) *Much stricter control of the court processes with special regard to the deadlines of the objection would inevitably be needed. Besides the deadlines, the objection of the clients shall also be handled in accordance with the provisions of the Law. Our members have been expecting practical implementation of the law governing the institution of public enforcement officers since 2011. Since the practical implementation of the law started recently in April 2014 it might bring some improvement in the identified deficiencies as well especially in relation to the shortening of the processes and the meeting of the stipulated deadlines.*

The MFIC regrets that the Government did not consider this recommendation. We hope that this will change this year, and that in the WB 2015 we will be able to report improvement in this very important matter.

Problems occurred during the "court sale" of the mortgaged real estate initiated by other creditors

Article 160 of the Law on Enforcement and Security provides that in case of a "court sale" of real estate, the mortgagee who has not initiated the enforcement proceeding shall also be reimbursed. In Article 173 paragraph 4 it is stipulated that if the real estate is not sold at the second auction, a new auction shall be scheduled where the discount of the sales price can be set with no restrictions, but only with the consent of the enforcement creditor which has initiated the subject enforcement proceeding. Some of our members have had the experience where the sales price of the real estate was lower than the secured amount of the bank's 1st-ranking mortgage right, therefore with such action the recovery of the bank's claim was jeopardized.

(R43) *Change of the Article 173 paragraph 4 of the Law on Enforcement and Security is needed in such a way as to include the mortgagee as an entity which has the right to object to the discounted sales price of the real estate for which the enforcement procedure is initiated.*

Government's comment: *The Government of Montenegro has consolidated the Proposal of the Law on Changes and Amendments to the Law on Enforcement and Securing of Claims. Changes to the Law are envisaged by the Government Agenda for 2014 and the Plan for Rationalization of the Judiciary 2013-2015. The Proposal to the Law envisages changes to Article 173 paragraph 4. The changed Article sets a lower limit on the sales price for immovable property in such a way that if the immovable property is not sold at the second public auction, the public enforcement officer shall schedule a new public auction at which the immovable property can be sold below 50% of the set value, but not below the amount of the claims of the judgement creditor. It should be borne in mind that this change allows the judgement creditor to collect his claims fully through an enforcement procedure, and then completion of the enforcement procedure. The Ministry of Justice thinks that the Law should not be changed by prescribing the right of the creditor to object to the reduced price of immovable property for which the enforcement procedure has been initiated, since the creditor's right to settlement is already protected as prescribed by the Proposal of the Law on Changes and Amendments to the Law on Enforcement and Securing of Claims.*

LAW ON VALUE ADDED TAX (R44 – R45)

Article 27 – other exemptions

Paragraph 4 (b) defines that banking and financial services are exempt of VAT, while the same paragraph states the following:
"b) services related to the management (handling) of deposits, savings, banking accounts, payment operations, payment orders, activating due payments, checks or other instruments, excluding the collection and purchase of debts".

(R44) *It is not clear enough what managing banking accounts means, what it encompasses and whether all related services are not taxable. It also remains unclear what debt collection is, meaning can debt collection be considered as collection of forfeited assets?*

Government's comment: *Drafting of the Law on Changes and Amendments to the VAT Law is ongoing and, according to the Government Agenda, it will be discussed in Q4 of this year when these matters will be considered as well.*

Article 39 – correction of deduction of the incoming VAT

The mentioned Article does not allow for correction of incoming VAT if the goods being sold were originally intended to be used for non-commercial purposes or if the taxpayer did not have the right to deduct the incoming VAT.

(R45) *An example would be equipment that a bank is buying for its own purposes. As the majority of the business of banks is exempted transactions, they do not have the right to deduct incoming VAT when purchasing equipment. If there is a need to sell, a bank is required to calculate and pay VAT while not having the right to correct the incoming VAT.*

Government's comment: *If a bank is not a registered VAT payer, it is not obliged to calculate VAT when selling equipment.*

LAW ON PREVENTING ILLEGAL BUSINESS CONDUCT

Article 11 of the Law on Preventing Illegal Business Conduct states that:
"Companies and entrepreneurs, whose accounts have been blocked in the procedure of compulsory debt collection, shall not, after 30 days from the day the account was blocked, collect its debts and pay its commitments by contracting a change of creditors, i.e. debtors in a particular obligation relationship (assignment, cession, overtaking, debt ceding and others), by payment in kind, transferring securities and/or any other way used to avoid collection of debts, or payment of debts through accounts, unless otherwise defined by the tax regulations."

The problematic part is when a bank is a creditor in such a case, as the Law puts it in a disadvantaged position, as according to the contract it has with a client it is required to make due payments but the client, due to a blocked account, is not able to collect its debts.

Government's comment: *In this case we note that a client may collect its claims, whereas creditors collect their claims as per the schedule established by blockade.*

LAW ON DEPOSIT PROTECTION (R46)

***(R46) Article 28** states that "The decision on the rate for calculating the regular premium and methods of calculation of premium shall be reached by the Board of Directors, as per rule until November of the current year for the next year", however, the Law does not list which conditions may affect the increase of a rate of a premium. At the beginning of 2014 the rate of the premium was increased, while the guaranteed deposit remained unchanged (€50,000).*

Government's comment: *"…the total exposure of the Fund towards banks is represented by a coverage coefficient (COVERAGE RATIO), the ratio of the assets of the Fund and total liabilities of the Fund in case of a hypothetical bankruptcy in all banks. The coverage coefficient is the internationally recognized coefficient for measuring and expressing the level of coverage of guaranteed deposits. The coverage ratio at the end of 2011 equalled 4.70% (for a guaranteed deposit ≤ €20,000), the coverage ratio at the end of 2012 equalled 4.72% (for a guaranteed deposit ≤ €35,000), and the coverage ratio at the end of 2013 equalled 4.81% (for a guaranteed deposit ≤ €50,000). The rate for calculating the regular premium in 2011 equalled 0.33%, in 2012 0.38%, and in 2013 0.46% of the total deposits of the banks. The above shows that the increase in the rate for calculating regular premiums was proportionally followed by an increase in the amount of guaranteed deposits (from €20,000 to €35,000, and then to €50,000), which allowed the coverage ratio to remain at approximately the same level. Since the amount of assets that the Fund managed to accumulate in the previous period is well below 10% of guaranteed deposits, which is defined by the Law as a benchmark for the Fund, the Managing Board decided to increase the rate for calculating regular premium for 2014 to 0.5% in order to reach the stated amount of assets in the next 6–7 years. We point out that one of the conclusions of the Parliament of Montenegro when reviewing the 2012 Progress Report of the Fund was to increase the premium to the maximum provided under the Law in order to reach the target level of coverage of 10% of guaranteed deposits."*

LAW ON OWNERSHIP RIGHTS (R47)

The Law on Ownership Rights clearly stipulates the principle of the extension of the mortgage right as follows: "If the value of the property increases during the period of the mortgage, the mortgage right also refers to the improvement of the property." There are substantial differences in the interpretation and application of this provision by the competent authorities. Our members had different experiences in this area where some land registry offices accepted the requests and included a newly-built building on an encumbered land plot as mortgage, but there were opposite examples where the banks came across with an interpretation according to which a facility that is subsequently built on the mortgaged land cannot be automatically a subject of the mortgage right unless it is otherwise stipulated by the Mortgage Agreement.

Proposal:

(R47) *A clearly defined standpoint of the lawmakers is needed to announce firmly and bindingly that if in cases where the bank had established a mortgage on the land, the building which was subsequently built on such encumbered property is also subject of the same mortgage, i.e. the mortgage right is automatically extended to the constructed facility, regardless of whether the extension of the mortgage is prescribed in the particular Mortgage Agreement or not.*

Government's comment: *The said proposal will be considered when making changes to the Law on Property Legal Relations*

4.2. IMPLEMENTATION AND ENFORCING THE LAW (R48)

Without a predictable business environment and legal certainty, no sustainable development is possible. We noted in the previous years that a lack of predictability, stability and legal certainty have unfortunately countered the positive steps that were undoubtedly made.

This is an example we repeat from the WB 2012 which has still not been changed:

PUBLIC PROCUREMENT-RELATED CHALLENGES

Bidders very often face the following challenges in the process of public procurement. Rigidity of the process in terms of eligibility criteria; copying the same documents for each tender position for the same tenderer; submission of documents already in the possession of that or other public bodies; in case of appeal, payment of fees amounting to 1% of the estimated public procurement value; imprecise requirements or the lack of document specifications with regard to the subject of procurement; an inferior status of bidders with the state commission which does not involve representatives of the real estate sector. In addition: multiple institutions in charge; submission of massive documentation; payment of different taxes and fees; waiting for the administration's "reply", etc. make public procedures complicated and ultimately very expensive creating additional issues.

(R48) *It is therefore necessary to improve the transparency of the procedures and application of ethical principles by the authorities.*

5. FOCUS AREAS

INTRODUCTION

Generally speaking, during the past year we saw limited progress, and the momentum from the previous years and the post-independence boom has gradually faded. The deficiencies and an inefficient administration coupled with an unstable regulatory environment still dominate the business and investment environment.

The Government needs to continue delivering reforms that will maintain the competitiveness of Montenegro's economy. In this chapter the MFIC offers its view of the specific issues that need further improvement and presents suggestions to help that cause.

The following is a review of five broad categories which encompass numerous individual issues and topics of significance for a well-functioning business environment and an investment-friendly economy, as seen by our members. Now we will discuss the following areas:

5.1. Labour Market and Employment
5.2. Property Development
5.3. Taxation
5.4. Corporate Governance
5.5. Rule of Law

However, sometimes we like to emphasize issues that are of extreme importance and are very illustrative of the type of changes of a deeply rooted mentality in the administration, which is not up-to-date with global business practices and requires far more than just writing regulations. The following is a perfect example of that:

Lack of coordination between the state institutions too often causes a situation in which, after submitting a request to one state body, the applicant must obtain certificates/evidence to support the request from another state body although the law stipulates that they should cooperate and exchange information among themselves. The most interesting situation in this regard was when the Central Registry of Companies, which is an office of the Tax Administration, required an applicant to submit evidence of regular tax payment issued by the same body that requested it.

5.1. LABOUR MARKET AND EMPLOYMENT (R49 – R57, R101 – R102)

It is our core belief that the regulatory framework of any modern economy should be designed to stimulate market development, create skilled jobs, productivity and attract investment. As part of this, an effective Labour Law should provide basic fairness and protection for employees, while also promoting healthy competition for skilled, long-term jobs by facilitating flexibility and labour mobility.

"Too often the issue of labour law has been a subject of a 'compromise' at the expense of business, and thus at the expense of the society as a whole."

Montenegro's Economy in 2013

Montenegrin Chamber of Commerce

This is currently not the case in Montenegro, which is why we urge the Government to reconsider its policies in this area.

PRIMARY ISSUES:

In working with our members and partner organizations such the American Chamber of Commerce, the Montenegrin Chamber of Commerce, Employers' Federation and the Montenegrin Business Alliance, we have prepared joint conclusions in the area of the Labour Law, under the umbrella of AmCham in a document entitled Position Document.

The MFIC appreciates the fact that the Government is willing to consider our proposals regarding disciplinary procedures, additional tools for violation of workplace orders and the termination notice. We regret that the Government is not willing to consider our other equally important proposals, hoping that the initiated dialogue will continue.

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The Government gave an exhaustive comment to the recommendations related to the Labour Law, and we unfortunately do not have the space to quote the full four pages in the White Book. We do, however, appreciate the view that the proposals given in the Position Document should be taken into account while drafting the new Labour Law.

PROCEDURE FOR DETERMINING WORK VIOLATIONS

This matter is necessary to be regulated not by the General Collective Agreement (see below for details), but solely by the provisions of the Labour Law[17].

(R49) *These violations should not only be included in the Labour Law, but should necessarily enable the employer to release workers with unsatisfactory performance, under the conditions clearly defined by the law.*

(R101) In order to reinforce the commitment to resolve the issue of abuse of sick leave discussed above in the section on Laws, we propose to introduce abuse of sick leave as grounds for termination.

- ESTABLISHING VIOLATION OF WORKPLACE ORDER

Another related issue is an overly complicated and rigid regulation, again from the CBA, on establishing violation of workplace order.

17 For a detailed proposal of how the Labour Law should be amended to accommodate this request please see the Position Document from December 2013.

(R50) *Simplifying the procedure in a matter that would not force business to conduct a courtroom-like trial would speed up the process and bring benefits to both employers and employees:*

"The disciplinary procedure provisioned by the General Collective Agreement is too formal and courts often override the employer's decision due to formal omissions and not due to the fact that the decision which had been made was, in fact, essentially incorrect. By simplifying this procedure, and making it less formal, the abovementioned problem would be resolved." – Position Paper on Labour Law, December 2013

- ADDITIONAL TOOLS TO BE USED IN THE EVENT OF AN EMPLOYEE VIOLATING WORKPLACE ORDER

(R51) *Our members support the view from the Joint Position Paper on the Labour Law that it would be* ***"necessary to provide additional tools that can reduce the occurrences of violations of workplace order, such as warnings and notices. Notices of warning could be issued in the event of a petty violation of workplace order or in cases where it is not the intention of the employer to fine the employee and whereby it is evident that a certain omission in performing daily tasks has occurred."***

BACK MONEY CLAIMS

(R52) *Frequently abused, in practice demonstrated that the original idea was not formulated well enough. Here we quote the position paper:*

"…we propose that Article 123 of the Labour Law be changed to read as follows:

'Monetary claims arising from and relating to the employment period shall be statutorily limited to three years from the date of the occurrence of the obligation.'"

This would make these claims equal to any other claims which in most cases have a statute of limitation clause for good reason.

Our members further note that when it comes to Article 123, we find it essential in terms of the legal security of employers in Montenegro. As was stated many times before, employers operating their businesses in line with the legal regulations should not suffer due to irresponsible individuals. The proposed deadline of three years is grounded in the practice from the region, but employers will welcome any kind of limitation when it comes to the deadline within which the monetary claim may be lodged.

NOTICE PERIOD

(R53) *The Labour Law is not clear enough, and sometimes cannot be applied or is completely contradictory. Complicated procedures and administration are a true burden for any company.*

WORK AGREEMENT DURATION

One of the most criticized provisions of the Law is most certainly the one related to the duration of the work agreement defined by Article 25. The issue with here lies primarily with the extremely rigid and complicated procedure for termination of the work agreement, which succeeds in protecting employees with inadequate performance, thus contributing significantly to a higher unemployment rate.

(R54) Again, we quote the wording of the proposed paragraph 25 from the joint Position Paper fully supported by the MFIC:

"An employer cannot conclude one or more Work Agreements with the same employee, as referred to in paragraph 1 of this Article, if their total continuous duration is longer than 36 months."

However, it must again be emphasized that in order to achieve a true compromise in this issue that works for the benefit of both the employees and the employer it is necessary to, simultaneously, introduce more up-to-date and flexible regulation on termination of the work agreement.

Commenting on our recommendation, the Government notes that Article 25 is in line with Directive 1999/70/EZ as of 28 June 1999 which we do not question. The point of our recommendation is to remove inconsistencies provided in this Article. Namely, paragraph 2 defines that an employer cannot conclude one or more work contracts with the same employee, as provisioned in paragraph 1 of this Article, if their overall duration is, continuously or with interruptions, longer than 24 months. Paragraph 3 (an interruption shorter than 60 days is not considered to be an interruption as defined in paragraph 2) is totally useless as the previous paragraph clearly states that fact as being irrelevant. This norm leads to the conclusion that regardless of the interruptions, the employer cannot conclude one or more work contracts with the same person if the total duration of those contracts is longer than 24 months.

TOTAL COST OF EMPLOYMENT

With the latest increase of tax from 9 to 15 percent, and a small reduction in 2015 to 13%, for salaries above average, the total cost of employment, previously also very high, has been brought up to unsustainable levels. In order to hire an employee on an average Montenegrin salary of €477, an employer has to pay a total of €723.[18]

In practice this creates a two-fold issue:

- Most of the tax burden falls on the largest companies and those who work legally, thus essentially punishing law-abiding companies.
- Other companies usually fall back to the grey zone, either paying only a partial amount of the taxes and contributions or failing to register the employees completely – distorting the competition and rewarding unlawful behaviour.

18 *According to Monstat data: http://www.monstat.org/cg/page.php?id=1317&pageid=24*

The approach to alleviating the challenges brought about by an unrealistically and unsustainably high cost of employment, a two-stage approach is in order [19]:

(R55) *The first step would be to increase the tax base through better enforcement of the existing rules which would eliminate the fear of fiscal concerns that may be caused by decreasing the taxes and contributions.*

(R56) *Only after this effort, which demands strong action and will, would it be prudent to decrease taxes and contributions in the first stage to 40% of the net salary. This would still be a relatively high rate, however, it would most certainly broaden the tax base and thus enable a second round of decreasing taxes and contributions to a level acceptable to both employees and employers on one side, and the government and the society it represents on the other.*

Stimulating measures combined with stronger enforcement will contribute to an overall increase of employment and fiscal revenues. Decisive and immediate action is a must if we are to accomplish this goal.

GENERAL COLLECTIVE AGREEMENT (GCA)

The issue of the General Collective Agreement (GCA) has caused numerous issues for businesses especially concerning the matter of disciplinary rules of procedure and violation of working duties. However, regardless of the fact that the lack of an in-force GCA has caused these regulatory gaps, it is the very existence of the document that is questionable.

> *"**…the General Collective Agreement is completely redundant.** The document is outdated and as such is not recognized in any contemporary legal system."*
>
> *Position Document*

(R57) *As stated in the Position Document: "…the General Collective Agreement is completely redundant. The document is outdated and as such is not recognized in any contemporary legal system."*

VOLUNTEER WORK

(R102) If properly regulated, introducing the institute of volunteer work could be a useful tool in creating a more dynamic labour market. This could be used for training purposes, or as a trial period – under particular conditions that would be defined by law.

19 Out of somewhat over 170,000 employed persons (according to Monstat, http://www.monstat.org/cg/page.php?id=1164&pageid=23), approximately 50,000 are employed by the Government. It is more than clear that this is an unsustainable burden for such a small economy as Montenegro's, and that reforms in this sector are long overdue.

5.2. PROPERTY DEVELOPMENT (R58 – R66, R103)

According to Doing Business 2014, Montenegro made significant progress in one of the most criticized areas: construction permits, rising to 106th place from 176th the year before.

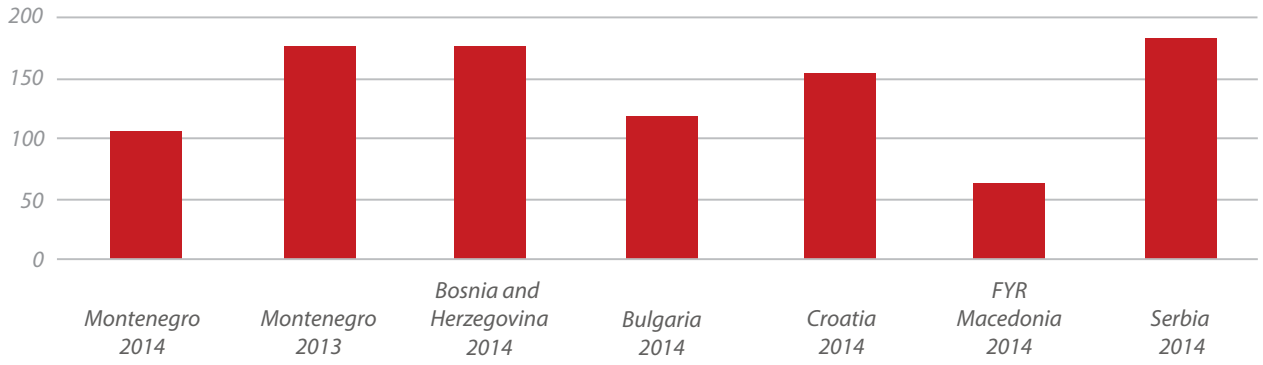

Figure 7: Doing Business 2014; Regional Comparison in rankings for Dealing with Construction Permits.

This is a reflection of positive developments in this area over the past year, welcomed by the MFIC members. We hope this is the beginning of a positive trend in this important aspect of property development.

However, construction permits are the final step in a process that requires more attention by the Government of Montenegro. Here we would like to offer our perspective on how to further improve the business environment in this sense, and better utilize the potential this area holds for boosting Montenegro's economy:

ESTABLISH A GENUINE RELATIONSHIP BETWEEN PLANNING DOCUMENTS AND MARKET OPPORTUNITY

(R58) *Just as with any other product, real estate development projects need to find "buyers", and unless a particular project corresponds to a particular demand in the market, it will likely remain just another opportunity wasted. This relationship has to be established in the highest-ranking planning documents.*[20]

In order to accomplish this in a most effective way, and take advantage of the increasing pool of investment capital increasingly available after the recovery from the 2008/2009 financial crisis, Montenegro needs to stay ahead of fierce completion.

(R59) *To get that extra edge, it would be recommendable to hire international consulting companies that specialize in this field. Such an investment would pay itself off multiple times over through direct revenue generated by projects and an indirect, trickledown effect that would be felt across the whole of Montenegro.*

20 The established zoning system in Montenegro is such that even when an investor finances development of a planning document, those urban spatial parameters that would meet the investor's requirements in accomplishing project feasibility often cannot be introduced due to the limitations of a planning document of a higher rank, limiting urban parameters. This is why it is necessary precisely and in great detail to standardize and regulate economic and market analysis, which would be designed during the stages before adopting a planning document of a higher and lower rank. Such an analysis is mentioned in the Law on Spatial Planning and Construction and the accompanying rulebook, but it has not been standardized. In this way economic and market analysis would become a standard for the market valuation of the planner's solution, making planning documents and the projects therein more competitive and attractive for investors. In addition, it is even more important to create a realistic basis for a quick start-up of projects planned in such a way. The basic condition for this is to provide for implementation of this approach in practice through higher-ranking plans.

DEVELOP DETAILED PROJECTS INCORPORATING THE MARKET COMPONENT

(R60) The faster an investor can begin a development project, the better the chances are to attract them. This means less work sifting through administrative hurdles, which would enable an investor to have his or her focus immediately on the important part – the investment.

STRENGTHENING THE RULE OF LAW IN PROPERTY DEVELOPMENT ISSUES

(R61) Issues caused by the process of restitution pose a threat to further real estate development, as procedures with former owners last far too long from the perspective of a potential investor. We were all witnesses of real-life examples of major investment projects being delayed, or altogether abandoned due to an undefined and unpredictable situation in this regard

The Government has recognized this issue and promised that if an investor is interested in a piece of land currently under restitution procedure, such a case would be given priority

REAL ESTATE APPRAISAL

There are currently no standards implemented in practice, due to a lack of regulation in this important field.

(R62) Introduction of internationally recognizable standards would enable a better foundation for further growth and development in the real estate market.

CADASTRAL PRACTICES

(R63) It would be recommendable for the Real Estate Directorate to hire private, licensed geodetic companies, to make changes in the cadastral records on behalf of the Directorate. This would contribute to increasing the limited capacities of the Real Estate Directorate.

LOW FIXED FEES FOR PROPERTY TRANSFERS

When transfer fees and taxes are too high, even registered property might quickly become informal if subsequent transactions are not registered. This not only weakens the protection of property rights, it also reduces potential revenue from property taxes.

(R64) Therefore it is necessary to set low and fixed fees for various services offered by the cadastre.

REAL ESTATE ADMINISTRATION'S DATABASE UPDATES

(R65) The Real Estate Administration's database should be updated on a daily basis instead of once a month or even more rarely. In addition, the possibility of downloading the title deed and paying for all the fees electronically would be a welcome change that would significantly reduce part of the procedure.

RANKING OF MORTGAGE RIGHTS / PENDING INDEX

Article 324 of the Law on Ownership Rights stipulates that in case there are several mortgages on the same immovable property, the priority of a mortgage shall be established according to the moment of submission of the request for its registration. The chief issue with the implementation of this provision in practice is that in the Deed of Title there is no information regarding pending requests with the precise date and time of their submission. The bank as the mortgage creditor is running the risk that some other creditor or business partner has already submitted a request for registration of the mortgage (even a few minutes before the bank's request is submitted) or for the sale of the real estate, but the decision is still not registered on the Deed of Title. Additionally, in the Decision of the Land Registry the ranking of the registered mortgage is not included, thus even after the mortgage right of the bank is registered in the Deed of Title, it does not have any guarantee that later on other mortgage rights with priority ranking will not be registered.

Proposal:

(R66) *A change to Article 53 paragraph 2 of the Law on State Survey and Cadastre is needed, in such a way that part of the content of the Deed of Title will list all the pending requests. Pending requests should be entered immediately in the Deed of Title upon their submission with the subject of the request, and the date and time of the submission.*

(R103) In addition Public Notary offices should have direct access to the Cadastre/Real Estate database to ensure real-time registration of property title deeds.

One of our members has faced the issue of being unable to claim their ownership rights over a piece of land. The Real Estate Directorate was legally bound to return the existing right of use of the land which was, prior to privatization, "social", pursuant to Articles 419 and 429 of the Law on Ownership Rights. The majority of Regional Units have complied with the Law and automatically transferred the rights of use into the rights of ownership. However, some Regional Units have not accepted the Request for Transfer and are requesting proof – an "Opinion" that the market price for the mentioned land has been paid in the process of privatization. This matter is under the authority of the Council for Privatization. Although it cannot be concluded for certain from the Law on Ownership Rights that there is an obligation to submit this Opinion, however, if some Regional Units of the Real Estate Directorate insist on its delivery, we urge the Council for Privatization to proceed with issuing the Opinion.

5.3. INFRASTRUCTURE (R67)

This hugely important area remains underdeveloped, and is one of the major limiting factors in the development of the whole country. For the past two years, primarily due to a lack of funding, no major projects were initiated that could improve the situation in this regard.

(R67) *The MFIC encourages the Government to invest additional efforts into commencing the construction of projects primarily in the area of traffic infrastructure and energy as soon as possible.*

5.4. TAXATION

Montenegro is generally recognized as a low-tax area. This is a very good image to have in the business community; however, this is just part of the story, as the 9% corporate tax rate is not the only consideration to take into account when talking about the tax environment.

Here we would like to discuss a topic that entered into the focus during the previous years and is related to a significant step back in the area of taxation.

PREDICTABILITY

Our members report that in total, various taxes and duties including both those on the national and municipal level have in the past few years seen an increase of close to 50%. This is mainly owing to municipal taxes and increases in the prices of their services, and the Government needs to continue looking even more closely at this side of the issue of taxation. During 2013, businesses were "surprised" twice with increases in the two most significant tax rates: VAT was increased from 17 to 19 percent, and income tax from 9 to 15 percent for above-average salaries (€480). Even though it was called a temporary "crisis tax", it was not changed until 2015, and even then the reduction is almost insignificant, down to 13%.

5.5. CORPORATE GOVERNANCE (R68 – R72, R104)

In this section we outline several components of corporate governance that still require significant improvement, while listing concrete solutions to issues that impede the development of this area and the economy as a whole.

5.5.1. FINANCIAL REPORTING

The quality of financial reporting remains an area with huge potential for improvement. Even though there are several exceptions, the overall quality is still not at an acceptable level. Some of our members are working with their clients on producing financial reports that would enable them to access a wider pool of financing options available outside Montenegro.

(R68) *However, this creates only a limited impact on the system as a whole, and the MFIC considers it crucial for the relevant authorities to improve not only control, but also education in this area.*

5.5.2. AUDIT PRACTICES

"Little progress was made in the field of company law. Overall, preparations remain moderately advanced." [21]

In the previous editions of the White Book, we discussed the issues related to Corporate Income Tax (CIT), Value Added Tax (VAT) harmonization with the EU, and the financial reporting framework. We touched upon VAT and listed some recommendations in the chapter on MFIC members' recommendations for improving the regulatory environment.

(R69) *Even though very limited progress has been noted in these areas, this time we will not be repeating all the issues noted earlier, encouraging the Government to once more look into the WB2012 and the recommendations we presented in it.*

5.5.3. BANKRUPTCY REGULATION

Our introductory assessment from two years ago is still valid: *"The current Law on Bankruptcy regulates in detail all aspects of the bankruptcy procedure. However, the problem of the bankruptcy procedures is not in the legal framework, but in their implementation. Montenegrin courts and judges have not yet built a clear position and legal practice regarding the application of the Law on Bankruptcy and the introduction of modern concepts of bankruptcy law to Montenegro.*[22]*"*

UNGROUNDED CHALLENGING OF THE REPORTED CLAIMS IN BANKRUPTCY PROCEEDINGS

A reported monetary claim is determined and deemed to be approved if it is not challenged by the bankruptcy manager or by any other creditor. Unfortunately, in practice, this right is often subject to abuse, where groundless challenges to the reported claims are made by other creditors so that they have a privileged position or by the bankruptcy manager who usually acts in favour of the debtor, whereas the law stipulates that it should act independently. What is even more serious is that the bankruptcy manager does not have an obligation to explain the reasons why certain claims are defined as disputed ones, even though the submission by the creditor contains clear evidence (signed loan agreements, utilization requests signed by the debtors, signed transfer orders, analytical cards, etc). Compared to such objective evidence the other party has no obligation to prove its statements with underlying documents. After the claim is challenged in the bankruptcy proceeding, the creditor is referred to start the litigation process to prove its right, which takes a long time.

Proposal:

(R70) *A change to the Bankruptcy Law is needed in such a way that the bankruptcy manager needs to share the opposing evidence with the creditor whenever the bankruptcy manager declares a claim to be disputed. Furthermore, the deadlines should be defined by the law, on the basis of which the bankruptcy judge must act in litigations for determination of the challenged claim, bearing in mind the urgency of bankruptcy proceedings.*

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21 Montenegro 2014 Progress Report, European Commission

22 For example, financial transactions such as loans to financial derivatives, which is the ability to charge in bankruptcy using the newly introduced provisions such as those of setoff, the right to choose, and the like.

Government's comment: *Article 33 of the Law on Bankruptcy provides that the Receiver shall act knowingly and in a timely manner, and the same Article paragraph 5 especially says that a proceeding shall be initiated before the court if expedient and justified. Bearing in mind that drafting of the Law on Changes and Amendments to the Law on Bankruptcy is ongoing, these proposals have been taken into consideration.*

VOTING RIGHTS IN CASE OF THE REORGANIZATION

The process of voting on the reorganization plan does not take into account the amount of the creditors' claims but the overall decisions are made solely on the separate decisions on the class of creditors. This usually leads to the adaptation of the reorganization plans by negatively discriminating against the banks as the largest overall creditors in most of the cases.

Proposal:

(R71) *A change to the Bankruptcy Law would be desirable in such a way that it includes provisions stipulating the right of veto of a creditor whose claim exceeds 50% of the total reported claims so that it can vote against the reorganization plan if it is against its interests.*

REVIEW OF THE SUBMITTED REORGANIZATION PLAN

The Bankruptcy Law stipulates that the reorganization of the company can be approved only if it provides a more favourable settlement and recovery for the creditors compared to the liquidation through the sale of the assets. It means that the main assumption behind the approval of a reorganization plan should be the evidence that there are economically justifiable and realistically achievable reasons for the continuance of the debtor's business activity. As opposed to this principle, in practice the reorganization plans are usually proposed by the debtors, and the court does not check the quality and the realistic background of the plans, but accepts it as it is submitted, without questioning or analysing it further. This action puts the debtor in an extremely favourable position since it may submit completely unrealistic reorganization plans for approval. In several cases these reorganization plans entirely lack any grounds and business rationality or reality.

Proposal:

(R72) *A change to the Bankruptcy Law is needed in such a way that will include a provision that prescribes the obligation for the bankruptcy judge, before voting on the reorganization plan, based on the request of one or more creditors with a minimum 30% proportion of the reported claims, to appoint an independent external financial advisor or financial expert, whose costs are to be borne by the debtor who has submitted the reorganization plan, to review the feasibility of the proposed plan, the reality of the applied assumptions and the sustainability of the proposed measures for the settlement of the creditor's claims.*

BANKRUPTCY JUDGES

(R104) In addition, the number of bankruptcy judges should be increased and specialized training should be given more attention.

5.6. RULE OF LAW (R73-R74)

Generally, our members consider that, even though Montenegro is making progress on its EU reform agenda, there are still issues that are a cause of concern in this area, primarily the fight against corruption and reinforcing the rule of law.

As the Heritage Foundation noted in its Index of Economic Freedom 2014:

> Corruption remains pervasive. According to a 2013 European Commission report, graft and misconduct are widespread in such key areas as health care and public procurement, convictions in high-profile cases are low, and oversight of conflicts of interest is relatively weak. Organized crime significantly influences both the public and private sectors. Politicization of the judiciary is a long-standing problem.
>
> Heritage Foundation, Index of Economic Freedom 2014

LONG-LASTING "OUT OF COURT SALE" PROCEDURES

In the process of "out of court" or extra-judicial foreclosure, the mortgage creditor faces a quite long-lasting process of registration of the notices in the Deed of Title, despite the fact that in the Law on State Survey and Cadastre it is stipulated that the deadline for the registration is 15 days from the moment of submission. This deadline is hardly ever met by the Land Registry Offices. In addition, the execution process is often delayed by the debtors who manage to avoid the delivery of default notices by fictitious leases in case of residential properties. Given the current practice, from the moment of the initiation of the out-of-court sale until the first public auction, almost half a year or even more often passes. This is an extremely serious problem that the banks are facing when it comes to the extra-judicial foreclosure of encumbered immovable assets mainly in terms of unenforceability.

PROPOSAL

(R73) *The supervision and the internal audit of the actions of the Land registries is inevitably needed for securing the prevention of the ungrounded breach of the deadlines prescribed by the Law.*

5.6.1. JUDICIARY

Our members report limited or no progress at all when it comes to the issue of lengthy commercial disputes and court cases. Observations from the previous three issues of this document are still relevant: *"Lengthy court proceedings can render the intent of the petitioner completely pointless, thus jeopardizing the very foundations of the rule of law."*

EVEN THOUGH PROGRESS IS NOTABLE, IT IS NECESSARY TO FURTHER SIMPLIFY COMPLICATED AND EXPENSIVE ADMINISTRATIVE PROCEDURES AND ELIMINATE EMERGING FORMS OF BUREAUCRATIC AUTOCRACY – ESPECIALLY AT LOCAL LEVELS. **(R74)** The one-stop-shop system should be extended across the range of services in this area, including issuing both working and residence permits to foreigners that are employed in Montenegro.

5.6.2. PERMITS AND LICENCES

Noting some progress in this area, our members are unanimous that the administrative procedures required for issuance of various permits and licences remain expensive and time-consuming. One of the most criticized areas of administrative procedures required for business operations is the area of issuing permits and licences.

5.7. PREDICTABLE BUSINESS ENVIRONMENT (R75)

In the White Book 2013 we discussed the issue of the predictable business environment, concluding that one of the defining characteristics of the previous year was the unpredictable business environment, caused by the frequent regulatory changes and increases in the tax rates and other fees payable to the government.

One of our members in 2009 paid a total of €3.2 million in various taxes, fees and charges for infrastructure services in total to both local and national governments. With approximately the same revenue, as growth was impeded by the global and local negative economic circumstances, in 2013 this figure reached a stunning €4.5 million – an increase of almost 50% in total taxes, fees, contributions and all other payments due to the government on various accounts, including services related to infrastructure. Regardless of how we choose to name these fees, this is an unsustainable trend of increase.

We quoted this example to illustrate the point:

In 2014 we faced even more increases – the price of water in the coastal region, the ecological tax, etc. In addition to 2013, there were increases of VAT from 17 to 19 percent, and a partial increase in the income tax rate from 9 to 15 percent (lowered to 13% in 2015).

***(R75)** Changes are inevitable, but how these changes are managed and implemented in the regulatory environment is what makes the difference between a stable, predictable environment that enables companies to plan ahead and invest and an environment in which investors take conservative investment decisions not being able to tell how much, or if they will profit at all.*

6. INDUSTRY OVERVIEW

6.1. TOURISM (R76 – R82, R105 – R110)

INTRODUCTION

Montenegro is becoming a worldwide tourist destination with high potential for further development. Tourism holds special significance for Montenegro's economy and is considered to be of strategic importance for the country's development.
According to World Travel and Tourism Council (WTTC)[23] , the following is the key data representing Montenegrin tourism:

GDP: DIRECT CONTRIBUTION

The direct contribution of Travel & Tourism to GDP in 2014 was €348.4 mn (9.5% of GDP). This is forecast to rise by 6.0% to €369.3 mn in 2015. The direct contribution of Travel & Tourism to GDP is expected to grow by 7.6% pa to €769.5 mn (14.8% of GDP) by 2025.

GDP: TOTAL CONTRIBUTION

The total contribution of Travel & Tourism to GDP (including wider effects from investment, the supply chain and induced income impacts, see page 2) was €733.2 mn in 2014 (20.0% of GDP) and is expected to grow by 7.9% to €791.3 mn (20.9% of GDP) in 2015. It is forecast to rise by 7.7% pa to €1,664.9 mn by 2025 (31.9% of GDP).

EMPLOYMENT: DIRECT CONTRIBUTION

Travel & Tourism generated 15,000 jobs directly in 2014 (8.6% of total employment) and this is forecast to grow by 5.1% in 2015 to 15,500 (8.9% of total employment). By 2025, Travel & Tourism will account for 25,000 jobs directly, an increase of 4.8% pa over the next ten years.

EMPLOYMENT: TOTAL CONTRIBUTION

The total contribution of Travel & Tourism to employment was 32,000 jobs in 2014 (18.5% of total employment). This is forecast to rise by 6.9% in 2015 to 34,000 jobs (19.4% of total employment). By 2025, Travel & Tourism is forecast to support 55,000 jobs (29.6% of total employment), an increase of 4.9% pa over the period.

23 http://www.wttc.org/-/media/files/reports/economic%20impact%20research/countries%202015/montenegro2015.pdf

VISITOR EXPORTS

In 2014, Montenegro generated €688.7 mn in visitor exports. In 2015, this is expected to grow by 7.0%, and the country is expected to attract 1,378,000 international tourist arrivals. By 2025, international tourist arrivals are forecast to total 2,223,000, generating expenditure of €1,584.4 mn, an increase of 8.0% pa.

INVESTMENT

Travel & Tourism is expected to have attracted capital investment of €234.9 mn in 2014. This is expected to rise by 15.6% in 2015, and to rise by 8.2% pa over the next ten years to €594.8 mn in 2025. Travel & Tourism's share of total national investment will rise from 33.5% in 2015 to 53.2% in 2025.

WORLD RANKING (OUT OF 184 COUNTRIES) ACCORDING TO THE RELATIVE IMPORTANCE OF TRAVEL & TOURISM'S TOTAL CONTRIBUTION TO GDP:

Our members noted that Montenegro is being better positioned as a tourist destination each year with concrete steps being taken to further improve its image.

RECOMMENDATIONS

Montenegro's potential has been given concrete guidelines in the Montenegro Tourism Development Strategy to 2020 which aims to position the country as "a destination with all-year-round tourism, with picturesque landscapes and protected biodiversity". [24]

24 http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=89273&rType=2&file=01+Montenegro+Tourism+Development+Strategy+To+2020.pdf

- **Regions and marketing**

(R76) To achieve the goal quoted above, Montenegro needs to position itself first in terms of the level of tourism it wishes to attract, which the Strategy has defined to a certain extent. It cannot only be high-end tourism, and a mix, strategically designed, would be the best way forward. In that sense, the regions, well defined in the Strategy, need to have their position and level in the general picture of Montenegro as one destination. However, these ideas are yet to be implemented.

(R105) In order to fully utilize the power of marketing for promoting Montenegro as a tourist destination, we propose to include the stakeholders more. Our members in the tourist industry would be willing to contribute to a more coordinated, clear strategy that integrates the key players in this industry in Montenegro.

- **Visas**

(R106) Montenegro should consider introducing a more liberal regime for tourist visas to enable tourists and property buyers from those countries from which some of the largest foreign investors in Montenegro come, to be able to easily access Montenegro. A good example is the Schengen visa which enables a visitor to stay in the EU for three months, but only seven days in Montenegro. Or, for example, to get a Montenegrin visa, the procedure for an Azerbaijani lasts three months and they have to go to Teheran, Iran which is nearly one thousand kilometres away.

- **Economic passport**

(R107) Apart from further liberalizing the visa regime, introduction of the so-called "Economic Passport" would greatly benefit Montenegro. Our members are confident that the country would attract significantly more foreign investment should this option be available to a prospective investor.

- **Infrastructure**

(R77) In addition to the formal aspects of making Montenegro more accessible that are mentioned in the two recommendations above, more accessible, easy, cost-effective access from major European capitals needs to be encouraged. To this end, the airport infrastructure also needs an upgrade, especially when it comes to Tivat Airport.

- **Yachting**

Paragraph 2 of the Article 27 of the Law on Yachts alternatively stipulates the possibility of filling out the "crew list" fully or by adding information, but the Port Authority does not allow the addition of information, which makes both Port Authority's and yacht's job significantly easier.

"According to the Regulation on Conditions to be Met by Ports Categorized According to the Type of Maritime Traffic and Purpose, ports are required to have berth (Article 2, paragraph 1, point 1). One of our members has several times sent a request for mapping a space which could be used for such a purpose. However no response has been received to date. What this means in practice is that skippers anchor their boat in a space they themselves determine while waiting for fuel and that the Port Authority issues a fine for doing so.

(R78) *Previously this has been allowed, and now it is only necessary to apply the existing Law.*

The definition of a proxy/authorization given by the owner of a yacht to the skipper/ captain should be harmonized by a legislative or less formal act. The Port Authority insists on a proxy that has been certified by a notary (or another similar institution) even when the owner of a yacht is present.

(R79) *We believe it would be enough to have a proxy that is not necessarily notarized, but is signed by the captain as a guarantee of authenticity with accompanying penalty provisions to be applied to a person who verifies the authenticity of a copy for which they know or must know they are not identical to the original.*

(R80) *It is necessary to harmonize the Law on Yachts and the Law on Border Controls or issue a mandatory interpretation defining which one of the two laws takes precedence over the other when regulating the same matters, such as leaving the country and deadlines.*

Government's comment: *This should be directed to the amendments to the existing Law or adoption of the new Law on Yachts. To our knowledge, the amendment to this Law was supposed to have been initiated already in 2013 and it is, among others, necessary due to the term "Republic of Montenegro" still being present in the text. It is very important that the future Law on Yachts should have to stick to the subject of regulation and cannot regulate the matter already dealt with by the Law on Border Control. In addition, we need to remind of the fact that the most recent amendments to the Law on Border Control, adopted on 7 August 2013, in accordance with the Schengen recommendations on the best practice in this area, represent a good example of updating regulations harmonized with all stakeholders' requests. That is why we believe that there is a possibility for foreign investors to propose amendments to the Law on Border Control, in order to improve its quality and remain in accordance with the current EU standards of border control. Another example of discrepancy between the two laws is Article 31 of the Law on Yachts, regulating, with respect to the departure of yachts, the obligation of leaving the waters of Montenegro within 24 hours. However, this issue is regulated by Article 53 of the Law on Border Control, prescribing to the master of a vessel the obligation to leave, after completion of border checks, the territorial waters of Montenegro using the shortest waterway. From interpretation of the Law on Yachts it follows that a yacht can, after the completion of border checks, stay for another 24 hours, sail the inland waters of Montenegro, dock and anchor without restrictions. Due to that, we believe that the possibility of departure of a yacht within 24 hours could only apply to verification of the list of crew and passengers in the Port Authority or Branch Office, but not to the possibility of departure of a yacht master within 24 hours after the completion of border checks.*

(R81) *It would be recommendable to revoke the requirement to return the "Shore Pass" to the police, since the police issues this document and can at any time check it against the records.*

Government's comment: *This has no grounds in the Law on Border Control and by-laws. Namely, the Law and the Rulebook on the form, content and manner of issuance of approval for movement to a crew member of a foreign ship in the area in which the port is located does not prescribe the obligation of returning this approval. In addition, there is no penal provision prescribing fines if a yacht master or a crew member does not return the approval to the police. However, we believe that the*

assessment of threats to the security of the State border, performed, according to the Law on Border Control, inter alia, in order to secure the state border, prevent and detect criminal acts and prevent illegal migrations, cannot be subject to the recommendations referred to in the White Book. In case a police officer performing border control, upon the departure of the ship, requests that the approval be returned, this refers to the security assessments prescribed by the Law on Border Control and which are not supposed to be restricted. Article 15 of the Proposal of Changes and Amendments to the Law on Yachts (changing Article 29 paragraph 1 of the existing Law) replaces compulsory navigation for all foreign yachts with a restriction of 1000 and up.

***(R82)** It is necessary to allow a request for a berth to be signed by a Ship Master and not only by the Agent. There are no regulations that would make it mandatory for a yacht to hire an agent, and this practice therefore does not make sense.*

- **"Grey" economy/inspections**

An issue that has seen significant improvement over the past few years is the work of inspections. However, businesses that operate in the so-called "grey area", i.e. those that are not registered, remain unsupervised, and this continues to be an issue for those that operate a legitimate business. **(R106)** In addition, in order bring the work of inspections and more importantly, their results, to a higher level we propose the introduction of independent inspectors to be considered, who would control businesses that have already been visited by the inspection, similar to the audit of the inspectors that is already in the Law.

(R108) The process of inspections of foreign-owned businesses needs to be more transparent for the business owners.

- **Lower VAT rate for food and beverages for hospitality businesses**

(R109) A lower VAT rate of 7 percent should also be applied to food and beverages for hospitality businesses, which is especially important in the challenging period that is ahead for Montenegrin tourism.

- **Tourist registration**

(R110) Tourist registration process needs to be made automatic at the airports, and all other Border Control Points.

6.2. PRODUCTION/ENERGY (R83)

INTRODUCTION

In a service-based economy, such as Montenegro's, the export potential of the production industry has special significance.

According to Central Bank data[25], in 2014, total industrial output declined by 11.4% in relation to 2013. An output decline was recorded in the manufacturing industry (6.7%) and electricity, gas and steam supply (19.6%), while mining and quarrying sector recorded production growth of 14.4%.

The highest decline was recorded in the production of metal products, except machines and devices (-86.6%), while the lowest decline was in the production of chemical products (-0.3%).

REMAINING ISSUES AND RECOMMENDATIONS

Our members this year noted limited positive developments, pointing out the inflexibility in the Labour Law and other regulations in this field. These seriously hamper Montenegro's potential in the real sector, and impede the initiated restructuring process.

In addition, the issue of state aid is affecting competition in this industry. Companies should not be receiving subsidies from the Government; this has widely been recognized as an inappropriate use of taxpayer's money.

(R83) *This situation needs to be resolved as quickly as possible as the EU rules on the protection of competition do not allow for such arrangements.*

6.3. TELECOMMUNICATIONS AND ICT (R84 – R88, R111-R115)

INTRODUCTION

The ICT sector is a driving force in both economic development and wider social change. It encourages productivity and competiveness across the economy.

We believe that a strong ICT sector is crucial for Montenegro. We are fully committed to supporting the growth of the sector and creating a world with many opportunities in the era of globalization.

25 http://www.cb-mn.org/slike_i_fajlovi/fajlovi/fajlovi_publikacije/biltencbcg/2015/bilten-012015.pdf

To deal with fast-paced technological changes and the way information is being consumed, produced and transferred, the ICT sector needs to look into new ways of finding revenue streams, new business models, and new markets. The telecommunications industry must continue to explore new ways to monetize the existing infrastructure and access investment to upgrade and expand that infrastructure, which is a particular challenge in Montenegro. All these goals can only be achieved by ensuring that outdated legislative and standardization frameworks are revised to fit the realities of the borderless broadband world

MFIC ICT Committee

During 2014, our members from the ICT Industry formed a Committee within the MFIC to speak with one voice with the relevant stakeholders with the purpose of improving the business environment for the ICT industry in Montenegro. The ICT Committee will be striving to encourage innovation, economic growth and improvements in daily life for both the citizens and businesses.

As stated in the ICT Committee's Statute: "The aim is to maximize the ICT sector's potential of contributing to Montenegro's development from several angles. The Committee's mission is to encourage innovation, economic growth and improvements in daily life for both citizens and businesses by enabling a transparent, predictable and sustainable business environment."

The ICT Committee published a Position Paper, dealing with improving the regulatory regime and it is particularly focused on improving the business climate in the country. The main goal of this position document is to address the most relevant issues concerning telecommunications industry, given that business environmental turbulence and frequent changes of regulation makes conventional strategic planning almost impossible, neglecting development trends.

This will be done through addressing the most relevant issues (such as: market erosion, the challenging environment and impact of OTT, changes to the Law on Electronic Communications and involvement in public consultation, changes to the Law on Spatial Planning and Construction, changes to the Law on Roads, strengthening further relations with the Agency for Electronic Communications and Postal Services and the Government of Montenegro) for the telecommunications industry and contribute to the overall improvement of the system.

To invest more, operators need clear support from the Government and the Regulator in overcoming the challenging business environment, since the existing situation from the telecommunications industry perspective is not sustainable. The primary focus should be to establish a predictable regulatory environment and a tax regime.

REMAINING ISSUES AND RECOMMENDATIONS

Several general issues that have been an impediment to the further development of this sector in Montenegro have already been mentioned in this document, whereas in this section we would like to list a few industry-specific recommendations:

- The emergence of OTT video and media services is changing the telecommunications industry. While OTT services are evolving fast, consumer behaviour is shifting even faster, so operators will have to create business models that are both agile and adaptive. In order to do this we need government support. Regulation of this market would be very important for both the operators and the Government. By regulating this market, the state can gain significant economic value, while operators can devote resources to creating strategies for sustainable growth. **(R111)** Thus we recommend eliminating the regulatory asymmetry between telecommunications and OTTs by immediately reducing the regulatory pressure on operators. In the medium term, the same rules should apply for same services.
- Traditional telecommunications services and revenues are subject to heavy regulation, driven by consumer protection and internal market concerns restricting the ability of mobile network operators to maximize value in these markets. The rigid regulatory framework has been a useful tool in the learning process for the national regulator. However, considering significant market erosion, in the last few years, the current period requires a more predictable, pragmatic and flexible framework. **(R112)** We encourage the Government to consider a redesign of the regulatory framework and establish a more flexible regime that will allow development of technologies and services, thus contributing to the society through the further investments in the industry.

*(R84) The observation that **infrastructure development via public/private partnerships** needs to be continued, remains valid. However, this is still jeopardized by far too low prices for infrastructure leases as determined by the Agency for Telecommunications.*

- When it comes to the infrastructure for mobile network base stations, positive improvement has been noticed with some local authorities such as in Podgorica, Cetinje and Berane, where the municipal authorities have been efficient in dealing with requests for obtaining building permits. On the other hand, our members have faced significant negative trends in some coastal municipalities, going as far as a total lack of cooperation which caused delays of one year for plans for temporary buildings.

(R85) Thus the issue of unbalanced criteria and an unbalanced position among municipalities regarding procedures for obtaining building permits is still a challenge to our members.

- The issuance of building permits for telecommunication facilities is under the jurisdiction of local governments; in some municipalities this creates serious issues, and in a number of instances makes it completely impossible. (R113) Considering that the most of our base stations are temporary facilities, we suggest transferring jurisdiction for issuing building permits in the Municipality of Podgorica to the Secretariat for Utilities and Transportation.
- Because of the current unfavourable situation in Montenegro's energy sector, telecommunications companies also face the **challenge of electricity supply for the base stations.**

(R86) Therefore, the use of alternative sources of energy to build energy systems for independent power base stations could be the optimal solution for this type of problem.

- Previously we noted that in order to fully take advantage of electronic commerce, provisions of the **Law on Electronic Commerce relating to distance selling need to be aligned with the Consumer Protection Law**. The Law on Electronic Communications foresees the possibility

that the subscriber agreement may be concluded by means of remote communication as well as outside the business premises of the operator, in accordance with the laws regulating electronic signatures and protection of consumers (Article 153).

(R87) *In that sense the operator should define clear and unambiguous general terms for the provision of services which particularly need to incorporate: a procedure for conclusion of agreements by means of remote communication and agreements concluded outside the business premises of the operator, which must contain provisions which are in accordance with the law regulating electronic signatures and protection of consumers (Article 148).*

- Montenegro is unique when it comes to **calculation of electronic communications concerning the units of measurement** (tariff interval) which is not subject to the laws on electronic communications in EU member states. In Montenegro, operators are required to include at least one tariff rate using 1 second as the unit of measure and 1 kilobyte (1KB) which also has to be applied in roaming, which for Montenegrin operators means that in most of the countries, roaming services are being offered below their actual cost, as according to standard agreements on roaming, the tariff intervals are 60 seconds and 10 to 100 KB.
- Sometimes the issue lies in **interpretations of legal provisions**. To illustrate, Article 39 of the Law on Electronic Communications is a good example, as, according to our opinion, its interpretation is beyond the framework of the Law itself: the operators are not allowed to, on the basis of commercial agreements, for the needs of their networks provide the use of electronic communication infrastructure located outside of Montenegro. The explanation is that equipment located outside of Montenegro cannot be controlled. We consider that such an interpretation is a barrier for operators and that in the end it is the users that are missing out, since many of the services cannot be offered to them.

(R88) *We believe that it is absolutely possible to conduct complete supervision over parts of the electronic communication networks, including the ICT systems installed outside of Montenegro, by means of remote access.*

- **(R114)** In addition to the above, we propose adding a new paragraph 2 to Article 39: *"If a part of the electronic communications infrastructure and associated equipment used for the provision of electronic communications services is located outside the territory of Montenegro, the owner of the electronic communications network that uses that infrastructure and associated equipment shall ensure the consent of the owner and the holders of electronic communications infrastructure and associated facilities in order to meet the obligations under paragraph 1 of this Article, and shall reimburse all the costs of the inspections and controls carried out outside the territory of Montenegro to the competent regulatory bodies and/or government bodies that perform supervision".*
- In December 2014, the Government of Montenegro adopted a draft Law on Cinematography, obliging the operators of public electronic services, including internet providers to pay for the so-called "Film Fund" amounting to 1% of the annual revenue generated from the internet. **(R115)** We are proposing the deletion of this controversial article of the Law on Cinematography. With this new expense in the current situation in which on the one hand the telecommunications market in Montenegro is facing negative trends in terms of the revenues and the need for serious investments in new technologies, on the other, the proposed regulation regarding the Film Fund finance additionally undermines operators' ability in this sense.

6.4. BANKING (R89 – R91, R116)

INTRODUCTION

At the end of December 2014, the total assets and liabilities of banks amounted to €3,134.4 mn or an increase of 5.9% year on year.

In the structure of bank assets in December 2014, loans and other receivables accounted for the main share (75.5%) followed by cash and deposits with central banks (15.9%), while other bank asset items accounted for the remaining 8.6%. In the structure of liabilities, the dominant share of 73.6% was recorded by deposits, followed by capital with 14.2%, borrowings with 7.9%, while other items accounted for 4.3% of total assets.

At the end of December 2014, the total capital of banks amounted to €443.6 mn, recording an increase of 11.5% year on year.

Total bank loans amounted to €2,367.2 mn at the end of December 2014, which represents a monthly decrease of 2.4% and a 1.9% decrease relative to December 2013. The loans–to-deposits ratio was 1.03% at the end of December 2014, and it was lower than in December 2013 when it amounted to 1.15% [26]

As the IMF noted in the Concluding Statement of the 2014 Article IV Consultation Mission[27]:

> ***The banking system's health is gradually improving, but NPLs remain a problem.*** *Liquidity is plentiful. But NPLs, at 17% of total loans, remain a substantial drag on asset returns, implying that banks have to seek higher returns from new loans than would otherwise be the case. A low system-wide provisioning level raises questions about the valuations of collateral against which NPLs can be netted, and the extent to which provisioning practices may be allowing banks to avoid resolving problem loans.*
>
> ***Lending rates reflect scale inefficiencies and high-risk premiums.*** *Relatively high costs per loan are to be expected in a small market. But banks also have to cover lending risks that are unnecessarily high, owing to difficulties in reliable credit information, securing collateral and inconsistent application of regulations (e.g. tax administration). The recent creation of the position of dedicated public enforcement officers is a valuable step towards resolution of some claims, but further progress will depend on more timely court decisions, with penalties for delays, and improved administration.*

26 *Data according to Central Bank of Montenegro*
27 *https://www.imf.org/external/np/ms/2014/110414.htm*

REMAINING ISSUES AND RECOMMENDATIONS

In this edition of the White Book, we have largely been focusing on some rather specific issues, without repeating all the issues from the previous editions. This section is no exception, and although the issue of, for example, full compliance with the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS) is being discussed, the approach to it is qualitatively different and more detailed.

DECISION ON MINIMUM STANDARDS FOR MANAGING CREDIT RISK IN BANKS; DECISIONS ON CAPITAL ADEQUACY OF BANKS

The Central Bank of Montenegro (CBCG) initiated the implementation of the new regulations in 2013, with the goal of fully implementing the International Financial Reporting Standards (IFRS). Prior to that, according to the local regulations, when calculating potential loss provisions, the collaterals the banks secured in order to mitigate estimated credit risk when approving a loan were not taken into account, which had a direct negative impact on banks' business decisions, loan prices and other conditions when considering new loans. At the same time, most of the banks needed to prepare two sets of financial statements, one that was used for the purposes of reporting to the CBCG and the other, in accordance with the IFRS for shareholders, creditors and potential investors.

However, regardless of the fact that commercial banks did have their representatives in the working group tasked with introduction of the IFRS, it was only after the final publication of the regulation that the banks had the chance to see the new rules. Unexpectedly, the final regulations imposed new capital requirements which in turn brought about new and also unexpected expenses.

Here we list the regulations that are not harmonized with the IFRS:

a) Decision on minimum standards for managing credit risk in banks ("Official Gazette of Montenegro", No. 22/12)
b) Decision on Amendments to the Decision on Minimum Standards for Managing Credit Risk in Banks ("Official Gazette of Montenegro", no. 55/12)
c) Decision on Amendments and Additions to the Decision on the Capital Adequacy of Banks ("Official Gazette of Montenegro", no. 55/12)
d) Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 ("Official Gazette of Montenegro", No. 61/12).

(R89) *We consider that Article 49b of the Decision on Amendments to the Decision on Minimum Standards for Managing Credit Risk in Banks ("Official Gazette of Montenegro", No. 55/12) is not in accordance with the IFRS, as nowhere in IFRS is it mentioned that the conditions have been met for recognizing a financial asset, and thus this Article is an interpretation by the regulator which does not have a precedent in EU member states.*

Further on, this Article introduces "internal records" used for purposes of recording written-off assets. It is unclear what the regulator is trying to introduce with this phrase, as in part of Article 49b it is stated that conditions have been met for ceasing to recognize a financial asset, and in the other part there is a request for keeping them in the "internal records".

We consider that the banks have been practically forced, through the introduction of this Article, to:

1. Favour debtors in default through write-offs,
2. Cause direct damage to themselves, their shareholders and other stakeholders,
3. Decrease the comprehensiveness and quality of data they have on debtors in default (since their debts have been written-off).

Government's comment: *"…it was assessed that there is a need for the establishment of a "prudential filter", which would exclude from the balances of banks those items for which there is a longer period of collection, which justifiably indicates that they are uncollectible…. regarding the potential negative effects of solutions according to which certain categories of problematic claims are de-recognized and continue to be kept in the internal records of a bank, we point out that such a solution does not and cannot have negative effects on banks, their shareholders or other stakeholders, as stated in this document. Firstly, there is no option for favouring delinquent debtors, as stated in the document, because the fact that a claim has been moved to internal records does not mean that a debtor is relieved of partial or total liability towards a bank, and this fact does not prevent in any way the bank from taking all actions towards recovery of the claim, which it can also do towards debtors whose debt is registered in the bank's balance. Also, this manner of registering does not cause any direct damage to the bank, its shareholders or other stakeholders. Namely, even after de-recognition from the balance and registering of write-offs in the internal records, banks are obliged to implement the procedure of the recovery of claims until it is determined that a claim is uncollectable, and cases when the procedure of the recovery of write-offs is terminated are defined by the respective decision. In cases of full or partial recovery of this category of claims, effects of such recovery reflect on the income statement of the bank in the same manner as the recovery of claims registered in the balance reflects. This manner of registering non-performing assets does not have a negative effect on the universality and quality of data on delinquent debtors, because data on claims which are de-recognized from the balance under Article 49b of the respective decision are kept in the credit register for another three years after de-recognition. Therefore, from the moment when a debtor enters a period of delay of 365 days and is designated on such grounds as being in the least favourable category of delinquent debtors (category "E"), until the moment he is removed from the credit register, a minimum of 5 years passes (two years before de-recognition and three years after de-recognition from the balance), which corresponds in all to the standards relating to credit registers..."*

(R90) *In addition, it remains unclear which type of records the banks should be using before court in procedures of proving the amounts of loans. In practice, the courts that have jurisdiction over the matters from this Article have thus far shown inefficiency and sluggishness, making the process of collecting bad debts even harder.*

Government's comment: *"Internal registering of claims cannot cause disturbances to banks in litigations against delinquent clients. The existence of claims and the level of claims are proved in litigations primarily by the contract establishing such a claim, and by evidence of settlement or a*

default relating to such claims, and the off-balance sheet in such proceedings has the same power of evidence as the balance evidence. Regarding comments relating to the regulatory reserves, it is important to point out the following: the introduction of regulatory reserves is caused by a change in the valuation of the financial assets of banks, which has been performed by the Decision on the Minimum Standards for Managing Credit Risk in Banks, or by the switch to the valuation of financial assets by applying MRS/MSFI. Bearing in mind that the criteria for valuing provided by local legislation are stricter than the requirements of MRS/MSFI, a switch to MRS/MSFI results in a better financial result. For precautionary reasons, which are necessary in a certain period after such changes, this difference is recorded on the reserve account following a regulatory requirement. It is recognized in the balance as a profit, but there are certain limitations in terms of disposing of funds on that account…as for the comment relating to the treatment of reservations from the aspect of taxation legislation, we point out that the Central Bank is not authorized to prepare or interpret legislation regulating the taxation system in Montenegro and, therefore, potential recommendations regarding this matter may refer to the line ministry."

When it comes to the Decision on Amendments and Additions to the Decision on the Capital Adequacy of Banks and the Guidelines on logging provisions for potential credit losses, correction of the values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 ("Official Gazette of Montenegro", No. 61/12), banks were surprised by the introduction of the following notions not known in any IAS:

a) Regulatory reserves – calculated on the basis of a qualification group of claims according to the percentage defined in Article 48 of the Decision on Minimum Standards for Managing Credit Risk in Banks
b) Required provisions for estimated losses – representing a positive difference between the provisions for losses and the correction of the value (Article 49a of the Decision on Amendments and Additions to the Decision on the Capital Adequacy of Banks "Official Gazette of Montenegro", No. 55/12)
c) Special reserves – representing a difference in provisions for losses and corrections of value on the day the new regulations enter into force, 1 January 2013 (Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing the starting conditions in the financial reports of banks for the year 2013 ("Official Gazette of Montenegro", No. 61/12))
d) Missing reserves – representing a positive difference in loans/party between the provisions calculated for estimated losses according to the regulatory demand, diminished for already formed special provisions (account balance 3025) and corrections according to the Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing the starting conditions in financial reports of banks for the year 2013 ("Official Gazette of Montenegro", No. 61/12).

The IFRS strictly forbid any general provisions which cannot be related to the potential loan loss established on the basis of the applied IFRS methodology.

In doing so, the missing reserves are a deduction in calculating own assets for the requirements of capital adequacy. Also, the calculation required at the level of the party, and not the net difference between the total IFRS and local provisions, has a negative effect on decreasing own assets by forcing the bank to perform additional recapitalization.

The transition to new regulations does not explain the treatment of reservations from the perspective of the Law on Corporate Tax with a position that is clear and approved by the Tax Administration, which is relevant for a proper implementation of the IFRS and appropriate IAS.

(R91) *Unfortunately, we have to conclude that none of the expected benefits of the new banking regulation have been accomplished. The banks are still forced to prepare two sets of reports as noted above, while the expected capital requirements have not been decreased.*

Government's comment: *"It seems that the statement contained in the White Book that none of the expected benefits of the new banking regulation have been achieved is based only on a one-sided understanding of the effects of that regulation. Consideration is given only to potential effects for which it is assessed that they could negatively reflect on banks. A sufficient fact, which supports this assessment, is the statement contained in the White Book that the previous legislation did not take into account collaterals for calculating reservations for potential credit losses, and this statement has not been elaborated on further in terms of assessment of the impact of the new approach to valuation of collaterals for banks' capital requirements by reducing reservations on these grounds. Also, consideration has not been given to the effects of the recovery of the significant credit portfolio from the off-balance sheet into the balance of banks at the beginning of 2013, with which any correction of the value under 100% directly affected the reduction of the missing reserves and, thus, the increase of the level of regulatory capital. The best indicator of the effects of enforcement of the new legislation is the comparison of the 2013 financial statements of banks with the same statements for the previous year. Finally, it needs to be pointed out that legislation and regulations governing banking are continuously subject to assessment by relevant international entities (the European Commission, IMF, World Bank) and that the screening results for Chapter 9 – Financial Services confirm the harmonization of this regulation with the relevant standards and principles which the EU banking legislation is based on."*

The entire economy would greatly benefit from lower interest rates and easier and simpler access to financing. **(R116)** But this requires a more stable business environment, and in that sense we encourage the Government to view this issue as a broader category, as the interest rate in an economy is a reflection of the risks in the economy – they are a consequence and not a cause.

6.5. TRADE/RETAIL (R92)

INTRODUCTION

In this industry our members report notable improvements, assessing that some challenges still do exist. In general, weak enforcement by the institutions remains to be an issue but the legislation and procedures have been very much improved.

REMAINING ISSUES AND RECOMMENDATIONS

(R92) The MFIC encourages the Government to ensure the equal treatment of businesses and equal application of the rules for all, including in the areas of social, pension and health insurance and contributions. These expenses comprise some 40% of employee-related costs and can dramatically impact the competitiveness of retail operations.

7. MFIC COOPERATION WITH THE GOVERNMENT

In 2014, the good cooperation that the MFIC has had since its establishment with the Government during the past four years, continued. We received comments on a large part of our recommendations, while the Government expressed its commitment to considering some of them. Most certainly we hope that the Government will show even more dedication to improving the business environment and that more of our recommendations will in the future be accepted.

The MFIC hosted several events attended by the highest-ranking officials during 2014. MFIC is honoured by the support expressed by the highest Government officials including the Prime Minister Milo Đukanović, Minister of the Economy, Vladimir Kavaric, and the Mayor of Cetinje, Aleksandar Bogdanović, who took part in sessions of the Montenegrin Foreign Investors Council during 2014.

These meetings present an important opportunity for the Council members to directly communicate with Government representatives, present their views and suggestions towards improvement of the business environment in terms of transparency, stability, efficiency and predictability. The feedback we received from our distinguished guests assured us that the work being done by the MFIC is heading in the right direction.

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We are looking forward to continuing and intensifying cooperation not only with the Montenegrin Government, but with the diplomatic community in Montenegro, universities, civil society and other business organizations.

8. BUSINESS AND EDUCATION

The MFIC launched its first University Outreach Programme in 2013. The launch event was held at the University of Donja Gorica (UDG), where MFIC representatives met students and held a presentation with the inspiring title "Fear of Profit versus Perfect Investors' Landscape".

In 2014 we continued this practice and talked to the students of UDG in April 2014. The panellists were Mr. Rüdiger Schulz, MFIC President and CEO of Crnogorski Telekom and Mr. Giulio Moreno, MFIC BoD member and Head of the EBRD Office in Montenegro. The subject of the discussion was the Montenegrin Foreign Investors Council itself and the activities carried out by this organization in order to improve the environment its members operate in.

The MFIC also talked to students of the Electrical Engineering Faculty of the University of Montenegro in October 2014. The panellists were Mr. Rüdiger Schulz, MFIC President and CEO of Crnogorski Telekom and Mr. Szabolcs Horvath, MFIC BoD member and CEO of Crnogorska komercijalna banka. The subject of the discussion was the Montenegrin Foreign Investors Council itself and the activities carried out by this organization in order to improve business environment its members operate in.

This is only the first step in what the MFIC is planning to do to give its contribution to what is the future of Montenegro and its economy – education. Education is, and in the future will be even more so, a leading source of innovation and thus of development. It can help shape the country's success in attracting FDI and thus create a solid base for future development and an increase in the standard of living.

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Since the first edition of the MFIC's White Book was issued in 2010, our members report that they are increasingly starting to feel positive developments in the area of education. However, incremental improvements are not enough for Montenegro's workforce to remain competitive in an increasingly global labour market. These challenges can be converted into opportunities in an ever-more connected world, in which physical distances, although still important, are being diminished through the development of technology and this is where the MFIC has started turning its focus more and more.

9. CLEAN MONTENEGRO INITIATIVE

The MFIC wishes to get more involved in activities that would lead to what we wish to call a "Clean Montenegro". Montenegro is first of all a tourist destination that has to not only catch up, but be a leader in environmental matters. The MFIC will be launching an initiative in this field which we will be presenting annually in the White Book.

Montenegro is recognized as a country with beautiful, unspoilt nature. We see it as one of the strongest potentials that this country has. The unique landscape of Montenegro, unfortunately, often becomes spoiled by something that does not belong there – waste.

Our members have recognized waste management as one of the areas with significant room for improvement. The key is raising awareness among the citizens of Montenegro about the importance of waste management, and establishing the right structure for citizens to be able to dispose of waste in the most convenient way. We are aware of the fact that this needs time, and we will keep following the progress that Montenegro makes over the years. We will keep encouraging and helping the governmental institutions in charge of waste management in their efforts to resolve some of the primary issues in this field. There is no doubt that Montenegro can resolve at least some of the challenges, like, for instance, illegal dumps – their number is, unfortunately, disturbingly high.

According to MONSTAT, in 2013, 286 378 tons of communal waste was collected in Montenegro, or 1.26 kg per capita per day. Unfortunately, not all waste producers are covered by the service of collecting and transportation of garbage. According to the data collected from the municipalities, it is mostly urban centres that are covered by this service, while rural areas, especially villages, are mainly not covered. At the moment, there are two regional sanitary landfills, one in Podgorica (for Podgorica, Danilovgrad and Cetinje), and the other in Bar (for the municipalities of Bar and Ulcinj, and Budva, Kotor and Tivat).[28]

According to the data from the Ministry of Sustainable Development and Tourism (from 2011), there are 273 unregulated waste dumps. This has a multitude of negative effects, among other things, tourists quite often notice illegal dumps in some of the most remarkable viewpoints in Montenegro. Certainly, this spoils their impressions about this beautiful country and gives some of our investors a hard task to explain why the situation is like that.

28 Source: Report on the State of the Environment in Montenegro for 2013 – data for 2014 will be provided in Q3 2015.

Bearing in mind that Montenegro will soon be opening Chapter 27– Environment and Climate Change, one of the most complex chapters in the negotiating process, we consider this a good opportunity to start changing for the better the current state in this field. In collaboration with our partners from the Government, surely we will make long-lasting progress and make this country a better place not only to invest in, but also to live in.

APPENDIX 1: OVERVIEW OF THE ACQUIS COMMUNAUTAIRE CHAPTERS

During the process of the enlargement of the European Union, the acquis was divided into 31 chapters for the purpose of negotiations between the EU and the candidate member states for the fifth enlargement (the ten that joined in 2004, plus Romania and Bulgaria, which joined in 2007). For the negotiations with Croatia (which joined in 2013), Iceland, Turkey, Montenegro and in the future, with Macedonia and Serbia (candidate countries), the acquis was/will be split up into 35 chapters instead, with the purpose of better balancing between the chapters: dividing the most difficult ones into separate chapters for easier negotiation, uniting some easier chapters, moving some policies between chapters, as well as renaming a few of them in the process:

1. Free movement of goods
2. Freedom of movement for workers
3. Right of establishment and freedom to provide services
4. Free movement of capital – opened
5. Public procurement – opened
6. Company law – opened
7. Intellectual property law – opened
8. Competition policy
9. Financial services
10. Information society and media – opened
11. Agriculture and rural development
12. Food safety, veterinary and phytosanitary policy
13. Fisheries
14. Transport policy
15. Energy
16. Taxation – opened
17. Economic and monetary policy
18. Statistics – opened
19. Social policy and employment
20. Enterprise and industrial policy – opened
21. Trans-European networks
22. Regional policy and coordination of structural instruments
23. Judiciary and fundamental rights – opened
24. Justice, freedom and security – opened
25. Science and research – closed
26. Education and culture – closed
27. Environment
28. Consumer and health protection – opened
29. Customs union – opened
30. External relations – opened
31. Foreign, security and defence policy – opened
32. Financial control – opened
33. Financial and budgetary provisions – opened
34. Institutions
35. Other issues

APPENDIX 2: FULL MEMBERS OF THE COUNCIL

Coca-Cola Hellenic Passion for Excellence	CKB CRNOGORSKA KOMERCIJALNA BANKA member of otp group	European Bank for Reconstruction and Development	ERSTE BANK
AZMONT INVESTMENT	HYPO ALPE ADRIA SA VAMA. UZ VAS. ZA VAS.	Deloitte.	T
EKO	telenor	UNIQA osiguranje	TRIANGLE
pwc	LUSTICA BAY MONTENEGRO	PORTO MONTENEGRO	m:tel Imate prijatelje!
LOVĆEN OSIGURANJE A.D. Član grupe triglav	TREBJESA MOLSON COORS COMPANY	MONTENEGRO STARS HOTEL GROUP	SIEMENS
DUKLEY	Terna Crna Gora TERNA GROUP	INTEGRATED EE HOLDINGS AN ADFG COMPANY	SAVA MONTENEGRO
NLB Montenegrobanka		SOCIETE GENERALE MONTENEGRO	

FOR THE MONTENEGRIN COUNCIL OF FOREIGN INVESTORS:

Rüdiger J. Schulz, MFIC President
Sonja Ražnatović, MFIC Secretary
Kosta Radonjić, Consultant

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