

**MONTENEGRO
PRESIDENT**

Pursuant to Article 95 item 3 of the Constitution of Montenegro, I hereby issue the

DECREE

**PROMULGATING THE LAW AMENDING THE LAW ON THE
PROTECTION OF COMPETITION**

I hereby promulgate **the Law Amending the Law on the Protection of Competition** adopted by the 26th Parliament of Montenegro, at the sitting of the First extraordinary session in 2018, on 14 February 2018.

Number: 01-217/2
Podgorica, 20 February 2018

The President of Montenegro
Filip Vujanović

Pursuant to Article 82 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the 26th Parliament of Montenegro, at the sitting of the First extraordinary session in 2018, on 14 February 2018, adopted

LAW AMENDING THE LAW ON THE PROTECTION OF COMPETITION

Article 1

In the Law on the Protection of Competition (Official Gazette of Montenegro 44/12), Article 1 shall be amended to read:

“This Law shall regulate the protection of competition in the market of Montenegro and the control and monitoring of compliance of State aid and other matters relevant to the protection of competition and control of State aid.”

Article 2

Article 19 shall be amended to read:

“Establishing the Agency

Article 19

The Agency shall be established as an independent authority having legal personality and carrying out the tasks laid down in this Law.

The Agency shall, within the limits of its powers:

- 1) monitor and analyse conditions of competition in the general market as well as in the markets of particular economic sectors;
- 2) define research methods for competition;
- 3) approve exemptions from the prohibition of certain agreements and approve concentrations of undertakings, under prescribed conditions and take decisions in other matters, in accordance with this Law;
- 4) take measures against undertakings and associations of undertakings for impairment of competition in the market, or take measures with a view to preventing the occurrence of or terminating the infringement and eliminating harmful effects for undertakings and consumers;
- 5) exercise the control of compliance of the State aid with the law regulating State aid (*ex ante* control);
- 6) exercise the control of compliance of the award and use of granted State aid with the law regulating State aid (*ex post* control);
- 7) monitor the implementation and the effects of the granted State aid;
- 8) order recovery of unlawful and non-compliant State aid;
- 9) collect and process data on planned State aid;
- 10) collect data on the use and effects of granted State aid;
- 11) maintain records on State aids;
- 12) submit annual report to the Government and the Parliament of Montenegro (hereinafter referred to as the “Parliament”) on granted State aid;

13)submit annual report to the European Commission on granted State aid;

14)give opinions at the request of a state administration body, competent local self-government body and a legal person managing and disposing with the funds from public revenues and State property in accordance with the law in the process of drafting of legislation and other acts regulating matters related to the award of State aid, as well as in the process of their adoption;

15)promote and encourage improvement of the State aid control system;

16)give opinion on the enforcement of legislation in the field of protection of competition and State aid;

17)prepare expert bases for drafting of laws and implementing regulations in the field of protection of competition and State aid;

18)determine the amount of fee for decision-making in accordance with this Law, with the consent of the Government;

19)conduct administrative procedure and take decisions in individual administrative matters;

20)file request for initiating misdemeanour proceedings to the competent court and/or issue misdemeanour orders in accordance with the law regulating misdemeanours;

21)give opinions regarding applicable legislation that affect or may affect competition and inform the public thereof;

22)form expert and advisory bodies as required for the implementation of this Law;

23)cooperate with international and national organisations and institutions in the field of competition and State aid;

24)submit work report for the preceding year to the Government and to the Parliament;

25) submit financial plan for the following year to the Government;

26)publish statistical data and keep records of approved and notified concentrations;

27)control the implementation of measures imposed by decisions;

28)carry out other tasks in accordance with the law.

The Agency shall be obliged to publish its work report for the preceding year on its website.

The President and the members of the Council of the Agency (hereinafter referred to as the "Council"), the Director of the Agency, the Deputy Director of the Agency, the Assistant Director of the Agency and the staff of the Agency may not seek or receive instructions from state authorities, state administration bodies, local self-government bodies, local administration bodies, legal persons and other entities exercising public powers or other legal and natural persons when performing activities and tasks laid down in this Law and the law regulating State aid.

The content and manner of maintaining records on State aid, and manner of submission and the content of the State aid report and documentation to be enclosed to the notice shall be prescribed by the state administration body competent for State aid."

Article 3

In Article 20, paragraph 4 shall be amended to read:

“The Agency shall have its statute which shall regulate bases of internal organisation, detailed powers and scope of work of the bodies of the Agency, the manner of and procedure for decision-making, adoption and publication of general acts and other issues relevant to the work of the Agency.”

Article 4

Eight new articles shall be added after Article 20 worded as follows:

"Bodies of the Agency

Article 20a

The bodies of the Agency are the Council and the Director of the Agency.

Council of the Agency

Article 20b

The Council shall have a President and two members.

The President and one member of the Council shall be appointed by the Government on a proposal from the Ministry, while the other member of the Council shall be appointed by the Government on a proposal from the state administration body competent for State aid.

The President and members of the Council shall be appointed for a period of four years and may be reappointed.

The President and members of the Council shall exercise their offices in the Agency on a professional basis.

The President and members of the Council may not exercise office of a Member of the Parliament or another public office or perform another activity on a professional basis.

Requirements for appointment of the President and members of the Council

Article 20c

A person may be appointed as a President or member of the Council, if:

- 1) he is a Montenegrin national;
- 2) he holds at least VII-1 level of educational qualification (240 CSPK credits) in the field of law or economics.

In addition to the requirements referred to in paragraph 1 of this Article, the President and the member of the Council appointed on a proposal from the Ministry must have at least five years of work experience in the discharge of tasks related to the protection of competition, while the member of the Council appointed on a proposal from the state administration body competent for State

aid must have at least five years of work experience in the discharge of tasks related to State aid.

Restrictions on the Election of the President and Members of the Council

Article 20d

A person may not be appointed as a President or a member of the Council, if:

- 1) he is a Member of the Parliament or a councillor;
- 2) he is a member of the Government;
- 3) he has been appointed by the President of Montenegro, the Parliament, the Government or an assembly of the local self-government;
- 4) he is an official of a political party (president of a party, member of a presidency, his deputy, member of the executive and main board, and other party official);
- 5) he has been finally convicted of criminal offence prosecuted *ex officio*, regardless of the sanction imposed, or if he has been finally convicted of other criminal offence and sentenced to a prison term longer than six months, in the period while the legal consequences of the conviction last, and
- 6) he is a relative of the person referred to in items 1 to 4 of this paragraph in the straight line or in the collateral line up to the second degree of kinship, a relative by marriage up to the first degree of kinship, a married or a common-law spouse, adoptive parent or adoptee, and a member of his joint household.

A candidate for a member of the Council shall submit to the competent body of the Government a written statement that there are no impediments to appointment set out in this Law.

Dismissal of the President and a member of the Council

Article 20e

The President and/or a member of the Council may be dismissed before the expiry of the period of his appointment:

- 1) on his personal request;
- 2) if he permanently loses working capacity to exercise his office;
- 3) in case of occurrence of the circumstances referred to in Article 20d of this Law;
- 4) if he discharges the duty of the President or a member of the Council untimely and unconscientiously;
- 5) if he provides inaccurate data in the written statement referred to in Article 20d paragraph 2 hereof.

Competence of the Council

Article 20f

The Council shall:

- 1) adopt administrative acts falling within the competence of the Agency;
- 2) adopt the rules of the Agency;
- 3) adopt the Rules of Operation of the Council;
- 4) adopt the statute and the act on internal organisation and systematisation of work posts, and other acts of the Agency;
- 5) adopt the annual work plan in the field of State aid and the annual report on the granted State aid;
- 6) adopt the work report of the Agency for the preceding year;
- 7) submit to the Government the proposed financial plan of the Agency for the following year;
- 8) give opinions and guidelines on the application of legislation related to the protection of competition and State aid;
- 9) give opinions at the request of a state administration body, competent local self-government body and a legal person managing and disposing with the funds from public revenues and State property in accordance with the law in the process of drafting of legislation and other acts regulating matters related to the award of State aid, as well as in the process of their adoption;
- 10) perform also other tasks laid down in the law and the statute of the Agency.

Decision-making by the Council

Article 20g

The Council shall take decisions by majority vote of the total number of members of the Council.

Convening the meetings of the Council, manner of decision-making and other matters relevant to the work of the Council shall be regulated by the statute of the Agency.

Duties of the President of the Council

Article 20h

The President of the Council shall perform the following tasks:

- 1) presiding at the meetings of the Council;
- 2) signing decisions and other acts of the Council;
- 3) proposing measures to improve the work of the Council, and
- 4) other tasks laid down in the law and the statute of the Agency.”

Article 5

Article 21 shall be amended to read:

“Managing the Agency

Article 21

The Agency shall be managed by the Director of the Agency.

The Director of the Agency shall be appointed by the Government on a proposal from the Ministry.

The Director of the Agency shall have a deputy and two assistants – one assistant for the protection of competition and one assistant for State aid.

The Deputy Director of the Agency shall be appointed by the Government on a proposal from the Ministry.

An Assistant Director of the Agency shall be appointed by the Government on a proposal from the Director of the Agency.

The persons referred to in paragraphs 1 to 5 of this Article shall be appointed for a period of four years on the basis of an implemented public competition and may be reappointed.”

Article 6

Two new articles shall be added after Article 21 worded as follows:

“Requirements for appointment of the Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency

Article 21a

The Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency responsible for the protection of competition may be a person who, additionally to general requirements laid down in the law, meets the following requirements:

- 1) is a Montenegrin national and a resident of Montenegro;
- 2) holds at least VII-1 level of educational qualification (240 CSPK credits) in the field of law or economics;
- 3) has at least five years of work experience in the field of protection of competition.

The Assistant Director of the Agency responsible for State aid may be a person who, additionally to the requirements laid down in paragraph 1 items 1 and 2 of this Article, has at least five years of work experience in the field of State aid.

Restrictions on the Appointment of the Director of the Agency, the Deputy Director of the Agency and the Assistant Director of the Agency

Article 21b

A person referred to in Article 20d paragraph 1 of this Law may not be appointed as a Director of the Agency, a Deputy Director of the Agency, or an Assistant Director of the Agency.

The Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency may not exercise office of a Member of the Parliament or another public office or perform another activity on a professional basis.

A candidate for the Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency shall submit to the competent

body of the Government a written statement that there are no impediments to appointment set out in this Law.”

Article 7

In Article 22 paragraph 1 shall be amended to read:

The Director of the Agency shall have the power to:

- 1) act on behalf of and represent the Agency;
- 2) shall be accountable for operations and the legality of work of the Agency;
- 3) organise and manage operations of the Agency;
- 4) propose to the Council administrative acts falling within the competence of the Agency and shall be responsible for the enforcement of the decisions of the Council;
- 5) propose to the Council the work report for the preceding year and the financial plan for the following year;
- 6) submit to the Council annual report on granted State aid;
- 7) submit to the Council proposals for opinions on the application of legislation related to the protection of competition and State aid;
- 8) propose to the Council opinions on draft legislation and proposals for legislation regulating matters related to the granting of State aid;
- 9) file request for initiating misdemeanour proceedings to the competent court and/or issue misdemeanour orders;
- 10) decide on the rights, obligations and responsibilities of the staff of the Agency;
- 11) make decisions regarding the management of income and expenses of the Agency in accordance with the financial plan;
- 12) perform also other tasks in accordance with this Law, statute of the Agency and decisions of the Council."

After paragraph 3 new paragraph shall be added worded as follows:

"The Assistant Director of the Agency shall manage and coordinate the work of the organisational unit, coordinate and guide the work of the staff in that organisational unit and perform other tasks ordered by the Director of the Agency."

Article 8

Article 23 shall be amended to read:

“Dismissal of the Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency

Article 23

The Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency may be dismissed before the expiry of the period of his appointment:

- 1) on his personal request;

- 2) if he was convicted of an offence making him unworthy of discharging his duty;
- 3) if he does not comply with the law, if he discharges his duty unprofessionally and unconscientiously;
- 4) if his conduct and work have called into question the independence and reputation of the Agency;
- 5) if he permanently loses the capacity to discharge his duty;
- 6) if he is elected to or commences exercising another office or the activity incompatible with his duty in the Agency.”

Article 9

New article shall be added after Article 23 worded as follows:

“Rights and Obligations of the Staff of the Agency

Article 23a

The rights, obligations and responsibilities of the President and members of the Council, the Director of the Agency, the Deputy Director of the Agency or Assistant Director of the Agency and staff in the Agency shall be governed by the legislation regulating the rights, obligations and responsibilities of civil servants and state employees, unless otherwise provided by this Law.

The quotient of complexity of tasks of the President and members of the Council, the Director of the Agency, the Deputy Director of the Agency or the Assistant Director of the Agency and staff in the Agency shall be defined by an act of the Ministry which shall be subject to the consent of the Government.”

Article 10

The introductory sentence in Article 24 paragraph 1 shall be amended to read:

“The resources necessary for the work of the Agency in the discharge of the activities and tasks laid down in this Law and the law regulating State aid shall be provided from:”

Item 3 shall be deleted.

Previous item 4 shall become item 3.

Article 11

In Article 25 paragraphs 5 and 6 shall be amended to read:

"The Agency shall be obliged to organise and conduct its financial operations in accordance with the legislation regulating operations of budget spending units.

Financial reports of the Agency shall be subject to audit by the State Audit Institution."

Paragraphs 7 and 8 shall be deleted.

Article 12

After Article 25 two new articles shall be added worded as follows:

"Annual Report

Article 25a

The Agency shall be obliged to submit, by the end of the second quarter of the current year, to the Government and to the Parliament, the work report for the preceding year.

The Agency shall be obliged to submit, by the end of the first quarter of the current year, to the state administration body competent for budget, the annual financial report for the preceding year.

State aid grantor shall be obliged to submit to the Agency the data on granted State aids by 15 March of the current year for the preceding year.

On the basis of data received from the State aid grantor, the Agency shall make an annual report on the State aid granted in the preceding year and submit it to the Government and the Parliament by the end of the second quarter of the current year, for the purpose of informing them thereof.

The Agency shall submit the report referred to in paragraph 4 of this Article to the European Commission, in accordance with the obligations assumed under ratified international agreement.

Data Confidentiality

Article 25b

The President of the Council, member of the Council, the Director of the Agency, the Deputy Director of the Agency, the Assistant Director of the Agency and the staff of the Agency shall be obliged to keep confidential, in accordance with the legislation regulating data confidentiality, any data they learn in the course of performance of their activities and tasks in accordance with this Law.

The obligation referred to in paragraph 1 of this Article shall survive after the expiry of term of office or termination of employment of the persons referred to in paragraph 1 of this Article."

Article 13

Article 26 shall be amended to read:

"Application of Legislation

Article 26

The provisions of Articles 27 to 64 and Article 69 of this Law shall not apply to proceedings conducted in accordance with the law regulating State aid."

Article 14

In Article 28 paragraphs 2 to 5, Article 32 paragraph 1, Article 34 paragraph 3, Article 44 paragraph 2, Article 60 paragraphs 1, 2 and 3 and Article

62 paragraph 1 of this Law, the word "conclusion" shall be replaced by the word "decision".

Article 15

In Article 31 paragraph 2, the word "performed" shall be replaced by the word "conducted".

Article 16

In Article 35 paragraph 1 shall be amended to read:

"Before it makes a decision, the Agency shall be obliged to deliver to all the parties against whom the proceedings have been initiated or at whose request the investigation is conducted a written notice of established facts, circumstances and conclusions in the proceedings."

In paragraph 2, the words: "which may not be shorter than 15" shall be replaced by the words: "of eight".

In paragraph 4, the words: "15 days" shall be replaced by the words: "eight days".

Article 17

In Article 36 after paragraph 2 new paragraph shall be added worded as follows:

"Business secret shall mean in particular business information having actual or potential market value, whose disclosure or use might result in economic advantage to other undertakings."

Article 18

In Article 37 paragraph 1, the words: "which may not be shorter than 15" shall be replaced by the words: "of up to 15".

Article 19

In Article 38 paragraph 1, after the words: „Upon the request of" the following words shall be added: "party to the proceedings" and a comma.

Paragraph 3 shall be amended to read:

"The Agency may order the measure referred to in paragraph 1 of this Article *ex officio* if in consultation with a person referred to in paragraph 1 above it has assessed that the protection of data is necessary to protect the interests of that person and that such protection is more important than the need to inform the public."

In paragraph 4, the word "conclusion" shall be replaced by the word "decision".

Article 20

In Article 39 paragraph 1 the words: "within 15 days" shall be replaced by the words: "within a period which may not be shorter than three or longer than 30 days".

Article 21

In Article 46 paragraph 2, the words "block exemption" shall be replaced by the words "that agreement".

Article 22

In Article 64 the words: "and conclusions" shall be deleted.

Article 23

After Article 72 five new articles shall be added worded as follows:

“Time Limit for Appointing the President and Members of the Council and Taking over the Tasks

Article 72a

In accordance with this Law the President and members of the Council shall be appointed within 30 days from the date of entry into force of this Law.

Until the President and members of the Council are appointed, the tasks of the Council in the part related to the protection of competition shall be discharged by the Director of the Agency.

The tasks of the Council in the part related to State aid, in accordance with this Law, shall be discharged by the State Aid Control Commission appointed in accordance with the Law on State Aid Control (Official Gazette of Montenegro 74/09 and 57/11) until expiry of the time limit referred to in Article 72b paragraph 1 of this Law.

Taking over the Tasks of the State Aid Control Commission

Article 72b

The Agency shall take over the tasks of the State Aid Control Commission within 120 days from the date of entry into force of this Law.

The State Aid Control Commission shall submit to the Council, on the date of taking over the tasks referred to in paragraph 1 of this Article, the report on granted State aid with a report on the control of earmarked use of granted State aid.

Exercise of Office of the Director of the Agency

Article 72c

The Director of the Agency appointed before the date of entry into force of this Law shall continue to exercise his office until his term of office expires.

Time Limit for Adopting the Statute

Article 72d

The statute of the Agency in accordance with this Law shall be adopted within 60 days from the date of appointment of the President and members of the Council.

Time Limit for Adopting the Act on Internal Organisation and Systematisation of Work Posts and Taking over Tasks and Staff

Article 72e

The Agency shall harmonise the act on internal organisation and systematisation of work posts with this Law within 60 days from the date of appointment of the President and members of the Council.

Within 30 days from the date of adoption of the act referred to in paragraph 1 of this Article, in accordance with this Law, the Agency shall take over from the state administration body competent for State aid the civil servants and state employees who discharged the expert and administrative tasks as needed by the State Aid Control Commission, equipment, official documentation, funds for salaries and other income of employees.

The civil servants and state employees referred to in paragraph 2 of this Article who have not been reassigned in accordance with the act referred to in paragraph 1 of this Article shall exercise their rights in accordance with the legislation governing civil servants and state employees.”

Article 24

After Article 74 new article shall be added worded as follows:

“Implementing Act

Article 74a

The implementing act referred to in Article 19 of this Law shall be adopted within 90 days from the date of entry into force of this Law.”

Article 25

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

Number: 08-1/17-1/4
EPA 341 XXVI
Podgorica, 14 February 2018

THE 26TH PARLIAMENT OF MONTENEGRO

THE SPEAKER
Ivan Brajović