

# LAW ON CONCLUSION AND ENFORCEMENT OF INTERNATIONAL TREATIES

## DISCLAIMER

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Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of the 25th convocation, at the sitting of the fifth extraordinary session in 2015, on 23 September 2015, has passed the:

## LAW ON CONCLUSION AND ENFORCEMENT OF INTERNATIONAL TREATIES<sup>1</sup>

### I. GENERAL PROVISIONS

#### Scope of the Law Article 1

This Law shall define the procedure of concluding, ratifying and enforcing international treaties as well as other matters related to entry into force, publishing, amendments and repealing international treaties.

#### The Concept of an International Treaty Article 2

An international treaty is a treaty that Montenegro concludes in writing with one or several states or with one or several international organisations, regulated by international law, contained in one or more interconnected documents, regardless of their name (agreement, convention, pact, charter, concord, protocol, memorandum, declaration).

Protocols, minutes or other written acts concluded for the purposes of enforcing international treaties by the bodies authorised by these treaties, as well as other

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<sup>1</sup> Official Gazette of Montenegro, No. 77/08 of 16.12.2008

international acts concluded by the public administration bodies within their competences, which do not assume new obligations for Montenegro (hereinafter referred to as: administrative international treaties) shall not be considered to be international treaties, within the meaning of this Law.

### **Application of International Law**

#### **Article 3**

Generally accepted rules of international law and international contractual law shall apply to relations not regulated by this Law.

### **Definitions**

#### **Article 4**

Certain terms used in the present Law shall have the following meaning:

- 1) conclusion of treaties covers all actions within the procedure of developing an international treaty, except for ratification;
- 2) full powers is a document defining one or several persons to represent the state during negotiations, adoption and certification of the text of an international treaty, express consent of the state to be bound by the treaty or to perform any other action in relation to the treaty, containing the name of the persons being authorised, full contract title, content of the authorisation (negotiation, signature or another action related to the contact), date and place of signing;
- 3) ratification represents the adoption of laws through which Montenegro expresses consent to be bound by an international treaty;
- 4) instrument of ratification, acceptance, approval or accession is a written act informing another country or an international organisation that a certain international treaty has been accepted by Montenegro and that it is bound to observe it;
- 5) notification of succession is an official notification in the form of a diplomatic note or another document informing another country or an international organisation that Montenegro will apply and assume international treaties and agreements it has concluded and to which the state union of Serbia and Montenegro has acceded and which refer to Montenegro and are in line with its legal order;
- 6) reservation is a unilateral written statement, however phrased or named, which is used by Montenegro during signing, ratification, acceptance or approval of treaties or accession to those treaties to exclude or amend the legal effect of certain provisions of the treaty with regard to its application to Montenegro;
- 7) interpretative declaration is a unilateral statement, however phrased or named, made by Montenegro, during signing or consenting to be bound by a treaty, in order to interpret, specify or clarify certain provisions of that treaty with regard to its application to Montenegro;
- 8) registration of international treaties is entry of the international treaty into records, kept by the competent authority of the United Nations for this purpose, in line with the United Nations Charter.

## **II. CONCLUSION OF AN INTERNATIONAL TREATY**

### **Initiation of the Procedure**

#### **Article 5**

The procedure of conducting negotiations and concluding an international treaty shall be initiated by the Government of Montenegro, upon its own initiative or upon the proposal of the public administration authority, which during the performance of affairs from its own competence or upon the initiative of another public authority, commercial entity or another legal entity, determines that certain matters need to be governed with other states or international organisations (hereinafter referred to as: competent ministry).

Government of Montenegro (hereinafter referred to as: The Government) can initiate a procedure for conducting negotiations and concluding an international treaty upon the initiative of the President of Montenegro or the Parliament of Montenegro.

### **Basis for Conducting Negotiations and Concluding an International Treaty** **Article 6**

Basis for conducting negotiations and concluding an international treaty (hereinafter referred to as: the basis) shall be determined by the Government, upon the proposal of the competent ministry.

The proposal of the basis shall specifically contain: constitutional basis; assessment of the state of relations with the other state or international organisation with which the conclusion of the international treaty is being proposed; reasons due to which the conclusion of the international treaty is being proposed; fundamental issues to be discussed during the negotiations or important elements contained in the treaty and the proposal of the positions of the delegation of Montenegro in relation to those issues; assessment of the necessary funds to enforce the treaty and the manner of securing funds; positions and opinions of interested bodies on the justification of concluding the treaty; whether the conclusion of an international treaty requires amendments to the current or adoption of new legislation; draft treaty and any other materials related to negotiations, proposal of the composition of delegation and cost estimate for its work.

Proposal of the basis for the conclusion of an international treaty defining or assuming financial obligations or which determine the participation of Montenegro in international funds or other credit institutions, in addition to the elements referred to in paragraph 2 of this Article, should also contain the following: purpose; amount of funds required; conditions and method of approving or repaying loans; sources of funds for Montenegro's participation share, as well as other obligations arising from an international agreement.

Opinion of the public administration authority competent for foreign affairs shall be attached to the proposal referred to in paragraph 1 of this Article (hereinafter referred to as: the Ministry).

### **Delegation Responsible for Conducting Negotiations** **Article 7**

When determining the basis, the Government shall appoint the delegation for conducting negotiations and the amount of costs for the work of the delegation.

Government may, when determining the basis, authorise the head of the delegation to sign an international treaty the content of which is in line with the basis.

## **Full powers Article 8**

Full powers shall be given by the Prime Minister or the Minister of Foreign Affairs on the basis of the conclusion of the Government.

Full powers referred to in paragraph 1 of this Article shall not be required for:

- the President of Montenegro, Prime Minister and Minister of Foreign Affairs, for signing an international treaty;
- Head of Mission, for the adoption of the text of international treaty between Montenegro and the state of the accreditation of the HoM;
- accredited representative of Montenegro at an international conference and within an international organisation or one of its bodies, for the adoption of the text of the treaty in that conference, in that organisation or body.

## **Conducting Negotiations Article 9**

Delegation responsible for conducting negotiations shall represent the positions determined in the basis.

Provided that the other party does not accept the positions determined in the basis or proposes issues to be discussed for which positions have not been taken within the basis during the negotiations, the delegation shall ask for the new positions of the Government, and if necessary, postpone the negotiations.

Government shall, urgently, define the positions required by the delegation during negotiations.

## **Temporary Application Article 10**

Exceptionally, the delegation of Montenegro can, upon the special approval of the Government, accept the provision within an international treaty defining that that treaty or some of its provisions will temporarily apply prior to its entry into effect.

Temporary application shall cease if Montenegro decides not to become a party to that international treaty and when it notifies other subjects of international law between which the treaty is temporarily applied of its decision.

## **Language Article 11**

Text of the bilateral international treaty shall be defined by the languages of the contracting parties and/or in another language as agreed between them.

## **Report on Negotiations Article 12**

Following the completion of negotiations, the delegation of Montenegro shall submit the report to the Government.

Provided that the Government estimates that the harmonised text of an international treaty is in line with the determined basis, it shall appoint its signatory.

In case the negotiations have not been successfully completed, the delegation of Montenegro shall, in the report referred to in paragraph 1 of this Article, specifically detail the reasons for the lack of success of negotiations and propose further action.

### **Submission of the Signed International Treaty Article 13**

Delegation of Montenegro, or the signatory of the international treaty shall, within 15 days from the date of the signing, submit to the Ministry the original of the signed international treaty.

## **III. RATIFICATION, ENTRY INTO FORCE, PUBLISHING AND RECORDING INTERNATIONAL TREATIES**

### **Ratification Article 14**

Parliament of Montenegro (hereinafter referred to as: The Parliament) ratifies international treaties requiring the adoption of new or amendments to the current legislation, international treaties involving accession to political or military unions, as well as international treaties the provisions of which explicitly require their ratification.

### **Law on Ratification Article 15**

International treaty shall be ratified by law. Law on ratification of an international treaty shall contain the following:

- full title of an international treaty, as required, annexes, place and date of signing and its signatories;
- text of an international treaty in Montenegrin, or the translation into Montenegrin language and/or one of the languages of the original if it is not Montenegrin language;
- provision on the entry into force of the law.

Law referred to in paragraph 1 of this Article may contain other provisions referring to the following:

- reservations and interpretative declarations attached to that international treaty;
- provisions on securing funds for the enforcement of an international treaty;
- bodies responsible for their implementation.

### **Preparation of the Law on Ratification Article 16**

Draft Law on Ratification of an international treaty, with an explanatory note, shall be prepared by the competent Ministry and submitted to the Government.

Explanatory note of the draft law shall contain the following: constitutional basis; assessment of international relations in the area in which the international treaty is being concluded and the aim to be achieved by the adoption of the law; basic issued governed by the international treaty; assessment of funds required for the implementation of the law; note on the need to harmonise internal regulations with an international treaty and the reasons for the urgency, if the shortened procedure for law adoption is proposed.

Opinion of the Ministry, public administration authority responsible for finance affairs, Secretariat for Legislation and other opinions according to the assessment of the competent ministry shall be submitted with the draft law.

### **Instruments of Ratification, Acceptance, Approval or Accession** **Article 17**

Instruments of ratification, acceptance and approval or accession to an international treaty shall be signed by the President of Montenegro.

### **Exchange of Instruments of Ratification, Acceptance, Approval or Accession** **Article 18**

Ministry shall be responsible for the exchange of instruments of ratification, acceptance, approval or accession, depositing instruments of ratification of an international treaty and the execution of other actions envisaged by an international treaty in relation to informing the other contracting state or the entry of the treaty into force.

### **Entry into Force** **Article 19**

International treaty shall enter into force in accordance with the provisions of that treaty and this Law.

Provided that an international treaty does not contain provisions on the entry into force, that international treaty shall enter into force once all of the signatories provide consent to be bound by that treaty.

### **Succession of International Treaties** **Article 20**

Rules of international law shall apply to the succession of international treaties, provided that those treaties are not contrary to the Constitution and the legal order of Montenegro. Notification of succession shall be carried out by the Ministry.

The list of treaties covered by the succession shall be published in the “Official Gazette of Montenegro - International Treaties”.

### **Publishing** **Article 21**

Law on ratification of an international treaty shall be published in the “Official Gazette of Montenegro - International Treaties” prior to its entry into force in line with the international

law.

In the “Official Gazette of Montenegro - International Treaties”, other international treaties and administrative international treaties shall also be published, as decided by the Government, as well as the notification on the beginning and temporary or permanent cessation of effect of an international treaty.

Ministry shall be responsible for the publishing of the notification on the entry into and cessation of effect of an international treaty referred to in paragraph 2.

### **Registration Article 22**

Ministry shall be responsible for the registration of international treaties concluded by Montenegro.

### **Recording and Safekeeping Article 23**

Ministry shall keep the records on concluded international treaties and safekeep the originals or certified copies and official translations of those treaties as well as other instruments related to ratification, accession, entry into force, cessation or amendments to an international treaty.

Provided that an international treaty entrusts Montenegro to be the depositary, this role shall be performed by the Ministry.

## **IV. IMPLEMENTATION, AMENDMENTS AND CESSATION OF EFFECT OF INTERNATIONAL TREATIES**

### **Implementation Article 24**

Competent ministries shall monitor the implementation of international treaties from its line of work and inform the Government thereof.

Government, upon the request of the President of Montenegro and the Parliament, shall submit the report on the implementation of ratified international treaties.

### **Amendments Article 25**

International treaty can be amended in line with the provisions of that treaty or according to the generally accepted rules of international law.

Provisions of this law referring to the conclusion of international treaty shall apply to the procedure of amendment of an international treaty accordingly.

### **Cessation Article 26**

International treaty shall cease to have effect, temporarily or permanently, in line with the provisions of this treaty or according to generally accepted rules of international law.

The decision on the temporary cessation of effect of the international treaty referred to in paragraph 1 of this Article shall be made by the Government.

### **Denunciation Article 27**

Denunciation or withdrawal from an international treaty shall be carried out in line with the provisions of that treaty or generally accepted rules of international law.

Provisions of this law referring to the conclusion of a treaty shall apply accordingly to the procedure of denunciation or withdrawal from an international treaty by Montenegro.

### **Withdrawal and Amendments to Reservations and Interpretative Declarations Article 28**

Withdrawal or amendments to reservations and interpretative declarations shall be carried out in line with the provisions of international treaty or generally accepted rules of international law. Procedure for denunciation of treaty shall apply to the withdrawal of reservations.

Parliament may authorise the Government through a law on ratification to withdraw or amend reservations or interpretative declarations when requirements for such action are met.

## **V. SPECIAL PROVISIONS**

### **Administrative International Treaties Article 29**

Competent ministry shall, prior to the beginning of negotiations for the conclusion of an administrative international treaty, inform the Government thereof and acquire the opinion of the Ministry.

Administrative international treaty shall be submitted to the Government for information purposes following the signing process.

Original copies of signed administrative international treaties, including minutes of meetings of mixed intergovernmental bodies, shall be recorded and kept at the Ministry.

### **Concluding International Treaties at Diplomatic Conferences Article 30**

Provisions of this Law shall apply accordingly to the procedure of concluding international treaties at diplomatic conferences, mixed intergovernmental bodies as well as accession



of Montenegro to prior concluded multilateral international treaties.

### **Other International Acts**

#### **Article 31**

Other acts that international organisations, associations and institutions adopt in line with the international treaty, binding for Montenegro, shall enter into force in line with the provisions of that treaty and this Law.

## **VI. TRANSITIONAL AND FINAL PROVISIONS**

### **Delivery of Treaty for Recording and Safekeeping**

#### **Article 32**

Competent ministries shall submit the international treaties Montenegro concluded as of 3 June 2006 for the purposes of recording and safekeeping.

### **Cessation of Effect of a Previous Regulation**

#### **Article 33**

Law on the Conclusion and Performance of International Treaties shall cease to effect as of the entry into force of this Law (Official Gazette No. 55/78 and 47/89).

### **Entry into Force**

#### **Article 34**

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