

PROPOSED

LAW ON AMENDMENTS TO THE LAW ON INTERNAL TRADE

Article 1

In Article 8 of the Law on Internal Trade (Official Gazette of Montenegro 49/08) for the words "with the exception of natural persons – end users" there shall be substituted the words "engaged in a registered business activity".

Article 2

In Article 9 at the end of paragraph 1 the full stop shall be deleted and there shall be added the following words "for wholesale trade".

Article 3

After Article 10 the sub-heading "2) Special Forms of Wholesale" and Articles 11, 12 and 13 shall be deleted.

Article 4

Article 14 shall be amended to read as follows:

"Retail trade shall mean the purchase of goods with the aim of their further sale to consumers and entities set out in Article 8 of this Law which do not use such goods for further sale".

Article 5

In Article 15, para. 1 for the words "sales premises or", there shall be substituted the words "special premises (shops) as well as".

In paragraph 2 the words "(street sellers with hand carts, etc.)" shall be deleted.

Article 6

In Article 16 for the Montenegrin words translated as "distance communication" there shall be substituted other Montenegrin words, with no relevance to the English translation, and after the word "trader", at the end the full stop shall be deleted and there shall be added the following words "(Internet sales, catalogue sales and telephone sales)".

Article 7

In Article 22, para. 4 shall be deleted.

Article 8

In Article 32, para. 5 for the words "prescribed for placement on the market (declaration, mark, accompanying documents, etc.)" there shall be substituted the words "for their placement on the market stipulated by a separate law".

Article 9

Article 33 shall be amended to read as follows:

- "(1) Unless otherwise provided by law, traders shall submit a notification of commencement of trading activity to the administrative body competent for inspection control - the competent inspectorate (hereinafter referred to as the "competent authority"), at the latest on the date of commencement of trading activity.
- (2) Traders shall inform the competent authority about the change of data contained in the notification set out in paragraph 1 of this Article within eight days from the date the change occurred.
- (3) Traders shall inform the competent authority of termination of trading activity within eight days from the date of termination of trading activity.
- (4) The records of data set out in paras. 1, 2 and 3 of this Article shall be kept by the competent authority in a separate register of notifications of trading activity.
- (5) The contents of the notification form set out in para. 1 and of the notice set out in paras. 2, 3 and of the register set out in para. 4 of this Article shall be prescribed by the Ministry."

Article 10

In Article 37, paras. 1 and 2 for the word "trade" in different case forms, there shall be substituted the word "consignment" in the appropriate case form.

Paragraph 4 shall be amended to read as follows:

"(4) The records shall be kept based on proofs of procurement of goods and production of finished goods and consignment services documents (bill-invoice, goods received note, work order, purchase order, and other proofs) and based on proofs of the sale of goods and provision of consignment services (bill-invoice, cash register receipt, hand-completed receipt, and other proofs containing the prescribed data about goods and services sold)".

Article 11

After Article 37, Chapter "IV. Unfair Competition" and Articles 38, 39 and 40 shall be deleted.

Article 12

In Article 41, paragraph 2 shall be amended to read as follows:

"(2) Inspection control over the implementation of this Law shall be exercised by the competent authority via market inspectors."

Article 13

In Article 42 in the introductory sentence of para.1 the word "responsible" shall be deleted.

Item 1 shall be amended to read as follows:

"1) temporarily close a facility or other point of sale in which wholesale or retail trade is pursued, where it:

- has not submitted the notification set out in Article 33, para.1 of this Law;

- does not comply with the prescribed requirements for engaging in trade;
- does not have proof of procurement of the goods which are being traded."

Article 14

Article 43 shall be amended to read as follows:

"(1) A legal person shall be punished for a misdemeanour by a fine ranging from €1,000 to €10,000, where:

- 1) it pursues trade in business premises or at other points of sale which are not in conformity with the prescribed requirements (Article 9, para. 1 and Articles 15, 19 and 31);
- 2) does not have proof of procurement of the goods which are being traded (Article 32, paras. 1, 2, 3 and 4);
- 3) it does not submit the notification of commencement of trading activity to the competent authority at the latest on the date of commencement of trading activity (Article 33, para. 1);
- 4) it fails to inform the competent inspection authority of a change of data from the notification of commencement of trading activity within eight days as of the date when the change occurred (Article 33, para. 2);
- 5) it fails to inform the competent inspection authority of termination of trading activity within eight days as of the date of termination of trading activity (Article 33, para. 3);"

(2) Entrepreneurs shall be punished for the misdemeanour set out in para. 1 of this Article by a fine ranging from €300 to €3,000.

(3) Responsible officers of legal persons and natural persons shall also be punished by a fine ranging from €200 to €500 for the misdemeanour set out in para. 1 of this Article.

(4) In addition to a fine for the misdemeanour set forth in para. 1 items 1, 2, 3 and 4 of this Article, the misdemeanant may also be imposed a protective measure of confiscation of the infringing goods.

(5) In addition to a fine for the misdemeanour set forth in para. 1 item 5 of this Article, the misdemeanant may be also be imposed a protective measure of trade ban for a period from three months to one year."

Article 15

After Article 43 the following Article shall be inserted:

"Article 43a

(1) Legal persons shall be punished for a misdemeanour by a fine ranging from €200 to €1,500 where they:

- 1) perform consignment services of those types of goods that are prohibited under this Law (Article 24, para.3);
- 2) do not have proof of procurement of the goods which are being sold on consignment (Article 24, para.4);
- 3) do not provide market place services in the prescribed manner (Article 30);

- 4) do not keep records in the manner laid down in this Law (Article 37).
- (2) Entrepreneurs shall be punished for the misdemeanour set out in para. 1 of this Article by a fine ranging from €150 to €1,500.
- (3) Responsible officers of legal entities and natural persons shall also be punished by a fine ranging from €150 to €500 for the misdemeanour set out in para. 1 of this Article.
- (4) In addition to a fine for the misdemeanour set forth in para. 1 items 3 and 4 of this Article, the misdemeanant may also be imposed a protective measure of confiscation of the infringing goods.
- (5) In addition to a fine for the misdemeanour set forth in para. 1 item 4 of this Article, the misdemeanant may also be imposed a protective measure of trade ban for a period from three months to one year."

Article 16

Article 45 shall be deleted.

Article 17

After Article 46 there shall be inserted the following Articles:

"Article 46a

The by-law set out in Article 33, para.5 of this Law shall be passed within six months from the day of entry into force of this Law.

Article 46b

Trading activity in Montenegro from the date of accession to the European Union may also be performed by business organisations, other legal entities, entrepreneurs and natural persons which are registered into the appropriate register for performing the activity concerned in the Contracting Parties of the Agreement on the European Economic Area in accordance with the law governing provision of services, as well as this Law, with the exception of the part relating to entry into the register."

Article 18

After Article 48 there shall be inserted the following Article:

"Article 48a

Article 47 of the Law Amending the Law on Fines for Misdemeanours (Official Gazette of Montenegro 40/11) shall be repealed on the day of entry into force of this Law."

Article 19

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

RATIONALE

I CONSTITUTIONAL BASIS FOR ADOPTING THE LAW

The constitutional basis for adoption of the Law Amending the Law on Internal Trade is enshrined in Article 16 item 5 of the Constitution of Montenegro, which sets forth that laws shall govern matters of interest to Montenegro.

II REASONS TO ADOPT THE LAW

Amendments to the Law on Internal Trade were initiated for the purpose of improving and abolishing norms that have become effectively inapplicable, as well as for the purpose of adopting new separate regulations governing in more detail certain actions and procedures related to trade. The reason for amendments is the harmonization of the EU acquis in the field of freedom to provide services, under which one part of the provisions should be transposed by regulations governing the area of freedom to provide services.

III EXPLANATION OF THE BASIC LEGAL PRINCIPLES

In Article 1, Article 8 shall be amended and for the words "with the exception of natural persons – end users" shall be substituted the words "engaged in a registered business activity", for the purpose of a more clear exclusion of consumers from the conduct of wholesale trade. Such a provision establishes more clearly that wholesale trade can only be conducted between legal entities registered for trade.

In Article 2, Article 9 defines more precisely that the requirements for premises relate to special requirements for premises used for wholesale trade, thus creating a distinction between premises for retail trade and those for wholesale trade.

In Article 3, Articles 11, 12 and 13 shall be deleted, thus repealing the provisions relating to forms of wholesale trade. Articles relating to exclusive and selective distribution and franchising are deleted in accordance with the regulation governing the subject-matter of contractual relations and the regulation governing the field of services.

In Article 4, Article 14 is amended because it has proved inapplicable to exclude traders, professional users and other entities that perform some registered retail activity. This amendment also enabled these persons to engage in retail trade (purchase of goods) if they do not use the goods in question for further sale.

In Article 5, paragraph 1 of Article 15 is amended in view of further harmonization with the terminology set out in Article 37, paragraph 2.

In Article 6, Article 16, paragraph 1 is amended in order to harmonize the terminology with the Law on Consumer Protection which has transposed European sources of law in relation to distance selling and it additionally defines the means of distance communication.

In Article 7, paragraph 4 of Article 22 is deleted for the purpose of alignment with the regulation transposing the source of EU law regarding the freedom to provide services.

In Article 8, Article 35, paragraph 5 is amended in order to further link this law with other regulations whose requirements must be fulfilled by the goods before being traded, such as declaration, mark, accompanying documents, and the like.

In Article 9, Article 33 is amended in order to further specify the contents of the form, procedure and time-limits for registering the commencement of trade, as well as for reporting additional changes during the performance of the activity. Additionally, the contents of the register kept by the competent inspection body are also specified in more detail, by introducing a by-law to be prescribed by the ministry.

In Article 10, Article 37, paras. 1, 2 and 4 are amended, by introducing records for consignment services only, because the others are covered by records prescribed by other regulations.

In Article 11, Articles 38, 39 and 40 are deleted for the purpose of alignment with the Criminal Code, Law on Prohibited Advertising and the regulation governing consumer protection (unfair commercial practice).

In Article 12, Article 41, paragraph 2 is amended for the purpose of alignment with the Law on Inspection Control which established the Administration for Inspection Affairs, whereby the former Market Inspectorate became a directorate within that Administration.

In Article 13, Article 42 paragraph 1 is amended and aligned with the Law on Inspection Control, whereas item 1 of the same Article is aligned for consistency reasons with Article 33 of the underlying text.

In Articles 14 and 15, Articles 43 and 44 are amended so that the penal provisions are additionally aligned with the regulation governing penal policy for misdemeanours. Also, given the experience acquired during the past application of this Law, penalties for some of the misdemeanours are prescribed more appropriately.

In Article 16, Article 45 is deleted for the purpose of alignment with the regulation governing penalties for misdemeanours.

In Article 17, a new Article 46a is added, thereby aligning the Law with the regulation governing services and transposing EU sources of law in the area of freedom to provide services.

In Article 18, the deadline for drafting the by-law set out in Article 33, paragraph 5 is given.

In Article 19, a new Article 48a is added, which serves alignment purposes as it states that the passing of this Law repeals the provisions of the Law Amending the Law on Fines for Misdemeanours in this area.

IV ESTIMATED FUNDS NEEDED TO IMPLEMENT THE LAW

Additional funds are not needed in the budget of Montenegro for the implementation of the present Law.

OVERVIEW OF THE PROVISIONS OF THE LAW ON INTERNAL TRADE
(Official Gazette of MNE 49/08) whose amendments are proposed

Article 8

Wholesale trade shall mean the purchase of goods with the aim of selling it further to traders, professional users, and other entities, with the exception of natural persons – end users.

Article 9

(1) Wholesale trade shall be conducted in special premises, warehouses, and other premises for wholesale of goods, on marketplaces for wholesale of goods, and at other places which fulfil the prescribed requirements.

(2) Wholesale trade may also be conducted without retaining the goods in the wholesaler's warehouse (transit trade).

(3) The sales space and/or the warehouse shall not be required for conducting the trade referred to in paragraph 2 of this Article.

Article 14

Retail trade shall mean the purchase of goods for the purpose of their further sale to end users.

Article 15

(1) Retail trade shall be conducted in sales premises or at other points of sale conforming to the prescribed requirements.

(2) Other points of sale at which retail trade is conducted shall include: stands - stalls, kiosks, automatic sale machines, mobile shops (street sellers with hand carts, etc.) and the like.

(3) Other points of sale within the meaning of para. 2 of this Article may be organised in closed space or in the open, at a marketplace or outside the marketplace, in accordance with a separate regulation of the local government.

(4) Trade at other points of sale shall be deemed to also include the opportune sales (performances, trade fairs, exhibitions, etc).

Article 16

Distance trade shall mean the retail through the means of distance communication within a sale network organised by a trader.

Article 22

(1) Agency services referred to in Article 21 of this Law shall be deemed to be the activities related to the conclusion of a contract on the trade in goods, on behalf of and for the account of a client.

(2) Intermediation services shall be deemed to be the activities of bringing interested parties into contact for the purpose of concluding a contract on trade in goods related activities.

(3) Intermediation services may be provided along with agency services, and vice versa, without making any entry into the register.

(4) Agency and intermediation services referred to in paras. 1 and 2 of this Article shall also include the services related to transactions in immovables and movable articles which constitute fixed assets of companies and entrepreneurs.

Article 32

(1) The proof of the procurement of goods which are being traded shall be the invoice issued in the prescribed form.

(2) The proof of the procurement of goods which are being sold on consignment shall be a certificate of goods takeover which contains data about the identification of goods and data about the client.

(3) The agricultural producer shall, for agricultural products from its own production which are being sold, provide a certificate of origin which is issued by the local administrative body competent for agricultural affairs.

(4) Other natural persons engaged in a business activity whose products may be sold, within the meaning of Article 6 para. 1 item 3 of this Law, shall obtain from the competent authority a proof of the origin of products, in accordance with a separate regulation.

(5) The goods which are being traded must comply with the requirements prescribed for placement on the market (declaration, mark, accompanying documents, etc.).

Article 33

(1) Unless otherwise provided by law, the trader shall file a notification of the commencement of trading activity, for record-keeping purposes, to the responsible inspection authority and municipal administration authority responsible for economy related matters, at least eight days before the commencement of operation.

(2) The Ministry shall prescribe the contents of the notification form and of the register for record-keeping referred to in paragraph 1 of this Article.

Article 37

(1) Traders shall keep records about goods procurement, wholesale and retail, and for the provision of trade services (hereinafter referred to as the "records").

(2) The records shall be kept for every point of wholesale, shop and other points of sale and business premises in which trade services are provided.

(3) The records must be accessible to the responsible inspection authorities in the course of control in the business premises in which control is being performed.

(4) The records shall be kept based on proofs of procurement of goods and production of finished goods and service order confirmation documents (bill-invoice, goods received note, work order, purchase order, and other proofs) and based on proofs of the sale of goods and provision of trade services (bill-invoice, cash register receipt, hand-completed receipt, and other proofs containing the prescribed data about goods and services sold).

(5) The contents and manner of keeping the records referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Article 38

The acts and actions of unfair competition shall be forbidden on the market.

Article 39

Unfair competition, for the purpose of this Law, shall be deemed to be such trader's actions which, contrary to goods business practices, adversely affect or may adversely affect another trader or buyer.

Article 40

Unfair competition shall be deemed to be, in particular:

- 1) advertising, announcing, or offering goods by indicating data or using expressions which create or may create misconceptions on the market about such goods, whereby a specific trader is brought or may be brought into a more favourable position;
- 2) telling untruths about another trader which are harmful to his reputation and business;
- 3) the sale of goods bearing marks or data which are or may be misleading for the trader in respect of the origin, method of production, quantity, quality, or other properties of the goods;
- 4) concealing the flaws of goods or otherwise misleading the consumer;
- 5) taking actions aimed at the termination of business relationships between other traders or aimed at preventing, or rendering such relationships more difficult;
- 6) unauthorized use of another trader's external marks, which creates or may create misconceptions in the circulation of goods to the detriment of another trader using such marks in his business;
- 7) granting to another trader the authorization to use one's own external marks, if that creates or may create a misconception on the market;
- 8) unauthorized use of the services of a travelling salesman, trade representative, or another trader's agent;
- 9) winning over customers or service users by giving or promising rewards or other material gain or benefit whose value is considerably above the value of common advertising gifts.

Article 41

- (1) Supervision over the implementation of this Law and the regulations adopted based on this Law shall be exercised by the Ministry.
- (2) Inspection control over the implementation of this Law shall be exercised by the Market Inspectorate.

Article 42

In addition to the administrative measures and actions prescribed by the law governing inspection control, the competent inspector shall take the following administrative measures and actions:

- 1) temporarily close a facility or other point of sale in which wholesale or retail trade is pursued, where it:
 - does not comply with the prescribed requirements for engaging in trade;
 - does not have proof of procurement of the goods which are being traded;

2) seize the goods which are being traded and for which the trader does not have proof of procurement.

Article 43

(1) A fine from fifty to three hundred times the amount of the minimum salary in Montenegro shall be imposed for a misdemeanour on a business organisation, or another legal person and entrepreneur, where it:

- 1) pursues trade in business premises or at other points of sale which are not in conformity with the prescribed requirements (Articles 15, 19 and 31);
- 2) performs consignment services of those types of goods that are prohibited under this Law (Article 24, para.3);
- 3) does not have proof of procurement of the goods which are being sold on consignment (Article 24, para.4);
- 4) does not provide market place services in the prescribed manner (Article 30, paras.1 and 2);
- 5) does not have proof of procurement of the goods which are being traded (Article 32, paras. 1, 2, 3 and 4);
- 6) does not submit a notification of commencement of trading activity to the responsible authority (Article 33, para. 1);
- 7) does not keep records in the manner laid down in this Law (Article 37);
- 8) takes any of the actions which constitutes an act of unfair competition (Article 40, para. 1 items 5, 6, 8, and 9).

(2) A fine from ten to twenty times the amount of the minimum salary in Montenegro shall be imposed for a misdemeanour set forth in para. 1 of this Article on a responsible officer of a legal entity and a natural person.

(3) In addition to a fine for the misdemeanour set forth in para. 1 items 2, 3, 5 and 6 of this Article, the misdemeanant may also be imposed a protective measure of confiscation of the infringing goods.

(4) In addition to a fine for the misdemeanour set forth in para. 1 items 1 and 4 of this Article, the misdemeanant may be also be imposed a protective measure of trade ban for a period from three months to one year.

Article 44

(1) A fine from thirty to fifty times the amount of the minimum salary in Montenegro shall be imposed for a misdemeanour on a legal person, other business organisation and entrepreneur, where it:

- 1) engages in trade outside the business premises contrary to this Law (Article 17);
- 2) does not perform consignment services separately from other business activities (Article 24, para. 2);
- 3) did not organise the wholesale market service in a space separate from the retail market service (Article 30, para. 3);
- 4) fails to adopt marketplace rules of conduct (Article 30 paras. 4 and 5);
- 5) fails to publicly display and abide by the working hours (Article 36).

(2) A fine from three to fifteen times the amount of the minimum salary in Montenegro shall be imposed for a misdemeanour set forth in para. 1 of this Article on a responsible officer of a legal entity and a natural person.