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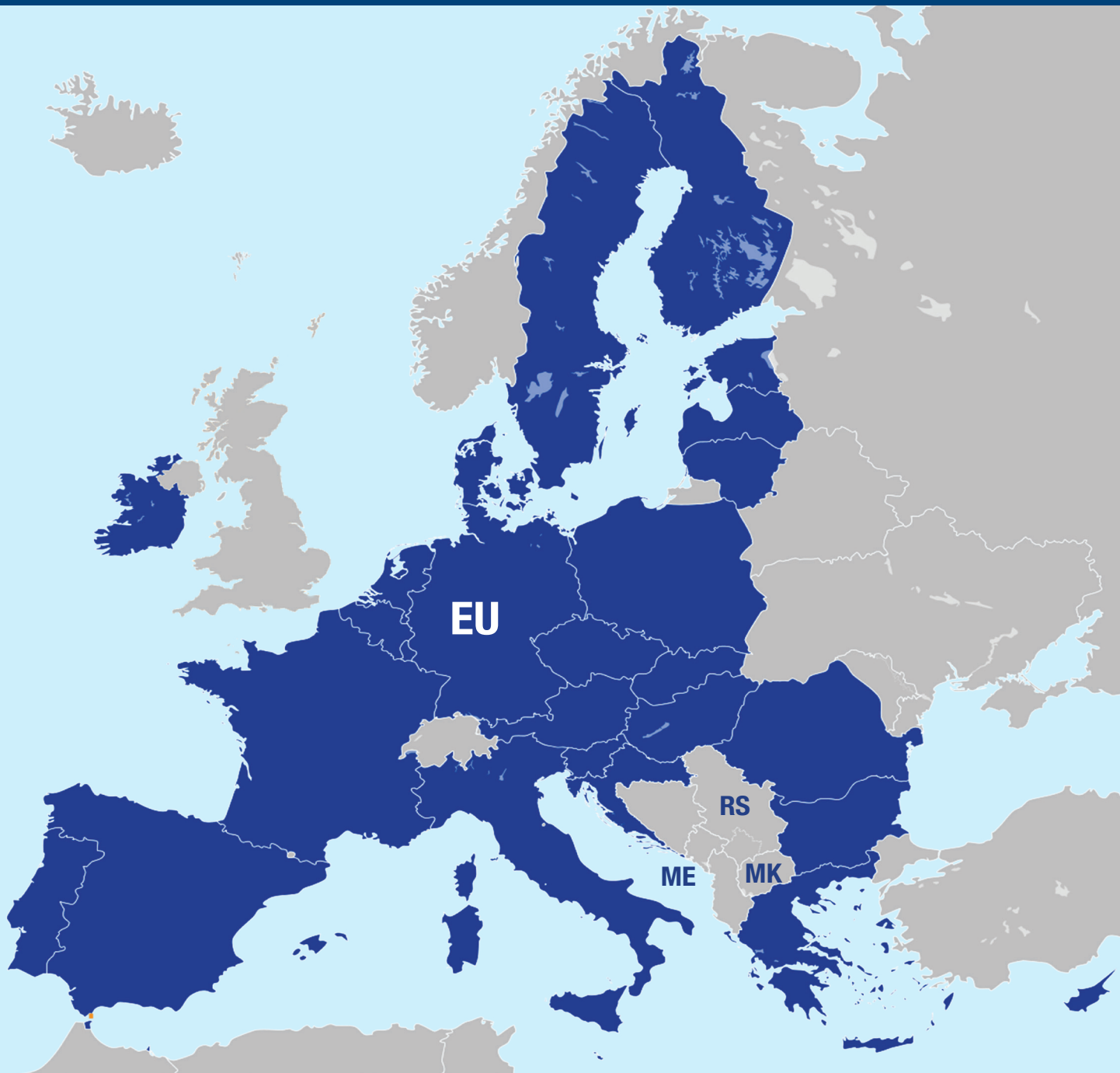
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TOWARDS NEGOTIATION IN THE AREA OF COMPETITION POLICY: **CHALLENGES FOR NORTH MACEDONIA, SERBIA AND MONTENEGRO** *NSMcompete*

Montenegrin Pan-European Union



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I. INTRODUCTION

The competition acquis covers both anti-trust and State aid control policies. It includes rules and procedures for fighting against anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), supervising mergers between undertakings, and preventing governments from granting State aid which distorts competition in the internal market. Generally, the competition rules are directly applicable in the whole Union, and Member States must co-operate fully with the Commission in the enforcement thereof.

The negotiation chapter 8 - Competition policy is recognized as highly sensitive and one of the most important “economic” chapters in the accession negotiation process. Based on previous experiences, it is usually one of the last chapters to be opened in negotiations. According to the new EC methodology, this chapter will be opened in the second cluster of chapters, within the group of nine economic chapters related to the EU internal market.

The competition acquis is to a large extent linked to commitments from the Stabilisation and Association Agreements, which North Macedonia, Serbia and Montenegro have signed with the EU and which will be further negotiated through the accession process.

The main goal of this project is to present coverage of the Chapter 8 – Competition policy and its importance for the EU single market, as well as status and/or level of preparation for the negotiation in competition policy area in selected countries of the Region.

The overall project goals are to strengthen dialogue between academic community, NGOs, Government and businesses related to common European policies, to support exchange of experiences between the candidate countries, to improve knowledge about State aid rules/competition policy and its impact on quality and scope of the negotiation process and to understand EU integration process and its impact on the economy and quality of citizens’ life.

Based on Croatia’s experience, as well as the experiences of North Macedonia, Serbia and Montenegro, and the experience of temporary changes of the State aid rules in the COVID-19 pandemic, this short **summary** of the situation and key challenges in competition policy negotiations should stimulate discussion and work on defining recommendations on the Conference to be held in Podgorica in the end of October.

The conference “Towards negotiations in the area of competition policy: Challenges for Northern Macedonia, Serbia and Montenegro” is organized by the Montenegrin Pan-European Union with the support of **the Balkan Trust for Democracy (BTD) initiative and the Norwegian Embassy in Belgrade.**

**II. PREPARATION FOR
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The accession negotiations are to a large extent technical process which defines the conditions and timing of adoption, implementation and enforcement of the EU acquis by a candidate country. The EU acquis is not negotiable, it is on each candidate country to transpose the EU legislation and to demonstrate sufficient administrative capacities to properly implement and enforce the EU rules. The acquis is constantly evolving and expanding and each wave of enlargement has added complexity for subsequent candidate countries. This makes the process of accession negotiations even more challenging for new candidates. With the aim of enabling a smooth transition and gradual adoption of the single market rules, the candidate countries are encouraged to undertake necessary reforms at an early stage of the accession process.

Stabilisation and Association Agreement

In several areas obligations of candidate country for alignment with the EU acquis are well established before the official opening of accession negotiations. One of the areas is Competition policy, including the State aid rules. The Stabilisation and Association Agreement which constituted the framework for relations between Croatia and the European Union basically established a clear obligation of Croatia to fully comply with competition rules as defined by the Treaty on the Functioning of the European Union prior to the accession to the EU.

Such an obligation has set a precedent in the Croatian legal system. The Competition Act of 2009 stipulates that “particularly in the case of legal voids and uncertainties relating to the interpretation of competition rules, accordingly the criteria arising from the application of the competition rules applicable in the European Community apply”. This was the first and the last time that Croatia made EU law directly applicable before acceding to the EU.

Opening and closing benchmarks

Opening and closing benchmarks as condition(s) for the opening or provisional closure of chapters are clear indicator of the challenges that candidate country might have during the process of accession negotiations. On one hand, benchmarks are in direct link with administration system of the candidate country and may require greater independency or stability of institutions, increased administrative capacities or adequate track record. On the other hand, the administrative changes have a direct impact on the performance of business community. The more candidate countries protect certain markets, the more difficult the negotiations in that area will be.

In Chapter 8 Croatia had five opening and four closing benchmarks which required restructuring of traditional industries such as shipbuilding and steel industry, but also demanded stronger capacities of competent authorities and full transposition of the acquis under Chapter 8.

The opening benchmarks were:

- The Republic of Croatia should adopt a National Restructuring Program for the steel sector, accepted by the Commission, in accordance with Article 5, paragraph 3 of Protocol 2 on steel products to the SAA.
- The Republic of Croatia should adopt individual restructuring plans for each of the shipyards in difficulty in accordance with the requirements arising from Article 70 of the SAA. The individual restructuring plans must be accepted by the European Commission and can then be included in the national program for the restructuring of the shipbuilding industry.

- The Republic of Croatia has to align the Law on Corporate Income Tax, Law on Promotion of Investments and Law on Free Zones with the EU regulations on State aid in accordance with the requirements arising from Article 70 of the SAA.
- Croatia should present the Action Plan, adopted by the Commission, with a clear timeframe for the alignment of all remaining State aid programs or equal measures in the list of State aid, identified as incompatible with the obligations arising from the SAA.
- The Republic of Croatia needs to ensure transparency of State aid by completing a comprehensive inventory of all State aid measures for the remaining sectors (aluminium and metals sector, textile, leather and footwear, automotive sector and the tourism sector).

The closing benchmarks were:

- The Republic of Croatia needs to continue to strengthen its administrative capacities and demonstrate a satisfactory enforcement of the competition policy legislation.
- The Republic of Croatia needs to complete the legislative alignment with the EU acquis.
- The Republic of Croatia needs to adopt an updated National restructuring program for the steel sector and individual business plans, accepted by the European Commission, in accordance with the requirements of Protocol 2 on steel products to the SAA.
- The Republic of Croatia needs to ensure full compliance with EU rules on State aid in the shipbuilding sector, in particular:
 - for each of the shipyards in difficulty a restructuring plan must be adopted in compliance with the EU acquis and accepted by the Agency for Protection of Competition and the European Commission;
 - no shipyard will take any new commission until the restructuring plans are accepted by the European Commission;
 - if any of the shipyards fails to submit an acceptable restructuring plan, the Republic of Croatia will have to adopt a bankruptcy plan for the shipyard in question, in accordance with national legislation, adopted by the Agency for Protection of Competition and the European Commission. Such shipyards will no longer be allowed to receive new commissions and will only be allowed to receive new State aid strictly limited to what is necessary for the completion of existing commissions.

The Action Plan was based on the list of the existing aid schemes and other legal documents which served as the basis for State aid approval. The Action Plan contained a table with the title of the scheme/other legal documents which had to be aligned, provisions of the scheme/other legal documents which had to be aligned, the competent authority entrusted with the alignment and the status of alignment. The Action Plan included more than 45 documents.

Croatia was also obliged to align the so called “fiscal acts” with the acquis. The legal framework of Croatia provided for a regime of tax measures that favoured recipients by reducing the company’s tax burden and included the following legislation: Law on Investment Promotion, Law on Free Zones, Law on Areas of Special State Importance, Law on Hilly and Mountainous Areas and the Law on Reconstruction and Development of the Town of Vukovar.

The first Competition Law was adopted in 1997, and new laws in 2003 and 2009. The Competition Law of 2003 was largely aligned with the EU acquis, but the Law of 2009 introduced several novelties and further strengthened the Croatian Competition Agency. Inter alia, the Agency was authorised to impose penalties which was an important step forward in implementing competition rules in Croatia.

Over the past 13 years the role and administrative capacities of the Agency were significantly strengthened. The Agency has 53 employees and annual budget of 1.8 million EUR. The Agency today is the authority competent for identifying prohibited agreements between undertakings and defining commitments necessary for elimination of harmful effects of anti-competitive practices, identifying the abuse of a dominant position by undertakings and prohibition of any

practices leading to the abuse, as well as defining the commitments necessary for elimination of harmful effects of such anti-competitive practices, and assessment of compatibility of concentrations between undertakings.

After the accession to the European Union, the Croatian Competition Agency restored its competence for the application of Competition Law in the banking sector belonging to the area of antitrust. The Agency is also a part of the European Competition Network and contributes to creating a common competition policy.

As of December 2017, the Agency is also competent authority for implementation of the Law on Prohibition of Unfair Trading Practices in the Business-to-Business Food Supply Chain.

On the economic side of the accession process the most of discussion was connected with shipbuilding and steel industry. Shipbuilding has vital importance for the Croatian economy due to its traditional nature of high capital and technological intensity and its driving force present in the development of various supporting manufacturing and service activities. Thus it represents a powerful generator of employment as well as of local, regional and national development. In its attempts to perform the rehabilitation and restructuring of the shipyards, from 1992 to 2017 the Croatian government spent around 4 billion EUR on support contrary to the State aid rules accepted through the Stabilisation and Association Agreement. Since Croatia failed to fulfil its obligation it was decided that the restructuring of shipbuilding would be realised through the process of privatization. As a penalty for the previously received State aids, the industry was obliged to provide compensatory measures, i.e. capacities reduction by the end of 2020, and it may not realize annual output, measured in cgt, higher than it was agreed with the EC.

As regards the steel sector, bankruptcy proceedings were initiated in the case of the Split Ironworks while in the case of the Sisak Ironworks there were several resales. Finally, the company ceased its activities in December 2015. Croatia was obliged to inform the Commission every six months about the state of the recovery of the aid, plus compound interests, received by the Sisak Ironworks.

State aid in agriculture

Article 107 of the Treaty on the Functioning of the European Union which stipulates that any aid granted through state resources is incompatible with the internal market, also applies to the agricultural sector. However, despite that general prohibition of State aid, the Commission sets out the conditions and criteria under which aid for the agricultural and forestry sectors and for rural areas shall be considered compatible with the internal market.

State aid rules in the agricultural sector follow the general principles of competition policy, they have to be coherent with the EU's common agricultural and rural development policies and compatible with the EU's international obligations, in particular the WTO Agreement on Agriculture.

These principles are being implemented through three main legal acts in agricultural sector:

- EU Guidelines for State aid in the agriculture and forestry sector - sets the general criteria used by the Commission when assessing the compliance of aid with the internal market;
- the Agricultural Block Exemption Regulation ('ABER') - allows the granting of certain categories of State aid to the agricultural and forestry sectors and in rural areas without prior notification to the Commission;
- the Regulation on de minimal agricultural aid – used by Member States when they need to act quickly without setting up a scheme in accordance with State aid rules.

Revised enlargement methodology

Although based on the same principals, the accession process in the case of Croatia was already more demanding than in the past. Revised enlargement methodology of 2020 introduces several novelties in technology of the accession negotiations.

Key novelty in the revised methodology is grouping of chapters into six thematic clusters, and Chapter 8 together with eight other chapters creates the cluster of Internal Market. A cluster can be open as a whole – after meeting the opening benchmarks – rather than on individual basis. Another important novelty is reversibility of the process meaning that previously opened cluster can be reversed and for chapters in the closing phase opening benchmarks might be defined.

Decisions to open or to close chapters/clusters will take into account the improvement of administrative capacities within the respective clusters and their component chapters. Moreover, anti-corruption policies will be mainstreamed throughout all relevant chapters.

Although initially prepared for the opening of negotiations with Albania and Macedonia, some elements of the new methodology might be implemented in the case of Montenegro and Serbia. More rigorous process should help the countries to tackle the more difficult challenges they face in their reform efforts.

III. TOWARDS NEGOTIATION IN THE AREA OF COMPETITION POLICY

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“The main objective of the EU competition rules is to enable the proper functioning of the Union’s internal market as a key driver for the well-being of EU citizens, businesses and society as a whole. To this end, the Treaty on the Functioning of the European Union (TFEU) contains rules that aim to prevent restrictions on and distortions of competition in the internal market. More specifically, it does so by **prohibiting anti-competitive agreements between undertakings and abuse of market position by dominant undertakings**, which could adversely affect trade between Member States. Moreover, mergers and takeovers with an EU dimension are monitored by the European Commission (‘the Commission’) and may be prevented, if they would result in a significant reduction of competition. Furthermore, **State aid to given undertakings or products is prohibited when it leads to distortions of competition** but can be authorized in specific cases. Subject to certain exceptions, competition rules also apply to public undertakings, public services and services of general interest.”¹

The competition policy in the accession negotiation framework for selected countries within the chapter 8. Montenegro opened the chapter on 30 June 2020 as the last out of 33 chapters, while Serbia is in process of preparations for opening chapter 8. North Macedonia will open this chapter in the second cluster in line with the new EU accession negotiations methodology adopted in February 2020.

1. COMPETITION POLICY – MONTENEGRO

Compliance with the competition rules defined in the **TFEU (Articles 101-109)** is par excellence one of the most important pillars of the internal market of the EU and a pre-condition for any membership aspiring country. For Montenegro they are introduced through **SAA** under **Article 73** and furthermore through the **Negotiating Position for Chapter 8**.

1.1. Legislative and institutional framework

The area of competition protection is regulated by the **Law on Protection of Competition** (Official Gazette of Montenegro 44/12, 13/18). This law regulates the protection of competition on the Montenegrin market and provides for control and monitoring of state aid compliance and other issues of importance for competition protection and state aid control. It defines the structure and authorisations of the Commission for Protection of Competition, as well as the rules and procedures according to which it operates. The Law on Protection of Competition is largely harmonized with European legislation.

The area of state aid control is regulated by the **Law on State Aid Control** of 2018 (Official Gazette of Montenegro 012/18) which represents a significant improvement of conditions for granting State aid in institutional and procedural manner, i.e. the new law further harmonizes Montenegrin State aid legislative framework with the EU state aid rules. By adopting the Law on State Aid Control, the State aid affairs, which were previously under the competence of the Ministry of Finance of Montenegro and the Commission for the State Aid Control, were transferred under the competence of the Agency for the Protection of Competition of Montenegro.

¹European Parliament, Factsheets on the European Union – Competition policy, available at: <https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy>

The Agency for Protection of Competition (APC) has been established as functionally independent entity with the entry into force of the new Law on Protection of Competition (Official Gazette of the Republic of Montenegro 44/12) and following registration with the Central Register of Economic Entities in February 2013. Prior to the founding of the Agency the work on competition law and policy was fully under the competence of the Ministry of Economy and responsible Directorate within the Ministry. Agency for Protection of Competition is operating as an institution with public authority, which performs administrative and professional work in the area of competition protection, which includes assessment of restrictive agreements between undertakings, investigation and identifying of potential abuses of a dominant position and assessment and control of mergers and acquisitions. The powers of the APC are broadly comparable to those of the European Commission in the area of competition.

One of the main goals is orientation of the Law on Protection of Competition towards consumers and politics of Montenegro, which must be the basic element of proper market economy that provides equal conditions for all market participants who intend to provide consumers with wider choices and reasonable price/quality ratio, which is one of the main tasks of the Agency for Protection of Competition.²

By adopting the Law on State Aid Control (Official Gazette of Montenegro 12/18), the State aid affairs, which were until then under the competence of the Ministry of Finance of Montenegro and the Commission for the Control of the State Aid, were transferred under the competence of the Agency for the Protection of Competition of Montenegro.

1.2. Enforcement and reporting

In 2019 the EU published a Report on Montenegro's progress in the EU accession process for previous 12 months' period. According to this report, the following is stated for the current conditions of competition policy implementation in Montenegro:

- Montenegro is moderately prepared in this area. **Some progress** was registered, in particular by completing the set-up of the independent State aid authority. Montenegro **has a good level of preparation** as regards alignment with the EU acquis on antitrust and mergers. The State aid legislative framework **is to a large extent aligned** with the EU acquis. Further significant efforts are needed in the enforcement of the antitrust, mergers and State aid legislation.
- As regards the institutional framework, the Agency for Protection of Competition (APC) is responsible for implementing the Law on the protection of competition. It is an operationally independent authority, whose director is appointed by the government. However, fines can still only be imposed by a decision of misdemeanour courts, not directly by the APC. On enforcement capacity, the APC's staffing level and expertise remain insufficient.

Fifth meeting of the Accession Conference with Montenegro at Deputy level was held in Brussels on 30 June 2020 in order to open negotiations on the last screened chapter, Chapter 8 - Competition policy. In line with the latest EC Report in 2019 and current conditions in the area of competition policy, the European Union has agreed to open last remaining chapter for Montenegro. At the meeting they highlighted the fact that Montenegro must continue to make progress in aligning with and implementing the acquis under this chapter.³

²Agency for the Protection of Competition, available at: <http://www.azzk.me/jml/index.php/en/home2/about-us>

³EC Progress Report 2019 for Montenegro, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

1.3 Benchmarks for opening/closing of chapter 8

The explanatory screening of Chapter 8 for Montenegro was done in October 2012, bilateral screening in December 2012, after which the Council of the EU approved the Screening Report and opening benchmarks were set up in June 2013, as follows:

1. Montenegro complements and amends its legislation on State aid for the purpose of implementing the obligations resulting from the Stabilization and Association Agreement.
2. Montenegro ensures that the State aid authority is operationally independent and that it has the powers and the resources necessary for the full application of State aid rules.
3. Montenegro aligns the fiscal aid schemes, namely the Law on Corporate Profit Tax, the Law on Personal Income Tax, the Law on Business Zones (Business Development Incentive Programme) and the Law on Free zones, with the requirements of Article 73 of the Stabilization and Association Agreement.
4. Montenegro establishes a comprehensive inventory of all State aid measures covered by the Stabilisation and Association Agreement and defines an action plan, accepted by the Commission, with a clear timetable for the alignment of all remaining aid schemes or equivalent measures identified as incompatible with the obligations resulting from the Stabilization and Association Agreement.
5. Montenegro adopts a restructuring plan for the aluminum plant KAP in line with the requirements of Article 73 of the Stabilization and Association Agreement. Such restructuring plan must be accepted by the Commission.⁴

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The closing benchmarks for the chapter opened on 30 June 2020 are as follows:

1. Montenegro has completed legislative alignment with the EU *acquis* covered by the chapter Competition Policy.
2. Montenegro has built up an adequate administrative and judicial capacity in the area of antitrust, mergers and State aid control.
3. Montenegro has demonstrated a satisfactory enforcement record in the area of antitrust, mergers and state aid control, including a track record of effective and efficient administrative and judicial follow-up of detected irregularities, including through imposition of deterrent sanctions, where appropriate.
4. In the following cases, the Agency for the Protection of Competition, as national State aid authority, has assessed the presence and compatibility of State aid with the State aid provisions of the SAA, and has ordered its recovery, where such aid has been identified as incompatible:
 - with regard to Montenegro Airlines, whether all State aid granted since 2012 to the company is compatible with the State aid provisions of the SAA. This needs to include the provisions of the Law on investment in consolidation and development of Montenegro Airlines adopted by the Parliament of Montenegro in December 2019;
 - whether Uniprom KAP received incompatible aid;
 - with regard to the Bar-Boljare highway, whether there was incompatible aid in the financing of the construction of the highway and its operation.⁵

⁴Ministry of European affairs, „EU ACCESSION NEGOTIATIONS: Analysis of Benchmarks for Montenegro through comparison with Croatia and Serbia“, January 2018, page 45-47.”

⁵Fifth meeting of the Accession Conference with Montenegro at Deputy level, Brussels, 30 June 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/06/30/fifth-meeting-of-the-accession-conference-with-montenegro-at-deputy-level-brussels-30-june-2020/>

1.4. Challenges in the up-coming period

Further significant efforts are needed in the enforcement of the antitrust, mergers and state aid legislation in order to further improve regulations and strengthen institutions.

In the next period after opening of Chapter 8 in June 2020, Montenegro should in particular (according to the EC 2019 Progress Report):

- ensure the functioning of the State aid authority, now placed in the Agency for the Protections of Competition, and the effectiveness of its control on State aid at all levels, including the building up of an enforcement record;
- ensure transparency on all State aid decisions;
- improve the track record of the Agency for the Protection of Competition on antitrust and mergers.

Additionally, it is necessary to further work on strengthening professional capacities of courts in the areas of cartels, concentration, abuse of a dominant position and State aid, as they only, so far, have the jurisdiction to adopt binding decisions in these matters.

Specific attention should be paid in resolving the issues in the sensitive sectors and companies related to competition policy, where significant State aid has been given, i.e. Montenegro Airlines, Uniprom KAP and arrangements for the construction of Bar-Boljari highway.

Report 2020: Montenegro is moderately prepared in this area. Limited progress was registered overall. Last year's recommendations remain valid and in the coming year Montenegro should in particular:

- provide the State aid authority with the means and information to follow up on the Montenegro Airlines case and to adopt an informed decision, in line with Montenegro's legislation, as well as its Stabilisation and Association Agreement obligations, on which Montenegro will then need to follow-up;
- ensure transparency on all state aid decisions and operational independence of the State aid authority as well as effectiveness of its control on State aid at all levels, including the building up of an enforcement record;
- improve the track record of the Agency for the Protection of Competition on antitrust and mergers.

2. COMPETITION POLICY – SERBIA

2.1. Legislative and institutional framework

Competition policy covers two areas: (i) protection of competition and (ii) State aid control.

The area of competition protection is regulated by the Law on Protection of Competition of 2009, which was improved the Amendments to the Law on Protection of Competition of 2013. The legislative framework in the field of competition protection was completed by the adoption of 8 bylaws during 2009 and 2010, as well as one Decree in 2016.

This law regulates mergers, abuse of a dominant position, as well as restrictive agreements and practices. It determines the structure and powers of the Commission for Protection of Competition, as well as the rules and procedures according to which it operates. The Law on Protection of Competition is largely harmonized with the European legislation.

With the adoption of the Law on Protection of Competition of 2009, further progress was made towards the harmonization of this area with the European legislation in relation to the law of

2005. This law changed the relatively low threshold for notification of a concentration and introduced the possibility for the Commission for Protection of Competition to impose penalties, which was until then under the jurisdiction of courts. Further progress in harmonizing domestic legislation with the European legislation was made in 2013, with the adoption of the Law on Amendments to the Law on Protection of Competition. This law further strengthens the investigative capacities of the Commission for Protection of Competition and approximates the definition of the dominant position on the market with the European provisions.

The Commission for Protection of Competition, responsible for the field of protection of competition, was established by the Law on Protection of Competition of 2005 as an independent and autonomous organization that exercises public authority in accordance with this law. The Commission has the status of a legal entity and is responsible for its work to the National Assembly of the Republic of Serbia, to which it submits an annual work report.

The Law on Protection of Competition of 2009 introduced the possibility for the Commission for Protection of Competition to impose penalties, which was until then under the jurisdiction of courts. The Law on Amendments to the Law on Protection of Competition of 2013 further strengthens the Commission's investigative capacity.

The bodies of the Commission are the Council of the Commission and the President of the Commission. The President of the Commission and the members of the Council are elected and dismissed by the National Assembly on the proposal of the competent committee for trade affairs. The Council makes all decisions and acts on issues within the competence of the Commission, unless otherwise prescribed by this Law and the Statute. The Council consists of the President of the Commission and four members. The President of the Commission represents the Commission, makes decisions, i.e. performs other tasks in accordance with the law and the Statute.

The Commission has an Expert Service that performs professional tasks within the competence of the Commission in accordance with this Law, the Statute and other acts of the Commission. The expert service is managed by the Secretary, who is appointed by the Council by a majority vote.

The new Law on State Aid Control was adopted in October 2019. With the entry into force of this law on 1 January 2020, the law of 2009 ceased to be valid. The main reason for passing the new law is the harmonization with European Union the regulations, having in mind the high degree of incompatibility of the previous law with this regulation. Its adoption is also a significant step towards meeting the accession criteria, as a precondition for the opening of Chapter 8, bearing in mind that most of these criteria relate to the area of State aid control. In order for the legislative framework in the field of state aid control to be completed, it is necessary to adopt a series of bylaws, the drafting of which is planned for 2020.

This Law regulates the control of State aid in order to protect competition in the market, ensuring transparency in granting State aid, as well as the establishment, position, organization and powers of the Commission for State Aid Control, general conditions, rules, measures and procedure implemented by the Commission in administrative affairs.

This law introduces a number of novelties in relation to the previous one. It introduces a list of State aid instruments, including: (i) subsidies (ii) fiscal relief (iii) state guarantees and the like. The law introduces three new concepts: (i) harmonized State aid, (ii) cumulation of State aid, and (iii) de minimis aid. New institutes have been formulated such as: (i) periodic penalty, (ii) direct insight, (iii) administrative measures, (iv) obsolescence, (c) register of granted State aid, (vi) cumulation rule and the like. In accordance with the recommendations of the European Commission, the meaning and content of the following terms are defined: (i) State aid scheme,

(ii) individual State aid, (iii) State aid instruments, (iv) cumulation of State aid, and (v) small value aid (de minimis aid). While in the previous law the term “allowed State aid” was used, now there is the term “harmonized state aid”. It is precisely defined what does not belong to State aid.

The Commission for State Aid Control, responsible for State aid control, was originally established under the Law on State Aid Control in 2009. The Commission was not independent in its work, the members of the Commission were appointed by the Government, on the proposal of the Ministries that were the largest providers of State aid and the Commission for Protection of Competition. Professional, administrative and technical tasks for the Commission were performed by the service within the Ministry of Finance.

With the new Law on State Aid Control of 2019, the Commission for State Aid Control received the status of a legal entity, and became an independent body, which is responsible for its work to the National Assembly, and to which it submits an annual work report. The law stipulates that the Commission has a new body - the Council of the Commission, which consists of five members elected by the National Assembly. Funds for the work of the Commission are provided in the budget of the Republic of Serbia within a special budget section, as well as from other sources, in accordance with the law.

This law prescribes that the Expert Service of the Commission, which was a Department within the Ministry of Finance, is attached to the Commission and performs expert tasks within the competence of the Commission. The expert service and accompanying services are managed by the secretary who is appointed by the Council for five years.

The new law stipulates that the proposers, i.e. the issuers of regulations, have the obligation to submit regulations to the Commission in order to assess its compliance with the rules on granting State aid. The procedures of ex-ante and ex-post control are more precisely defined, as well as the manner in which the direct insight and data protection in the procedures before the Commission is carried out.

2.2. Enforcement and reporting

In the last published EC annual report (May 2019), it was stated that

- Serbia has a certain level of preparedness in the field of competition,
- No progress has been made in terms of legislative alignment and implementation of State aid rules, given that the new Law on State Aid Control was adopted at the end of 2019.

The recommendations of the European Commission were that, in the coming year, Serbia should in particular:

- make significant progress in aligning its State aid legislation, in particular to abolish the exemption of companies in the privatization process from State aid control, in line with its obligations under the Stabilization and Association Agreement;
- to take additional steps to harmonize existing schemes, in particular fiscal State aid schemes (Law on Corporate Income Tax, Law on Personal Income Tax and the Law on Free Zones) with the EU acquis;
- significantly increase the budget and executive powers of the Commission for State Aid Control to ensure its independence and effectiveness;
- harmonize the Law on Interbank Fees and Special Business Rules for Payment Transactions on the Basis of Payment Cards with the acquis and obligations from the Stabilization and Association Agreement.

Most of these recommendations are valid, but as the new Law on State Aid Control was adopted at the end of 2019, the accompanying bylaws are being drafted, which will complete the

regulation of this area, while part of the EC recommendations has already been partially met.

In respect of what has been achieved so far, the European Commission 2020 Report states the following – Serbia is moderately prepared in the area of competition policy. Good progress was made in legislative alignment of State aid rules with the adoption of a new law on State aid control and increasing the operational independence of the Commission for State Aid Control (CSAC). In the coming year, Serbia should in particular:

- take additional steps to align the existing aid schemes, in particular the fiscal state aid schemes with the EU acquis;
- align the law on multilateral interchange fees and special operating rules for card-based payment transactions with the EU acquis and SAA obligations;
- provide a solid track record in the implementation of laws on protection of competition and State aid control.

2.3 Benchmarks for opening/closing of Chapter 8

On 24 February 2016, the Republic of Serbia was informed about the result of the screening for Chapter 8 - Competition Policy. The document states that the Republic of Serbia cannot be considered sufficiently ready to negotiate on this chapter and that this chapter could be opened when the EU determines that the following criteria are met:

1. Serbia supplements and amends its legislation on the granting of State aid in order to fulfil its obligations under the SAA;
2. Serbia ensures that the body responsible for State aid control is operationally independent and has the necessary powers and resources for the full and correct application of State aid rules;
3. Serbia completes the existing list of State aid measures in terms of Article 73, paragraph 6 of the SAA and establishes an action plan, to be adopted by the Commission, with a clear timetable for harmonization of all remaining existing State aid schemes or equivalent measures found to be incompatible with obligations arising from the SAA;
4. Serbia harmonizes the existing fiscal assistance schemes, i.e. Law on Corporate Income Tax, Law on Personal Income Tax and Law on Free Zones with the EU Acquis in the Field of State Aid Control;
5. Serbia ensures the compliance of the aid granted to the Smederevo Ironworks with all the conditions prescribed in Protocol 5 to the SAA on State aid to the steel industry;
6. Serbia fulfils its obligation under Article 73, paragraph 5 of the SAA and Protocol 5 to the SAA and provides to the Commission comprehensive information on individual cases of State aid so that the Commission can assess and monitor the compliance of these aid measures with Serbia's SAA obligations.

The criteria for opening Chapter 8 primarily relate to the area of State aid control, which lags far behind the protection of competition in terms of compliance with the European legislation. Some progress in meeting these criteria has been achieved with the adoption of the new Law on State Aid Control, which entered into force on 1 January 2020.

2.4. Challenges in the up-coming period

In order to create conditions for the opening of Chapter 8 - Competition Policy and harmonization of the area of competition policy with European legislation, it is necessary to further improve regulations and strengthen institutions. To this end it is necessary to:

- adopt bylaws, the enactment of which is prescribed by the new Law on State Aid Control, in order to complete the legislative framework in this area;

- strengthen the administrative capacities of the Commission for State Aid Control, through increasing the number of employees and through their continuous training, in order to ensure the best possible implementation of the Law on State Aid Control;
- strengthen the professional capacity of courts in the areas of cartels, concentration, abuse of a dominant position, and State aid;
- introduce the obligation to adopt the opinion of the Commission for Protection of Competition when drafting regulations that may affect the restriction of competition.
- continue professional development of administrative staff in the Commission for Protection of Competition.
- actively work to remove other restrictions for the opening of Chapter 8, given in the accession conditions.

3. COMPETITION POLICY – NORTH MACEDONIA

EU competition policy aims towards free competition on the EU single market. It consists of two categories: 1) competition rules and 2) State aid.

The competition rules include antitrust rules against restrictive agreements between companies and abuse of dominant position. They also include rules on concentrations between companies which would significantly impede competition. In addition, EU rules on State aid stipulate that governments are only allowed to grant State aid if restrictive conditions are met, with a view to prevent distortion of competition.

The Republic of North Macedonia, as a candidate country for EU membership, has an obligation to achieve full compliance to the EU acquis prior to accession. The process of harmonization of Macedonian legislation with the acquis in the area of competition policy is on-going. An overview of the State of affairs, institutional structure and remaining challenges is provided below.

3.1. Legislative and institutional framework

The latest European Commission's Country Report on North Macedonia providing details on EU acquis by chapters has been released in 2019. It refers to the State of affairs as of end 2018/early 2019. Due to COVID-19 situation, as well as changes in the EU methodological framework for negotiations/accession, EC Country Report on North Macedonia 2020 was released in different format, focusing on major issues relevant to the opening of negotiations. Implicitly, this overview relies on the notes of the EC Report 2019. In addition, necessary consultations of the legislation and institutions have been made, confirming no changes from the latest EU reporting.

The legal framework for competition policy in the Republic of North Macedonia consists of two major acts: Law on Protection of Competition⁶ and Law on State Aid⁷ and respective bylaws.

Competition rules: The Law on Protection of Competition is broadly aligned with Article 101 (restrictive agreements) and Article 102 (abuse of dominant position) of TFEU and with the corresponding provisions of the Stabilization and Association Agreement (SAA). It provides for ex ante control of mergers, following the principles of the Merger Regulation.

⁶Official Gazette of the Republic of Macedonia 145/10; 41/14; 53/16; 83/18

⁷Official Gazette of the Republic of Macedonia 145/10

There are nine bylaws deriving from the Law on Protection of Competition adopted as of 2012, which provide relatively high level of alignment with the EU legislation. However, EC Report states that “some remaining pieces of secondary legislation have yet to be aligned.”

State aid: The Law on State aid control broadly reflects Articles 107 and 108 of the TFEU and its corresponding provisions in the SAA. There are five bylaws regulating in details different forms of State aid (de minimis aid, regional aid, horizontal aid, etc.). As stated in the EC Report, “the Law on State Aid and the Regulation for granting aid of minor importance (de minimis) still need to be amended⁸. Implementing the legislation on certain forms of aid and specific sectors still needs to be aligned with the acquis. In addition, the State aid inventory and the regional aid map are outdated and lack transparency.”

Summarized, Macedonian legislation in the area of competition is broadly aligned with EU acquis. The major challenges in this area refer to the enforcement of legislation.

The Commission for the Protection of the Competition (CPC) is the main regulatory body with regards to competition rules and State aid. It has been established in 2005, as a fully-fledged body with mandate endorsed by the Parliament.

Competition rules: CPC is responsible for implementing the Law on Protection of Competition. Formally, the CPC is an operationally independent authority with the capacity to adopt enforcement decisions on antitrust and mergers. The CPC may approve mergers, with or without conditions, or prohibit them. It submits opinions on draft legislation that may affect competition. Its decisions can be subject to an appeal before the Administrative Court. The CPC acts on complaints, notifications or on its own initiative. It can issue requests for information, carry out unannounced on-site inspections and conduct sector enquiries. If competition rules are breached, it can impose fines and propose remedies. A leniency policy towards whistle-blowers of cartels is in place, but has never been used.

State aid: CPC is also responsible for implementing the Law on State Aid. State aid grantors must notify the CPC about their plans to grant new or alter existing State aid so that it can assess its compatibility. If an aid measure is not notified, the CPC has the power to investigate it ex-officio, and can order its recovery.

Structure and capacity: The CPC managing body consists of the President and four members, supported by administrative staff. The latest composition of CPC was appointed by the Parliament in October 2018 for five-year term. There was a certain delay in appointing the new CPC, which created a backlog of cases.

With regards to its capacities, the CPC is not adequately staffed. There were 24 administrative staff in 2018. Out of them, only three are dealing with State aid. In addition, the level of expertise needs to be increased through training activities. The budget allocated to CPC is not sufficient for the execution of its tasks and varies each year, raising concerns about its independence as well as creating issues of staff retention. Also, the technical equipment is outdated.

Summarized, the institutional structure in the area of competition policy has been in place, although with serious constrains (staff, budget, technical equipment) in CPC's operation.

⁸The Bylaw on de minimis aid has been adopted in 2011. It has not been amended since.

3.2. Enforcement and reporting

As stated in the European Commission Country Report on North Macedonia 2019,⁹ “the country is moderately prepared in the area of competition policy. Significant efforts are needed on enforcement. In the coming year, the country should pay particular attention to:

- step up the enforcement record of the Commission for the Protection of Competition (CPC), including on the most problematic cases mentioned below;
- increase the transparency of State aid granted by the government;
- ensure independence and capacity of the CPC.”

With regards to competition rules, the number of merger decisions of CPC increased from 50 in 2017 to 61 in 2018 and the number of decisions adopted on cartels and abuse of dominant position dropped from seven in 2017 to five in 2018.¹⁰ The decisions are published on the website of CPC, enabling interested parties to have information in a timely manner. However, as noted by EC, “no guidelines on the definition of the level of fines do exist. The CPC must strengthen its enforcement policy by increasing on-site inspections and by promoting the use of leniency. It should also continue to make full use of the possibility of fining, if applicable and in a transparent manner. Concerns remain over the lack of independence and the capacity of courts to deal with anti-trust cases.”

With regards to the State aid, notified and approved State aid represented 0.37% of the country's 2018 GDP.¹¹ There were 21 notifications of State aid submitted to CPC in 2018, out of which 19 were approved and 2 annulated (opposite to the Law on State Aid). There has been certain improvement in the reporting on the State aid, although further progress should be made with regards to provision of more details in a timely manner. Lack of publicly available information has been overly criticized by EC in the past. It has still been mentioned as an area for improvement, as noted above.

As stated by EC, “concerning specific cases, the Ministry of Transport set up State aid schemes for air transport from 2012 to 2014 and from 2015 to 2018, to support one air carrier. The call for 2018 to 2021 failed twice, before the third call was awarded to the same carrier. Compliance of these schemes with the market economy operator principle, the aviation guidelines and the provisions of the SAA, needs to be confirmed. The Law on Support to Financial Investments was adopted in June 2018 to provide government incentives to the private sector. However, this scheme is not in line with the State aid acquis. In the future, the implementation of State aid rules should also be monitored by the CPC in large projects in cooperation with third countries. Safeguards to ensure that State aid measures are free from conflict of interest, still need to be put in place.”

Summarized, the enforcement and reporting in the area of competition policy should be advanced, in particular with regards to the State aid.

3.3. Challenges in the up-coming period

There are three main challenges in the area of competition policy for North Macedonia to be addressed in the upcoming period, as listed in section 3. These refer to:

- enforcement of competition rules;
- increase of the transparency of State aid granted by the government and
- improvement of the CPC operation in terms of full independence and increased capacity.

⁹ <http://www.sep.gov.mk/data/file/Dokumenti/20190529-north-macedonia-report.pdf>

¹⁰The latest annual Report of CPC has been released in 2019, with data referring to 2018. CPC Report is adopted by the Parliament prior to release. Due to COVID-19 and non-operation of the Macedonian Parliament in spring/summer 2020 due to Parliamentary elections, CPC 2020 Report has not been available yet.

¹¹These are data from CPC Annual Report 2019. The EC Report states 0.2% of GDP.

The EC notes that the focus of further developments in the field of competition in North Macedonia should be on policy's implementation. The legislation framework has been broadly aligned with the EU acquis, although the process of harmonization should continue further, in particular taking into account the dynamic of competition policy changes in EU. Also, CPC should elaborate and adopt guidelines on defining the level of fines, for the purpose of having more sound base for decision-making.

The most challenging aspect is the one related to the capacities of the CPC. The issue of insufficient human resources has been also pointed out in the Annual Report of CPC 2019, along with the technical and budgetary constraints that CPC faces. In addition, the necessity for continuous training of the employees is crucial, given the voluminous and substantial EU acquis on competition. Furthermore, proper implementation of competition policy also requires increased capacities of judiciary, as the ultimate institution for enforcement of the decisions in this field.

Compared to what has been achieved so far, the European Commission 2020 Report states the following – North Macedonia is moderately prepared in the field of competition policy. The main legislative framework of State aid and anti-trust & mergers is broadly harmonised with the EU rules, but needs to be amended in implementing legislation covering various areas and sectors. The Commission for the Protection of Competition (CPC), as the national competition authority, lacks administrative and enforcement capacity, both in terms of staff and budget. Significant efforts are needed in enforcement. No progress was made in this field during the reporting period. Therefore, the recommendations of last year remain valid. In the coming year, North Macedonia should in particular:

- improve the independence and strengthen capacities of the national competition authority to step up their enforcement record, including on the most problematic cases mentioned below;
- increase the transparency of State aid granted by the government;
- further align implementing legislation in the area of State aid.

IV. STATE AID RULES AND THE PANDEMIC COVID-19

IV. STATE AID RULES AND THE PANDEMIC COVID-19

State aid rules enable Member States to take swift and effective action to support citizens and companies, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak¹².

In its Communication of 13 March 2020, the Commission, relying on the first decision adopted in line with Article 107(2)(b) TFEU, clarified that the COVID-19 outbreak qualifies as “**exceptional occurrence**” for the purpose of this provision of the Treaty. Member States can compensate undertakings that were directly affected through official recommendations or prohibitions of the competent authorities, aimed at limiting the Covid-19 outbreak.

The European Commission has adopted a Temporary Framework¹³ to enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the COVID-19 outbreak. Together with many other support measures that can be used by Member States under the existing State aid rules, the Temporary Framework enables Member States to ensure that sufficient liquidity remains available to businesses of all types and to preserve the continuity of economic activity during and after the COVID-19 outbreak.

The State Aid Temporary Framework to support the economy in the context of the COVID-19 outbreak, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union, recognises that the entire EU economy is experiencing a **serious disturbance**. To remedy that, the Temporary Framework provides for five types of aid:

- (i) **Direct grants, selective tax advantages and advance payments:** Member States will be able to set up schemes to grant up to 800,000 EUR to a company to address its urgent liquidity needs.
- (ii) **State guarantees for loans taken by companies from banks:** Member States will be able to provide State guarantees to ensure that banks keep providing loans to the customers who need them.
- (iii) **Subsidised public loans to companies:** Member States will be able to grant loans with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.
- (iv) **Safeguards for banks that channel State aid to the real economy:** Some Member States plan to build on banks’ existing lending capacities, and use them as a channel for support to businesses – in particular to small and medium-sized companies. The Framework makes clear that such aid is considered as direct aid to the banks’ customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.
- (v) **Short-term export credit insurance:** The Framework introduces additional flexibility on how to demonstrate that certain countries are not-marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.

¹²https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html

¹³Communication from The Commission, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, Brussels, 19.3.2020 C(2020) 1863 final

Given the limited size of the EU budget, the main response will come from Member States' national budgets. The Temporary Framework will help target support to the economy, while limiting negative consequences to the level playing field in the Single Market.

The Temporary Framework therefore includes a number of safeguards. For example, subsidised loans or guarantees to businesses are linked to the scale of their economic activity, by reference to their wage bill, turnover, or liquidity needs, and to the use of the public support for working or investment capital. The aid should therefore help businesses to resist difficulties and to prepare a sustainable recovery.

The Temporary Framework complements the many other possibilities already available to Member States to mitigate the socio-economic impact of the COVID-19 outbreak, in line with EU State aid rules. On 13 March 2020, the Commission adopted a **Communication on a coordinated economic response to the COVID-19 outbreak** setting out these possibilities. For example, Member States can make generally applicable changes in favour of businesses (e.g. deferring taxes, or subsidising short-time work across all sectors), which fall outside State aid rules. They can also grant compensation to companies for damage suffered due to and directly caused by the COVID-19 outbreak. This can be useful to support particularly impacted sectors, such as transport, tourism, hospitality and retail.

The Framework will be in place until the end of December 2020. With a view to ensuring legal certainty, the Commission will assess before that date if it needs to be extended.

On 3 April 2020, it adopted a first amendment to enable aid to accelerate research, testing and production of COVID19 relevant products, to protect jobs and to further support the economy during the current crisis¹⁴.

On 8 May 2020, the Commission adopted a **second amendment**¹⁵ extending the scope of the Temporary Framework to recapitalisation and subordinated debt measures. This provides additional assistance to micro-enterprises and small and start-ups, and provides incentives for private investment.

On 29 June 2020 Commission expands Temporary Framework to **further support micro, small and start-up companies and incentivise private investments**¹⁶. The third amendment extends the Temporary Framework to enable Member States to provide public support under the Temporary Framework to all micro and small companies, even if they were already in financial difficulty on 31 December 2019.

The main purpose of the Temporary Framework is to provide targeted support to otherwise viable companies that have entered into financial difficulty as a result of the coronavirus outbreak. Therefore, companies that were already in difficulty before 31 December 2019 are not eligible for aid under the Temporary Framework, but may benefit from aid under existing **State aid rules, in particular the Rescue and Restructuring Guidelines**¹⁷. These Guidelines set clear conditions according to which such companies must define sound restructuring plans that will allow them to achieve long-term viability.

¹⁴Communication from the Commission of 3 April 2020, C(2020) 2215, OJ C 112 of 4.4.2020

¹⁵Communication from the Commission of 8 May 2020, C(2020) 3156, OJ C 164 of 13.5.2020

¹⁶Communication from the Commission of 29 June 2020, C(2020) 4509, OJ C 218 of 2.7.2020

¹⁷Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014)

Summary of temporary State aid measures caused by the COVID-19 pandemic:

1. Temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity
2. Aid in the form of guarantees on loans
3. Aid in the form of subsidised interest rates for loans
4. Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions
5. Short-term export credit insurance
6. Aid for COVID-19 relevant research and development
7. Investment aid for testing and upscaling infrastructures
8. Investment aid for the production of COVID-19 relevant products
9. Aid in form of deferrals of tax and/or of social security contributions
10. Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak
11. Recapitalisation measures (until 30 June 2020, under specific eligibility and entry conditions).

The Commission applies this Communication from 19 March 2020, having regard to the economic impact of the COVID-19 outbreak, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after 31 December 2020, except for section 3.11, which will be applied until 1 July 2021. The Commission may review this Communication before 31 December 2020 on the basis of important competition policy or economic considerations.

1. SHORT-TERM MEASURES TO MITIGATE THE SOCIAL AND ECONOMIC CONSEQUENCES OF THE COVID-19 IN MONTENEGRO

The Montenegrin government adopted three packages of measures to support the economy and citizens.

The first set of measures contains:

- Mitigation of the negative impact of the pandemic on the financial system – delay of payment of all loans to 90 days
- Delay of payment of taxes and contribution on wages as well as obligations according to the Law on Reprogram up to 90 days
- Creation of a new IDF credit line for economic assistance
- Advance payment to contractors for investment works.

Implementation of the **second package of measures** is in fact continuity of the first package expanded deeply to specific sectors, as follows:

- Subventions for closed activities
- Subventions for tourism sector
- Subventions for vulnerable activities – entrepreneurs, micro, small and medium-sized companies (does not apply to: state institutions, local self-government and companies' majority owned by the State or local self-government)
- Subventions for new employments

Implementation of the **third package of measures** is in fact continuity of the first package expanded deeply to specific sectors:

- New IDF credit lines
- Fiscal incentives – lower VAT rates for some economic sectors (tourism) at 7%
- Direct support to SMEs
- Defined structure and dynamics of investments by sectors

Sources of financing are the following: budget, Investment Development Fund, commercial banks and private sector.

The level of support measures for the first and the second package is 7% of estimated GDP in 2020 (0.9% and 6.1% respectively per package). Estimated level of the third package 2020-2024 is 26.5% of estimated GDP in 2020.¹⁸

2. SHORT-TERM MEASURES TO MITIGATE THE SOCIAL AND ECONOMIC CONSEQUENCES OF THE COVID-19 IN SERBIA

The complete program of measures to help the Serbian economy affected by the consequences of the coronavirus epidemic is worth 5.1 billion euros. The measures have two objectives: (i) maintaining employment and (ii) helping the companies most affected by the crisis.

The first set of measures presupposes, for the most part, the postponement of the payment of due tax obligations, with later repayment in instalments, at the earliest from the beginning of 2021. Delays in the payment of taxes and contributions on salaries are carried out in order to provide liquidity, maintain economic activity and employment. Income tax advances are also postponed in the second quarter.

Tax measures include - deferral of payment of due tax liabilities

- Deferment of personal income tax (including social security contributions) and income tax payments
- Deferment of payment of taxes and contributions on wages
- Reduced interest rate for late payment of taxes
- Extension of the deadline for filing corporate income tax returns
- Extension of the deadline for submission of financial reports

The second set of measures refers to direct payments to companies, payment of aid in the amount of the minimum wage for entrepreneurs, micro, small and medium enterprises, or subsidies of 50% of the minimum wage to large companies whose employees are sent on forced leave due to reduced business volume or complete suspension of work.

Direct payments to companies - **incentives for employment**

- Direct benefits to employees (up to three minimum wages)
- Direct payments to all companies (depending on the number of employees)

The third set of measures refers to preserving the liquidity of economic entities in the conditions of the economic crisis expected during and after the end of the emergency situation caused by the COVID-19 virus pandemic. With this program, the Government of the Republic of Serbia wants to minimize external influences (drop in demand, disruption of supply chains, etc.) and their consequences (reduced employment, illiquidity, etc.) on the business of the Serbian economy.

¹⁸Djurovic, G., Analysis of Economic and Social Consequences of the Covid-19 Pandemic in Western Balkans Countries, RESPA, August 2020.

In particular, the program envisages two measures

1. program for granting loans for maintaining liquidity and working capital for companies from the segment of entrepreneurs, micro, small and medium business entities, agricultural farms and cooperatives that are registered in the relevant register through the Development Fund of the Republic of Serbia,
2. guarantee schemes to support the economy in the conditions of COVID-19 crisis for loans to maintain liquidity and working capital for companies from the segment of entrepreneurs, micro, small and medium enterprises, as well as agricultural farms through commercial banks operating in the Republic of Serbia. The total value of the programs envisaged by this measure is 264 billion dinars (about 2.2 billion euros).

Preferential loans and credit facilities

3. Moratorium on loans
4. Moratorium on lease payments
5. Loans for entrepreneurs, cooperatives, small and medium-sized enterprises that are majority privately or cooperatively owned and that perform production, service, trade or agricultural activities (up to EUR 50,000)
6. Guarantee schemes for small and medium enterprises, agricultural holdings, entrepreneurs.

3. SHORT-TERM MEASURES TO MITIGATE THE SOCIAL AND ECONOMIC CONSEQUENCES OF THE COVID-19 IN NORTH MACEDONIA

Macedonian government has responded to COVID crises with several sets of measures. The measures could be categorized as follows:

- Monetary policy measures, which include cut of the National Bank's policy rate by 0.25% (down to 1.75%) and revision of loan regulation aiming to alleviation of terms for new loans and restructuring of the existing ones.

- Fiscal policy measures, such as introduction of three-month fiscal package to help address firms' liquidity problems and protect jobs in affected sectors; tax deferral system for VAT returns and tax deferral system for excise duties for selected excise goods (mainly auxiliary medicines and disinfectants).

- Support to firms, which include:

- Support to salaries and firm liquidities in affected sectors in tourism, transport and catering in April – July of 2020. The measure was also applied to self-employed, independent contractors and private media legal entities.
- Provision of credit support by easing the standards for household and corporate loan restructuring. In addition, the Development Bank of North Macedonia offered a credit line with interest-free loans in total amount of around 45 million euros. Also, state guarantee for commercial loans and customs debt was introduced.
- Reduction of the instalment and reprogramming of loans to financial companies and leasing companies. Instalments in the repayment of loans by individuals were reduced by 70% in relation to June 2020.
- Bankruptcy measures: North Macedonia adopted a decree amending the Bankruptcy Law during the state of emergency which froze all bankruptcy procedures during the state of emergency.
- Support for the development of domestic start-up products and services: The already existing Innovation and Technological Development Fund was granted additional EUR 1.6 million for the development of innovative products and services.

- Additional government support to tourism, textile and agro-food sectors by use of different instruments, including vouchers for use of the domestic touristic facilities, purchase of domestic products, etc. Also, medical staff of infectious disease clinics and departments and members of the emergency medical teams received a 20% higher salary for May and June 2020, via a home payment card.

- Support to the population, such as price control regulations for certain products; unemployment insurance for employees who lose their jobs due to the health crisis; increased social protection to vulnerable groups; direct financial support for young people for tuition fees and IT and digital skills training, as well as support of private solidarity initiatives – setting a fund to support private associative initiatives that respond to the need for solidarity arising from the COVID-19 crisis.

In addition to the abovementioned measures which include certain form of State aid, the Government has introduced certain cuts of the budget, such as reduction of the salaries of public servants to the minimum wage for April and May 2020 and lowering of the rate of participation of the state budget in the financing of political parties from 0.15% to 0.04% of the total income of the budget. On the other hand, as measure to support the State budget, the Government amended the Law on Games of Chance and Entertainment Games allowing online hazard games services.

The international financial sources for support of the COVID related measures, as well as operation of the state institutions are:

- EU bilateral financial assistance to support North Macedonia in the coronavirus emergency (EUR 4 million of immediate support for the health sector and EUR 62 million of support for social and economic recovery).
- European Union Solidarity Fund (FSEU), which was extended to support COVID19 responses on April 2020. North Macedonia is eligible to use FSEU. The fund is approx. EUR 800 million.
- IMF support: The International Monetary Fund is mobilizing USD 191.8 million in emergency aid to North Macedonia to help it deal with the economic impact of the COVID-19 outbreak.
- USAID support of USD 16 million for support the growth of the private sector.
- World Bank support: a loan from the World Bank of EUR 50 million, for the modernization of agriculture.

4. COVID-19 AND EU SUPPORT TO THE REGION

The Western Balkans is an integral part of Europe and a **geostrategic priority** for the European Union. The European perspective of the entire region was confirmed again in March 2020, when the Member States endorsed the Commission's proposals for a strengthened methodology¹⁹ for the accession process and decided to open accession negotiations with the Republic of Albania and the Republic of North Macedonia. It is of key importance to the European Union to continue fostering the stability and prosperity of this region, and build on our shared strategic interests.

In its response to the crisis, the EU decided to provide substantial **financial support** but also to include, to the greatest possible extent, the Western Balkans in its own response. Within the existing MFF 2014-2020, the EU has mobilized a package of over EUR **3.3 billion** to the benefit of Western Balkans citizens for the following priorities:¹⁹

¹⁹Commission Communication "Enhancing the accession process - A credible EU perspective for the Western Balkans" COM(2020) 57 final

- a) **EUR 38 million of immediate support for the health sector**, through reallocations of some IPA funds, in particular through delivering essential supplies to save lives such as personal protective equipment, tests and ventilators²¹, The EU assisted Albania and North Macedonia to cover the immediate needs of their public health systems with up to EUR 4 million each, Bosnia and Herzegovina with EUR 7 million, meanwhile Montenegro received EUR 3 million, Kosovo* EUR 5 million and EUR 15 million went to Serbia;
- b) **EUR 389 million to address social and economic recovery needs** (national IPA re-allocations); EUR 46.7 million to support the social and economic recovery of Albania, EUR 73.5 million for Bosnia and Herzegovina, EUR 50 million for Montenegro, whilst North Macedonia will benefit from EUR 62 million, Serbia from EUR 78.4 million and Kosovo* will receive up to EUR 63 million; and
- c) **additional economic reactivation package in the amount of EUR 455 million for the region, in close cooperation with the International Financial Institutions** (EUR 50,7 mil for Albania, economic reactivation package for Albania), as well as
- d) **a proposal for EUR 750 million of Macro-Financial Assistance** (EUR 180 mil for Albania, Bosnia and Herzegovina EUR 250 mil, Kosovo* EUR 100 mil, Montenegro EUR 60 mil and North Macedonia EUR 160 mil)²² and
- e) **EUR 1.7 billion package of assistance from the European Investment Bank** (preferential loans)²³.

Furthermore, given their European perspective, the EU is treating the Western Balkans as **privileged partners** by granting them access to many initiatives and instruments reserved for EU Member States.

The Commission is also including the Western Balkans in EU initiatives to tackle the coronavirus crisis like the **joint procurement schemes of protective personal equipment** and has accelerated the implementation of a project with the European Centre for Disease Prevention and Control (ECDC). Initially envisaged for 2021, this project will enhance their capacities to survey and control communicable diseases, improve their health emergency preparedness capabilities, and support the development of their public health microbiology laboratory systems. Privileged partnership also includes exemption of the region from the EU's export authorization scheme for personal protective equipment, ensuring the fast flow of essential goods across land borders through **"green lanes"**, and the EU supply of testing material to ensure the correct functioning of coronavirus tests in the Western Balkans. The region is also connected with the work of relevant health bodies.

As a result of the coronavirus outbreak, the Western Balkans has also activated the **Union**

²⁰This includes reallocations from the Instrument for Pre-accession Assistance. Existing IPA support programs are also being adapted and accelerated e.g. EU pre-accession assistance for rural development (IPARD) and for EU-Western Balkans cross-border cooperation (REGIO).

²¹The EU is funding the delivery of some 95.000 COVID tests, 500 hospital beds, 450 ventilators, 100 intensive care monitors, 100 containers for triage, 10 ambulances, as well as more than 4.5 million pieces of protective equipment as well as hundreds of medical devices (such as x-rays, ECGs, CT scanners, defibrillators, infusion pumps) and thousands of supplies (such as thermometers, catheters, tubes, syringes, masks). The EU has also covered the cost of 16 long-haul flights carrying 750 tons of medical supplies purchased from other sources.

²²Proposal for a Decision of the European Parliament and of the Council on providing Macro-Financial Assistance to enlargement and neighborhood partners in the context of the COVID-19 pandemic crisis. 22 April 2020. 2020/0065 (COD)

²³Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Support to the Western Balkans in tackling COVID-19 and the post-pandemic recovery Commission contribution ahead of the EU-Western Balkans leaders meeting on 6 May 2020, COM/2020/315 final

Table 1 COVID-19: the EU package for the Western Balkan of EUR 3.3 billion

	To deal with the health crisis	To support business and public sector investment	To kick-start the socio-economic recovery		
	EUR 38 mil of immediate support to the health sector	EUR 455 mil for economic reactivation package in close cooperation with the IFIs	EUR 1.7 billion of preferential loans by the EIB	EUR 389 mil reallocation of IPA for social and economic recovery	EUR 750 mil of Macro-Financial Assistance (direct loan to the state budget)
AL	4	50.7		46.7	180
BA	7	80.5		73.5	250
KS*	5	60.0		63.0	100
ME	3	53.0		50.0	60
MK	4	66.0		62.0	160
RS	15	93.4		78.4	-

Civil Protection Mechanism (UCPM) and has already started to receive assistance through delivery of equipment and repatriation of citizens from the UCPM Member States and Participating States. **European Union Solidarity Fund (FSEU)** is extended to support COVID19 responses in the Region in April 2020.

The EU is also providing immediate humanitarian assistance **to vulnerable refugees and migrants** amounting to EUR 4.5 million and EUR

8 million to address pressing needs in migrant camps across the region.

Looking ahead - an economic and investment plan for recovery

The Western Balkans will require continued support to address the impact of the pandemic once the immediate crisis is over. The European Commission will later in the year come forward with an **Economic and Investment Plan for the region**, to spur the long-term recovery, boost economic growth and support reforms required to move forward on the EU path.

It will also include a substantial investment package for the region. For the period **2021-2027**, the Commission has proposed a total envelope for **the Pre-Accession Instrument III of EUR 12.9 billion²⁴**, of which major share is intended for the Western Balkans (**EUR 9 billion for the Western Balkans**, out of which EUR 6 billion is for direct investments in infrastructure and economy²⁵). The Commission foresees doubling in the provision of grants through the Western Balkans Investment Framework (WBIF) and substantially increase of the financial guarantees to support public and private investments in the region through a dedicated Guarantee Instrument under the WBIF.

The green transition and digital transformation will play a central role in relaunching and modernizing the economies of the Western Balkans. Investing in clean and digital technologies and capacities, together with a circular economy, will help create jobs and growth. Support will also be provided to improve the competitiveness of the economies of the Western Balkans, to better connect them within the region and with the EU, and to help make the Western Balkans fit for the digital age. A strong focus will be put on the transport and energy links, which are crucial for the economic development of both the region and the EU.

²⁴EC revised proposal, 27 May 2020;

²⁵Video Conference of Foreign Affairs Ministers with EC commissioner Varhely, presentation of the Draft package, 1 October 2020.

