

Project Fiche – IPA National programmes / Component I

1 IDENTIFICATION

Project Title	Approximation of the legislation with EU Acquis
CRIS Decision number	2012/023-582
Project no.	08
MIPD Sector Code	7. Ad hoc measures
ELARG Statistical code	03.08 ¹
DAC Sector code	33110 trade policy and administrative management
Total cost (VAT excluded) ²	EUR 1.320.000
EU contribution	EUR 1.200.000
Management mode	Centralised
<i>Centralised mngmt:</i> EU Delegation in charge <i>Decentralised mngmt:</i> Responsible Unit or National Authority/Implementing Agency	Delegation of the European Union Montenegro
Implementation management	Delegation of the European Union Montenegro
Implementing modality	Delegation Agreement with GIZ
Project implementation type	C01 – project type interventions
Zone benefiting from the action(s)	Montenegro

¹ The different components of the project refer to different codes: Component 1 refers to 03.08, Component 2 to 03.03.

² The total project cost should be net of VAT and/or of other taxes. Should this not be the case, clearly indicate the amount of VAT and the reasons why it is considered eligible.

2 RATIONALE

2.1 PROJECT CONTEXT: ISSUES TO BE TACKLED AND NEEDS ADDRESSED

Strengthening the capacities of Montenegrin authorities to manage and enforce EU legislation related to internal market, competition and free movement of services is necessary to faster development of market economy.

The project will support efficient implementation of the Competition Law, better Enforcement record and higher level of effective competition on the market, contributing to general welfare and consumers' benefits. Another component of the project will support the creation and implementation of the Action plan for establishment a legal framework related to Directive on Services in the internal market 2006/123/EC.

2.2 LINK WITH MIPD AND NATIONAL SECTOR STRATEGIES

The MIPD (2011-2013) grouped priorities for support in three areas: (1) support to the key priorities defined by the EC in the Opinion; (2) the opening of three new IPA components; and (3) support to the approximation of national legislation with EU *acquis*³. More specifically, "IPA will concentrate on the outcomes of the Opinion highlighting that Montenegro should, (i) in the medium term, have the capacity to "comply with the requirements of the *acquis* in the following fields": taxation; enterprise and industrial policy; science and research; education and culture; customs union; financial and budgetary provisions; (ii) develop "additional efforts" in the following fields: freedom of movement for workers; right of establishment and freedom to provide services; free movement of capital; public procurement; company law; competition policy; financial services; information society and media (incl. electronic communications); intellectual property rights; transport policy; energy; economic and monetary policy; trans-European networks; consumer and health protection (incl. actions in public health⁴); (iii) carry out "considerable and sustained efforts" in: free movement of goods; intellectual property law; agriculture and rural development; food safety, veterinary and phyto-sanitary policy; fisheries; statistics; social policy and employment; regional policy and coordination of structural instruments; judiciary and fundamental rights; justice, freedom and security; financial control. Related to energy, as a member of the Energy Treaty Community, Montenegro is obliged to implement substantial parts of the *acquis* in energy, environment and competition. There are important shortcomings which will need to be addressed with financial support."

National Plan for Integration (NPI), adopted in 2008, is still the key national planning document for EU integration and the harmonization of national legislation with EU *acquis* which - according to the Article 73 of Stabilization and Association Agreement (SAA) focuses on fundamental elements of the protection of competition (p. 198-202).

Under the umbrella of the NPI there are a number of sector-specific strategic documents, which are directly link to this project. The most important is Montenegrin **Strategy for Protection of Competition**, which is framed for 2008-2010, is still a guiding policy

³ Multi Annual Planning Document 2011-2013, page 7

⁴ Such as human substances, communicable diseases, tobacco control, cancer screening, mental health.

document until the adoption of new Strategy. This competition strategy determines the whole range of activities of the Competition Authorities in order to achieve the goals and to contribute to general welfare in the public.

Also, **Strategy of fighting against corruption and organized crime** for the period 2010 – 2012 - In Section 3.11.2. **Public Procurement** defined the following objectives:

1. Regulatory framework improved in purpose of complete harmonization with the EU standards in this area and full efficiency, competitiveness and transparency of the public procurement procedures;
2. Enhanced administrative capacities of both competent authorities, as well as of consumer units, especially in the view of anti-corruption measures and integrity strengthening;
3. The EU Directive on Utilities implemented;
4. The electronic public procurement system put in place.

2.3 LINK WITH ACCESSION PARTNERSHIP (AP) / EUROPEAN PARTNERSHIP (EP) / STABILISATION AND ASSOCIATION AGREEMENT (SAA) / ANNUAL PROGRESS REPORT

Stabilization and Association Agreement between European Communities and their member states and Republic of Montenegro:

Art. 72 – guides toward the gradual implementation of compatible legislation of Montenegro with the EU *acquis*, for the period 2008 – 2012, Art. 73 (Competition and other economic provisions) and Article 59 (Right of establishment and freedom to provide services).

European Commission: Montenegro Analytical Report 2011:

“As regards the administrative capacity of the CPA, little progress has been made. This body currently employs 12 staff, of whom only five are case-handlers. This number is insufficient in view of the tasks assigned to the CPA by law. Resources remain a critical issue. However, there is an improvement in the law enforcement record” and “Further investment in the administrative, investigative and managerial capacity of the Competition Protection Administration is required” and “There has been some progress in competition policy. Yet, challenges remain on the administrative capacity of the CPA and the State aid bodies.”

“Further progress has been made in the field of *right of establishment and freedom to provide services* where, in general, alignment with the *acquis* is satisfactory. Continued work on mutual recognition of professional qualifications and on transposition and implementation of the Services Directive in order to achieve complete alignment is needed as well as further strengthening of the administrative capacity of the postal services regulator.”

The **European Partnership (EP)** document stresses the need to continue strengthening the relevant Internal Market authorities, aligning fully domestic legislation with the *acquis* and SAA requirements and its enforcement by all relevant authorities. More precisely in terms of competition it requires to: “Establish and provide adequate means for the operation of a competition authority with full functional independence.”

2.4 PROBLEM ANALYSIS

Component 1 of the project covers the Competition law. The competition authority has a staff of 12 civil servants, but only 5 of them are dealing with case studies; and overall capacities of this institution are insufficient to carry out all its tasks. Administrative capacity needs to be boosted and adequate financial resources need to be provided for adequate competition enforcement.

Technical support to the future Agency for Protection of Competition should be provided urgently and sufficiently in order to provide response on the needed support in growing activities and initiatives by the APC. As still growing and maturing institution APC must provide faster and adequate response to the needs of Montenegrin market in the EU accession process and strengthen the internal market developments, legal and business investment security.

There is still low level of competition law and policy awareness among general public, businesses and expert professionals as well as other civil servants in different branches – both Government and Judicial. Advocacy efforts are especially needed for expert professionals and public authorities, with special emphasis on judges in Administrative and Misdemeanour courts, in order to prevent any administrative barriers and monitor legislation enactment and enforcement in sensitive markets so as to allow for proper alignment with free market principles and non-impeded competition.

Component 2 deals with the right of establishment and the freedom to provide services. The right of establishment and free movement of services are crucial for the strengthening of European integration process in Montenegro and for achievement a balanced and sustainable economic and social development. Given the fact that the Stabilization and Association Agreement (SAA) entered into force on 1 May 2010, and that pursuant to Article 8 of the SAA, Montenegro is obligated to a period of 5 years from the ratification of the Agreement (2010 - 2014), assume all the obligations arising from it.

Directive of Services on Internal Market represents horizontal legal framework in area of freedom to provide services 2006/123/EC. In this regard Government of Montenegro has already successfully passed through few adjustments of its regulatory framework in field of services, namely WTO accession process and recently closed World Bank sponsored program for elimination of business barriers.

However, in difference to the aims of Directive 2006/123/EC these were all rather based on sectoral than on a horizontal approach. Thus, large variety of activities in Montenegro, such as consultancy services, certification services, estate agents, engineering, construction, distribution, tourism, leisure and transport are still not been thoroughly reviewed as to its compatibility with general internal market principles and EU law, respectively Directive 2006/123/EC. Thus Montenegrin market conditions and regulatory framework is inevitably carrying barriers that could be encountered at each of the six stages of the business process ranging from establishment of the service provider, use of inputs necessary for the provision of the service, promotion, and distribution and selling of services, to the after-sales phase. Also lack of information, and what is known as cultural/language difficulties in accessing information on applicable national rules and their interpretation currently takes various forms and occurs at all stages of the business process. These include difficulties arising from the use of local language with the authorities and problems occurring in areas where there are questions of interpretation of national laws resulting from unclear, inconsistent or unpredictable national jurisprudence.

Previous confirms finding on lack of understanding on interdependence of different service activities, which call for immediate horizontal based approach in eliminating legal and non-legal barriers in line with Directive 2006/123/EC

With respect to preparation for the implementation of this Directive, Ministry of Economy informed all national institutions competent for the transposition of this Directive, in order to get acquainted with her coverage. There is a plan to establish Working group consisted of civil servants from competent authorities with task to review the national regulations and administrative processes, rules and requirements which influenced free movement of services, and to create an Action plan for transposition of this Directive in to national legal framework. Therefore, it is necessary to strengthen administrative capacity of this Working group. The project will also support the implementation of this Action plan.

2.5 LINKED ACTIVITIES AND DONOR COORDINATION

For Component 1- EU has already financed technical assistance for Competition Law and Policy in under different CARDS and IPA i.e. PLAC II (CARDS 2004), TRIM-MNE (CARDS 2006), both implemented by GIZ, and AIM(IPA 2009) combining funding of the EU with funding of the German Ministry for Economic Cooperation and Development .

The AIM project, which ended in March 2012, was limited in time and human and financial resources (competition was just one among four components – competition (antitrust and concentrations), state aid, consumer protection, market surveillance). There is no other project substantially covering the field of Competition Law and policy (Antitrust, Merger Control, Liberalization) foreseen currently. According to desired enforcement of the new Competition Act which will introduce new competencies for the new to be established Agency for Protection of Competition (APC) a thoroughly planned and executed technical assistance program is absolutely necessary. This is also reconfirmed by the new competencies for the courts and urgent need to raise the level of competition culture and to provide for the added value to economic development of Montenegro.

For Component 2 - a close experience in screening and amending service related legislation, including coordination on the highest governmental level can be found in CARDS 2004 PLAC (02/2005-04/2007) and CARDS 2006 TRIM MNE (11/2007-05/2009) projects, funded by EU and implemented by GIZ, within the WTO accession process. GIZ bilateral Program for Economic Development and Employment Promotion (budget approx. 7.2 million EUR, with 6 million EUR funded by the German Ministry for Economic Cooperation and Development); duration from January 2005 to June 2012 provides support to development of the private sector. That corresponds to implementation of the measures foreseen by the Directive 2006/123/EC being aimed “to significantly facilitate life and increase transparency for SMEs and consumers when they want to provide or use services in the single market”.

2.6 Lessons learned

There are a number of generic lessons learnt through previous assistance to Public Administration Reform (institution building in Montenegro) which need to be incorporated into the implementation of this Project. These include:

Project implementation is often hampered by both insufficient staff or/and high turnover of staff, and resources allocated to (newly established) institutions is sometimes inadequate to them to properly exercise their mandate.

Coordination within the key stakeholders is needed. Further improvements in the regulatory systems are dependent on the stronger inter-institutional coordination, and on finding operational, working mechanisms for coordination and harmonisation of policies in various areas. The project will thus facilitate good and efficient coordination amongst stakeholders.

The personnel from beneficiary institutions responsible for the project have understood that the most pragmatic and effective methodology for the deployment of technical assistance is to create 'working groups' that are trans-sectoral and composed of representatives of all relevant stakeholders. This helps to ensure continuity and coherence from the assistance provided.

On the other hand for Component 1, exclusive experience of GIZ in Montenegro in introducing the EU internal market policies in Montenegro and in contributing to the approximation of the legislation in the key project fields (competition and state aid, from 2005 to 2011) has showed best results in building the capacities and communicating anti-trust issues to external stakeholders (government bodies, judges, business community and wider public) and therefore it is proposed as implementing management model for this project.

3 DESCRIPTION

3.1 OVERALL OBJECTIVE OF THE PROJECT

Facilitation of the EU accession process by supporting alignment of Montenegrin legislation with EU acquis in the fields of competition and services.

3.2 SPECIFIC OBJECTIVE(S) OF THE PROJECT

Component 1 - Strengthening capacities of the Agency for Protection of Competition (APC) in order to foster the competition on Montenegrin market;

Component 2 - Building the capacity of the Ministry of Economy to effectively transpose Directive on Services in the internal market 2006/123/EC and implement it

3.3 RESULTS

The project will achieve the following results:

Main anticipated results in **Component 1 - Competition**:

Result 1.1. Agency for Protection of Competition (APC) is fully operational and prepared for effective implementation and efficient enforcement of competition protection legislation.

This result will be measured by applying the following indicators:

- ❖ Credible Enforcement Record established, allowing the completion of negotiations on Chapter 8: Competition policy by 2016
- ❖ Increase in at least 50 % of the number of cases initiated ex-officio by APC in comparison with 2012
- ❖ Average time for dealing with cases reduced by 40% in comparison to the time needed at the project start;

- ❖ Increase in notification of concentrations for at least 30 %;
- ❖ Improved capacities for economic analysis of competition cases indicated by the number of economic analytical studies finalised (at least 50% more than in 2012)
- ❖ Number of interventions (e.g. prohibition decisions, decisions with remedies, planned mergers withdrawn by merging parties) in relation to the number of notification.
- ❖ Number of interventions re antitrust and cartels in relation to the number of investigated cases.
- ❖ "Success ratio" on appeal (i.e. the percentage of APC decisions that are upheld by appeal courts)

Result 1.2. Improved competition culture and awareness among sector regulators, business society and journalist.

This result will be measured by applying the following indicators:

- At least three information channels concerning protection of competition are regularly used (Number of publications on competition issues and positive trend in media reporting on competition issues)
- Decisions of APC are publicly available and used by public (number of users of the APC decisions and hits on APC internet page increased, internet page provides relevant information of EU acquis and relevant institutions)
- At least 20 members of sector regulators, and at least 50 people working in private sector (including journalists) involved in competition promotion activities such as trainings, publications, etc.,

Main anticipated results in **Component 2 - Services Directive**:

Result 2.1.: Comprehensive screening on the legislation in this area and further harmonisation of the legislation

This result will be measured by applying the following indicators:

- 90%, preferably 100%, Montenegrin legislation screened in this area
- Comprehensive monitoring report according to a template agreed (focusing mainly on compatibility assessment with chapters II, III and IV of the 2006/123/EC directive) beforehand with the European Commission / DG MARKT
- Action plan for the transposition of the Directive on services in the internal market 2006/123/EC prepared.
- More than 30% screened legislation amended and implemented

Result 2.2.: Administrative capacity in Montenegro built for continuous screening and amending of the legislation according to the requirements of the Services Directive after the end of the project

This result will be measured by applying the following indicators:

- At least 40% of the staff from competent bodies trained on services directive
- Coordination, steering and monitoring structure in place, well trained and endowed with a strong political mandate

3.4 MAIN ACTIVITIES

The project will be implemented through following activities:

Component 1- Competition:

Activities related to Result 1.1: Agency for Protection of Competition (APC) fully operational and prepared for effective implementation and efficient enforcement of competition protection legislation:

1.1.1 Legal analysis on the level of approximation of the national competition legislation with the EU acquis and provision of recommendations for further improvements and preparation of transposition tables (if applicable);

1.1.2 Comprehensive needs analysis with regard to institutional and administrative competences of the APC required for effective enforcement of the competition legislation and design of capacity building program (including but not limited to investigations techniques and imposing fines, and credible economic analysis);

1.1.3 Mentoring (on-the-job training and technical assistance) and day to day support on ongoing antitrust cases to APC, including provisions of advisory support to increase the no. of antitrust cases initiated *ex officio* (focus on sensitive competition cases);

1.1.4 In coordination with Activity 1.3. organize and deliver Internal capacity building program to APC. This activity should cover:

- At least 5 internal workshops/simulations of complex cartel cases for 8 persons (case-handlers and other relevant staff);
- Internal trainings and workshops (at least 6) on investigations techniques and imposing fines for 8 persons (case-handlers and other relevant staff);;
- At least 4 internal trainings and workshops with case based simulations on economic analysis for 8 persons (case-handlers and other relevant staff););
- Execution of 2 study visits (“shadowing”) on subject of economic analysis to the European Commission and selected National Competition Agency (NCA) of the EU member state

1.1.5. Support the creation of credible enforcement record by assistance to preparation of case management system of the APC;

Activities related to Result 1.2: Level of competition culture/awareness among sector regulators, business society including journalist increased:

1.2.1 Implementation of awareness raising activities on competition policies for strengthening competition culture (incl. interviews, press releases on most important activities of the APC, expert articles published in monthly magazines etc).

1.2.2 Develop and organize seminars for key target groups: Government and administration in general; Sector regulators; Business society; General public

- 8 seminars at Chambers of commerce during project implementation for at least 50 various participants from business society from all Montenegro (how many persons you plan to reach with your seminars);
- 4 seminars for sector regulators (e.g. banking and electronic telecommunication sectors) - for at least 20 persons;
- 2 seminars for journalist in order to increase public perception, and allow media to precisely formulate information and contribute to promotion of competition culture for at least 20 persons;

1.2.3. Translation of benchmark cases of the EU Court of Justice, and decisions and annual reports of the APC.

Component 2 Directive on Services:

*Activities related to **Result 2.1**: Comprehensive screening on the legislation in this area and further harmonisation:*

2.1.1 Screening of the Montenegrin legislation relevant in this area.

The screening process will cover a review of the regulations and administrative processes, rules and requirements which influence and cover trade and services (authorisation schemes, licence applications, certification, registration processes, approval systems and continuing requirements), to ensure that they comply with the Directive's criteria (primarily with chapters II, III and IV of the 2006/123/EC directive). The screening will identify the relevant requirements / authorisation schemes imposed on services providers as contained in each piece of relevant legislation. For each of these requirements the legal reference should be listed, as along with a description of the requirement, an indication of the overriding reason of general interest on which it is based (or not), an assessment of the proportionality and justification of the requirements and a reasoned explanation of the non-conformity (or compliance, as the case might be) with the Services Directive

2.1.2. Transposition and harmonisation including the following sub-activities:

- Preparation and adoption of an Action plan for the transposition of the Directive on services in the internal market 2006/0123/EC prepared This Action Plan should contain legislative and administrative timelines, the institutions responsible for the implementation, expected results and resources necessary, as well as the steering body responsible for the monitoring and authorised to take appropriate actions in case deadlines are not adhered to.

- Harmonisation - Any provisions found to be contrary to the requirements of Services Directive will be eliminated or amended in more than 30% of the legislation (i.e. more 30% of non-compliant legislation made compliant).

Activities related to **Result 2.2.:** Administrative capacity in Montenegro built for continuous screening and amending of the legislation according to the requirements of the Services Directive after the end of the project.

2.2.1. Establishment of a Coordination and steering structure/unit, empowered to ask ministries/governmental bodies to screen and to revise legislation in order to make it compliant with the Services Directive. This activity includes an analysis of the institutional and power set up and the legal and operational institutionalisation of the unit along with its empowerment and competence clarifications.

2.2.2. Training for the competent body/ies in Montenegro on how to monitor the areas covered by the Services Directive on an ongoing basis, including after the end of the project, and to prevent new restrictions. The training will include a study visit, consultative meetings, trainings for (40-50) representatives of the Working group members and other relevant stakeholders on the implementation of the Action Plan.

2.2.3. Translation, publication and promotion of a brochure on the Directive on services in the internal market 2006/0123/EC.

3.5 ASSESSMENT OF PROJECT IMPACT, CATALYTIC EFFECT AND CROSS BORDER IMPACT (WHERE APPLICABLE)

The project invests in gradual preparation of the Montenegrin regulatory systems of competition and services in the internal market for the challenges of joining the internal market. It combines activities related to improvement of both the legislative systems and the administrative capacity in both horizontal and vertical perspective. A focus is put also on raising the public awareness on key issues related to the normal functioning of the market economy. This integral approach will ensure the progress in enforcing the internal market-related policies of Montenegro. Thus, the project will impact positively the national economy by enlarging the space for competition and restricting unfair business and administrative practices. Stronger competition will ensure innovation, benefits for consumers, economic growth for the country, while simplification measures in service sector will significantly facilitate life and increase transparency for SMEs and consumers when they want to provide or use services from both, national and regional perspective.

The project will have also a positive impact on the capacity of the public administration to sustain long-term reforms. By creating a pool of Montenegrin officials well acquainted with such the two key issues related to the internal market – the core of the EU integration - the project will enlarge the resources of the country, thus allowing smooth cooperation and coordination with the respective EU bodies.

The catalytic effect of the project is reflected on speeding up of the reforms in both areas subject of this project. The adoption of new legislative instruments in the sectors of services and competition, will enhance the need for further legal harmonization to ensure not only the free movement of services, but also people and capitals and favourable business

environment. In the end, the catalytic effect of the enforced two internal market fundamental policies will be illustrated through increased competitiveness of the Montenegrin industry, better level playing field for foreign (e.g. regional) investors, and better and efficient trade regimes not only with the EU, but also CEFTA, and WTO.

3.6 SUSTAINABILITY

At present, there is a clear need to continue raising awareness of all stakeholders, as well as to ensure the sustainability of existing beneficiary expertise in order to raise the level of preparedness for the accession in these SAA-priority areas.

The sustainability of the project results will be addressed through strengthened administrative capacity which creates the framework needed for successful further progress in introducing the EU principles. Tools for achieving sustainability are training of the officials of the national institutions in the area of competition and free movement of service that is freedom of establishment, project partners (e.g. private sector) and other stakeholders; strong awareness-raising measures at all levels (public and private partners and general public); established stronger links between Montenegrin and EU institutions.

More efficient and transparent Internal Market institutions operating in compliance with the EU standards (e.g. competition and free movement of services) will ensure stable investment environment, which in its turn will attract investors and will enhance the country's economic development.

The internal market legislative and institutional enforcement will foster regional integration processes of Montenegro as well. The component 2 will help Montenegro to release growth potential of the services market. Thus improving the legislative and institutional framework conditions and policy instruments will significantly increase better conditions and transparency for SMEs when they want to provide services in the Montenegrin but also regional market.

EU funding will not replace other funding from the government or other donors and the EU funded intervention/project will result in benefits which would not occur otherwise.

The projects should imply building up of communication and co-ordination strategy generating a synergy among the key players and more generally, within the Government.

3.7 ASSUMPTIONS AND PRE-CONDITIONS⁵

The main assumptions are related to the continued GoM commitment to the implementation of the regulatory and administrative reform, and thus readiness to revise and adopt the new legislation harmonized with the EU. At the same time other main assumptions are related to the budgetary support needed for their implementation. All EU policies subject to this action are dependent on this assumption.

⁵ Assumptions are external factors that have the potential to influence (or even determine) the success of a project but lie outside the control of the implementation managers. Such factors are sometimes referred to as risks or assumptions but the Commission requires that all risks shall be expressed as assumptions. Pre-conditions are requirements that must be met before the sector support can start.

The success of this project will depend, to a large extent, on the effective participation and pro-active cooperation of the main project beneficiary (APC), the Project partners (Ministry of Economy, Ministry of Sustainable Development and Tourism, Ministry of Labour and Social welfare, Ministry of Culture, Ministry of Agriculture and Rural development, Business Society, Sector/Technical Regulators,) and other relevant key stakeholders involved, and to the effective coordination among these institutions.

Other, more specific assumptions underlying the Project intervention are related to a strong inter-ministerial co-operation in implementing the necessary reforms and limitation of fluctuation of trained staff. The other factors are speeding up the EU integration process, budgetary solidity for implementing the needed regulatory and policy reforms, etc.

The success of the Project will therefore depend on a high level of political commitment and strong cooperation of different actors to enforce the policies in the sectors of competition. Main assumptions for Component 1 are related to:

- Adoption of the new Law on Protection of Competition and creation of new, independent Agency for Protection of Competition;
- Sufficient resources (financial, human and technical) allocated for full enforcement of the new Law on Protection of Competition;
- Good and continuous interaction between APC and other partners relevant for the enforcement of competition rules;
- Private sector and sector regulators interested in Competition law and policy.

Main assumptions for Component 2 are related to:

- Further political support and commitment at governmental for the implementation of the EU acquis through implementing Action plan;
- Government and Parliament readiness to revise and adopt new legislation harmonised with the EU;
- New legislation adopted by the Parliament and Government in due time.
- Coordination and steering structure established in Montenegro, empowered to ask ministries/governmental bodies to screen and to revise legislation in order to make it compliant with the Services Directive

4 IMPLEMENTATION ISSUES

Proposed management mode is indirect centralized management. Proposed method of implementation is delegation agreement, with delegated partner being GIZ.

4.1 INDICATIVE BUDGET

EUR1.200.000 (IPA budget) + EUR 120.000 (private contribution) = EUR 1.320.000 (Total budget)

Indicative Project budget (amounts in EUR) (for centralised management)

<i>PROJECT TITLE</i>			SOURCES OF FUNDING									
			TOTAL EXPENDITURE	IPA CONTRIBUTION		NATIONAL CONTRIBUTION						PRIVATE CONTRIBUTION
	IB (1)	INV (1)	EUR (a)=(b)+(c)+(d)	EUR (b)	% (2)	Total EUR (c)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional/Local EUR (y)	IFIs EUR (z)	EUR (d)	% (2)
<u>All activities are covered by the project</u>												
contract 1	X	–	1.320.000	1.200.000	90						120.000	10
TOTAL IB			1.320.000	1.200 000	90						120.000	90
TOTAL INV												
TOTAL PROJECT			1.320.000	1.200 000	90						120.000	10

NOTE: DO NOT MIX IB AND INV IN THE SAME ACTIVITY ROW. USE SEPARATE ROW

Amounts net of VAT

- (1) In the Activity row, use "X" to identify whether IB or INV
- (2) Expressed in % of the Total Expenditure (column (a))

4.2 INDICATIVE IMPLEMENTATION SCHEDULE (PERIODS BROKEN DOWN BY QUARTER)

Contracts	Start of Tendering/ Call for proposals	Signature of contract	Project Completion
Contract 1(IPA + PC)	NA	Q1 2013	Q1 2015

4.3 CROSS CUTTING ISSUES

4.3.1 *Equal Opportunities and non discrimination*

There is extensive equal opportunity legislation in Montenegro. The proposed project will ensure that the internal policies, structure or operating procedures of the beneficiary institutions conform with and promote equal opportunity. In supporting legislative harmonisation, gender needs will be taken into consideration and provisions that enhance equal opportunities will be introduced.

All project activities will respect the principles of equal treatment and opportunities for women, especially trainings and awareness events.

4.3.2 *Environment and climate change*

Environment protection legislation in Montenegro is comprehensive and is going through a process of harmonisation with the EU acquis. The proposed project will give due cognisance to environmental issues. Generally, introducing effective policies for free movement of services and competition, has impact on nature protection as the increased awareness and demand on behalf of the consumers and the legislative requirements force business to invest into environmentally-friendly technologies. More specifically, education and training activities will also address the growing presence of environmental challenges to the internal market. Among others this will include increased use of electronic means, reduction in paper consumption (recto/verso prints) etc.

4.3.3 *Minorities and vulnerable groups*

Being the multiethnic society, Montenegro is committed to preserve the culture, history, language and religion of their national minorities and of the majority. The ability for minorities to access markets is essential for their future economic, social and political wellbeing.

Thus the beneficiary will be assisted through the project to implement mechanisms to ensure that in the legislative process, the internal policies, structure or operating procedures of the beneficiary institutions the principle of equitable representation of ethnic minorities and the protection of their rights is taken into consideration.

4.3.4 *Civil Society/Stakeholders involvement*

By supporting the introduction of the internal market policies in two sectors (competition and service) the project aims to include civil society in the implementation phase, primarily in awareness rising activities (e.g. training). Thus, in area of competition, active role of consumer protection organization is crucial since the restrictive practices and abuse of dominant position practices decrease the level of consumer welfare, for which reasons these organization in EU also represent stable source of information for any NCA. Beside these, those CO which deal with anticorruption have already proved to be reliable partner in indication of eventual bid-ringing type of restrictive practices found in public procurement procedures.

Beside civil society, project aims to involve other stakeholders such as media, professional associations, local authorities and institutions like academic institutions and research centres. In this manner project would contribute to the creation of contacts at different levels and sectors of activities, while building the long term partnerships and networking between mentioned stakeholders.

ANNEX 1: Logical framework matrix in standard format

LOGFRAME PLANNING MATRIX FOR Project Fiche		Project title and number	Approximation of the legislation with EU Acquis
		Contracting period expires	Execution period expires
		Total budget	€1.320.000
		IPA budget:	€1.200.000
Overall objective	Objectively verifiable indicators (OVI)	Sources of Verification	
Facilitation of the EU accession process by supporting alignment of Montenegrin legislation with EU acquis in the fields of competition and services.	<ul style="list-style-type: none"> • EC positive assessment in regular reporting on the progress achieved • Improved business environment, created level-playing field for business; • Improved business environment through changes in legislation for regularity in providing services on internal market 	<ul style="list-style-type: none"> ▪ EC Progress reports ▪ NPI ▪ Laws and bylaws adopted and published in Official Gazette ▪ Annual reports of beneficiary institutions 	
Specific objective	Objectively verifiable indicators (OVI)	Sources of Verification	Assumptions
<p>Component 1 - Strengthening capacities of the Agency for Protection of Competition (APC) in order to foster the competition on Montenegrin market;</p> <p>Component 2 - Building the capacity of the Ministry of Economy to effectively transpose Directive on Services in the internal market 2006/123/EC and implement it</p>	<p>Legislation fully compatible with EU aquis</p> <p>Convincing enforcement record re competition protection</p> <p>Improving harmonisation rate (positive trend in amendment of the legislation) on internal market for services</p>	<ul style="list-style-type: none"> ▪ Official Gazette ▪ EC Progress reports ▪ NPI ▪ Project Reports ▪ Annual reports of beneficiary institutions 	<ul style="list-style-type: none"> ▪ Government commitment to meet requirements of EU Internal market standards ▪ Political stability and Budgetary solidity; ▪ Government and Parliament readiness to revise and adopt new legislation harmonised with the EU ▪ Further political support and commitment of the Project partners and stakeholders for the implementation of the Internal market acquis ▪ Services Directive: Coordination and steering structure established in Montenegro, empowered to ask ministries/governmental bodies to screen and to revise legislation in order to make it compliant with the Services Directive

Results	Objectively verifiable indicators (OVI)	Sources of Verification	Assumptions
<p>Component 1 Result 1.1. Agency for Protection of Competition (APC) fully operational and prepared for effective implementation and efficient enforcement of competition protection legislation.</p> <p>Result 1.2. Level of competition culture/awareness among sector regulators, business society including journalist increased.</p>	<ul style="list-style-type: none"> • Average time for dealing with cases reduced by 40% in comparison to project start • Increase in at least 50 % of the number of cases initiated ex-officio by APC; in comparison to 2012 • Increase in notification of concentrations for at least 30 %; in comparison to 2012 • Credible Enforcement Record established • Improved capacities for economic analysis of competition cases indicated by the number of economic analytical studies finalised (at least 50% more than in 2012) • Number of interventions (e.g. prohibition decisions, decisions with remedies, planned mergers withdrawn by merging parties) in relation to the number of notification. • Number of interventions re antitrust and cartels in relation to the number of investigated cases. • "Success ratio" on appeal (i.e. the percentage of APC decisions that are upheld by appeal courts) <ul style="list-style-type: none"> ▪ At least 20 members of sector regulators, and at least 50 people working in private sector (including journalists) state, that their understanding on competition law and policy improved; ▪ Decisions of APC are publicly available and used (Number of hits to APC internet page increased, internet page provides relevant information of EU acquis and relevant institutions; ▪ At least three information channels concerning APC issues are regularly used (Number of media publications and positive trend in media reporting on competition issues) 	<ul style="list-style-type: none"> ▪ EC progress reports; ▪ Official Gazette; ▪ APC Annual report; ▪ Competition enforcement record; ▪ Project reports; ▪ Evaluation reports; ▪ APC web page; ▪ Study visit and Internship reports <ul style="list-style-type: none"> ▪ Training & learning materials; ▪ Project reports ▪ Annual reports of the targeted institutions ▪ Evaluation reports ▪ APC Web-page; ▪ Competition awareness rising campaign ▪ Media reports ▪ Official Gazette ▪ EC Progress reports ▪ NPI 	<ul style="list-style-type: none"> • Strong absorption capacity at the APC and other stakeholders for the planned TA activities; • Efficient coordination among key stakeholders in particularly complicated and multidimensional domains such as competition. ▪ Significant increase in resources of the APC, including retaining of trained staff ▪ Media interested in competition law and policy implementation and enforcement ▪ Further political support and commitment at governmental for the implementation of the acquis through implementing Action plan <ul style="list-style-type: none"> ▪ Strong absorption capacity within public administration

<p>Component 2</p> <p>Result 2.1.: Comprehensive screening on the legislation in this area and further harmonisation of the legislation</p> <p>Result 2.2.: Administrative capacity in Montenegro built for continuous screening and amending of the legislation according to the requirements of the Services Directive after the end of the project</p>	<ul style="list-style-type: none"> ▪ 90%, preferably 100%, Montenegrin legislation screened in this area ▪ Comprehensive monitoring report according to a template agreed (focusing mainly on compatibility assessment with chapters II, III and IV of the 2006/123/EC directive) beforehand with the European Commission / DG MARKT ▪ Action plan for the transposition of the Directive on services in the internal market 2006/123/EC prepared. ▪ More than 30% screened legislation amended and implemented ▪ At least 40% of the staff from competent bodies trained on services directive ▪ Coordination, steering and monitoring structure in place, well trained and endowed with a strong political mandate 	<ul style="list-style-type: none"> ▪ Project Reports ▪ Annual reports of beneficiary institutions ▪ Study visit and Internship reports ▪ Media reports ▪ Evaluation reports ▪ Training and learning materials 	<ul style="list-style-type: none"> ▪ Sector regulators and private sector committed to actively participate in the project,
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Activities to achieve results	Means / contracts	Costs	Assumptions
<p><u>Component 1</u></p> <p>1.1.1 Legal analysis on the level of approximation of the national competition legislation with the EU acquis and provision of recommendations for further improvements and preparation of transposition tables (if applicable);</p> <p>1.1.2 Comprehensive needs analysis with regard to institutional and administrative competences of the APC required for effective enforcement of the competition legislation and design of capacity building program;</p> <p>1.1.3 Mentoring (on-the-job training and technical assistance) and day to day support on ongoing antitrust cases to APC, including provisions of advisory support to increase the no. of antitrust cases initiated <i>ex officio</i> (focus on sensitive competition cases);</p> <p>1.1.4 Internal capacity building program to APC</p> <p>1.1.5. Support the creation of credible enforcement record by assistance to preparation of case management system of the APC;</p> <p>1.2.1 Implementation of awareness raising activities on competition policies for strengthening competition culture (incl. interviews, press releases on most important activities of the APC, expert articles published in monthly magazines etc).</p> <p>1.2.2 Develop and organize seminars for key target groups: Government and administration in general; Sector regulators; Business society; General public</p> <p>1.2.3. Translation of benchmark cases of the EU Court of Justice, and decisions and annual report of the APC.</p>	<p>1 delegation agreement to the amount of 1.320.000 EUR</p>	<p>EU funding - 1.200.000 GIZ funding 120.000</p> <hr/> <p>Total funding 1.320.000 EUR</p>	<ul style="list-style-type: none"> ▪ Government and Parliament readiness to revise and adopt new legislation harmonised with the EU ▪ New legislation adopted by the Parliament and Government in due time. ▪ Administrative capacity to implement commitments under the SAA and WTO;

Component 2

2.1.1 Screening of the Montenegrin legislation relevant in this area.

2.1.2. Transposition and harmonisation including the following sub-activities:

- Preparation and adoption of an Action plan for the transposition of the Directive on services in the internal market 2006/0123/EC

Harmonisation - Any provisions found to be contrary to the requirements of Services Directive will be eliminated or amended in more than 30% of the legislation (i.e. more than 30% of non-compliant legislation made compliant).

2.2.1. Establishment of a Coordination and steering structure/unit, empowered to ask ministries/governmental bodies to screen and to revise legislation in order to make it compliant with the Services Directive.

2.2.2. Training for the competent body/ies in Montenegro on how to monitor the areas covered by the Services Directive on an ongoing basis, including after the end of the project, and to prevent new restrictions.

2.2.3. Translation, publication and promotion of a brochure on the Directive on services in the internal market 2006/0123/EC.

Technical assistance

ANNEX 2: Description of Institutional Framework

For Component 1:

Government of Montenegro on the session held on 29.10.2009, has established the Rulebook on internal organization and systematization of Directorate for competition protection, and officials' and employees' placing for 16 executers were systemized, out of which 12 are currently employed with the Director. By the Rulebook on internal organization and systematization of the Administration for competition protection, within established responsibilities of the Administration three internal units were formed:

- Department for following concentrations, forbidden agreements, abuse of dominant position and international cooperation
- Referee for infringement procedure prosecution
- Department for general operations.

Competences of the Administration for competition protection are: to follow competition in the market in general and in particular economic areas; to approve exceptions for certain forbidden agreements and approve concentration of participants, under prescribed conditions and solve other issues which fall under its competence according to this law; to take decisions in the procedure of establishing the violation of competition as prescribed by this law; to take measures towards participants and associations of participants for violations of competition or their prevention, stopping the violation and removal of consequences harmful for participants and consumers; to analyse situation in the market from the point of free and efficient competition, and to report to the Ministry on the facts established; to prepare professional foundations for making by-laws, application of European and other international standards and instruments from the area of competition protection to publish statistical data from the area of competition protection, etc.

For **Component 2:** Ministry of Economy has 8 departments: Department for Transformation and Privatization, Department for Energy, Department for Energy Efficiency, Department for Mining and Geological Researches, Ministry for Industry and Entrepreneurship, Department for Internal Market and Competition, Department for Multilateral and Regional Trade Cooperation and Economic Foreign Relations.

Department for Multilateral and Regional Trade Cooperation and Economic Foreign Relations has 18 employees currently.

The following Units in the Department are:

- Unit for policy and foreign trade regime,
- Unit for improvement of investment environment,
- Unit for bilateral cooperation with foreign countries,
- Unit for multilateral trade cooperation and
- Unit for regional trade cooperation, regional organisations and initiatives

Department for Multilateral and Regional Trade Cooperation and Economic Relations in 2012. is aimed at further development of economic relations through the creation of new and implementation of existing agreements on economic cooperation and

investment protection and promotion. Great attention will be devoted to activities related to implementation of the WTO and CEFTA 2006 agreement and is expected to start implementation of the Regional Pan Euro Mediterranean Convention rules of origin. The main objective of the Department for Regional Development is to establish a system for implementing the policy of balanced regional development based on the solutions defined in the Strategy of Regional Development and the Law on Regional Development. Achieving this goal will contribute to make the remaining by-laws under the Act and the drafting of the Action Plan to implement the Strategy in 2012. and 2013. year. Creating conditions for increasing competitiveness of all parts of the country and recognition of their development potential will contribute to developing strategies for sustainable economic growth through the introduction of clusters and strategic development plans of local governments. The adoption of these documents creates a basis for the preparation and implementation of development programs and projects, based on which will allow the use of pre-accession funds of the European Union and other international sources of funding intended for regional development.

ANNEX 3: Reference list of relevant laws and regulations only where relevant

Component 1:

Legislation in the area of competition represents the Law on Protection of Competition (Official Gazette of the Republic of Montenegro, No 69/05), which started to apply as of January 2006 and Law on Amendments to Law on Protection of Competition (Official Gazette of RMN, No 37/07), which the was adopted by Parliament on 6th May 2007, and this created the legal framework for the establishment and work of the operative independent entity for competition protection - the Directorate on Protection of Competition.

During 2006 and 2007 the following bylaws were adopted:

- Decree on detailed conditions for exemptions of agreements as per types and determination of types of agreements which can be exempted for prohibition (Official Gazette of RMN No. 10/07)
- Regulation on content of the application and mode of registry of notified agreements (Official Gazette of RMN No. 36/06)
- Regulation on content of the request for individual exemption (Official Gazette of RMN No. 36/06)
- Regulation on form and content of application for the registry of approved concentrations and the application form and mode of running the registry(Official Gazette of RMN No. 36/06)
- Regulation on the form and content of the request for initiation of proceedings (Official Gazette of RMN No. 36/06)
- Instruction on criteria in defining the relevant market (Official Gazette of RMN No. 77/05)
- Instructions on the form and content of the request for issuance of approval for proposed concentration (Official Gazette of RMN No. 77/05)

Component 2:

The most relevant legislation in the area of free movement of Services are:

- Company Law
- Law on consumers protection
- Law on Advocacy
- Law on Accounting and Auditing
- Law on Tax Advisors
- Law on Space Planning and Construction
- Law on e-Signature, Law on Amendments of Law on Electronic Signature
- Law on Electronic Commerce, Law on Amendments of Law on Electronic Commerce
- Law on Electronic Document
- Law on agriculture and rural development
- Law on Hunting
- Veterinary Law
- Law on Scientific-Research Activities, Law on Legal Property Relations, Media Law, Broadcasting Law
- Law on Standardization
- Law on wild animals and hunting, Law on Forests, Law on Agricultural Land
- Law on Marine Fishery,
- Law on River Fishery
- Law on Mining
- Law on Geological Research
- Energy Law
- Law on Cinematography
- Law on Theatre Activities
- International Trade Law,
- Law on Internal Trade
- Law on Foreign Trade in Weapons, Military Equipment and Dual-Use
- Law on Primary Education and Upbringing, Law on Secondary Education, Law on High Schools, Law on Vocational Education, Law on Higher Education, Law on Adult Education, Law on Preschool Upbringing
- Utilities Law, Waters Law, Environmental Law
- Law on the maintenance of cleanliness, waste collection and use.
- Law on Environment Protection
- Law on Waste Management
- Law on the ski slopes
- Tourism Law, Law on Tourism Organizations
- Law on sport
- Law on Crafts
- Foreign Investment Law
- Foreign Trade Law
- Law on Regional Development
- Law on General Administrative Procedure

ANNEX 4: Details per EU funded contract (*) where applicable:

Contract: indirect centralised management (delegation agreement to GIZ)

The selection of the method of implementation and the delegatee body is based on:

(1) exclusive experience of GIZ in Montenegro in introducing the EU internal market policies in Montenegro and in contributing to the approximation of the legislation in the key project fields (competition from 2005 to 2012). Also, an exclusive experience in screening and amending all service related legislation, including coordination on the highest governmental level gained within the WTO accession process and preparation of Offer on Services, in GIZ implemented CARDS 2004 PLAC (02/2005-04/2007) and CARDS 2006 TRIM MNE (11/2007-05/2009) projects. Currently GIZ is implementing IPA 2009 AIM Project to the full satisfaction of the beneficiaries (e.g. competition), while in parallel is preparing implementation of the IPA 2011 Project "Strengthening State Aid Management" combining EU funding with funding of the German Ministry for Economic Cooperation and Development. Harmonizing activities of the IPA-program and Montenegrin-German bilateral cooperation by combining funding and project implementation will allow using synergies and ensuring effective assistance to the beneficiaries.

(2) Proven experience of the GIZ bilateral Program for Economic Development and Employment Promotion (budget approx. 7.2 mil EUR, with 6 mil. EUR funded by the German Ministry for Economic Cooperation and Development, duration from Jan. 2005 to Jun 2012) with the objective: "Effective support structures and instruments enhance prospects for development and growth in selected areas of the private sector" that corresponds to the simplification measures foreseen by the Directive 2006/123/EC being aimed "to significantly facilitate life and increase transparency for SMEs and consumers when they want to provide or use services in the single market".

(3) The need to sustain the reforms in the targeted sector (competition and services in the internal market) without a delay and using the momentum gained through still running projects (e.g. AIM/ Economic Development and Employment Promotion, as well as other upcoming activities implemented in cooperation between the ME and GIZ). This requires a very quick launch of the current project after the signing of the Financing Agreement, while securing that common and interrelated objectives of different programs (BMZ/GIZ and IPA) improve its efficiency and effectiveness.

(4) Considering the capacity of the EU Delegation as a contracting authority, the number of projects funded under IPA (2008, 2009, 2010 and 2011) and primarily the fact that the introduction of DIS in managing the EU funds will not be achieved before the implementation of IPA 2012/2013 cycle.

The Contract will be managed by a project manager, whose tasks include:

- Overall project supervision and coordination to ensure high quality outputs and results;
- Mobilising short- and medium term experts and approval of their performance;
- Executing administrative tasks (i.e. preparation of reports, side letters etc.)
- Communication with the beneficiaries and the Contracting authority;
- Participation in the regular Steering Committee meetings.

The human resources to be ensured for the implementation of this contract include at least the following senior experts: a legal harmonization, competition enforcement/capacity building, IT and awareness raising.. The input from the Project manager and the senior experts will be provided in the beneficiary country and in the place of residence ensuring however expertise on site.

The Ministry of Economy and APC will assign one person as a National Project Coordinator, who will interact with the Contractor and the EU Delegation. The work of the national project coordinator will be supported by the Ministry of Economy.

Additionally, the beneficiary institutions will have to:

- Ensure the participation of the appropriate people in all project events and activities;
- Actively cooperate in making available information relevant to the project;
- On own initiative and upon request by the Contractor, establish contacts with people and organisations that are considered instrumental in achieving the project objectives;
- Provide all possible assistance to solve unforeseen difficulties related to implementation;
- Provide technical and organisational support for the organization of the international conference.

A Steering committee (SC) will be established to review the project progress. It will comprise of representatives of beneficiary institutions and the EUD. The SC may invite other organisations to attend meetings where this will bring added value to discussion, direction and outcomes of the Project. Representatives of the other key stakeholders may also be invited at the meetings of the SC. The Contractor will provide the SC with expert and secretarial support.

The main functions of the SC are to:

- assess Project progress and guide it strategically;
- jointly discuss any critical points or bottlenecks for further project implementation;
- propose and discuss remedy actions to be taken in order to tackle problems;
- issue recommendations on timing or project contents, and
- comment and discuss the project reports.

The SC will meet at least every six months.

NOTE: Instead of national co-financing, international co-financing is envisaged by German Federal Ministry for Economic Co-operation and Development (BMZ), subject to its approval. This is to be considered as co-financing and approved amount will relate to project implementation.

ANNEX 5: Project visibility activities

The visibility of the project among Project Partners and other key stakeholders will be an important task in terms of project management. This will imply a permanent communication routine with the EUD and the main beneficiary. Furthermore, a constant communication with all target groups directly affected by the project activities will be established to ensure participation in and support of all project activities. Among others, this especially embraces awareness rising activities in component 1, where new system of competition, its institutions, the legal framework and the procedures requires that all key stakeholders are reasonably aware and familiar with it.

In more, general approach of the project should be that each seminar besides its importance for capacity building is an opportunity to introduce and further promote free movement of services/competition culture (rise awareness) among key stakeholders and general public. To reach the general public as well, project will secure that all seminars are appropriately followed by media, either by invitation to follow up on them or by delivering press release on selected events.

Finally, project-related information is to be disseminated to other interested parties, which will be identified during the course of project implementation, e.g. other donors, embassies, academic institutions, NGOs and the media. Another additional activity, which can contribute to awareness rising is cooperation with the Chamber of Economy covering all topics of the Project. Since this project covers a multitude of trade related aspects, the awareness raising efforts to promote the project as well as the progress of governmental reforms, have to be improved and extended to all participants of Montenegrin economy.

In order to achieve high level and consistency of this EU funded action, all external communication of the project will be prepared and delivered in compliance with the latest “EU visibility guidelines for external actions” which is set up at http://ec.europa.eu/europeaid/work/visibility/index_en.htm, and similar supporting the GoM EU Communication Strategy.