

7 May 2013

# Screening report

# Montenegro

## Chapter 10 – Information society and media

**Date of screening meetings:**

Explanatory meeting: 6-7 December 2012

Bilateral meeting: 21-22 January 2013

## I. CHAPTER CONTENT

The *acquis* on information society and media aims to eliminate obstacles to the effective operation of the internal market in electronic communications services and networks, promote competition and safeguard consumer interests in the sector, including the universal availability of basic modern services. It also includes rules on information society services and a transparent, predictable and effective regulatory framework for audiovisual media services in line with European standards. The Stabilisation and Association Agreement provides for cooperation between the EU and Montenegro in the area of audiovisual media services and electronic communications networks and services, including information society development. The ultimate objective as stated in the relevant provisions of the Stabilisation and Association Agreement is the adoption of the *acquis* by Montenegro.

The Digital Agenda for Europe (DAE) frames the information and communication technologies (ICT) strategy in the European Union and is one of the seven flagship initiatives of the Europe 2020 Strategy. The DAE aims at delivering sustainable economic and social benefits from a digital single market based on ultra-fast internet. The Digital Agenda Review adopted in December 2012 refocuses the Digital Agenda to further stimulate the digital economy through Key Transformative Actions such as: a new and stable broadband regulatory environment; new public digital service infrastructures and an EU cyber-security strategy and Directive.

## II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Montenegro and the discussion at the screening meeting.

Montenegro indicated that it accepts the *acquis* regarding Information Society and Media and that it does not expect any difficulties to implement the *acquis* by accession.

### **Digital Agenda for Europe (DAE)**

Montenegro stated that strategies and plans at national level are in line with the requirements of the DAE.

Montenegro's current information society development strategy (2012-2016) focuses on five pillars of development: ICT sustainability, ICT for community, ICT for public administration and ICT for economic development and the development of the media and broadcasting market. Plans for broadband development are included in the strategy and focus on measures to achieve 25% broadband access by 2014 and 40% by 2016.

Montenegro pointed out the need to advance further on **broadband** and on DAE actions in general. In October 2012, the fixed broadband penetration rate per 100 inhabitants amounted to 13,9%, while large differences in take-up between municipalities existed.

With regard to **fast and ultrafast internet access**, 34% of homes are in reach of an xDSL network, around 2% of homes connected with fibre and around 10% having fixed wireless or mobile wireless access. Montenegro estimates that only 21% of Internet subscribers have access to broadband networks with speeds exceeding 2Mbps.

The formulation of the policy and its implementation is under the responsibility of the Ministry for Information Society and Telecommunications.

In the area of the **digital single market**, Montenegro is currently experiencing a fragmented market limited to national portals (with limited possibilities for cross-border activities) and the market lacks interoperability.

With regard to trust and security, Montenegro established a computer incident response team (CIRT) in 2011 as a department within the Ministry for Information Society and Telecommunications and it plans to adopt a national strategy in this area.

Regarding **e-inclusion**, Montenegro stated that its objective is to reach a level of penetration of internet users of 75% by 2015 . 65% of vulnerable social groups should gain informatics literacy by the end of 2014 and 85% by 2016. Steps have been taken to address the 'e-inclusion' of marginalised groups focusing on e-Accessibility for all, Digital Literacy for all and ICT in business.

In terms of ICT-enabled benefits for society, Montenegro is already participating in the ICT Policy Support Programme (ICT PSP) which is part of the Competitiveness and Innovation Framework Programme (CIP).

## **II.a. Electronic communications and information and communications technologies (ICT)**

Montenegro liberalised electronic communications networks and services in January 2004. The current Law on Electronic Communications was enacted in 2008, and amended several times, with the latest amendments adopted in January 2013. Montenegro indicated that the law is currently under review. The new draft law, aiming at full alignment with the "2009 Telecom Package" (review of the 2002 EU regulatory framework for electronic communications), including the BEREC Regulation (EC) No 1211/2009, is expected to be adopted in 2013.

The current Law on Electronic Communications constitutes the general legal framework in Montenegro containing provisions, *inter alia*, on the promotion of open market and competition, non-discrimination in the treatment of undertakings and the promotion of consumer interests. However, Montenegro acknowledged that further improvements of the law are needed as regards the appointment and dismissal of both the Council members and the Executive Director of the national regulatory authority (NRA) - the Agency for Electronic Communications and Postal Services (EKIP). Further improvements are also needed as regards the appeals procedure and the jurisdiction of the Ministry over the NRA. Montenegro stated that all of these would be addressed by the new draft law. EKIP has launched an appeal before the Constitutional Court against articles in the Law on Electronic Communications regarding the automatic dismissal of its board and its Executive Director if its financial report is not approved by the Parliament.

Montenegro stated that the principles of management of radio frequencies, numbering and addressing resources and the mechanisms to ensure rights of way, co-location and facility-sharing are in line with the *acquis*. Montenegro indicated that it will align with the Citizens' Rights Directive 2009/136/EC of the 2009 Telecom Package through the new law on electronic communications.

Montenegro indicated that the competent authority in the areas of **regulatory framework for networks and services** and **radio spectrum** is the Ministry for Information Society and telecommunications (65 staff, 10 in the electronic communications department).

EKIP has currently 68 staff. The financing of the NRA is based on a percentage of the annual turnover of operators. The NRA proposes and executes the budget, which is then accounted for in the NRA's annual financial report. The Annual Report, including the financial report, is adopted by the Parliament. If the financial report is not adopted, the Parliament may release from duty the Council and the Executive director of the NRA. The current law was amended in January 2013 to allow for the transfer of any surplus of the NRA's budget to the state budget. The amendment stipulates that this is a provisional measure in force until 1 January 2016. The NRA's decisions can be appealed against in the first instance to the Ministry for Information Society and Telecommunications. The appeals procedure by the NRA and the Ministry for Information Society and Telecommunications must be completed within 50 days. Between 80 and 100 decisions are taken per year.

According to Montenegro, the NRA completed its first round of **market analysis** based on the 2007 Commission recommendation on relevant product and service markets (C(2007) 5406) within the electronic communications sector susceptible to ex ante regulation in accordance with the Electronic Communications Framework Directive 2002/21/EC. In all seven markets, the NRA imposed a full set of regulatory obligations including retail price controls, wholesale access obligations covering interconnection, carrier selection and pre-selection, wholesale line rental, local loop unbundling, wholesale broadband access and wholesale price controls.

In April 2009 EKIP signed a cooperation agreement with the Competition Authority aiming at ensuring competition and preventing harmful effects due to the lack of competition in the electronic communications market.

Montenegro stated that rights of way are dealt with in the Law on Legal Property Relations. The new draft law on electronic communications will include provisions on the rights of way. **Facility sharing** is dealt with under the law on Electronic Communications.

According to Montenegro, the incumbent is not functionally separated and both the network and the other services remain under the same ownership. The provisions on **universal service and end-user rights** are covered in the Electronic Communications law. Pay phones are not included in the minimum services set under the universal service. An out-of-court dispute resolution mechanism between service providers and end users exists and the NRA can impose a level for compensation if deemed necessary. The new draft law will include provisions on net neutrality (which are not covered under the current law). Montenegro indicated its interest in aligning with the **roaming Regulation** (EC) No 544/2009 as soon as possible.

The provisions on **access to and interconnection** are regulated in the law for electronic communications but Montenegro acknowledged that it is not in line with the 2009 Telecom Package as the law dates from 2008.

In the area of **radio spectrum**, Montenegro indicated that according to the law on digital broadcasting, the target date for analogue switch-off is set to 17 June 2015 but that the method is still to be decided. The NRA is in charge of adopting the Radio Frequency Assignment Plans and controls their implementation. A National Radio Frequency Allocation table exists. Studies on possibilities for usage of the digital dividend (790 – 862 MHz) in Montenegro are under way.

## **II.b. Information society services**

Montenegro stated that the formulation of the policy on information society and its implementation is coordinated by the Ministry for Information Society and Telecommunications.

In the field of **e-commerce**, Montenegro stated that its legislation is largely aligned with EU legislation. To that end the Montenegrin Act (80/04, 41/2010) on Electronic Commerce ensures a high level of alignment with EU Directive 2000/31/EC on e-Commerce. Draft amendments aiming at full alignment have been prepared.

Regarding the Montenegrin legislation on **conditional access services**, Montenegro stated that it is largely aligned with EU legislation. According to Montenegro, the Electronic Media Law (No. 46/10, 40/11, 53/11) is largely aligned with Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. Montenegro specified that it is aware of the need to align with the Conditional Access Directive in the part on information society services which is not covered by the current relevant legislation. Montenegro stated that alignment will take place in the context of the revision of relevant laws during 2013.

Regarding **e-signature**, Montenegro stated that the Montenegrin Law on Electronic Signature adopted in 2003 and amended in 2005 and 2010 is fully aligned with the Directive 1999/93/EC. The law is accompanied by a rulebook on the content and manner of keeping record and registry of certification services providers, a rulebook on measures and procedures of certificates and data protection related to the signatories and by regulations on measures of electronic signature and advanced electronic signature security.

Regarding the **re-use of public sector information**, Montenegro indicated that the Law on Free Access to Information which was adopted in 2005 and amended several times since, most recently in 2012, covers also the provisions of Directive 2003/98/EC.

Montenegro indicated that a new law on **e-government** is being prepared and is expected to be finalised in 2013. In the area of e-health, Montenegro stated that the development of integral health information systems is well-advanced, but acknowledged that legislation in this area still needs to be developed.

### **II.c. Audiovisual policy**

With respect to the general framework, Montenegro stated that its media legislation enshrines all fundamental freedoms, such as the freedom of expression, the freedom of media and the freedom of reception and transmission of television broadcasts. Legislative cornerstones are the Law on Media, the Law on Electronic Media and the Law on Public Broadcasting Services of Montenegro. In the field of audiovisual policy, the competent authority is the Ministry of Culture with currently three staff working in this policy area. The Agency for Electronic Media is the regulatory body for audiovisual media services. The Agency has currently a staff of 20. Montenegro acknowledged that the Agency does currently not have the capacity to continuously monitor media providers outside the capital. The Agency is functionally independent from any State authority and any legal or natural persons engaging in production and broadcasting of audiovisual media services. The Agency submits its operational and financial plans and reports to Parliament for approval. The Law on Electronic Media is currently under review with the aim of abolishing the obligation of the Agency for Electronic Media to have their budget approved by the Parliament and to submit financial and other operational reports to the Parliament of Montenegro.

Montenegro indicated that its legislation is largely in line with the Audiovisual Media Services (AVMS) Directive (2010/13/EU). The Law on Electronic Media enacted in 2010 and amended in 2011 and the Law on Media enacted in 2002 constitute the general legal framework in this area in Montenegro. The AVMS requirements regarding promotion of European works and independent works (e.g. quotas) were flagged by Montenegro as potentially requiring new by-laws. The activities of the Public Broadcasting Service, the RTCG, are regulated by the Law on

Public Broadcasting Services of Montenegro, adopted in 2008 and amended in 2012. The RTCG Council represents the public interest and is independent of any State authority or organisation and persons involved in the production and broadcasting of AVM Services. The RTCG is financed through contributions from the State budget (1,2% of the budget), advertising revenues and other own revenues from sales of audiovisual works and sponsorship.

Regarding **film heritage**, Montenegro stated that it applies European recommendations.

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

Overall, Montenegro has already reached a good level of alignment of the *acquis* in the fields covered by this chapter. However, legal alignment is only partial as regards the *acquis* on electronic communications. Legislation is not yet aligned with the 2009 EU telecom package. Montenegro needs to ensure full alignment with the *acquis* on electronic communications as well as sufficient resources for its implementation.

In the area of audiovisual policy, some amendments remain to be adopted to complete the alignment with the European media standards, notably the relevant recommendations and declarations from the OSCE, the Council of Europe and the European Commission, as well as with the Audiovisual Media Service Directive.

Montenegro's administrative capacity in the field of information society and media is generally satisfactory. However the capacity of the Ministry for Electronic Communications and the Agency for Electronic Media is limited. Montenegro will need to ensure that the administrative capacity is sufficient in view of the *acquis* requirements.

#### **Digital Agenda for Europe (DAE)**

Regarding the implementation of DAE, the preparation at national level is largely in line with the requirements of the DAE. However, Montenegro's broadband objectives are not yet aligned with the broadband objectives of the DAE and the relevant national strategies should seek to cover all the different aspects of a comprehensive and operational strategy as underlined by the European Commission in the Commission Staff Working Document on the implementation of national broadband plans of 21 March 2012 (SWD(2012) 68 final/2). Broadband penetration is considerably below EU targets set in the DAE.

Montenegro has been invited to the High Level Group on the Digital Agenda advising the Commission and is already participating in the ICT Policy Support Programme (ICT PSP) which is part of the Competitiveness and Innovation Framework Programme (CIP).

#### **III.a. Electronic communications and information and communications technologies (ICT)**

Regarding electronic communications and information and communications technologies, the Montenegrin legislation needs to be amended in order to ensure the independence of the regulator. Currently the appellate and supervisory powers of the Ministry for the Information Society and Telecommunications endanger the independence of the regulator. The same applies to some of the dismissal conditions of the president and the members of the Council of the NRA which appear vague. In case of non-adoption of the NRA's financial report by the Parliament, the Council and the executive director of the NRA are to be released from their function. In addition, the decisions of the NRA, although directly enforceable, are not final in the administrative procedure and can be appealed against to the Ministry.

Regarding the transfer of the NRA's surplus budget to the State budget, Montenegro needs to ensure that its legislation is brought in line with Article 12 of the Authorisation Directive 2002/20/EC.

Moreover, Montenegro's legislation needs to be brought in line with Article 3(2) of the Authorisation Directive to ensure that electronic communications services can be provided without any official decision by the regulator, as well as with all other provisions of the Directive.

The provisions in Article 3(2) of the Framework Directive on the functional separation of electronic communications networks and other services need to be ensured.

Alignment with Relevant Markets provisions as required in the 2009 EU Telecom Package needs to be ensured. Moreover, the notification obligations under Article 7 of the Framework Directive 2002/21/EC need to be contained in the law itself. Montenegro will need to ensure that the NRA will have the necessary administrative capacity once the BEREC Regulation applies to Montenegro.

The provisions of the 2009 revision of the Access Directive 2002/19/EC, including on facility sharing, need to be applied in the electronic communications legislation.

**Net neutrality** is not covered under the current electronic communications law.

Concerning **universal service**, Montenegro needs to ensure that its current review of the universal service obligation is in line with the *acquis*, in particular the 2009/136/EC Citizens' Rights Directive (part of the 2009 Telecom Package). Article 15 of the Universal Service Directive (USD) (2002/22/EC) refers to the competence of the Commission to review the scope of the USD and not to national competences.

Montenegro has implemented number portability for both fixed and mobile networks, but is not fulfilling the requirement of porting the number within one day.

Regarding privacy and electronic communications, Montenegro needs to implement the provisions in Directive 2009/136/EC<sup>1</sup> (part of the 2009 Telecom Package).

Regarding **radio spectrum policy**, Montenegro will need to fulfil the requirements on the conditions for the availability and effective use of the radio spectrum under Decisions 2002/676/EC and 2012/243/EU.

### **III.b. Information society services**

Montenegro is largely in line with the *acquis* on information society services and has the necessary administrative capacity.

Concerning alignment with **E-commerce Directive** 2000/31/EC Montenegro has to ensure that the principle of the prohibition of the prior authorisation for the provision of information society services is implemented in the national legislation. In as much as other basic principles of the E-commerce Directive are concerned, such as for example the recognition of internal market principles and the liability of intermediary service providers, a high level of alignment has been

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<sup>1</sup> Amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

achieved. As regards the transposition of the **conditional access Directive**, Montenegro's legislation is largely in line with the *acquis*. However, the current legislation which applies only to media services has to be extended also to information society services.

Montenegro's legislation is aligned with the **e-signature Directive** 1999/93/EC.

With regard to **trust and security**, Montenegro has established a computer incident response team (CIRT) as a department within the Ministry for Information Society and Telecommunications, as required by action 38 of the DAE.

Regarding the **re-use of public sector information** legislation needs to be aligned with the provisions of Directive 2003/98/EC..

Montenegro is aiming at adopting a new law on **e-government**, the draft is expected to be finalised in 2013. The new law should include provisions on cross-border services in line with the EU e-government Action Plan.

Regarding **e-health**, Montenegrin legislation and actions in this field needs to take into account the EU e-health Action Plan 2012-2020.

### **III.c. Audiovisual policy**

In the field of audiovisual policy, Montenegro's legislation is largely in line with the Audiovisual Media Services (AVMS) Directive.

The Commission will monitor progress on the implementation of the AVMS Directive, especially the independence of the Agency for Electronic Media and as regards proper enforcement of media legislation currently in force. Montenegro will need to ensure that administrative capacity is sufficient in view of the requirements of the AVMS Directive. The monitoring capacity of the regulator needs to be strengthened.

As regards public broadcasting service, Montenegro should follow the Council of Europe *acquis*, in particular Recommendation No. (96) 10 on the guarantee of the independence of public service broadcasting (and the attached guidelines) and Recommendation 1878 (2009) on “The Funding of Public Service Broadcasting”. A well-functioning public service media is one of key elements of ensuring media pluralism.

Montenegrin legislation and practices related to **film heritage** are in line with the 2005/865/EC Recommendation.

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