

17 Annex - Economic and monetary policy

144. LAW ON THE CENTRAL BANK OF MONTENEGRO

LAW ON THE CENTRAL BANK OF MONTENEGRO

(Official Gazette of the Republic of Montenegro 52/00, 53/00,
47/01, 04/05)

I. GENERAL PROVISIONS

Article 1

This Law establishes the Central Bank of Montenegro (hereinafter: the Central Bank).

The Central Bank is an independent organization of the Republic of Montenegro (hereinafter: the Republic) solely responsible for monetary policy, establishing and maintaining a sound banking system and efficient payment system in the Republic.

Monetary policy of the Central Bank shall be based on the DEM as the monetary unit, the means of payment, and the reserves currency until the introduction of the EUR.

Article 2

The Central Bank shall be independent in exercising its powers under this Law.

Article 3

The Central Bank may not issue currency.

The Central Bank may not grant loans to the Government of the Republic of Montenegro (hereinafter: the Government) or any other legal or natural persons, except under the conditions stipulated in this Law.

Article 4

The Central Bank is a legal person.

The registered office of the Central Bank is in Podgorica.

Article 5

The Central Bank shall use and dispose of its property in the manner laid down in this Law.

Article 6

The Central Bank shall be exempt from taxation and all duties and levies, in accordance with the law.

Article 7

The Republic shall not guarantee for the Central Bank's obligations nor shall the Central Bank guarantee for the Republic's obligations.

Article 8

The Central Bank shall submit the report on its operations to the Parliament of the Republic of Montenegro (hereinafter: the Parliament), as needed, but at least annually.

Article 9

The Central Bank shall have its own seal which shall bear the following title: "The Central Bank of Montenegro Podgorica" and the coat of arms of the Republic.

Article 10

The Central Bank shall have its Statute.

The Statute of the Central Bank shall be published in the "Official Gazette of the Republic of Montenegro".

Article 11

In exercising its functions set out under Article 1 above, the Central Bank shall have the authority to:

- 1) issue and revoke licenses for the operation of banks and financial institutions, regulate and supervise their operations and instigate bankruptcy and liquidation proceedings against banks and financial institutions in the Republic;
- 2) grant loans from its reserves to licensed banks in the Republic, under the conditions laid down in this Law;
- 3) prescribe and take measures, regulate and oversee payment system operations, settlement and inter-bank clearing in the Republic;
- 4) perform and oversee the national and international payment operations;
- 5) act as a banker, adviser and fiscal agent of bodies and organizations of the Republic;
- 6) purchase and sell currencies and precious metals for its own account or for the account of the Republic;
- 6a) purchase and sell at the secondary market securities issued by the Republic, European Union Member States, or other states designated in a regulation of the Central Bank of Montenegro;
- 7) perform regular macroeconomic analyses, including monetary, fiscal, financial and balance of payments analyses of the economy of the Republic, and communicate recommendations to the Government in the field of economic policy;
- 8) draft and participate in the drafting of laws and other regulations governing monetary, foreign exchange, and banking systems, in accordance with international standards, including establishing reserves for different types of deposits;
- 9) provide banking services to foreign governments, foreign central banks, as well as international organizations and other international institutions in which the Central Bank or the Republic participate;
- 10) accept deposits from banks, state bodies and organizations;
- 11) open and maintain accounts for the needs of state bodies and organizations, domestic and foreign banks, international financial institutions and donor organizations;
- 12) prescribe the manner of performing activities of dealers and banks in foreign exchange transactions, determine limits on foreign currency positions of dealers and banks and supervise their operations;
- 13) may own and manage one or more payment systems including one of real-time gross settlement system for wholesale payments;
- 14) may manage a net settlement system for retail payments;
- 15) provide adequate supply of banknotes and coins for the settlement of financial transactions;
- 16) perform other operations prescribed under this and other laws.

Article 12

Individual terms used in this Law shall have following meaning:

- 1) “bank” is a legal person, which activities involve the acceptance of deposits from legal and natural persons and the use of such funds, whether all or in part, for granting loans or investing for its own account and at its own risk;
- 2) “deposit” is money deposited in a bank to be paid at request (on demand or otherwise), bearing or not bearing any interest, which results in a debtor-creditor relationship that is not based on the sale of goods or the provision of services;
- 3) “credit” is a loan or a commitment to lend money or renew a loan, a debt guarantee , as well as any activity aimed at acquiring the right to collection of a certain amount of money; the term “ credit” shall not include deposits in banks and the purchase of bonds and other similar (debt) securities at secondary market;
- 4) “securities” are company shares, bonds, certificates of financial responsibility, including Government’ s certificates of its financial responsibility, as well as other investment or commercial papers accepted in developed capital markets (as well as derivatives of such securities) to be sold either at a stock exchange or over-the-counter and regardless of whether they are in hard copy or electronic format;
- 5) “financial institution” is a legal entity engaged primarily in granting loans or investing for its own account and at its own risk or rendering other financial services;
- 6) “ fiscal agent” is a function of the Central Bank whereby it acts as a depository and performs activities related to the allocation of public revenue funds, effects principal and interest payments, as instructed by bodies and organizations of the Republic, and performs administrative operations related to the public debt;
- 7) “recommendation” is an unbinding instruction or statement of policies established and published by the Central Bank for the purpose of informing banks, financial institutions and other entities;
- 8) “International Accounting Standards” are the latest international accounting standards issued by the International Accounting Standards Board (IASB);
- 9) “order” is a binding instruction for action that the Central Bank issues in order to ensure the enforcement of provisions of this Law and/or regulations passed on the basis of this Law;
- 10) “clearing house” performs activities of real-time gross settlement (RTGS) for wholesale payments and/or net settlement for retail payments;
- 11) “Real-time gross settlement (RTGS)” is a payment system whereby the settlement finality is conditioned by the provision of coverage in the account of a participating bank;
- 12) “net settlement of retail payments” is a deferred time net settlement system;
- 13) “intra-day credit” is a credit granted by the Central Bank to a commercial bank, to be repaid by the end of the same business day when it was provided and it must be fully secured by a collateral.

II. MANAGEMENT OF THE CENTRAL BANK

Article 13

The Central Bank shall be governed by the Council of the Central Bank (hereinafter: the Council).

Article 14

The Council shall have seven members.

The members of the Council shall be: the President of the Council, the Director General and two deputies of the Director General, who are executive officers of the Central Bank to be nominated by the working body of the Parliament competent for the selection and appointments, and three members to be nominated by the Government.

The members of the Council shall be appointed by the Parliament.

Article 15

A member of the Council must possess special professional knowledge in the area of monetary, credit and foreign exchange systems.

An official or an employee of a bank operating in the Republic or holding more than 5% of shares in a bank may not be a member of the Council.

A member of the Council must have moral qualities and may not be elected if he/she was convicted of criminal offences and/or if legal proceedings have been instituted against him/her for criminal offences that would render him/her ineligible for performing the function of a member of the Council. A member of the Council must be a person with recognized integrity who shall perform his/her duties in the Central Bank in such a manner that his/her personal interests or interests of related parties will not be put ahead of those of the Central Bank and its clients.

A member of the Council shall, at least once a year, submit a report to the Central Bank on his/her direct and indirect financial interests, as well as interests of his/her related parties, in the manner prescribed by the Central Bank.

Article 16

A member of the Council shall be appointed for the period of six years and may be reappointed only twice.

Article 17

The Council shall be empowered to:

- 1) establish policies in accordance with provisions under Article 11 above;
- 2) pass regulations, recommendations and orders issued by the Central Bank;
- 3) approve reports and recommendations that the Central Bank communicates to the Parliament or the Government;
- 4) decide on the Central Bank's presence in international organizations;
- 5) issue the Central Bank's Statute and lay down general guidelines for the Central Bank's operations;
- 6) adopt the financial plan and annual financial statements of the Central Bank;
- 7) decide on applications for granting and revoking licenses to banks, financial institutions and payment systems.

Other activities, modus operandi and other issues related to the operation of the Council shall be laid down in the Central Bank's Statute and the Council's rules of procedure.

Decisions of the Council that have the character of general acts shall be published in the "Official Gazette of the Republic of Montenegro".

Article 18

The President of the Council shall chair the Council meetings, represent the Central Bank, and

take care of the enforcement of the Council decisions.

If the President of the Council considers that an act of the Council is contrary to the law, the Central Bank's Statute or any other general act, he/she shall warn the Council thereof. If the Council still keeps to its act after such a warning, the President shall inform the Parliament thereof.

The Director General shall replace the President of the Council if he/she is prevented from attending. In the event that the Director General is also prevented from attending, the Deputy Director General for banking system supervision shall replace the President of the Council.

Article 19

The Director General is an executive officer of the Central Bank in charge of daily operations of the Central Bank.

The Director General shall report to the Council, at least once a month, on business operations and activities of the Central Bank, conducted monetary policy, soundness of the financial system, the money supply, the capital and foreign exchange markets, including all trends that affect or will significantly affect the managing or business operations of the Central Bank, its policies, the financial system or the aforesaid markets.

In the case the Director General is absent or prevented from attending, he/she shall be replaced by the Deputy Director General for banking system supervision, or if he/she is prevented too, then by the Deputy Director General for payment system operations.

Article 20

One Deputy Director General shall be appointed for the banking system supervision to be responsible for the licensing, regulating and supervision of banks and financial institutions.

In performing his/her functions, the Deputy Director General under paragraph 1 above shall be authorised to take all necessary measures against a bank and a financial institution, including the appointment of an interim administrator, as well as the implementation of the procedure of winding up such a bank or a financial institution.

Article 21

Another Deputy Director General shall be appointed for payment system operations to be responsible for the managing, regulating and overseeing of payment systems, including the functioning of the real-time gross settlement system.

Article 22

The Central Bank shall have the Chief Economist, as an executive officer managing the statistic and research department and responsible for macroeconomic analyses, including monetary, fiscal, financial and the balance of payments analyses of the economy of the Republic.

The Council shall appoint the Chief Economist upon the nomination by the President of the Council.

The Chief Economist shall tender advice to the President of the Council, the Council and the executive officers of the Central Bank on macroeconomic and monetary issues that are within the competence of the Central Bank and shall submit monthly reports to the Council on the condition of the economy of the Republic.

Article 23

(Official Gazette of the Republic of Montenegro)

04/05)

A member of the Council shall be relieved of duty if he/she:

- 1) is not eligible to be a member of the Council within the meaning of Article 15 of this Law;
- 2) has been a debtor in a bankruptcy proceedings;
- 3) has been sentenced to unconditional imprisonment or convicted of an offence which makes him unworthy of the position of the Council member;
- 4) has performed the function of the Council member unprofessionally and unconscientiously;
- 5) has become permanently incapacitated to perform the function of the Council member.

Article 24

The Council may decide to suspend a member of the Council against whom criminal proceedings have been brought, during the course of the proceedings.

Article 25

A member of the Council may tender a written resignation to the Parliament, upon a prior notice thereof made at least one month in advance.

Article 26

A vacancy in the Council shall be filled by the appointment of a new member of the Council in accordance with provisions under Article 14 above.

Article 27

A member of the Council may not be an officer or an employee in a bank operating in the Republic one year after his/her term of office in the Council has ended.

Article 28

The Council shall decide on the activities within its scope of work at meetings to be held at least once a month.

The Council may take decisions if there are at least five members of the Council present at the meeting.

The Council shall make decisions by the majority vote of the Council members.

Article 29

The Secretary of the Council shall take minutes of the Council meetings. The Council shall appoint the Secretary upon nomination by the President of the Council.

The Secretary shall make the minutes available to the President of the Republic, the Parliament and the Government for their review, after the minutes have been adopted by the Council at its next meeting.

III. BUSINESS OPERATIONS OF THE CENTRAL BANK

Article 30

The Central Bank may grant a bank licensed in the Republic, for the purpose of maintaining its daily liquidity, the following:

- 1) permission to use its statutory reserve requirement held at the Central Bank that the bank must restore to the prescribed level by the end of the same business day;
- 2) an intra-day credit from its own funds;
- 3) a credit from its own funds, provided that the amount of the credit is fully secured by securities issued by the Republic, an European Union Member State or another state specified in a regulation of the Central Bank.

The credit referred to in paragraph 1 point 3 above shall be granted or renewed for a period of one business day.

The securities used as pledge for the intra-day credit and credits referred to in point 3 above must be pledged on the basis of a pledge contract and delivered to the Central Bank by the borrowing bank .

The conditions and the manner of the use of the funds referred to in paragraph 1 above shall be regulated in more detail by the Central Bank.

Article 31

The Central Bank shall have the right of priority in the collection of its claims for any credit balance and other funds held in its account or in the account of the pertinent debtors, whether in the form of collateral for securing its claims or in another form, after such claims become due and payable.

The Central Bank may use the right referred in paragraph 1 above only if it has a credit balance or has sold other assets at a fair price and reimbursed itself from the sale proceeds after the deduction of the sale costs.

Article 32

For the purpose of maintaining liquidity in international payments, the Central Bank may purchase and sell foreign currencies at the foreign exchange market or hold foreign currencies in the form of banknotes or securities that have been issued and/or guaranteed by the European Union or the European Union Member State or another state designated in a regulation of the Central Bank.

Article 33

The Central Bank shall manage foreign exchange reserves of the Republic, except for the part that is managed by licensed banks.

The Central Bank may open accounts in foreign countries.

Article 33a

The Central Bank may purchase and sell securities issued by the Republic in the secondary market.

The Central Bank may purchase and sell securities at either the primary or secondary market that

are issued by a Member State of the European Union or another state designated in a regulation of the Central Bank.

Article 34

For the purpose of maintaining liquidity in international payments, the Central Bank may occasionally prescribe that the licensed banks must hold, as the minimum reserve, a certain percentage of foreign currency deposits freely available in the accounts in foreign banks or in the Central Bank.

Article 35

The Central Bank shall supervise the compliance with the regulations on foreign exchange transactions and foreign exchange reserves management, passed by itself or as a representative of the Republic, with the regulations in this field enacted by the Republic.

Article 36

The Central Bank shall perform international payment transactions in accordance with the principles of banking.

The Central Bank may , for its own account or for the account and on the order of the competent Republic authority, enter into clearing or payment agreements or sign such contracts with public or private central clearing houses domiciled in foreign countries.

Article 37

The Central Bank may organize, own, manage, oversee and regulate the manner of operation of payment system, settlement and inter-bank clearing in currencies determined by the Central Bank, including payments via cheques and other payment instruments.

Article 38

The Central Bank shall grant a license and perform the oversight of private clearing houses and private payment systems.

The rules for the licensing and manner of operation of payment systems shall be laid down in a separate regulation of the Central Bank.

Article 39

A bank licensed for operating in the Republic, which seeks to participate in payment system, must have an opened account with the Central Bank, under the conditions stipulated by the Central Bank, including maintaining the minimum balance in that account.

Article 40

The Central Bank shall organize the supply of banknotes and coins for the Republic.

Article 41

Banks and financial institutions engaged in cash operations shall be supplied with banknotes and coins from the Central Bank and shall bear the costs of the supply.

The costs of withdrawal and replacement of unfit banknotes and coins shall be borne by the Central Bank.

IV. SUPERVISORY FUNCTION OF THE CENTRAL BANK

Article 42

The Central Bank shall grant and revoke licenses to banking and financial institutions under the conditions prescribed by the law.

Article 43

The Central Bank shall perform the supervision of financial standing and legality of banks' and financial institutions' business operations.

In the performance of supervision specified in paragraph 1 above, the Central Bank shall have the right to examine business books and other documentation of banks and financial institutions, as well as of all other participants in the activity that is subject to supervision.

Article 44

If the supervision under Article 43 above reveals that the bank or the financial institution has acted contrary to the regulations and in the manner that jeopardizes their financial standing, the Central Bank shall issue an order to such a bank or financial institution to correct the identified irregularity and shall at the same time take measures against them, as prescribed by the Law.

Article 45

Licensed banks and financial institutions are obliged to furnish the Central Bank, at its request and without delay, with the information related to their business operation and financial position, in the manner prescribed by the Central Bank.

Article 46

The Central Bank shall keep a registry of licensed banks and financial institutions and their organizational units, a registry of banks authorized to perform international payment and credit operations, a registry of banks and financial institutions in foreign countries with domestic ownership or mixed ownership with invested Montenegrin capital, and a registry of foreign banks' representative offices, organizational units and other forms of financial activities, as well as other financial institutions in the Republic.

V INFORMATION SYSTEM OF THE CENTRAL BANK

Article 47

The Central Bank shall maintain bookkeeping records and process data and reports in accordance with accepted international standards, including the International Accounting Standards.

Article 48

The Central Bank shall collect data on macroeconomic, monetary, fiscal, financial, and the balance of payments trends necessary for exercising its powers set forth in Article 11 hereof.

Article 49

The Central Bank shall collect data from banks and other users on all export-import operations, foreign currencies used in those transactions, and the manner of payment for the purpose of establishing the existing debts and outstanding external obligations.

Article 50

The Central Bank shall prescribe the format and the content of the records, data processing, reports and transfer of data necessary for the application of this Law.

VI. PROPERTY, INCOME AND EXPENSES OF THE CENTRAL BANK

Article 51

The Central Bank shall use the property for performing its activities determined under this Law.

The property within the meaning of paragraph 1 above shall consist of ownership rights over: immovable and movable items, the founding capital and other financial resources, precious metals and other titles.

The Council shall pass more detailed regulations on the acquisition, use and management of the property.

Article 52

The founding capital of the Central Bank shall be DEM 5 million.

Within six months as of the payment of this amount of capital, the capital and the balance in the general reserve accounts of the Central Bank must equal at least five percent of the total amount of credit balances in all accounts, disclosed as liabilities in the balance sheet at the end of a financial year. The level of this aggregate minimum amount of funds must be at least five percent (5%) of the total amount of such credit balances. The capital may be increased by such amounts as may be respectively determined and approved by the Central Bank and the Government.

The capital of the Central Bank may not be pledged or subject to encumbrance in any other way.

Article 53

The Government shall allocate from available funds, within a month as of the day of announcement of the Central Bank's balance sheet, amounts necessary to cover disclosed deficits, whenever:

- 1) a monthly trial balance sheet of the Central Bank shows that the value of its property has fallen below the total amount of its liabilities and unimpaired founding capital, or
- 2) the amount of net income for any financial year is not sufficient to increase the founding capital and general reserves of the Central Bank that is equivalent to five percent (5%) of the total amount of credit balance in all accounts kept by the Central Bank, presented in the balance sheet of the Central Bank as liabilities at the end of the given financial year.

Article 54

Net income or net loss of the Central Bank shall be calculated for each financial year in accordance with accepted international accounting standards.

Net income shall be allocated each year to the general reserve account, until amounts of the founding capital and general reserve accounts equal the amount specified in Article 52 paragraph 2 hereof.

The balance of net income shall represent the income of the budget of the Republic and shall be transferred to the account of the Ministry of Finance established with the Central Bank.

Net loss shall be covered from general reserves or debited to the founding capital, in that order.

Article 55

In addition to the income earned in accordance with Article 51 above, the Central Bank shall also earn income from:

- 1) bank licensing fees;
- 2) bank supervision fees paid by banks; and
- 3) other fees for performing operations that are within the scope of activities of the Central Bank.

The decision on the amount of fees specified in paragraph 1 above shall be made by the Council.

Article 56

Material expenses of the Central Bank shall be determined in the annual financial plan adopted by the Council and communicated to the Government for information purposes only.

Article 57

The resources for the fixed assets fund, the special reserves fund, the non-operating assets fund and the employees' salaries fund in the Central Bank shall be accounted for in the financial plan and finally established in the annual financial statements.

The Council shall decide, upon the proposal of the President of the Council, on the use of special reserve funds during a year.

Article 58

The financial year of the Central Bank begins on the first day of January and ends on the last

day of December.

Article 59

Annual financial statements of the Central Bank for previous year shall be prepared in line with accepted international accounting standards.

The annual financial statements, with the report and the opinion of an independent external auditor, shall be considered and adopted by the Council by 31 May of the current year and shall be delivered to the Parliament for information purposes.

The financial plan of the Central Bank for the following year shall be adopted by the Council no later than by 30 September of the current year.

Article 60

The audit of accounts, records and financial statements of the Central Bank shall be performed by internationally recognized auditors appointed by the Council, as approved by the Government.

VII. CONTROL OF THE CENTRAL BANK'S OPERATIONS

Article 61

The Central Bank shall have the Inspector General, who shall be appointed by the Council upon the proposal of the Director General, for a six-year period, with a possibility of reappointment.

The Inspector General shall report to the Council.

The Inspector General may tender his resignation, but under at least two-month written notice to the Council.

The Director General shall be relieved of duty under the conditions prescribed in Article 23 hereof relating to the relieving of duty of members of the Council.

Article 62

Duties of the Inspector General are:

- 1) to assess the quality of the existing and proposed governance systems and systems of financial control and to test the functioning of those systems, as well as the reliability and protection of information and transactions;
- 2) to establish and maintain adequate procedures and instruments for risk control in the Central Bank;
- 3) to perform periodical control of administration and business operations of the Central Bank in order to ensure the strict implementation of the law and regulations related to the Central Bank;
- 4) to control and submit reports and recommendations to the Council about accounts and reports, as well as budgetary and accounting procedures and controls of the Central Bank, and
- 5) to review periodic financial statements and relevant documents of the Central Bank.

VIII. ORGANIZATION OF WORK AND STATUS OF EMPLOYEES IN THE CENTRAL BANK

Article 63

The fundamentals of organization and business operations, as well as the rights, obligations and responsibilities of employees in the Central Bank shall be regulated in more details in the Statute.

Article 64

The Director General shall hire employees for the Central Bank in accordance with the general regulations.

Employees of the Central Bank may, exceptionally, subject to the approval of the Director General, work in another legal person after-hours, provided that it is not contrary to the interests of the Central Bank.

Article 64a

During their term of office, members of the Council and the Inspector General may not hold any other office or employment, duty or function, except upon special approval granted by the Council.

During his/her term of office, no member of the Council nor any employee of the Central Bank may accept any gift or credit or other kinds of benefits from any party with whom he/she has related business or financial interests, if the acceptance thereof would affect his/her impartial discharge of his/her duties.

Article 65

Employees of the Central Bank may not be guided by their political affiliations in the discharging of their duties.

Article 66

Members of the Council and employees of the Central Bank are obliged to keep confidential professional and business secrets, regardless of the manner such a secret has come to their knowledge.

The confidentiality obligation under paragraph 1 above shall last for five years after the expiry of the term of office and/or the termination of employment in the Central Bank.

IX. PENALTY PROVISIONS

Article 67

A responsible person in a bank or a financial institution or in any other legal person that prevents the Central Bank from examining their business books and other documentation in the process of supervision shall be fined the amount ranging between tenfold and twenty-fold minimum wage in the Republic (Article 43).

Article 68

A bank or financial institution that does not provide or deliver to the Central Bank in the prescribed time limit information related to their business operations and financial position shall

be fined the amount ranging between tenfold and three hundred fold minimum wage in the Republic (Article 45).

A responsible person in the bank or the financial institution shall also be fined for the offence under paragraph 1 above the amount ranging between tenfold to twenty-fold minimum wage in the Republic.

X. TRANSITIONAL AND FINAL PROVISIONS

Article 69

The Central Bank shall start operating in accordance with this Law as of the day of appointment of the Council members.

Article 70

The Central Bank shall pass the Statute and other general regulations required for the enforcement of this Law within three months as of the day of entry into force of this Law, and it shall regulate its organization and business operations within six months as of the day of entry into force of this Law.

Article 71

The Central Bank shall take over the property and employees of the National Bank of Montenegro, including employees of the Settlement and Payments Institute (ZOP) – Podgorica as of the day of entry into force of this Law.

Employees not reassigned in accordance with the job classification scheme of the Central Bank shall exercise their rights stemming from employment in accordance with the general regulations on labour relations.

Article 72

The Central Bank shall coordinate activities related to the settlement of the external debt and the collection of claims against foreign countries originating before the entry into force of this Law.

Article 73

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro.