EXPLANATION

I. CONSTITUTIONAL BASIS FOR THE ADOPTION OF THE LAW

The constitutional basis for the adoption of the Law on Transport of Dangerous Materials is contained in the provisions of Article 16, paragraph 1, point 5 of the Constitution of Montenegro, which stipulates that the law, in accordance with the Constitution, regulates the matters of interest for Montenegro.

II. REASONS FOR THE ADOPTION OF THE LAW

The applicable Law on Transport of Dangerous Materials was adopted in 2008, and therefore it was necessary to revise it in order to regulate the Transport of Dangerous Materials, and especially issues that are subject to EU Aquis and ratified international contracts. In accordance with such an orientation it is necessary to perform appropriate legislative changes in this area with the adoption of the Law on Transport of Dangerous Materials.


Montenegro has ratified the key international instruments and the Instrument of the Council of Europe in the fight against terrorism. In this regard, the Government of Montenegro has adopted the Strategy for the prevention and suppression of terrorism, money laundering and financing terrorism.

The transport of dangerous materials is part of the overall transportation system of Montenegro, whereby the specifics of the transport of dangerous materials is in the multidisciplinary attribute, wherefore it was necessary to access this area in that way.

The transport of dangerous materials is interdisciplinary because the regulation that apply to this type of transport are applicable to the road and rail transport, maritime transport as well as air transport, so that the Montenegrin legislation in this area also has the same characteristic.

During the transportation of dangerous materials a significant factor is the understanding of the properties of dangerous materials, packaging method, mode of transportation, equipment of vehicles for the transportation of dangerous materials, handling of accidents with dangerous materials, rehabilitation of accident consequences, including environmental accidents, as well as education of people for the preparation and transportation of dangerous materials.

Dangerous materials can not be avoided as raw materials in the industry, as well as energy, which makes them an obligatory part of the every day life, wherefore they must be the subject of a special regulation that will govern all aspects of packaging,
loading, transport, protection and education of the responsible persons in the cycle, and finally surveillance and repression against violators and punishing violations by defining penalties.

Dangerous materials are those substances that might endanger human health, threaten the environment or cause property damage, which have dangerous implications on human health and the environment, which are as such defined by the law, regulations and international agreements, which by virtue of their nature or properties and conditions in connection with the transport can be dangerous to public safety or public order, or that have been proven toxic, corrosive, irritant, flammable, explosive and radioactive effects. Dangerous materials are also raw materials based on which dangerous materials are produced as well as waste if it has the qualification of a dangerous material.

The national and international transport of dangerous materials has increased significantly in the previous years, and thereby also the risks from accidents and disasters. Within the realization of the internal transport market, it was necessary to adopt measures for better prevention of risks associated with this kind of transport. The companies, other legal entities or entrepreneurs dealing with the transport of dangerous materials must apply the rules of prevention of risks related to the transport of dangerous materials.

The concept of the law is based on the commitment to ensure the implementation of provisions contained in the relevant international contracts, and that the transport of dangerous materials, is carried out in accordance with the provisions of ratified international contracts. The previous law was also based on this determination, but in the meanwhile it was overcome in the part which is not aligned with the changes in international contracts, and restructured technical regulations and attachments that allow the improvement of safety in the transport of dangerous materials. This commitment for the adoption of the law is in accordance with Article 9 of the Constitution of Montenegro, according to which international contracts are ratified, and as an integral part of the internal legal order of Montenegro, shall have primacy over national legislation and shall be indirectly applicable.

The law does not substantially change the position and the basic obligations of the companies, other legal entities and entrepreneurs dealing with the transport of dangerous materials. However, the law contains provisions about the new obligations of these entities that are in line with a more complete and precise compliance with the relevant provisions or ratified international contracts in this field, as well as the effective implementation of solutions from these contracts. The aim is to reduce the security risk in the transportation of dangerous materials through the establishment and effective implementation in practice of proven solution related to participants in the transportation of dangerous materials, contained in the international contracts in this field, which were confirmed by Montenegro.

With the proposed provisions in regard to the applicable law text, the following is achieved:
- continued alignment and enforcement of existing regulations with solutions, standards and recommendations provided for in international contracts,
- further alignment of Montenegrin legislation with the EU in the field of transportation of dangerous materials,
- defining the framework for the safe performance of transport activities of dangerous materials by road, rail, air and maritime transport,
- Safety, protection and education of persons involved in the transportation of dangerous materials, as well as protection of the nature,
- clear definition of responsibility for issuing permits and control of various transport of dangerous materials by road, rail, aviation and maritime transport.

The Ministry of Internal Affairs has published on its website as of 1st of June 2012 a public invitation to participate in the consultation for the preparation of the Draft Law. In accordance with the regulation of the procedure and manner of conducting public consultation in the preparation of the law ("Official Gazette of Montenegro" Number 12/12), the Ministry made on 27.08.2012. a public call for a public debate on the draft law of the transport of dangerous materials with the program of public hearings, which ended with a round-table on 10.10.2012. In addition, the draft law was posted on the website of the Ministry of Internal Affairs as of 27.08.2012. so that all interested parties could provide suggestions and comments.

III. THE CONFORMITY OF THE LAW WITH THE EU LEGISLATION

The text of the law is in accordance with the general principle of the Council of Europe in this area, as well as solutions of best practice in the surrounding and other European countries.

In order to gradually align in the field of transport of dangerous materials with the legislation of the European Union, in order to meet the priorities within the Stabilization and Association Process and come closer to the standards applied in the EU, a new Law on Transport of Dangerous Materials is now being prepared. Having in mind, that in this period the provisions of the EU Aquisa are partly transposed, the preparation of the new draft law was started to achieve full transposition of the directive:
- Directive 2008/68/EU about the internal transport of dangerous materials. The Draft Law is completely aligned with the Directive.
- Directive 95/50/EU about the uniform procedures for control of transport of dangerous materials on the way.

The Draft Law is partly aligned with the Directive in the field which relates to the detailed content and the protocol form of inspection, content and the protocol form about the executed control on the way, for the violations identified according to risk categories (Annex II) and the annual report form about the implementation of surveillance for the previous year (Annex III). Full alignment will be achieved by the adoption of the by-laws by the end of the second quarter of 2014, and the amendments to the law, by the end of the fourth quarter of 2016.

The draft law on the transport of dangerous materials is not aligned with the directive in the part related to the missing definition in the meaning of the term “control”, as well as the missing of a national control body for the transport of
dangerous materials. The complete alignment will be reached by the amendments of the law, by the end of the 4th quarter of 2016.

- Directive 2004/112EU by which the Council Directive 95/50/EZ about the uniform actions of control for the transport of dangerous materials on the way, is aligned to the technical improvement.

The Draft Law is partly aligned with the Directive in the field which relates to the detailed content and the protocol form of inspection, for the violations identified according to risk categories (Annex II) and the annual report form about the implementation of surveillance for the previous year (Annex III). Full alignment will be achieved by the adoption of the by-laws by the end of the second quarter of 2014, and the amendments to the law, by the end of the fourth quarter of 2016.


The Draft Law is partly aligned with the Directive in the area which relates to the control regime on the inner borders of the Union and respecting the principle of proportionality, non-discrimination an prohibition of restrictions on trading between Member States in the implementation of additional measures related to the transport of dangerous materials in order to protect human life and health, property and environment. Full alignment will be achieved by the amendments of the Law, by the end of the 4th quarter of 2016.

Also, ratified international contracts have been used in drafting the law, which are governing the transport of dangerous materials:

- European Agreement concerning the International Carriage of Dangerous Goods (ADR Agreement) with its component parts, attachments A and B;
- Convention on International Railway Transport (COTIF) – Regulations concerning the international carriage of dangerous materials by rail - RID;
- Annex 18 (Safe transport of dangerous materials by air) Convention of International Civil Aviation, and technical instructions for the safe transport of dangerous materials by air (ICAO Doc. 9284 AN/905), including additions, amendments and corrections.

IV. EXPLANATION OF BASIC LEGAL INSTITUTES

Conceptually and substantively, the Law on the Transport of Dangerous Materials is systemized into eight chapters which are thematically rounded within one unique content act:

Basic Provisions (Article 1 to 5) contain the basic principles related to the transport of dangerous materials in the territory of Montenegro, which are: the subject of the law, exemptions from the application of this law, the types of dangerous materials which are object to this law, the use of gender-sensitive language and meaning of expressions.

Preventive Security Measures (Article 6 to 10) contain provisions that, in order to prevent endangering lives and health of people, environment and material goods, define the place where the loading and unloading of dangerous materials can be done, functionality of the device and other equipment for the loading and unloading of dangerous materials, prescribe the rules which must be followed during the loading and unloading of dangerous materials, duration of the loading and unloading and special places at the railway stations, ports and harbors, and airports where the loading and unloading of dangerous materials is done.

General safety measures (Article 11 to 41) regulate matters related to the obligations of the participants in the transport of dangerous materials, packaging of dangerous materials, safety advisors for the transport of dangerous materials and persons participating in the transport of dangerous materials by road or rail traffic.

The Draft Law prescribes and lists all obligations that have to be followed by the participants in the transport of dangerous materials (sender, packer, filler, carrier and receiver).

The Draft Law, among others, prescribes the obligations of the sender to provide to the transporter a delivery document about the transport of dangerous materials and instructions for special security measures or exemptions when it comes to transport of dangerous materials by air. The transportation document for dangerous materials, whose content is precisely defined, is always followed by instructions for special security measures for the transport. The carrier as well as the person who drives the vehicle for the transport of dangerous materials is obliged to confirm with their signature on the document about the transport that the declared dangerous substances have been taken over. The transportation of dangerous materials whose transport is prohibited will always be suspended by the adequate governing authority by this Law and adequate measures will be taken to avoid endangering human health, the environment and the property. The adequate governing authority, or the carrier will inform the sender about it, and the sender shall immediately after receiving notice about the stop of the transport, remedy the defined deficiencies or take over the dangerous materials.

The proposal also provides for the measures taken by the carrier in case of loss of the dangerous materials and in case of an accident, as well as restrictions on the transport of dangerous materials.

A very important part is the regulation of the matters relating to the packaging of dangerous materials, which is regulated by this law as a separate part due to the fact that packaging is the first condition that must be provided for a dangerous material, in order that the dangerous material can be further processed. The proposal provides for
the conditions which must be met for packaging, and handling of empty and not cleaned packaging, labeling method of packaging as well as transportation equipment.

The key novelties introduced by this new law, and hereby a separate part in the chapter, are the provisions related to the safety advisor for the transport of dangerous materials and persons participating in the transport of dangerous materials.

In comparison to the existing Law on Transport of Dangerous Materials, the obligation of the carrier, sender and receiver in the road and railway traffic, define and contractually engage, at least one person responsible for the safety of the transport of dangerous materials, which has at least 6th level of national qualification framework and a certificate of competence for the safety in the transport of dangerous materials, is a novelty in the Draft Law on Transport of Dangerous Materials. The qualifications of the safety advisors and other persons participating in the transport of dangerous materials contributes to better quality of services in the interest of users, whereby risks from accidents are reduced.

The Draft Law regulates the obligation of the carrier, sender and receiver, to provide the Ministry information about the safety advisor and to inform the Ministry about every change of this information, in a defined timeframe from the moment of engaging the safety advisor.

The Law defines numerous obligations of the safety advisor which states that the safety advisor is one of the most responsible persons for the transport of dangerous materials.

The education and training of candidates for the safety advisor is conducted by an organizer of adult education, who has a license to operate the education program according to the regulations governing the education for adults, which, depending on the type of transport must be in accordance with the ADR Agreement and the RID regulation.

The examination of the candidates for the safety advisor is conducted by a committee formed by the Ministry and representatives of the Ministries and State Administration Bodies in charge of transport, and the Center for Professional Education. The certificate for the qualification for safety advisor of the transport of dangerous materials is issued by the Ministry and is valid for five years.

Qualification certificates for safety in the transport of dangerous materials issued by foreign countries are valid in Montenegro.

The Draft Law prescribes that persons participating in the loading and unloading of dangerous materials by road or rail transport must have at least 4th level of the national qualification framework and a certificate of competence to perform the tasks of loading and unloading dangerous materials issued in accordance with the Law. The procedure of education and training of persons participating in the loading and unloading of dangerous materials, knowledge examination and issuing of certificates is the same as for the safety advisor. The certificate of qualification for the conduct of loading and unloading activities is valid for five years.

The Draft Law prescribes that the driver, as a person participating in the transport of dangerous materials, has to have a certificate of competence for the transport of dangerous materials, in accordance with the classification of dangerous materials. The
certificate of competence for the driver is issued upon request of driver candidates, provided he has at least 3rd level of National Qualification Framework, Drivers License for the adequate vehicle category and a certificate of competence for driver’s activities. The education and training of the candidates for drivers is conducted by an organizer of adult education, who has a license to operate the education program according to the regulations governing the education for adults, which, must be in accordance with the ADR Agreement, whereby the knowledge examination is conducted by a Commission formed by the Ministry and representatives of the Ministries and State Authority Bodies and the Center for Professional Education. The organizer of education and training of candidates for drivers issues a certificate of competency for the driver and keeps evidence about these certificates for passed exams. The Draft Law prescribes that the certificate of competency for drivers is issued by the Ministry and is valid for five years starting from the date of passing the exam. The certificate of competency for drivers is issued on the printed form of the Ministry in accordance with the ADR Agreement. In accordance with the Draft Law, the education and training fee and the fee for the knowledge examination of the candidates for the safety advisor, participants in the loading and unloading of dangerous materials and drivers, are paid by the candidates or companies or other legal entities or entrepreneurs where the persons are employed, whereby the amount of the fees is defined by the Government of Montenegro upon suggestion of the Ministry.

In this chapter, by the Draft Law an obligation is prescribed, and a legal base is defined for the adoption of the by-laws pursuant to Article 26 paragraph 3, 27 paragraph 3, 28 paragraph 3, 30 paragraph 3, 31 paragraph 5, 34 paragraph 3, 35 paragraph 4, 36 paragraph 3, 37 paragraph 6, 39 paragraph 5 and 40 paragraph 2.

**Approval for the transport of dangerous materials (Article 42 to 51)**

This section contains provisions which regulate that the transport of explosive materials, poisons and radioactive materials in road and rail traffic can only be conducted if for that transport an approval has been issued from an authorized body, content requirement, necessary documentation to be submitted with the application in order to obtain proper authorization, validity period, authorization for multiple transports and the obligation of giving notice.

**Transport of dangerous materials by type of transport (Article 52 to 73)**

This section further regulates the matters in regard to special safety measures for the transport of dangerous materials by single types of transport.

The provisions of this Law which relate to the transport of dangerous materials by road, are further regulating matter on closer measures of security, obligations of the carrier, obligations of drivers, prohibition of transport of other dangerous materials, certificate of approval for transportation vehicles of dangerous materials, conditions for legal entities which issue the certificates, inspection and examination of the vehicles, and issuing certificates and records.

The Draft Law prescribes that during the transport of dangerous materials by road, in addition to security measures prescribed by the Law, also the security
measures established by the ADR Agreement are to be applied (European Agreement concerning the International Carriage of Dangerous Materials).

A special place in this section prescribes the regulation of matters in regard to the certificate of approval for transport vehicles of the dangerous materials. The Draft Law prescribes that the certificate of approval for the vehicle transporting dangerous materials, after the examination of the vehicle, is issued by a legal entity entitled from the Ministry, for a one year period. The Draft Law also regulates matter in relation to the conditions which the legal entity has to fulfill in order to issue the certificate of approval for the vehicle transporting dangerous goods, the content of the application and the documentation provided with the application, as well as examination expenses for the vehicle and issuing the certificate of approval for vehicles transporting dangerous materials.

The provisions of the Law in relation to the transport of dangerous materials by rail provides that, in addition to security measures prescribed by this Law, also safety measures prescribed by the regulations governing railway safety and interoperability of the railway shall be applied, as well as the security measures established by the RID regulation (Convention on international railway transport – (COTIF) – Regulations concerning the international carriage of dangerous materials by rail – RID).

The draft law also regulates the matters of transport of dangerous goods by wagons, and maneuvering means of rail transport.

The Draft Law prescribes that the transport of dangerous materials by air is conducted in accordance with this Law, regulations about air transport and Annex 18 (Safe transport of dangerous materials by air) of the Convention on International Civil Aviation and the technical instructions for the safe transport of dangerous materials by air (ICAO Doc. 9284 AN/905), including additions, changes and corrections (in the following: technical instructions).

The Draft Law prescribes that the dangerous materials can not be transported by Air in accordance with the technical instructions, whereby exceptionally, the transport of dangerous materials whose transport is prohibited can be approved in the air territory of Montenegro, based on the exceptions decision, in accordance with the technical instructions, which is issued by a independent legal entity responsible for the civil aviation, and with the approval of the adequate authorities of the State Administration depending on the type of the dangerous material. The Decision is issued upon request of the sender for only one air transport and is valid for 24 hours. The transport prohibition of dangerous materials, whose transport is prohibited in accordance with the technical instructions is also obligatory for foreign aircrafts flying overt the territory of Montenegro.

The Draft Law, having in mind the specifics of the transport of dangerous materials by air, prescribes the obligations of the sender and forwarder, the obligations of the postal operator, the obligations of the carrier as well as actions in exceptional situations.

By the provisions of the Law in relation to the transport of dangerous materials at sea, except the measures of safety for the transport of dangerous goods prescribed by this law, safety and security established by the regulations governing the safety of
The Draft Law, an obligation is established and a legal base for adoption of the by-laws pursuant to Article 56 paragraph 4, 57 paragraphs 4, 58 paragraph 2 and 59 paragraph 3.

**Surveillance (Article 74 to 81)**

This chapter regulates the matters of supervision over law enforcement, inspection of the transport of dangerous materials, authorization of inspectors, monitoring on the way, temporary prohibition measures, or interruption of traffic, control of the sender and receiver and carrier, entering the Territory of Montenegro and preparation of the annual report.

In this chapter by the Draft Law an obligation or a legal base is prescribed for the adoption of the by-laws pursuant to Article 77 paragraph 8 and 81 paragraph 4.

**Penalty Provisions (Article 82 to 83)**

This chapter defines the violations of legal entities and persons in relation to the transport of dangerous materials as well as the amount of the penalties to be paid for different types of violations.

**Transitional and Final Provisions (Article 84 to 91)**

This chapter defines the matters in relation to the starter procedures, timeframes for the adoptions of the by-laws, timeframes for other legal entities and entrepreneurs conducting transport of dangerous materials in road and rail transport, as well as legal entities, and other legal entities and entrepreneurs who give or take over dangerous materials for transportation, are obliged to define a safety advisor, timeframe for the alignment of business activities of the transport of dangerous materials, timeframe for the alignment of certificates, implementation and termination of the current law and the date of enactment of this Law.

**V. ESTIMATION OF THE AMOUNT OF FUNDS IN THE BUDGET OF MONTENEGRO NEEDED FOR THE IMPLEMENTATION OF THIS LAW**

For the implementation of this Law, no additional funds from the Budget of Montenegro are needed.