



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

MONTENEGRO

POLICY-MAKING AND CO-ORDINATION

ASSESSMENT MAY 2008

Coherence of the Policy-making Framework

The legal framework for the decision-making system in Montenegro is set out in the “Provision on the Government of Montenegro”, the “Decree on State Administration Organisation and Operations” and the “Rules of Procedure of the Government of the Republic of Montenegro” (RoP). The RoP were amended immediately after the present government took office in November 2006, and again in 2007 and 2008. In addition, the arrangements for the co-ordination of European integration policy are set out in the “Information on the Need to Establish Provisional Common Bodies with the EU for the Purpose of Implementation of the Interim Agreement”, which was approved by the government on 5 April 2007.

[Due to issues related to the consolidation of legal acts and to translation into English, SIGMA is not certain that it has the very latest Rules of Procedures with all of the amendments. However, we are reasonably certain that the content of this section is up-to-date.]

The legal framework provides for a hierarchy of decision-making bodies.

- The weekly government session is the only formal decision-making body entitled to make binding decisions. Decisions to submit bills to parliament can only be made by the government session. Decisions require a majority vote of government members who are present at the session. The Secretary General of the Government and the Secretaries (Heads) of the Secretariat of Legislation, Secretariat for European Integration and Secretariat for Development attend the sessions of the government.
- The Inner Cabinet consists of the Prime Minister and the two deputy prime ministers (DPMs); other ministers are invited to attend if the discussions are relevant to their responsibilities. The Core Cabinet plays an important role in deciding the policy priorities of the government, in resolving conflicts between ministers, and in instructing ministers and commissions with regard to items brought forward to the government for formal decision.
- Two commissions (permanent working bodies) of the government filter items and discuss them in depth before they reach the government session. These commissions cover Economic Policy and Financial Affairs; and Political System, Internal and Foreign Policy. Each commission is chaired by a deputy prime minister. Discussion by one or both commissions is normally required before an item can proceed to the government session. Although not specified in legal documents, in practice only ministers and secretaries of other administrative bodies (Ministries and Secretariats) are members of these two commissions. The Secretary General of the Government and the Secretaries of the Secretariat of European Integration, Secretariat of Legislation and Secretariat for Development attend, as regular members, the meetings of the commissions.

The Rules of Procedure (RoP) in Montenegro establish a fairly complete policy development and decision-making system, with many good features. They set up a sequential process of preparation of material for decision, and the time frame for each step:

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, and they do not necessarily reflect the views of the OECD and its member countries or of the beneficiary countries participating in the Sigma Programme.

- Annual planning of bills and other material for the government;
- Development and drafting by the proposing ministry;
- Obligation to consult other ministries affected by the proposal, and a specific requirement to consult the Ministry of Justice (on penalties), the Ministry of Interior and Public Administration (on allocation of responsibilities to public bodies), the Ministry of Foreign Affairs (on foreign negotiations) and the Ministry of Finance (on fiscal impact assessment);
- Review of legal drafts by the Secretariat of Legislation;
- Review of drafts by the Secretariat for European Integration regarding conformity with the *acquis communautaire*;
- Review of materials by the General Secretariat of the Government;
- Discussion by the filter commissions;
- Decision by government; and
- For bills, submission to parliament and follow-up of the parliamentary process by the relevant minister.

Useful features in the RoP are the strict limitations on including items in the government sessions that have not been properly processed beforehand and a requirement that submissions should not be longer than 10 pages or should include a short summary. Since the end of 2004, ministries preparing documents have been obliged to include a statement of fiscal impact assessment, as well as a statement on harmonisation with European law.

The legal framework underlying the policy-making system is adequate. In the last few years, various elements of this framework have been amended in order to increase its efficiency and effectiveness. The legal framework would benefit from consolidation and rationalisation so as to fully harmonise all of the relevant provisions.

2. Inter-ministerial Consultation on Policy Proposals

The work programme of the government identifies for every item (laws and other materials) the ministries that must be consulted. The lists of ministries are quite comprehensive, and ministries are required by law to provide the requested opinions. This requirement is in addition to the specific requirement in the Rules of Procedure regarding consultation with the Ministry of Justice (on penalties), the Ministry of Interior and Public Administration (on allocation of responsibilities to public bodies), the Ministry of Foreign Affairs (on foreign negotiations), and the Ministry of Finance (on fiscal impact assessment). A document specifying how the proposing ministry has responded to the opinions must accompany every item before it can be scheduled for discussion in the government session.

In addition to the formal consultations required by the Rules of Procedure, all laws are prepared by inter-ministerial working groups, which include the affected ministries and outside experts. These working groups provide a forum for detailed consultations during the early stages of preparation. The new requirement that all laws must be preceded by policy documents also contributes to the opportunities for consultation. In the first year of introduction of this requirement (2007), more than 20 policy documents were discussed by the government prior to the drafting of legislation.

In practice, some of the consultations remain formal and occur too late in the process, i.e. after the legal draft has already been prepared.

Inter-ministerial consultations appear to be adequate. Increased use of policy papers prior to drafting could contribute to more effective inter-ministerial consultations.

3. Work Planning

In Montenegro, the main framework for policy development is the annual work programme of the government. This programme is always based on the four-year programme of the government, but other strategic obligations and priorities are also taken into account. In the past year, Montenegro made good progress in improving the planning process and in ensuring that this planning is not just a mechanical, bottom-up process. The Strategic Planning Unit of the General Secretariat of the Government (GSG) now takes a proactive role in drafting the annual work programme of the government by guiding ministries as

they prepare their inputs to the programme, ensuring that they take into consideration the strategic priorities of the government. Towards the end of 2007, the GSG sent a letter (signed by the Secretary General) to the Secretaries of ministries (and other bodies) requesting them to submit their ministries' items for the annual programme. In this letter, ministries were specifically reminded of strategic priorities that should be taken into account. The letter included the following:

“The foundation for the adoption of the Programme is the Programme of the Prime Minister-elect, adopted by the Parliament of Montenegro, and 2008 Economic Policy Measures. In nominating themes for inclusion in the Government Programme, you must also take into account the obligations arising from the following in particular:

- Constitutional Law on the Implementation of Montenegro Constitution;
- Stabilisation and Association Agreement;
- Action Plan for the Implementation of European Partnership Recommendations;
- European Commission Progress Report on Montenegro for 2007;
- strategic documents;
- membership in international organisations and ratified conventions, and
- Action Plan for Combating Corruption and Organised Crime.”

Once the lists of items were received from the ministries, the Strategic Planning Unit of the GSG organised rounds of discussions with each of the ministries (and other bodies) to compare their list of items with the above-mentioned strategic documents and to ensure that there was a good fit and that all obligations had been fulfilled. More than 30 items were added to the annual work programme as a result of these discussions, and a number of proposals from ministries for inclusion in the programme were rejected. The resulting draft programme was then discussed by the two filter commissions and subsequently approved by the government.

The work programme is monitored on a quarterly basis. Every quarter, the GSG sends a letter to all ministries concerning the obligations under the programme, indicating those obligations that have been fulfilled and those that have not. Ministries are required to justify delays and to set new deadlines. At the beginning of each quarter, the government holds a session to review progress on implementation of the Government Work Programme, to make adjustments and to draw lessons from the experience of the previous quarter.

These new and greatly improved planning arrangements have been operational since late 2006, and are clearly taking root. This process is critical for Montenegro, as it ensures that the government work programme is fully aligned with the National Programme for Integration into the EU (NPI). The GSG expects further improvement in the planning and monitoring process once the new IT system is in place in new premises, which are expected to be ready in early 2009.

An adequate system for planning the work of the government is in place, and it has developed very well over the past two years. The activities linking the annual work-planning process with strategic priorities, especially those related to European integration, are particularly useful. Over time, it will be essential to develop and maintain a dynamic link between strategic priorities and budget allocations.

4. Dispute-resolution Mechanisms

In addition to the inter-ministerial consultation noted above in section 2, two mechanisms are in place to resolve disputes prior to discussions in the government session. One is the Inner Cabinet, formally composed of the Prime Minister (as chair) and the two Deputy Prime Ministers, who are responsible, respectively, for European integration and economic policy. The Inner Cabinet meets “as required” to discuss issues and resolve disputes. Since many issues are related to European integration, this forum often meets as the “Collegium on European Integration”, which also includes the Ministers for Foreign Affairs, Justice, Finance, Interior and Public Administration, Economic Development, and Agriculture, Forestry and Water Management.

Another important forum for in-depth discussion of issues and resolution of conflicts are the two “filter commissions”, for Economic Policy and Financial Affairs; and Political System, Internal and Foreign Policy – mentioned above in section 1. Each commission is chaired by a deputy prime minister, and their membership comprises ministers and the Secretaries of three secretariats; experts may be invited on an ad hoc basis. Items for decision by the government must normally be discussed first in one (or both) commissions. The commissions have the authority to return items to the initiators and to require additional

work before proceeding to decision. The number of commissions was recently (March 2008) reduced from three to two in an effort to streamline the process and to improve the capacity of the commission to provide an effective filter. Also there are two more government commissions named Commission for Staff and Administrative Issues and Commission for Allocation of Part of Budgetary Reserve Resources that meet as appropriate.

The dispute-resolution mechanisms are adequate.

5. Central Co-ordination Capacity

The main body responsible for supporting the decision-making system is the General Secretariat of the Government (GSG). The GSG is established by a decree of the government, which also sets out its organisational structure. It has the capacity to provide central co-ordination to the decision-making system by serving both the government sessions and the two filter commissions.

The units principally concerned with policy-making and co-ordination within the GSG are:

- The Sector for Government Affairs (15 staff), headed by the Assistant to the Secretary General of the Government. This sector also includes the Secretaries for the filter commissions;
- The Sector for Strategic Planning (3 staff), which is responsible for designing and implementing the work-planning system described above.

The GSG also includes a Public Information Bureau, with a staff of 15.

In addition, the Cabinet of the Prime Minister is concerned primarily with supporting the Prime Minister in his strategic leadership role and is not involved in the day-to-day management of the agenda for government sessions (it is part of the General Secretariat for administrative purposes only and in practice is independent from the Secretary General).

The Secretariat for Legislation also plays a significant co-ordinating role in the policy system. The Secretariat currently has a staff of 17, ten of whom are lawyers. As in most countries of former Yugoslavia, the Secretariat of Legislation is the public administration institution that performs a legal oversight role, which includes ensuring conformity with the Constitution and with other legal acts as well as linguistic coherence. The Secretariat is responsible for reviewing all normative acts before they are scheduled for discussion by the commissions. Ministries are obligated to forward all normative acts for review and opinion to the Secretariat of Legislation. Although somewhat short-staffed (45% of the positions in the Secretariat for Legislation are vacant), the Secretariat of Legislation is able to review all Acts, send comments to ministries, and assist in redrafting. However, this work is undertaken under severe pressure, which on some occasions must impact on the quality of the work. The Secretariat is also directly responsible for the legal drafting of laws that do not fall clearly within the competence of any particular minister, but such laws have diminished significantly in number in the past few years. The officials of the Secretariat of Legislation are members of the filter commissions and the Secretary attends meetings of the government. The opinions of the Secretariat for legislation are generally respected.

The enforcement of the framework underlying the policy system depends to a large extent on the authority and capacity of the General Secretariat of the Government. In the past few years, the GSG has become a stronger and more effective body. For example, the General Secretariat now has the authority to return to ministries any items that have not been prepared in conformity with the RoP. As noted above, the GSG has also assumed a proactive role in the annual planning process and in monitoring the performance of ministers in accordance with the plan. In the coming years, to further improve its effectiveness, the GSG will need to develop its capacity to review and co-ordinate the content and quality of materials reaching the commissions and the government.

Montenegro is developing an increasingly more effective system for the central co-ordination of decision-making. The General Secretariat of the Government should continue to strengthen its capacity and to gradually become involved in substantive co-ordination so as to ensure the quality of consultations, the fit of legal acts with government commitments and priorities, and the cross-sectoral consistency of proposals. Further efforts should be made to fill vacancies in the Secretariat for Legislation.

6. Central Capacity to Advise on Policy and Strategic Matters

Through its planning activities, the General Secretariat of the Government is developing its capacity to advise the government on the link between ongoing activities and strategic commitments. The GSG does not have the capacity to advise on policy matters on an ongoing basis. Some capacity to provide central policy advice exists in the Cabinet of the Prime Minister, in the Secretariat for Development (supporting the Deputy Prime Minister for Economic Policy), and in the Secretariat for European Integration (supporting the Deputy Prime Minister for European Integration).

Central capacity to provide advice to the government on policy and strategic matters is not sufficient, and should be developed within the General Secretariat of the Government.

7. Co-ordination of European Affairs

Since independence, Montenegro has been investing significant talents and resources in building and strengthening its system for managing and co-ordinating activities related to European integration. The ambitious strategic goal driving the process is aimed at 2012 as the date when Montenegro would be internally ready for EU accession. In April 2007 a major reorganisation of the structures for European integration (EI) took place. The approach was to design a full co-ordination system in a comprehensive manner, based on advice from an EC twinning project and on the experience of neighbouring countries. As a result, essentially all of the elements normally found in EI management structures are now either in place or will soon be implemented.

The co-ordination system is as follows:

- **National Council on European Integration**, to be established soon, will operate at national level in an apolitical manner¹. It will consist of representatives of the government, the State President, parliament, all political parties, and civil society. A representative of an opposition political party will chair the council.
- **Collegium for European Integration** is the top political body and is responsible for steering the process of EU accession and for dealing with political/strategic issues. It is chaired by the Prime Minister, with the Deputy Prime Minister for European Integration as the deputy chair. Members of the Collegium are the Deputy Prime Minister for Economic Development and the Ministers for Foreign Affairs, Justice, Finance, Interior and Public Administration, Economic Development, and Agriculture, Forestry and Water Management. The Collegium is a fairly informal body that meets as required. Administrative support for the Collegium is provided by the Secretariat for European Integration.
- **Commission for European Integration** is responsible for expert horizontal co-ordination of the EU accession process, including harmonisation, the IPA programme, and other foreign assistance linked to accession. Its members also constitute the Montenegrin side of the SAA Committee. The Commission is chaired by the Deputy Prime Minister for European Integration, with the Secretary of the Secretariat for European Integration as deputy chair. Members of the Commission are the heads of the seven inter-ministerial groups for European integration, assistant ministers from ministries that are not leading a group for European integration, and a representative of the Secretariat for Legislation. Administrative support for the Commission is provided by the Secretariat for European Integration.
- **Seven Groups for European Integration** have been created, corresponding to the SAA sub-committee structure. These groups are led by the deputy ministers from the ministries that cover the major part of the *acquis*. There are plans to establish 35 working groups corresponding to the 35 negotiating chapters, but these plans will have to await the strengthening of administrative capacity and the further training of civil servants before they can be operational. Staff of the Secretariat for European Integration are members of all seven groups.
- **Secretariat for European Integration (SEI)** is the main focus of EI policy work and co-ordination. The SEI reports to the Deputy Prime Minister for European Integration. The SEI has a staff of 35, and the following structure:

¹ The Decision on establishing this body was adopted by the Parliament, Official Journal of Montenegro No 22/08.

- Sector for the EU Association Process, which has departments responsible for the co-ordination of the Association Process, including compliance checks (12 employees), and for the translation and development of the national version of the *acquis* (three employees);
 - Sector for Co-ordination of Assistance, which has departments responsible for the co-ordination of the National Assistance Programme (four employees) and for regional and cross-border co-operation programmes (four employees);
 - Service for General Affairs (12 employees, including two IT experts and two translators).
- There are **identified contacts for European integration in the ministries**, but in practice most of the ministerial contacts for the SEI are provided through the seven EI groups.

*Montenegro's EI efforts appear to be well-coordinated, with strong strategic leadership provided by the top levels. The structure put in place to manage and co-ordinate European integration is quite comprehensive, and is operating remarkably well considering the fact that it was set up only recently. However, further consolidation will be necessary to maintain progress. The plan to supplement the structure with EI units in ministries and with working groups for the 35 chapters of the *acquis* will need to be implemented in the next year or two.*

8. Involvement of the Council of Ministers in Budget Decisions

The budget process begins early in the year, and in May the Ministry of Finance prepares guidelines, including financing priorities, which are subsequently adopted by the government. Based on input by budget-users, the Ministry of Finance prepares a draft budget. The draft is analysed and discussed extensively by both commissions, which often propose changes in the allocations. The commissions prepare conclusions that are submitted to the Ministry of Finance. This process is followed, in November, by the submission of the budget bill to be adopted by the government and sent to parliament.

There is enough opportunity for ministers to discuss the budget, especially in the two ministerial commissions.

9. Impact Assessment

The system of Fiscal Impact Assessment (FIA) has been operational since 2004. It provides information on the budgetary costs of proposed policies and laws. Ministries generally comply with the requirement to complete the assessment, and it is then reviewed by the Ministry of Finance. The General Secretariat of the Government (GSG) will not allow an item on the agenda for the session of the relevant government commission without a completed FIA. The quality of the information provided in the FIA is variable, as the capacity in ministries to complete the form is often insufficient. At times, ministries are reluctant to revise the forms so as to take into account the concerns of the Ministry of Finance, and they often attempt to send the FIA directly to the relevant commission. However, in that event, if the Ministry of Finance signals that there is no adequate budget provision, the commission almost always refers the proposal back to the originating ministry for more work.

The government plans to introduce impact assessment in January 2009. Terminology used in this area is often confusing, and the government is speaking of "regulatory impact assessment", which is sometimes interpreted in a narrow sense, although what is intended is impact assessment in a broad sense, i.e. covering a broad range of decisions and various types of impact, including economic, environmental and social impacts. An assessment of the contribution of this requirement to better policy preparation by ministries and to more informed decision-making by the government and the commissions cannot be made at this time.

The only impact assessment carried out at the present time in Montenegro is Fiscal Impact Assessment (FIA), and this does not suffice for the identification of the consequences of new policies, laws, and regulations. The capacity of ministries to conduct FIA is not sufficient, and the capacity for more comprehensive impact assessment is almost entirely lacking. Montenegro should take steps to improve the capacity of ministries in all aspects of policy analysis, in parallel with the introduction of the new impact assessment requirement in 2009.

10. Better Regulation

There is no comprehensive “better regulation” policy.

11. Transparency, Consultation and Communication with the Public

Public consultations: In Montenegro there is a strong emphasis on public consultations. According to the Rules of Procedure, “when the Government estimates that, in the procedure of adopting certain laws, there is a need for a public discussion, it establishes a discussion programme, appoints the agency that carries it out, and sets time limits when the public discussion should be held and which cannot be shorter than 15 days” (article 44). This is a good requirement, which is quite unique in the region. In practice, every important (“core”) law is first adopted by the government as a draft, and the draft then proceeds to mandatory public consultations before the government adopts it as a bill and sends it to parliament. Public consultations are normally carried out not only on laws but on all important issues brought to the government, such as strategies, policies and decisions. For example, the National Programme for Integration into the EU (NPI) 2008-2012 was recently drafted by the Secretariat for European Integration (SEI) after extensive consultations within the administration. The draft is now scheduled to be the focus of a one-month public debate, including roundtables in several cities. Only after this consultation process has been completed will it be adopted by the government.

Communications: Within the General Secretariat of the Government (GSG) there is a Public Information Bureau, with a staff of 15. The Office ensures reporting to the media after the sessions of the government and responds to inquiries from the media and the public on a daily basis. It also posts documents on the government website, including government decisions, documents and drafts for public consultation. Since the communications’ capacity in ministries is not fully developed, this Office also assists in the communications activities of ministers. The Office has taken some first steps in the training of ministry spokespersons. It also focuses on communications related to European integration. The SEI has prepared a Communications Strategy, and on this basis an annual communications plan has been prepared and is being implemented in co-operation with NGOs.

Gazette: For the time being, the Gazette is published officially only in printed form. The new Law on Publication of Legislation and Other Regulations (Official Gazette of Montenegro, No. 5/08 as of 23.01.2008) provides for an electronic edition of the Official Gazette which will be accessible to everyone in Montenegro free of charge. However, the Law prescribes that the electronic edition of the Official Gazette will be established on 1 July 2009 so as to create conditions necessary for publication of the electronic version in the meantime.

There is awareness in Montenegro of the need for transparency, openness, and consultation, and adequate procedures are being developed and applied to ensure them.

12. Summary and Next Steps

Summary

In the past two years, Montenegro has taken conscious steps to strengthen its policy system. There is evidence of the efforts made by the General Secretariat of the Government (GSG), the Secretariat for European Integration (SEI), and ministries to improve planning, monitoring, and policy development. In particular, there is a clear sense throughout the system of the importance of co-ordination as a means of ensuring the most effective use of the limited resources available to a small country in order to reach its strategic goals of economic growth and EU integration. A good example of this awareness is the “joining up” of the various strategic and planning documents to ensure coherence and to minimise internal contradictions and duplication in reporting obligations. These efforts to improve policy development, analysis and co-ordination should continue.

The overall process of weekly decision-making is appropriate. Proposals are prepared by ministries (often by inter-ministerial working groups). Ministries comply with the requirements to carry out consultations with other ministries, and they are obliged to report the responses to the government commissions. If positive opinions have not been received, the matter may not be submitted to the commissions.

Material is generally received and prepared in advance by the GSG, although items are sometimes received late. If items have not been prepared in accordance with the requirements, or if supporting documents are missing, the GSG has the authority to return them to the originating ministry for remedial action. The two

main government commissions fulfil the role of filter committees, where issues can be debated and resolved prior to decision in the government sessions. If there are substantial disagreements between ministries, issues are usually referred back to the originating ministry for further work.

The GSG openly acknowledges that the policy content and supporting analysis of materials prepared by ministries are often insufficient to ensure optimal decisions by the government. The GSG has explicitly chosen to focus on strategic planning and impact assessment as the instruments for beginning the process of correcting this problem.

Capacity in ministries to develop policies and draft laws remains insufficient. The Secretariat of Legislation is often called upon to improve the drafts. The government's plan to introduce impact assessment in January 2009 provides a potential opportunity for addressing this problem, but only if the plan is also accompanied by resources to strengthen policy development and legal drafting capacities.

The GSG is moving forward with steps to strengthen its central role within the policy system by enforcing the Rules of Procedure (RoP), especially in the area of strategic planning. This action is most welcome, and over time needs to be extended further, in particular to allow the GSG to review and co-ordinate the content and quality of materials reaching the commissions and the government. The GSG lacks adequate IT systems, but expects this to improve after it moves to new premises in 2009.

The co-ordination arrangements for European integration (EI) are in line with arrangements that have worked well in other countries that have joined or are seeking to join the EU.

The government's clear commitment to making major improvements to the policy-making and co-ordination system should be welcomed and, as soon as possible, supported by donors in such a way that sustainable results can be achieved.

Next Steps

Montenegro should continue to improve its policy system in the step-by-step manner that it has been pursuing. The focus should be on the following:

- The General Secretariat of the Government (GSG) should continue to improve its capacity to support the policy system by providing logistical, planning and policy co-ordination services to the government and to the filter commissions. In the coming year, it should move to build capacity to provide some policy advice and to consolidate its support to the commissions. The General Secretary could explore the possibility of organising regular meetings with the secretaries of ministries as a means of improving overall co-ordination.
- A plan should be developed, including resources and training, to strengthen legal drafting and policy capacity in ministries.