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SIGMA Country Assessment Reports 2013/06

Montenegro Assessment Report 2013

OECD

ASSESSMENT

MONTENEGRO

APRIL 2013

ASSESSMENT PRIORITIES

Montenegro is at a stage of the EU accession process where the intensity of European Integration related policy-making and co-ordination is increasing rapidly. In June 2012, the formal accession negotiations began with the screening process that should be concluded by mid 2013. While this proceeds, the new Government of Montenegro will also need to prioritise the consolidation of public spending and reforms to stimulate economic growth.

In agreement with the European Commission (EC), SIGMA's 2013 assessment focuses on some of the most topical areas that influence the country's capacity to manage the EU accession process in the medium-term. In addition, topics for the assessment that were given priority were identified from areas where actual reform is either being implemented or planned.

SIGMA's 2013 assessment of Montenegro therefore concentrates on four areas of public governance:

- Policy Making and Co-ordination
- Co-ordination, Implementation and Priorities of Public Administration Reform
- Human Resource Management in the Public Sector
- Function of the Ombudsman

Each selected assessment area is presented in a separate thematic report. These include a brief description of the state of play and recent developments, followed by a more detailed analysis with conclusions.

The **policy-making and co-ordination** assessment analyses the capacities for central co-ordination and horizontal planning, including the co-ordination of European Integration affairs, and the arrangements for policy analysis, planning and monitoring in the ministries. The focus is primarily on horizontal government planning and co-ordination, and policy capacities and working routines in the ministries.

The **public administration reform co-ordination and implementation** assessment focuses on the coherence of the public administration reform agenda in the various strategic documents, the capacity to co-ordinate public administration reform and the actions identified in the Public Administration Reform Strategy 2011-2016. In addition, the assessment analyses the state of play and progress in the main priority topic, the plan to re-organise the public sector.

The **civil service and human resources management** assessment examines preparedness for implementation of the new Law on Civil Servants and Public Employees, which came into force on 1 January 2013. It analyses the challenges inherent to a reform requiring a more modern civil service regulation, and the way the Government has approached these challenges.

The report on the function of the **Ombudsman** assesses the capacities of the Human Rights and Freedoms Ombudsman of Montenegro, and both the focus and relevance of its work. This is a timely topic as the Government has initiated the preparations for amending the Law on the Protector of Human Rights and Freedoms.

Where possible, the assessment reports follow the relevant parts of the SIGMA baselines. As the 2013 assessments are tailor-made according to a country's priorities, not all areas are fully covered by the SIGMA baselines. For example, an analytical framework was developed for the assessment of PAR co-ordination and implementation in consultation with the EC. In addition, the report on the implementation of the Law on Civil Servants and Public Sector Employees follows the relevant SIGMA baseline only partially, as the primary focus of the analysis was very specific as compared to the baseline.

POLICY MAKING AND CO-ORDINATION

MONTENEGRO

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

Montenegro has established a basic policy management system, comprising a legal framework and the bodies necessary to perform the required planning and policy co-ordination tasks. The legal framework is well established with the exception of existing weaknesses in the formal system with regards to medium-term policy planning: formalised government work planning is annual, there is no formal requirement for medium-term budgetary planning, the National Plan for Integration has not been updated in recent years, and there is no detailed framework and content requirements for medium-term sectoral strategies.

The regulation in place for governing policy making and co-ordination has been largely implemented in practice.

In the Government's annual planning of its work, there is scrutiny to avoid minor issues being listed in the annual Government Work Programme, and the General Secretariat of the Government is organising regular monitoring and reporting to the members of the Government.

Another strength found in the environment for policy development is the wide use of informal and formal networks of co-operation between the ministries, and a growing dialogue with representatives of non-governmental interest groups. New laws or strategies of the Government are prepared with the help of, or at least by the setting-up of, a working group that comprises the relevant ministries, and, in many cases, experts from outside the Government administration. Capacity constraints for in-house policy analysis are also often overcome by involving external consultants to prepare the basic analysis of the relevant issue at hand.

1.2. Main developments since last assessment

The overall environment for policy development was influenced by the general elections held in October 2012. This had a considerable impact on the dynamics and progress of new policy proposals during the second half of 2012. This is best illustrated by the fact that only 42% of the Government Work Programme items planned for the second half of the year were actually brought to the Government and decided upon. The new Government was appointed by the Parliament in early December 2012 but, as it is led by the same party (Democratic Party of Socialists) that had been the leading coalition partner for the last 20 years, there has been no real discontinuity in the overall policy direction of the Government.

An important milestone was the formal opening of the EU accession negotiations in June 2012, with the start of the screening process. The Government of Montenegro has established sectoral working groups for each negotiation chapter and, by the end of March 2013, 24 out of 35 working groups had been formed. A first chapter (Chapter 25, Science and Research) was opened and provisionally closed in December 2012. At the time of writing, the Government, in co-operation with the EC services, was actively focusing on the preparation of Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), where progress needs to be achieved before the opening of most other negotiation chapters.

2012 was the first year of implementation of the Rules of Procedure of the Government, including new requirements for Regulatory Impact Assessment (RIA) to assess new policy options and the likely impacts on those being regulated. These new requirements became effective as of 1 January 2012. During the year, the Ministry of Finance (MoF), the body responsible for verifying the quality of RIAs, gave its opinion on 294 RIA documents. New decrees on the involvement of NGOs and public consultations were also implemented during the last year.

In 2012 and early 2013, the Ministry of Finance prepared, in co-operation with all line ministries and with support from a European Union twinning project, a comprehensive National Development Plan

for 2013-2016 (NDP). This plan covers national economic policy in its widest sense, following the scope of the Europe 2020 strategy. The NDP was adopted by the Government on 28 March 2013[1].

2. Analysis

2.1. Policy co-ordination and planning at the centre of the government

Montenegro's ambitious European Integration agenda, and the need to develop national policies for a more competitive economy, require well-functioning policy co-ordination and a planning system with clear legal requirements, and proper institutional arrangements and functional capacities at the centre of the Government2 and in the ministries.

Horizontal procedures and institutional set-up for planning and co-ordinating the work of the Government

Clear legal requirements for planning and co-ordinating the work of the Government are in place. The Rules of Procedure of the Government, the Decree on Government, the Law on Administration and the Law on Budget are the key legal grounds for the work of the ministries for policy planning and co-ordination. While the Rules of Procedure of the Government3 set the procedural framework and the main requirements for new policy proposals, including detailed requirements for policy preparation, they lack the specific follow-up obligations needed for the ministries to analyse the implementation of policies.

The main body responsible for supporting and managing the decision-making system is the General Secretariat of the Government (GS). The focal point for planning Government sessions and co-ordinating the work around the Government Work Programme is the Department for Government Affairs. The Cabinet of the Prime Minister and the respective cabinets of the Deputy Prime Ministers, formally part of the GS, also play a role in policy making. Their mandate and focus is determined by the Prime Minister or the Deputy Prime Minister, and in practice they deal with priority policy matters in co-operation with the relevant line ministries.

The MoF is involved in policy co-ordination primarily through three sectors: the Sector for Economic Policy and Development (macroeconomic estimations, co-ordination of structural reforms and some key economic policy plans, such as the NDP); the Sector for Financial System and Improvement of Business Environment (the Secretariat for the Regulatory Council and quality control over RIAs); and the Sector for Budget (budget preparation and quality control of fiscal impact analyses of policy proposals).

The Ministry of Foreign Affairs and European Integration (MFAEI) co-ordinates planning of Instrument for Pre-Accession Assistance (IPA) programmes and the work of the Government for all European Integration affairs, including transposition of the *acquis*. It is also in charge of programming EU financial support in Montenegro.

The Secretariat for Legislation also plays a co-ordinating role within the policy system by performing a legal oversight role, which includes ensuring conformity with the Constitution and other legal acts, as well as legal linguistic coherence. Its effectiveness depends, however, on the capacities for policy drafting in the ministries. The Secretariat has not taken on the responsibility of devising systematic steps for improving the quality of work in the ministries. The Government decision-making process is channelled through its formal weekly sessions. The Rules of Procedure established four thematic

[1] The formal name of the document that was adopted is "Development Trends for Montenegro for 2013-2016".

[2] The notion of the centre of government includes a number of horizontal policy co-ordination functions that in Montenegro are largely fulfilled by the General Secretariat, the Ministry of Finance, the Ministry of Foreign Affairs and European Integration and the Legislative Secretariat.

[3] Official Gazette of Montenegro, no. 03/12.

commissions, of which the Commission for Political System, Internal and Foreign Policy4 and the Commission for Economic Policy and Financial System5 form the more relevant parts of the Government decision-making system for new policy proposals6.

The nucleus of government decision-making is the inner Cabinet7 that meets, as a rule, once a week. It is comprised of the Prime Minister, Deputy Prime Ministers and Secretary General, and its task is, among other things, to co-ordinate and consider key issues on the agenda of the Government. Other ministers are invited to take part in the work of the inner Cabinet as needed. Informal meetings of the representatives of the key government bodies take place almost on a daily basis.

European Integration (EI) affairs are led by the Deputy Prime Minister and Minister for Foreign Affairs and European Integration with close support from the State Secretary for European Integration, who can be seen as the centre of gravity of the accession process. As well as being the State Secretary for EI in the Ministry, he is also the Chief Negotiator and the National IPA Coordinator (NIPAC). He regularly participates in the sessions of the Government. As the key forum for deciding upon the direction of negotiations, there is a Collegium[8], which consists of practically the same persons as the inner Cabinet, meaning there is potentially strong co-ordination at the political level between EI related policy directions and other Government policies. All matters relating to the negotiations should in principle be discussed in the Collegium, as the primary working body of the Government for EI affairs. This body considers the proposed negotiating positions during the stage that follows the working groups' preparation of the drafts, and before adoption by the Government.

Regarding the overall EI co-ordination, Montenegro has developed a dynamic and fairly decentralised framework, where the Ministry of Foreign Affairs and European Integration (MFAEI) provides political and administrative leadership on all EI related processes, and the line ministries are responsible for analytical and preparatory tasks related to their specific policy areas. When it comes to negotiating structure and the allocation of responsibilities, it could be said that political co-ordination of the process is concentrated in the highest negotiating body – the Collegium. The Montenegrin negotiations structure includes: the Collegium, the Negotiating Team, the State Delegation for Negotiations, the working groups for negotiating chapters, the Office of the Chief Negotiator and the Secretariat of the Negotiating Team. This is a complex structure adding to the existing co-ordination structures of the Stabilisation and Association Agreement.

With the recent changes in the EI co-ordination system and ongoing changes in the structures of the MFAEI, there are signs of unnecessary division between the politically driven core group for the negotiations and the formal co-ordination structures between the ministries. More importantly, in order to be able to co-ordinate EI affairs within the Government over a medium-term period, plans to prepare the Programme of Accession to the EU need to be realised as soon as possible.

In recent years the Government has established several permanent consultative bodies, such as the Council for Privatisation, the Council for Cooperation with NGOs and the Council for Improvement of Business Environment, Regulatory and Structural Reforms (Regulatory Council). The latter, for example, co-ordinates the activities of the state administration by analysing existing regulations in terms of business barriers and the need to simplify these regulations, initiates changes in regulation in the area of business environment, and agrees on establishing sub-working groups for specific topics (such as the

4 Article 15 of the Rules of Procedure of the Government.

5 Article 16 of the Rules of Procedure of the Government.

6 The two other working bodies are the Commission for Human Resources and Administrative Issues, and the Commission for Distributing a Part of Budget Reserve.

7 Also known as the Executive Council of the government.

8 The Collegium includes the Prime Minister, Deputy Prime Ministers, Minister of Foreign Affairs and European Integration, and the Chief Negotiator.

plan to re-organise public administration).[9] This body plays an important role in triggering and designing policy changes. Its members include the relevant ministers, senior civil servants and representatives of business organisations, trade unions and municipal associations. Their work has been successful in some areas, such as reducing the cost of construction permits through pre-construction and post-construction procedures.[10]

It is clear that there are many highly operational government advisory bodies, such as the example above, but, due to the large number of them (73 in March 2013), the Government agreed on 7 March 2013 to reduce their number and to encourage "decentralisation". This would be accomplished in such a way that, in the future, the Government would establish only those councils that could provide opinions and proposals with regard to the performance of its constitutional functions. At the same time, the councils and other bodies in charge of considering the issues falling under the competences of separate ministries would be established by the ministers. This is a necessary step to reduce the number of redundant advisory bodies while, based on the decision of the Government to maintain the most horizontal and relevant for the work of the Government (17 consultative bodies in total), keeping the necessary tools for co-ordination.

Medium-term and annual work planning of the Government

The main weakness of the horizontal strategic planning system in Montenegro is the lack of a systemic approach in medium-term policy planning. The priorities of the Government are announced without specific measures or deadlines, and medium-term budgetary planning is represented only in the draft Law on Budget and Fiscal Responsibility, which has yet to be adopted by the Government[11]. The main horizontal policy document for EI affairs[12] is outdated and a new EI specific strategic planning document is currently under initial preparation. The situation is much clearer in the areas of economic policy co-ordination, where the Government has adopted more horizontal planning documents[13].

There is, nevertheless, a good system in place for preparing the Annual Work Programme of the Government. There is a visible link between the annual work-planning process and the strategic priorities of the new Government. The Annual Work Programme is compiled with both bottom-up and top-down inputs. The GS takes an active role in drafting the Annual Work Programme by guiding ministries as they prepare their input to the programme, ensuring that they take into consideration the strategic priorities of the Government and do not include items that should be handled by the relevant minister. Planning for the 2013 work programme had begun already at the level of civil servants before the October elections. The plan covers: draft laws (including those that are prepared for transposition of the *acquis*), strategies, action plans, and information on the state of affairs within specific areas of Government competencies. Each item includes information on the basic background, responsible ministries and deadlines for its implementation. Implementation of the Government's Work Programme is monitored by the GS, which prepares a quarterly report on its implementation and delivers it to the Government. Recent practice demonstrates a reasonable degree of discipline in meeting the deadlines of the Government Work Programme.

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9 Decision on Establishment of the Council for Regulatory Reform and Promotion of Business Environment, May 2012, updated with a new decision in January 2013 with an updated composition and a new name – the Council for Improvement of Business Environment, Regulatory and Structural Reforms.

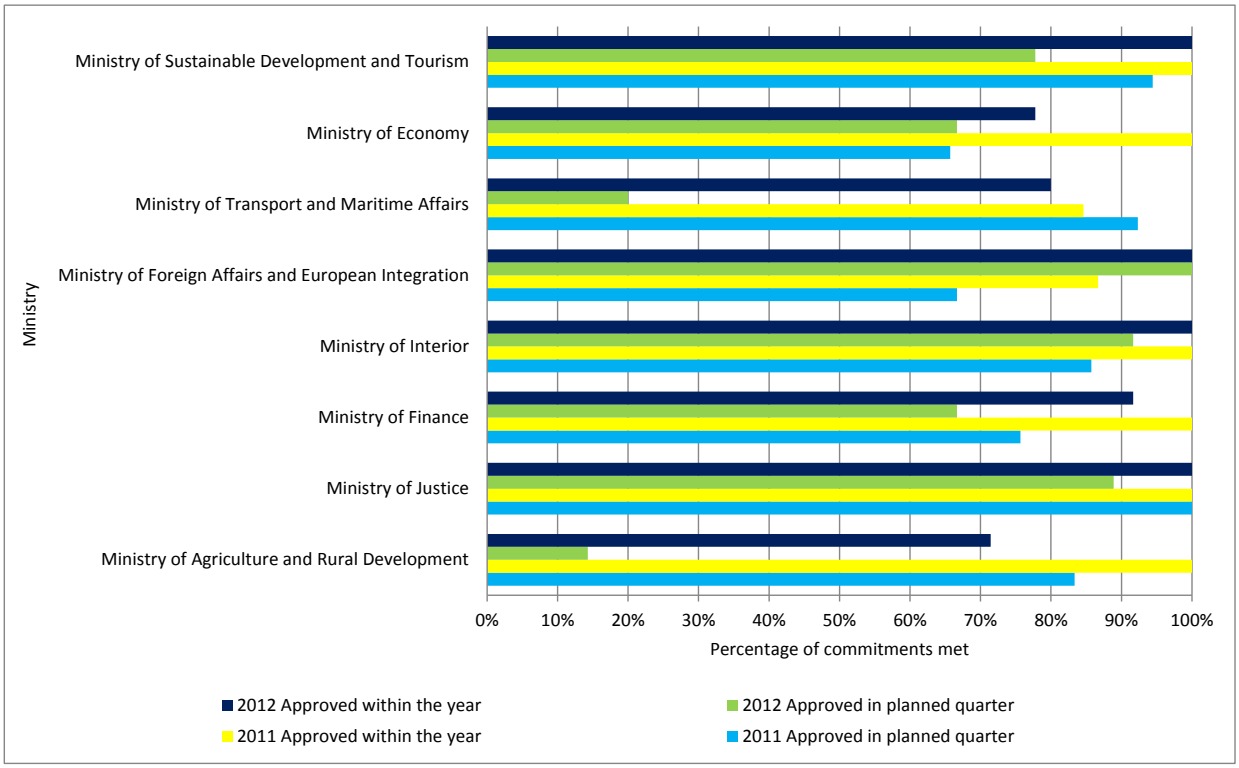
10 "Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises http://www.doingbusiness.org/data/exploretopics/dealing-with-construction-permits/reforms\.

11 The draft Law on Budget and Fiscal Responsibility is in its final stages of preparation. The Government Work Programme for 2013 foresees its adoption in 2013.

12 National Programme for Integration 2008-2012.

13 The Pre-Accession Economic Programme and the National Development Plan 2013-2016.

Figure 1. **Overview of ministries meeting their commitments in the Government Work Programme**



Source: Annual reports of the implementation of the Government Work Programme

In order to evaluate the overall coherence of key policy planning instruments, SIGMA reviewed and compared the following strategic documents: the Prime Minister's address to the Parliament, 4 December 2012, on the four year priorities of the Government; the 2013 Government Work Programme; the Pre-Accession Economic Programme 2012-2014; the draft National Development Plan 2013-2016; and the 2013 priorities of the Regulatory Council. The primary focus of the review was on the planning for 2013. Direct comparison (e.g. in the form of a table) is not feasible in this case, as all of these programmes have their specific scope and mandate.

The overall conclusion is that there is a fair degree of consistency between these various strategic plans. Although the four year programme of the Government is available only through the Prime Minister's address in the Parliament, it is evident that the 2013 Government Work Programme reflects the announced priorities. The same priorities are reflected through different structural reforms and other measures identified in the Pre-Accession Economic Programme and in the NDP. The Regulatory Council has set four priorities for improving the business environment, which are aligned directly with World Bank indicators, and this prioritisation is also reflected in the NDP.

As for reporting to the public, there is no comprehensive government-wide progress report. Representatives of the General Secretariat noted that producing such a report is hardly feasible due to, among other reasons, the high number of sectoral strategies[14]. Another reason lies in the fact that the sectoral strategies are not part of a tangible strategic planning framework. Another systematic weakness in the system for policy co-ordination is that the GS does not have the capacity to review systematically draft government policies in terms of coherence with previous commitments and priorities. To a certain extent this role is fulfilled by the Cabinet of the Prime Minister, but this function is not entirely systemic with regards to analysing the various sectoral strategic plans.

The Law on Budget does not foresee consideration of the existing strategic planning framework during the formulation and drafting of the annual budget proposal except in a very abstract way, by stating

[14] There are more than 60 various strategies approved by the Government.

that budget planning is based on considering, among other things, adopted laws and other regulations[15]. No formal procedure exists for considering the implications of the strategic acts currently in force during the drafting and formulation of the budget. Furthermore, incentives to estimate financial needs over the medium-term are further decreased as the budgeting procedure focusses on the next fiscal year, and there are no existing multi-annual budget planning procedures. A number of horizontal elements of fiscal policy planning are present in the Pre-Accession Economic Programme, but these do not provide incentives for ministries to align their own capacities for financial planning. In practice, the situation is somewhat better, as the informal co-ordination within most ministries, and also between ministries, generally works well. Attention to budget constraints is being ensured by the most pragmatic solutions, including effective controls in capping budget execution in central government.

Legal requirements for planning and co-ordinating the work of the Government are in place. The Rules of Procedure of the Government are well designed and easy to follow, and these have been routinely implemented in 2012. The institutions at the centre of government each have a clear role in ensuring sound policy planning. The main weaknesses include the lack of formal medium-term horizontal planning and missing requirements to ensure that policy implementation is followed up by monitoring and analysis. In the area of economic policy, the planning framework has become more developed in recent years, and the Government intends to develop a medium-term plan for EU accession and to introduce a medium-term budgetary framework. Establishment of more formal requirements for analysing policy implementation remains a challenge. This is particularly relevant for being prepared for the EU accession process, where various negotiation benchmarks will be related to the actual implementation of policies.

2.2. Interministerial co-ordination and policy development in the ministries

The working routines foreseen by the Rules of Procedure of the Government for co-ordination between ministries, tend to be implemented normally without many exceptions. Most of the interviews indicate that the Ministry of Finance and the Secretariat for Legislation, as well as other bodies as determined by the Rules of Procedure, are regularly consulted. A notable case of non-application of the normal consulting arrangements was identified in the EU accession negotiation framework, when Chapter 25 (Science and Research) was provisionally closed even though the Government had committed to increase national investment in research and development. This commitment was taken without proper consultation with the MoF.

In the ministries, responsibility for policy development is assigned to deputy ministers[16] (or heads of departments in some cases). Deputy ministers responsible for a particular policy area of a ministry, are also responsible for the necessary preparations for transposition of the EU *acquis* in that area. In addition, the Law on State Administration[17] stipulates that ministries may appoint one or more state secretaries to be in charge of policy development and the monitoring of its implementation. Up until recently, state secretaries were appointed only in the MFAEI. However, in early 2013, these positions had also been established also within a number of other line ministries[18].

A similar pattern is also followed in the structure for EU accession negotiations, where deputy ministers normally lead the working groups and the work within negotiation chapters. These groups

[15] Article 19 of the Law on Budget.

[16] Although the Government has formally changed the position of deputy ministers to general directors within ministries, this report continues to use the term “deputy minister”, as most ministries have not changed their organisation and systematizations and the new term is not yet used widely.

[17] Article 41.

[18] The decision of the Government of 31 January 2013 to appoint for the first time state secretaries to the Ministries of Interior, Finance, Justice, Sustainable Development and Tourism, Economy and Agriculture. State Secretaries are not civil servants but political appointments as set out in Article 41a of the Law on State Administration. Their employment relations are, however, managed in accordance with the Law on Civil Servants.

are formed for each of the 35 negotiation chapters and their role is to participate in the examination and evaluation of the harmonisation of Montenegrin legislation with the EU *acquis*. Working groups will participate in the drafting of the negotiating positions, with the support of the other governmental agencies and institutions.[19] Although most members of the working groups are representatives of the Government and the Parliament, almost all working groups also include representatives of NGOs and the academia. Involving non-governmental experts in the work is commendable, but the practice of involving them as chairpersons of some of the working groups[20] raises questions about unclear accountability lines between the non-governmental representatives and the responsible minister, who needs to implement the commitments made within the negotiation chapter.

Ministries generally consider which resources are needed to meet all the requirements and commitments during a year. However, most ministries lack analytical staff and thorough knowledge of policies is held by a small number of experts. These constraints are often resolved by engaging external consultants to work on policy analyses and preparation. This practice, if used regularly, undermines the capacity building element of policy analysis and debate. Particularly in the process of EU accession negotiations, the Government risks losing the opportunity to acquire skills that will be of benefit after accession and, more immediately, the skills needed for analysing the actual implementation of these policies.

In order to ensure adequate analytical attention and co-ordination in preparing new regulation or strategies, there is a widespread practice of forming working groups. In some cases these are composed only of the staff of the ministry or of several of the relevant ministries. However, during the last year, the involvement of NGOs and other non-governmental experts has increased, particularly in the preparation of strategies and related action plans. As with the working groups formed for the EU accession process, the heads of these working groups are usually deputy ministers. Most of their members are civil servants.

Within the ministries, specialised departments needed to serve as a nucleus for EI co-ordination and policy planning do not always exist. Where they do exist, the focus is either on the planning of IPA funds or co-ordinating EI affairs or both, as in the case of the Ministry of Finance, but they do not normally cover the overall policy co-ordination of the ministries.

Ministers are seen as the key focal points for dispute settlement between ministries, and as interlocutors for transferring the policy direction of the Government and the Prime Minister to the relevant civil servants. There is no regular forum for the highest level civil servants (such as the secretaries to the ministries or state secretaries) to co-ordinate work or discuss differences in opinions on policy.

Interministerial consultations are mandatory for all policy proposals and, partly owing to the informal networks, are in some cases effective. There are also cases where the opinions of the ministries consulted are merely technical approvals to fulfil the obligation to respond. Formal consultations do not require receiving opinions from all ministries. It is obligatory to obtain the opinion of the MFAEI, Ministry of Interior (MoI), Ministry of Finance, Ministry of Justice, the Secretariat for Legislation and any ministry that is directly affected by the draft proposal[21]. The final content of a law and other proposals, which previously fails to comply with the opinions of the competent institutions, must be agreed upon by the relevant Deputy Prime Minister.

Montenegro's initiatives to increase public participation in the operation of Government are commendable. There is a strong emphasis on, and legislative basis for, the need to communicate proposed legislative changes with those affected by the proposals. There is a systemised approach to engagement with Montenegrin non-governmental organisations, underpinned by a Government

[19] Article 14, Decision on establishing a structure for negotiating for the accession of Montenegro to the European Union.

[20] One example of such a practice is the working group for Chapter 3 (Free movement of services), where the General Secretary of the Chamber of Commerce is chairing the working group.

[21] For more details see Article 40 of the Rules of Procedure of the Government.

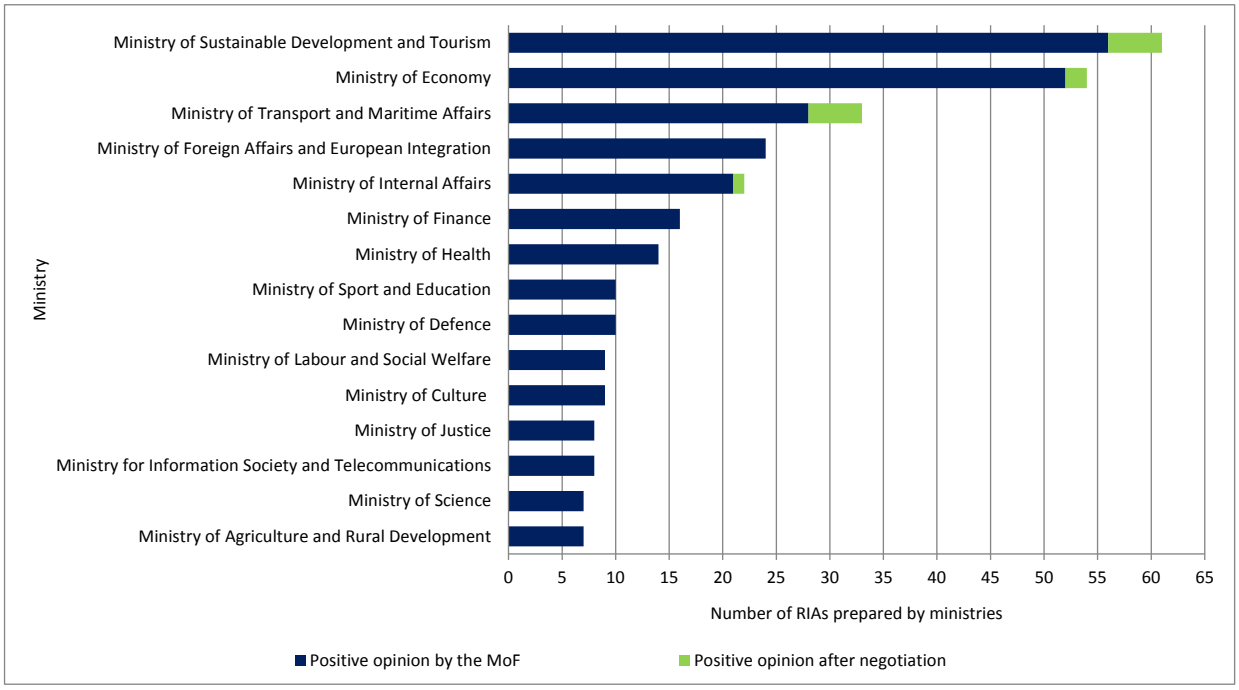
decree.[22] The working group system used to support the policy and legislative development process operates routinely. Stakeholders from outside the government structures feel that there are adequate opportunities to engage with the Government and influence policy development.[23] These range from informal engagement to participation in working groups, public hearings and representation on the Regulatory Council.

Support and guidance to the ministries

The new procedures for RIA were put in place in January 2012, and the rate of implementation is remarkably high. All ministries are required to analyse whether a regulatory intervention is needed and, if so, which of the possible options is the best solution to the problem. This is submitted along with the proposed law.[24] There are four areas that do not require the submission of a RIA: the budget bill, legislation dealing with the aftermath of emergencies, national security legislation, and legislation which transposes EU legislation where no options on how to implement the legislation are available. Also, the drafter is able to decide not to develop a RIA, as long as he or she is able to substantiate and explain the reasons. The wide range of exceptions available poses a risk that sound practices of preliminary analysis will be avoided, particularly when it is possible to refer to the EU *acquis*.

The first year of implementation of the new procedures has nevertheless been promising. Figure 2 below demonstrates the distribution of RIAs across the public administration in 2012 and shows that in most cases the Ministry of Finance (the authority verifying the quality and completeness of the RIA documents) has approved these without pointing to significant problems.[25]

Figure 2. **Regulatory Impact Assessments prepared by ministries in 2012**



Source: Ministry of Finance

[22] "Decree of the manner and procedure of co-operation between state administration authorities and non-governmental organisations" op cit.

[23] Four NGO's were interviewed. One suggested that they would like greater dialogue with government before a law is drafted.

[24] The Rules of Procedure of the Government, Article 33 mandates an assessment of impacts of a draft law or by-law.

[25] In 13 cases, they negotiated with the proposing ministry to ensure that the analysis was agreed upon. MoF changed opinion due to the fact that the proposer adopted the amendments of MoF or that eventually they agreed with the proposers rational, once it had been more fully explained.

The content of the information within the RIA documents is still often weak and does not demonstrate how the consultation process actually influences the development of a policy. The analysis in some areas of the process, such as public consultation, tends to be fairly superficial.[26]

Fiscal impact assessment is required as part of the RIA procedure[27], and the template for a RIA report includes a set of 10 questions that need to be answered by the initiator of the draft regulation. This provides a clear framework and guidelines for the line ministries, and although the first year has shown remarkable consistency in the delivery of the RIA reports, the quality of the fiscal analyses in these varies a lot, and is not always complete in terms of the questions foreseen in the RIA template.

Although the procedure and practice of preparing RIAs is commendable and is positively and routinely implemented in practice, they are too often prepared during the late stages of law drafting, and are not used to support public consultations. Furthermore, the current system does not allow for a proper discussion of policy alternatives prior to the discussion of a full draft law.

The Legal and Technical Rules provided by the Secretariat for Legislation must be applied in the law-making process, including secondary legislation. Despite several years of implementation, the Secretariat for Legislation, which oversees the implementation of these rules, still finds frequent problems in the accuracy and coherence of the draft legal texts.

Another consistent problem in ensuring the good quality of overall regulation is that secondary legislation is mostly prepared after the relevant law itself has been passed, or in some cases (as has partially happened in the case of the Law on Civil Servants and State Employees[28]), it is finalised when the law itself is already in force. These situations have negative consequences on the ability to implement the regulation, as it makes it difficult to ensure that the law contains the correct and precise delegation norms for secondary legislation (creating additional delays in the consultation with the Secretariat for Legislation). In addition, with the information on secondary legislation missing, the analysis underpinning RIA (including evaluation of fiscal impacts) cannot always be precise at the time of the draft law discussion.

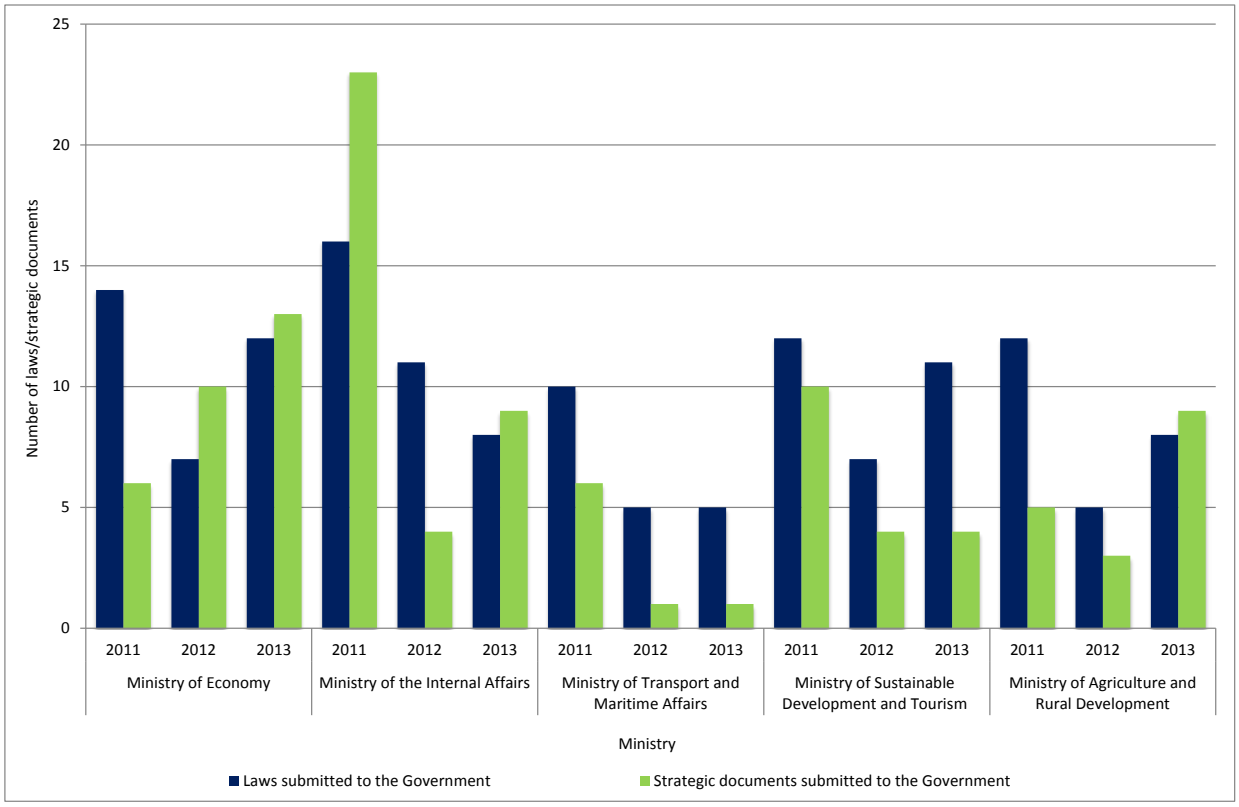
The overall volume of legislative activities varies and may change considerably between years. For individual ministries this volatility is even higher, which requires giving specific attention to their annual resource planning process. Figure 3 below shows the legislative (laws only and not by-laws) and strategic workloads of five ministries over two years, with a planned programme for 2013.

[26] Three sample RIAs were considered and the analysis demonstrated varying quality of the detail provided.

[27] Article 2 of the RIA Manual.

[28] Refer to the 2013 SIGMA assessment report on the implementation of the Law on Civil Servants and Public Employees for more details.

Figure 3. **Output of laws and strategic documents by selected ministries**



Sources: Reports on realisation of Government Work Plans for 2011 and 2012 and reports on the work of ministries

The policy development structures in ministries are notably small, but have demonstrated to be flexible, through working groups, when it comes to mobilising resources for particular analytical or preparatory work for new policies. Interministerial and public consultation largely works as a routine but often the application of these tools is technical and comes fairly late in the drafting process. Both the formal rules and practices focus on policy development. Sufficient attention to rigorous implementation of new regulation and analysis of the actual implementation is mostly not ensured. The relative strengths in the policy development practices in Montenegro are the frequent use of informal networks between the ministries and the fact that to a large extent the EI capacities are built on the same policy capacities that exist within the ministries for national purposes. Full and thorough application of RIA as a tool for policy analysis, including for EI related matters, remains a challenge.

CO-ORDINATION, IMPLEMENTATION AND PRIORITIES OF PUBLIC ADMINISTRATION REFORM

MONTENEGRO

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of Play

Public administration reform (PAR) forms a visible part of the formal agenda of the Government. This is partly because it is closely related to the process of European Integration and a continuous need to consolidate public spending. The key objectives for PAR in Montenegro are set out in the PAR Strategy in Montenegro for the period 2011-2016. The scope of the PAR Strategy is wide in terms of areas covered and includes direct contributions from a number of institutions. The MoI, whose remit includes civil service, administrative procedures and local government, holds most of the PAR responsibilities.

Co-ordination and monitoring of implementation of the Strategy is entrusted to the Council for Improvement of Business Environment, Regulatory and Structural Reforms, and the Co-ordinating Committee on Local Government Reform. The former is supported primarily by the Ministry of Finance, the latter by the MoI.

In the areas related to central government, some overall progress has been made in all of the key areas identified by the PAR Strategy. Since the second half of 2011, political attention has been on re-organising the central government administration with a view to increasing the efficiency of public policies. This is in turn related to most other objectives of the PAR Strategy.

1.2. Main developments

General elections took place in Montenegro during the period assessed, which had an impact on the pace of reform implementation. Nevertheless, while the elections influenced reform dynamics and progress, particularly during the autumn 2012, continuity in the Government's PAR agenda can be seen.

In relation to public sector organisation and civil service management there have been a number of changes in national regulation during the last year. The Government endorsed the draft Plan to Re-organise the Public Sector in April 2012. Although the elections interrupted progress in the implementation the Plan, some steps agreed upon prior to the elections have been completed, such as the formal integration of 14 administrations into their parent ministries.

The Council for Improvement of Business Environment, Regulatory and Structural Reforms was re-established by the Government with a new composition and mandate in January 2013. The Council tasked all ministries involved in implementing the PAR Strategy with providing, during the first quarter of 2013, an overview of progress made on activities committed to in the Action Plan of the PAR Strategy. By the end of March, only the MoI had provided an overview, but once performed by all ministries, it will provide the first comprehensive overview on the state of play regarding the implementation of the activities foreseen by the PAR Strategy.

To update the draft Plan to Re-organise the Public Sector and prepare proposals for its implementation, a working group, chaired by the Deputy Minister of Interior[29],was established in February 2013. At the request of the Council, another working group is being formed by the Minister of Interior to provide an analysis, by the end of 2013, on the position and functions of the organisations exercising public authority.

2. Analysis

This assessment deals with developments in the public administration reform co-ordination mechanism, priorities and implementation at the central government level. The assessment focuses on developments with regard to the coherence of PAR and the institutional co-ordination framework, capacities and resources for PAR.

[29] Decision by the Council for Advancement of Business Climate, Regulatory and Structural Reforms, 8 February 2013.

Setting of public administration reform priorities and coherence of reform agenda

In order to determine the level of consistency of PAR in the Government's key strategic documents, SIGMA has analysed the priorities, commitments and the reform agenda established in eight Government documents. These documents include the following overall horizontal PAR policy plans:

- Government Work Programme for 2013
- Draft National Development Plan for Montenegro 2013-2016
- Programme of priority areas for the Council for Improvement of Business Environment, Regulatory and Structural Reforms (Regulatory Council) in 2013

Specific strategies and action plans to guide the implementation in the areas of PAR:

- Public Administration Reform Strategy in Montenegro 2011-2016 (PAR Strategy)
- Action Plan for Public Administration Reform in Montenegro 2010–2015 (Action Plan)
- Draft Plan to Re-organise the Public Sector (April 2012)
- Public Internal Financial Control Strategy (PIFC) in Montenegro for the period 2013-2017,
- Strategy for the Development of Information Society – 2012-2016

The analysis of these documents shows a broad level of consistency regarding PAR. The directions specified in the PAR Strategy (e.g. consistency of the state administration system, improvement of the civil service system, improvement of the quality of regulations, modernisation of administrative procedures, and enhancement of the electronic management system) also appear in other strategic documents. The 2013 Government Work Programme also includes a few items from the PAR agenda, including a new Law on General Administrative Procedures, a Plan for Public Sector Re-organisation, and a new Law on State Budget and Fiscal Responsibility.

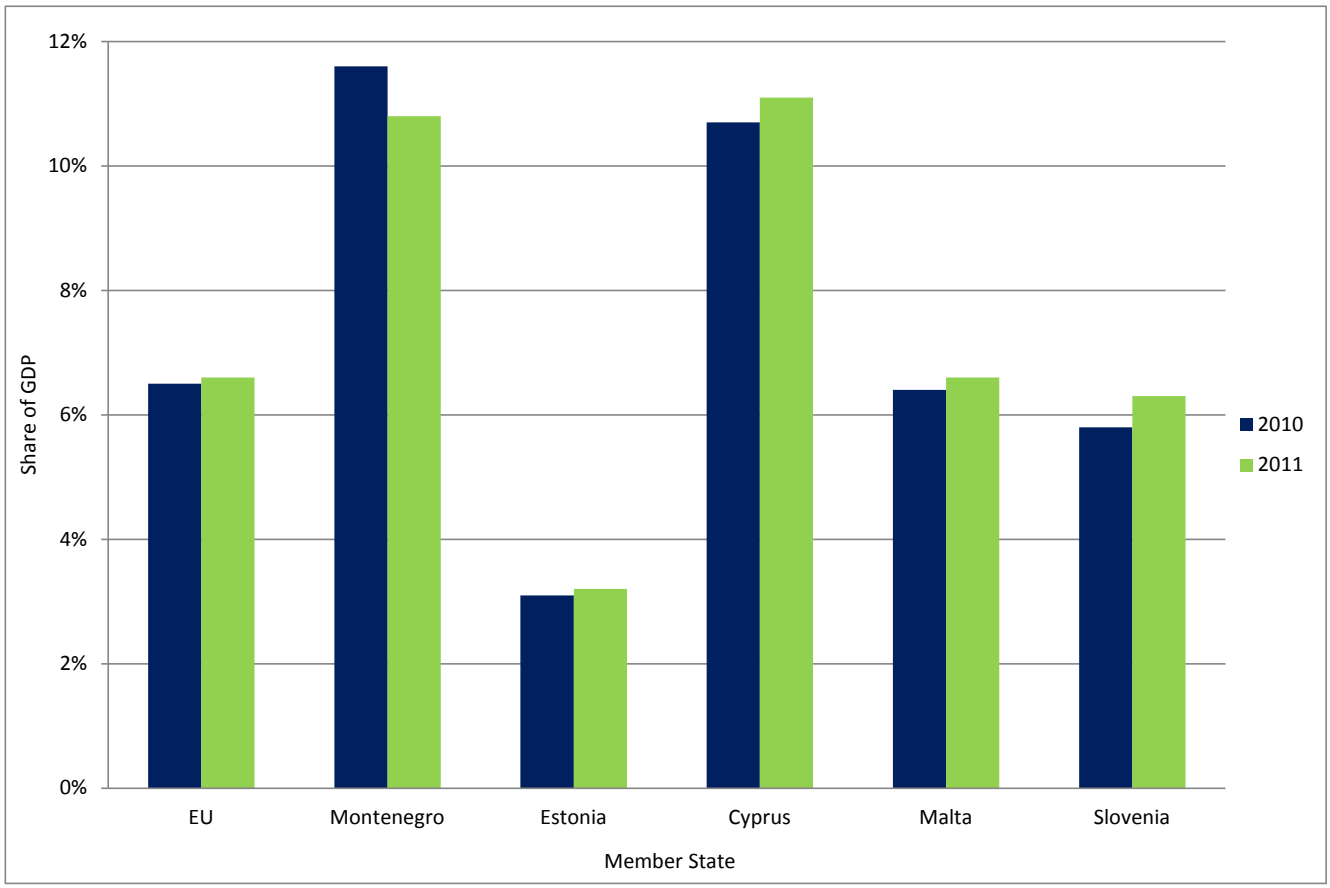
Except for the PAR Strategy itself, and its Action Plan, the various strategies do not, however, have an evident hierarchy between them, and the structures provided by the strategic documents are established in such a way that the identification of distinctly direct linkages and inter-dependencies is not easy. This has a negative effect on the co-ordination and monitoring arrangements, discussed in part "Institutional co-ordination framework for PAR".

Montenegro has prepared and approved broadly coherent key Government documents for public administration reform, with objectives and priorities reflected throughout these guiding policy documents.

Public sector re-organisation

One of the key objectives of the PAR Strategy is to improve the efficiency and cost-effectiveness of the public administration. The Strategy addresses the need to reconsider the organisation of state administration from a point of view that includes the division of duties within each public authority, and the need to consolidate job concentration within ministries. This objective has recently been receiving more attention as a result of the need to limit public spending. The Montenegrin authorities recognise that the overall public sector salary bill is proportionally too high and that structural changes in public employment are needed.

Figure 4. **Public spending on general public services[30] in selected small European Union Member States (as a share of GDP)**



Source: Pre-Accession Economic Programme 2012-2014, Eurostat

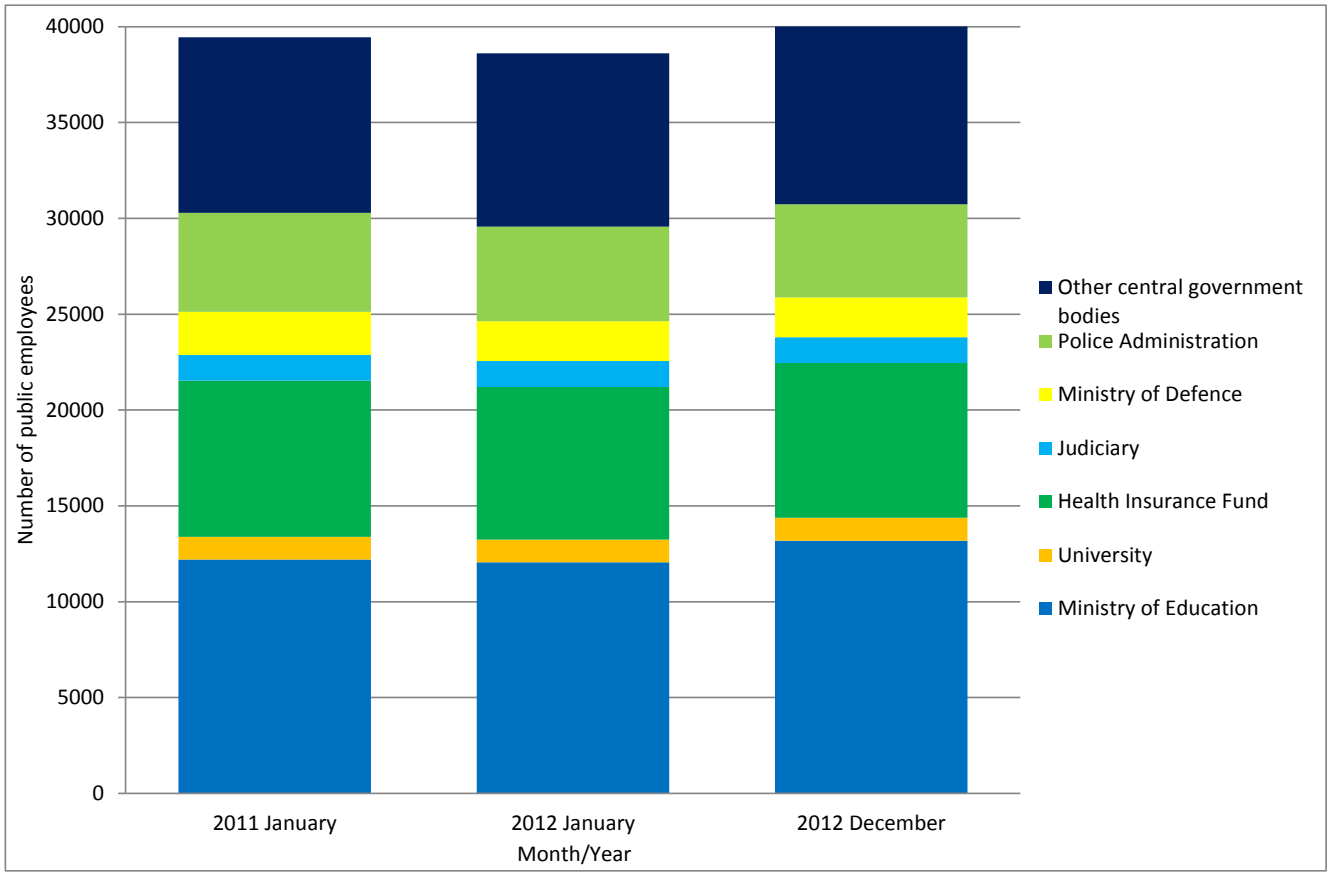
The Government of Montenegro has successfully focused on consolidating public spending over the few last years[31]. It is notable, however, that at the same time, employment in the central government administration has slightly increased over the last two years. The number of public employees rose from 39 448 at the beginning of 2011 to 40 050 at the end of 2012[32]. Excluding the judiciary, education, defence and health sectors, these numbers stand at 14 310 in 2011 and 14 171 in 2012.

[30] General public services are defined according to the Classifications of the Functions of Government (COFOG) classification for public expenditure.

[31] Public deficit has been reduced from 5.4% of GDP in 2011 to 3.7% in 2012 and further expenditure consolidation is decided within the 2013 state budget.

[32] Data from the Ministry of Finance (employment in central government organisations).

Figure 5. **Public employment in central government organisations**



Source: Ministry of Finance

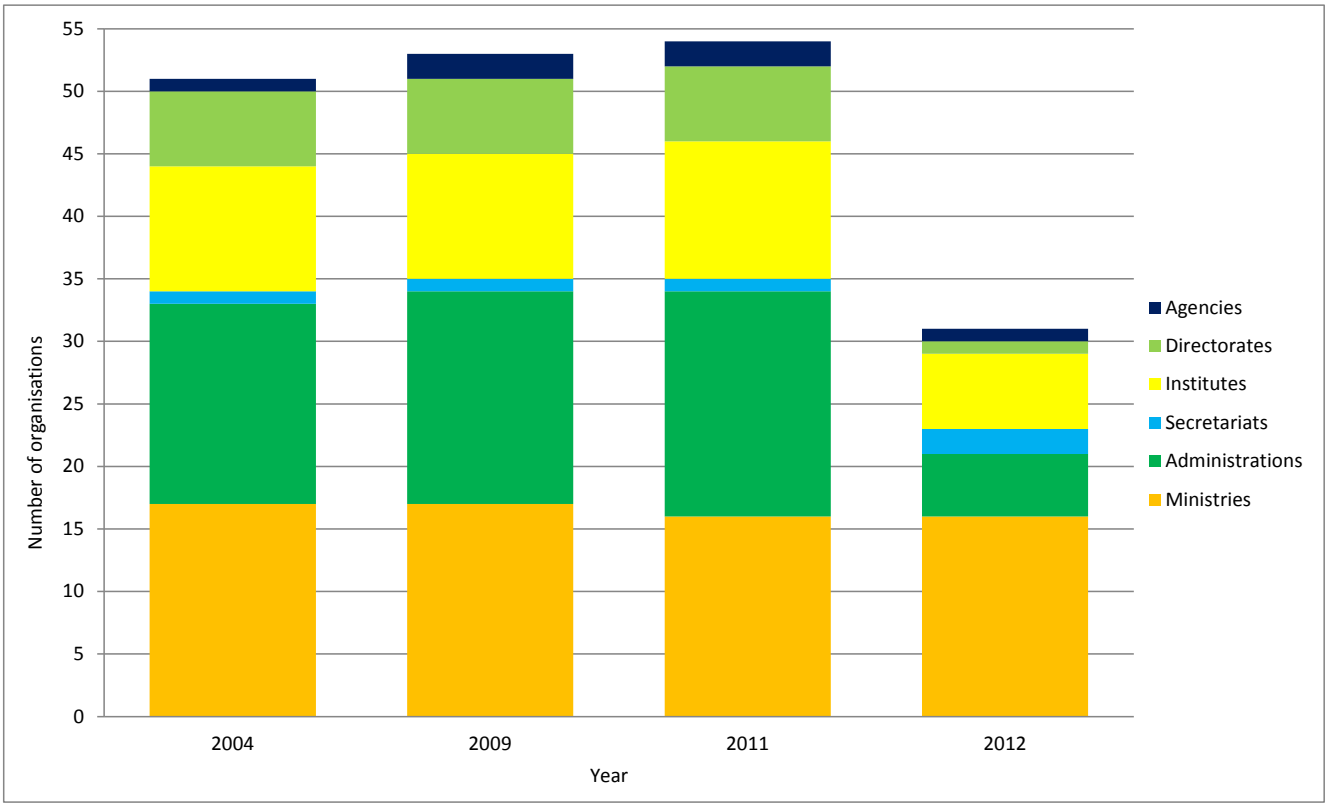
Although the plan for re-organising the public sector has not yet been approved by the Government[33], related changes in the Government structure have started to take place. There has been a slight change in the structure of central government employment, with the Police Administration and Ministry of Defence as the main organisations experiencing a notable reduction in their total number of staff. On the other hand, the Ministry of Justice and the MoI, and the Ministry of Foreign Affairs and European Integration to a lesser extent, have seen an increase in their total number of staff number.

The number of central government organisations has formally decreased, as set in the decree on the organisation and operation of the state administration[34].

[33] The Regulatory Council approved an updated plan for re-organising the public sector on 29 March 2013.

[34] The Official Gazette of Montenegro No 61/12 of 07.12.2012.

Figure 6. **Number of central government organisations**



Source: Report on Public Administration Reform by Institute Alternativa (2012)

The ministries most affected by the changes are the Ministry of Finance, the Ministry of Transport and Maritime Affairs and the Ministry of Agriculture and Rural Development. A small number of administrations were kept independent (e.g. the Public Procurement Administration and Administration for Protection of Competition). These have in principle more budgetary autonomy and have retained their separate legal entity, which is not the case for the administrations which are now part of ministries[35].

Work on the integration of these administrative organisations into the ministries is still ongoing. The 2013 annual budget has already been consolidated according to the new organisational division, but, at the time of writing this report, most of the ministries were still working on their new systematisations[36]. It will take time to create and embed these before optimal internal working arrangements within the new structures (e.g. merging technical support services where reasonable).

To prepare for the implementation of the plan for re-organising the public sector, the Regulatory Council, in March 2013, collected from all ministries (including their subordinate administrations) detailed information on their staff composition, differentiating between permanent employees and staff with fixed term contracts. The information collected does not, however, distinguish between policy functions, co-ordination functions and administrative support staff and may not be a sufficient basis for centrally co-ordinated structural changes in public organisations.

In addition, the Regulatory Council has tasked the MoI with analysing the position and functions of every organisation that exercises public authority, leading to proposed solutions in the legislative framework for public services and public administration organisation (including potential regulation for public agencies). This analysis, to be finalised by the end of 2013, would also support the basis for decision-making regarding the optimisation of government structures.

[35] Institute Alternativa, report on Public Administration Reform in Montenegro (2012).

[36] Formal decision on the internal organisation and systematisation of tasks, nomenclature of task groups, content of these tasks, requirements for positions, framework number of executors within a public sector organisation.

The draft plan for re-organising the public sector focuses on public sector employment, with the exception of local government and the education, health-care, judiciary and defence sectors. Under the mandate of the Regulatory Council, parallel structural analyses are ongoing to tackle the other areas of public administration, except local government. In June 2012, the MoI finalised an analysis on the functioning of the municipalities that can be used to feed into the public sector re-organisation discussions. In light of the importance of public employment at the local government level[37] and of the fact that ministries have a new demand for stronger capacities for managing the EU accession process, including local government at this stage of the analysis could widen the Government's options for future policy decisions.

Public sector re-organisation is a core priority of the PAR agenda. The underlying analysis has been thoroughly prepared, but significant gaps in data still need to be filled before decisions on well targeted structural changes in public employment and in the organisation of the public administration can be taken.

Institutional co-ordination framework for PAR

An assessment of the various key documents and institutional responsibilities and structures for PAR co-ordination in Montenegro demonstrates that a political mandate exists, as demonstrated by the adoption of the PAR Strategy and Action Plan for an overall PAR agenda. This can also be seen in the key government documents listed under section 2.1.

All line ministries are responsible for supervising the effectiveness and legality within their own administrations, as well as the work of their public administration bodies, as specified by the decree on organisation and operation of the state administration[38]. The MoI exercises horizontal responsibilities with regard to public administration, the civil service system, and general administrative procedures. The MoI also provides opinions regarding proposed laws and regulations relevant to public administration procedures. The MoI is recognised by all those interviewed as the co-ordinating structure for PAR reforms, although the decree on organisation and operation of the state administration does not specifically assign co-ordination functions in the area of PAR to the MoI or any other ministry. From a practical point of view, the newly created position of State Secretary for PAR and the Deputy Minister of Interior[39] exercise authority within the ministry, and are expected to lead PAR processes throughout the Government.

The Ministry of Finance also has a central role with regard to PAR, and is responsible for managing issues such as Public Internal Financial Control development, salary reductions, funds and budget constraints and budgetary issues with regard to the "right-sizing" of the public sector, which are all at the core of the reform. The MoF also provides the secretariat[40] that supports the Regulatory Council.

The Ministry of Foreign Affairs and European Integration is responsible for managing and monitoring Montenegro's EU accession process, as well as co-ordinating the harmonisation of the national legislation with the EU *acquis*. Also relevant to the co-ordination and development of the public administration is the need to incorporate the *acquis* into the administration of the state institutions. The Ministry also co-ordinates the Government's applications for financing from the Instrument for Pre-Accession Assistance (IPA), with PAR as a priority area.

The Ministry of Information Society is responsible for developing e-government. A number of independent administrative bodies such as the Human Resources Management Administration, Public Procurement Administration and the Inspection Services for the Administration affect the work on and co-ordination of PAR as they perform core horizontal public administration services.

The Regulatory Council is the central co-ordinating body for the PAR agenda at the central government level. It is composed of several ministers, including the Minister of Interior, Minister of Finance, Minister of Justice,

[37] Local government employs more than 10 500 in Montenegro of whom nearly half are in municipal companies.

[38] Decree on Organisation and Operation of the Public Administration (The Official Gazette of Montenegro No 11.05.2012, 61/12 of 07.12.2012).

[39] Information from interviews with the Ministry of Interior during SIGMA's Assessment Mission to Montenegro, February 2013.

[40] Sector for Financial System and Improvement of Business Environment in the Ministry of Finance.

Minister of Economy, Minister for Sustainable Development and Tourism, Minister of Health, Minister of Education and Minister of Labour and Social Welfare. Other members of the Council include advisors to the Prime Minister and Deputy Prime Ministers and the heads of the Chamber of Commerce, Association of Municipalities, and Business Alliance. The Regulatory Council meets every three months or more often depending on its agenda. It adopts decisions that afterwards can be submitted to the Government for approval. The leading politician and Chairman of the Council is the Deputy Prime Minister and Minister of European Integration. The authority to sign Council documents is vested in the Chairman and the Minister of Finance. Administrative and technical support for the Council is provided by the Ministry of Finance through the Council secretariat (composed of three experts), which deals with all issues the Council is responsible for (not only PAR but also the business environment, regulatory reform and other structural reforms). It is worth noting that although there is a general recognition that the Council also co-ordinates the PAR agenda related to the central government, there are no explicit references to PAR or the PAR Strategy in the Council's 12 formal tasks.

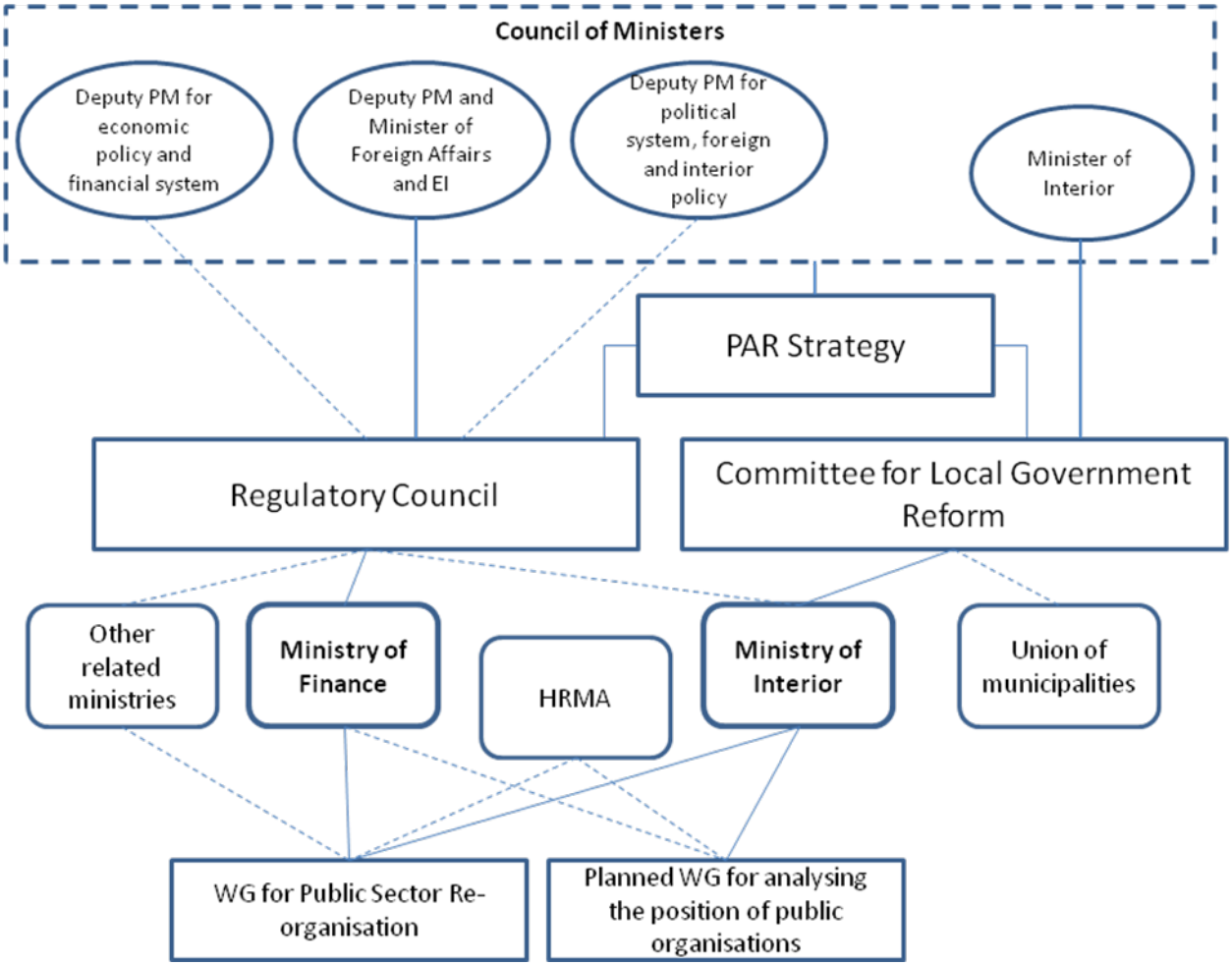
While the Regulatory Council is chaired by the Deputy Prime Minister and Minister of Foreign Affairs and European Integration, another Deputy Prime Minister is responsible for the area of political system, foreign and interior policy that also covers PAR area in the formal decision-making framework of the Government[41]. A similar situation applies to the Deputy Prime Minister for economic policy and financial system who is responsible for co-ordinating the activities of a number of other topics that the Regulatory Council covers.

The co-ordination tasks for the part of the PAR strategy related to local government are handled by the Co-ordinating Committee for Local Government Reform. This split between the Regulatory Council and the Co-ordinating Committee for Local Government Reform without any regular co-ordination between them or joint analysis is a weakness for more strategic decisions that would affect both levels of government.

To update the draft plan for re-organising the public sector, the Regulatory Council established a working group co-ordinated by the Deputy Minister of Interior and which includes representatives from the Ministries of Finance, Justice, Interior and Information Society, as well as from the Office of the Deputy Prime Minister and the Human Resources Management Authority (HRMA).

[41] Article 15 of the Rules of Procedure of the Government.

Figure 7. **Schematic overview of the Public Administration Reform co-ordination structures in March 2013**[42]



Source: Support for Improvement in Governance and Management (SIGMA)

The above illustration (Figure 7) of the co-ordination of PAR structures, already itself a simplification, shows a rather complex and dispersed institutional co-ordination structure. It is difficult to identify one leading politician/entity with the authority needed to communicate internally within the public administration and externally with citizens on public administration issues, including PAR progress.

This situation also applies to the responsibility for monitoring and reporting on the implementation of the PAR agenda in general, and more specifically on the PAR Strategy and the Action Plan. In practice, these responsibilities rest with the MoI. The PAR Strategy envisaged that the monitoring of the implementation would be done through the use of the Action Plan, providing a general framework with objectives and activities. However, monitoring and reporting have been challenging for the Government, owing to unclear responsibilities with regard to monitoring, the large scope of topics, a lack of allocated capacity, trained staff, and procedures, and the number of government institutions covered by the PAR Strategy.

The formal monitoring of the PAR Strategy has been inconsistent. There is no consolidated progress report on the PAR Strategy or Action Plan. One recent positive development is the Regulatory Council's request that all responsible authorities prepare, during the first quarter of 2013, an overview of the completion of activities in the Action Plan. At the time of writing, only the MoI has presented an overview, However, this report mainly contains a quantitative account of what the MoI and Human HRMA have done, providing an overview of

[42] Solid lines refer to direct and active relationships; dotted lines refer to less direct or less active involvement.

activities but no impact assessment or information on results[43]. The report states that only one activity envisaged in the Action Plan has not been implemented by the MoI and HRMA[44], and it concludes that it will be necessary to update the Action Plan for the implementation of the PAR Strategy for the next two-year period. There has been no systematic analysis of gaps, difficulties in implementation or impact of the measures taken to date. The question regarding a more accurate method of monitoring and steering reform implementation relates to the co-ordination and the internally allocated expertise capacities for PAR (as discussed in the following part).

While Montenegro over the past few years has shown progress with regard to public administration reform, there is scope to further improve the co-ordination, reporting and analysis of the level of implementation of the reforms. The establishment of a Government mandated Council for Improvement of Business Environment, Regulatory and Structural Reforms to deal also with public administration reforms is a positive development. However, the many actors and institutions, the lack of clarity on who is actually responsible for co-ordinating and taking the public administration reform forward at all levels, contributes to limiting the effective and efficient implementation of PAR in Montenegro. As a result, despite actual progress on all key issues, there has been virtually no monitoring and no evidence of a thorough progress evaluation of the PAR strategy.

Resources allocated to PAR

The Action Plan for Public Administration Reform in Montenegro 2010-2015 allocates funds to most projects and activities and occasionally states the funds' origins. The financial estimates given in the Action Plan are connected to single activities or immediate outputs (but not to the potential overall cost of the reform plans themselves).

Many of the reform efforts that have seen progress (e.g. new regulation for civil service and administrative procedures, progress in activities related to e-government activities and Public Internal Financial Control) are benefitting from external support provided primarily by the European Commission. The EU allocated EUR 35 million in 2012 to Montenegro, covering key areas such as judicial reform, public administration reform and institution building, the fight against corruption and organised crime, and civil society support. Estimates for transition assistance and institution building stand at EUR 16 343 471 in 2012 and EUR 5 238 958 in 2013.[45]

Strengthening the technical capacities of those involved in the reform process is foreseen in the PAR Strategy and the Action Plan but has not yet taken place. The two Sectors most involved in PAR co-ordination activities have three staff and occasional trainees to cover a number of important policy areas for the Government. The MoI Sector for Public Administration is in charge of PAR co-ordination, as well of public sector organisation, civil service and public employment and administrative procedures. The MoF Sector for Financial System and Improvement of Business Environment is responsible for developing regulation for the business environment and for co-ordinating and ensuring the quality of impact assessments for all regulations. Without expert capacity regarding horizontal policy formulation, planning and performance assessment, it is difficult to follow and analyse the implementation of PAR policies. The recent decision by the Government to appoint a State Secretary to the MoI with PAR co-ordination responsibilities is a promising step. Still, the size of the relevant team in the MoI is too small to fulfil competences such as formulation policy, legal drafting, providing advice on developments in PAR-related sectors, monitoring reform, f monitoring implementation of policies and legislation, enforcing laws and assessing results.

One way of overcoming the present shortage of internal expertise is by preparing laws and by-laws with the help of external experts. Interministerial working groups are also established to complete certain analytical and technical tasks. Nevertheless, while the MoI is not understaffed, the PAR co-ordination team within the MoI is. The administration has not allocated the necessary internal skills to deal with issues that require

[43] Report on the implementation of activities from the Action Plan of the Strategy for Public Administration Reform 2011–2016, in part of the competences of the MoI and HRMA (13 March 2013).

[44] Analysis of Position of Organisations Performing Public Duties.

[45] http://ec.europa.eu/enlargement/instruments/funding-by-country/montenegro/index_en.htm.

impartial, competent, and professional expertise. A permanent body of experts, completely dedicated to supporting PAR initiatives (analytically and technically), is an important component for the co-ordination and implementation of PAR.

The PAR Strategy and the Action Plan provide an indication of funds for carrying out individual activities. Strengthening the technical and analytical capacities of the structures that support PAR is a key area in need of progress for the co-ordination and sustainability of reform. A re-allocation of resources within the MoI is necessary, and the pooling of technical expertise through the use of project teams between the different core PAR ministries and administrative bodies such as the MoI, MoF and HRMA remains necessary to manage extensive PAR reforms such as, for example, the re-organisation of the public sector. Securing external financial and expert support from the IPA and other sources has proven to be less of a problem.

HUMAN RESOURCE MANAGEMENT IN THE PUBLIC SECTOR

MONTENEGRO

APRIL 2013

1. State of play and main developments since the last assessment

1.1. State of play

Montenegro is currently facing a challenging period regarding public employment. The Government is primarily focusing on meeting its fiscal objectives, which requires limiting spending also on public employment. At the same time, the new Law on Civil Servants and State Employees (Civil Service Law) came into force on 1 January 2013 and still needs to be implemented with its numerous new elements. Most of the by-laws needed for the implementation of the Civil Service Law have now been prepared, but many of its provisions are yet to be implemented.

1.2. Main developments since last assessment

Preparation of the necessary secondary legislation has been ongoing since the adoption of the Civil Service Law in 2011, but most of the progress in finalising the secondary legislation has been achieved during the last few months. From a legal perspective, three main developments should be mentioned:

- The secondary legislation necessary for the implementation of the Civil Service Law has been prepared and adopted to a considerable extent. The "regulation on methods for mandatory competence assessment, detailed criteria and grading of candidates for recruitment in state administration" (Competence Assessment Regulation)[46] has particular relevance. This regulation attempts to ensure the proper application of the merit principle within the recruitment process. However, implementation has not started as recruitments have been put on hold due to the upcoming presidential election.
- In December 2012, prior to the application of the Civil Service Law, an amendment to it was adopted to restrict the re-employment of employees who left the service and are receiving severance pay.
- The new Law on Salaries of Civil Servants and State Employees[47] was adopted, introducing elements of transparency and fairness of the salary system in the public sector.

From a managerial perspective, one aspect is noteworthy with regard to the transition process from the old to the new Civil Service Law:

- Nearly all ministries and other authorities are in the process of updating their rulebooks on internal organisation and systematisation of job positions. This process is based on the Regulation on the Criteria for Internal Organisation and Systematisation of Tasks in State Institutions[48], which is aligned with the new Civil Service Law.

2. Analysis

In Montenegro, the status of civil servants is regulated by the Law on Civil Servants and State Employees (Civil Service Law), the Law on Administration[49] and the Law on Salaries of Civil Servants and State Employees. Public administration employees are also subject to general labour regulation unless the Civil Service Law or other specific laws regulate issues differently. Special laws are also in place, such as the Law on Police and the Law on Foreign Affairs, but they are not considered in this analysis.

[46] Adopted by Government on 27 December 212.

[47] The Official Gazette no. 14/2.

[48] Adopted by Government on 17 January 2013.

[49] Official Gazette nos. 38/03, 22/08, 42/11.

2.1. The New Law on Civil Servants and State Employees

In July 2011, the Parliament approved a Civil Service Law which is based on the principle of merit. The Law contains the necessary elements to develop a professional and impartial public administration. Moreover, it provides mechanisms which, if properly put into practice, will contribute to enhancing the efficiency and productivity of the public administration. The Law is applicable to about 40 000 civil servants and employees from the central government administration, and to another 10 500 working for local government. The most important elements of the new Civil Service Law are the following:

- The concept of a framework law, which in most cases provides only the legal principles and parameters for a broad range of public administration activities, has been largely achieved. The inclusion of all state employees into the civil service system, which had not been envisaged in the policy paper developed prior to the drafting of the law, has some clear advantages, particularly with regard to the application of the merit principle for recruitment. The scope of the law is further broadened with the inclusion of the Pension and Disability Insurance Fund and other such institutions. The main regulations apply to civil servants and state employees; both groups are only distinguished by their respective tasks.
- The Recruitment of civil servants and other public employees up to the level of middle management is explicitly based on the merit principle. The discretion heads of state authorities previously had in the selection process has been restricted to the five remaining candidates on the shortlist obtained from the testing commission. Additional procedural requirements are necessary in cases where the head of the authority selects a candidate other than the highest ranking one[50].
- Senior position vacancies are publicly announced, thus ensuring transparency. A commission then carries out a structured interview with all the candidates meeting the formal requirements, and produces a shortlist containing the five best candidates in ranking order. The minister then proposes for appointment either the highest-ranked candidate, or provides justification for selecting another candidate from the shortlist. Senior managers are appointed for a fixed term of five years and may be re-appointed. For positions at the interface of the political level and administration, this approach is acceptable if carried out properly, on the basis of adequate rules and transparency.
- Heads of state administration bodies are not included in the scope of the senior managerial level of the civil service, though most of them are supposed to have professional and not political functions. However, the Civil Service Law provides some basic requirements for appointment, transparency through public competition, and for an interview with the candidates meeting the formal requirements. The Government then makes an appointment based on the proposal of the minister. This is not a fully merit-based process but it represents some progress compared to the previous regulation.
- Impartiality, professionalism and other civil service values are adequately protected, particularly by employment for an indefinite term subject to termination only in those cases explicitly provided for by law. The appeals procedure formally provides administrative redress in cases of grievances. The possibility of bringing a case before the Administrative Court is an additional element that contributes to the protection of the status of the civil servants.
- The mobility of public employees is enhanced, especially when connected to the abolishment of bodies and tasks. The HRMA is to lead the process in cases of abolishment of bodies. Redundant staff are made available to the HRMA for re-assignment, with certain rights and obligations, and with six months of salary guaranteed in all cases.

The new Law on Civil Servants and State Employees is a good basis on which to build a public employment system based on merit. The changes introduced by the Law present a genuine opportunity to improve public sector human resources management.

[50] Details are set out in the Competence Assessment Regulation.

2.2. Secondary legislation necessary to implement the Civil Service Law

The Civil Service Law provides explicit authority for 13 regulations to be adopted, either by the Government or by individual ministers. The procedure for preparing these regulations was different from the procedure used for preparing the law itself. Drafting of the Civil Service Law was preceded by a comprehensive policy development process, summarised in a policy paper; this procedure has not been applied in the process of drafting secondary legislation. The preparation of the various pieces of secondary legislation was carried out by a working group, chaired by the MoI, with the participation of the HRMA, the Ministry of Finance and the Ministry of Defence.

By the end of March 2013, the following eight regulations had been adopted:

- Code of Ethics of Civil Servants and State Employees, adopted by the Government[51]
- Rulebook on the content of notice, corrections of notice, electronic submission of applications to notice and insight into notice documentation, adopted by the Minister of Interior[52]
- Rulebook on the means and criteria for drawing up a disciplinary commission membership list, adopted by the Minister of Interior[53]
- Rulebook on monitoring and assessment of probation of civil servants and state employees, adopted by the Minister of Interior[54]
- Regulation on methods for mandatory competence assessment, detailed criteria and grading of candidates for recruitment in state administration (Competence Assessment Regulation), adopted by the Government[55]
- Decree on criteria for classification of jobs for civil servants to be given titles and placed within levels and categories, adopted by the Government[56]
- Decision on the appointment of the president and members of the Appeals Commission[57]
- Decision on the Ethics Committee[58].

Although there was 18 months to prepare the secondary legislation, it still had not been entirely completed by 1 January 2013. Furthermore, the following pieces of secondary legislation have not yet been adopted, which represents a further deviation from the deadlines set in the internal Action Plan that the MoI and HRMA prepared in August 2011:

- Regulation on the Central Human Resources Register (submitted to the Secretariat for Legislation)
- Regulation on the State Examination[59] (submitted to the Secretariat for Legislation)
- Regulation on performance appraisal criteria and procedures
- Regulation on recognition for exceptional achievements
- Regulation on training.

[51] The Official Gazette of Montenegro no. 20/12.

[52] The Official Gazette of Montenegro no. 8/13.

[53] The Official Gazette of Montenegro no. 62/12.

[54] The Official Gazette of Montenegro no. 51/12.

[55] The Official Gazette of Montenegro no. 4/13.

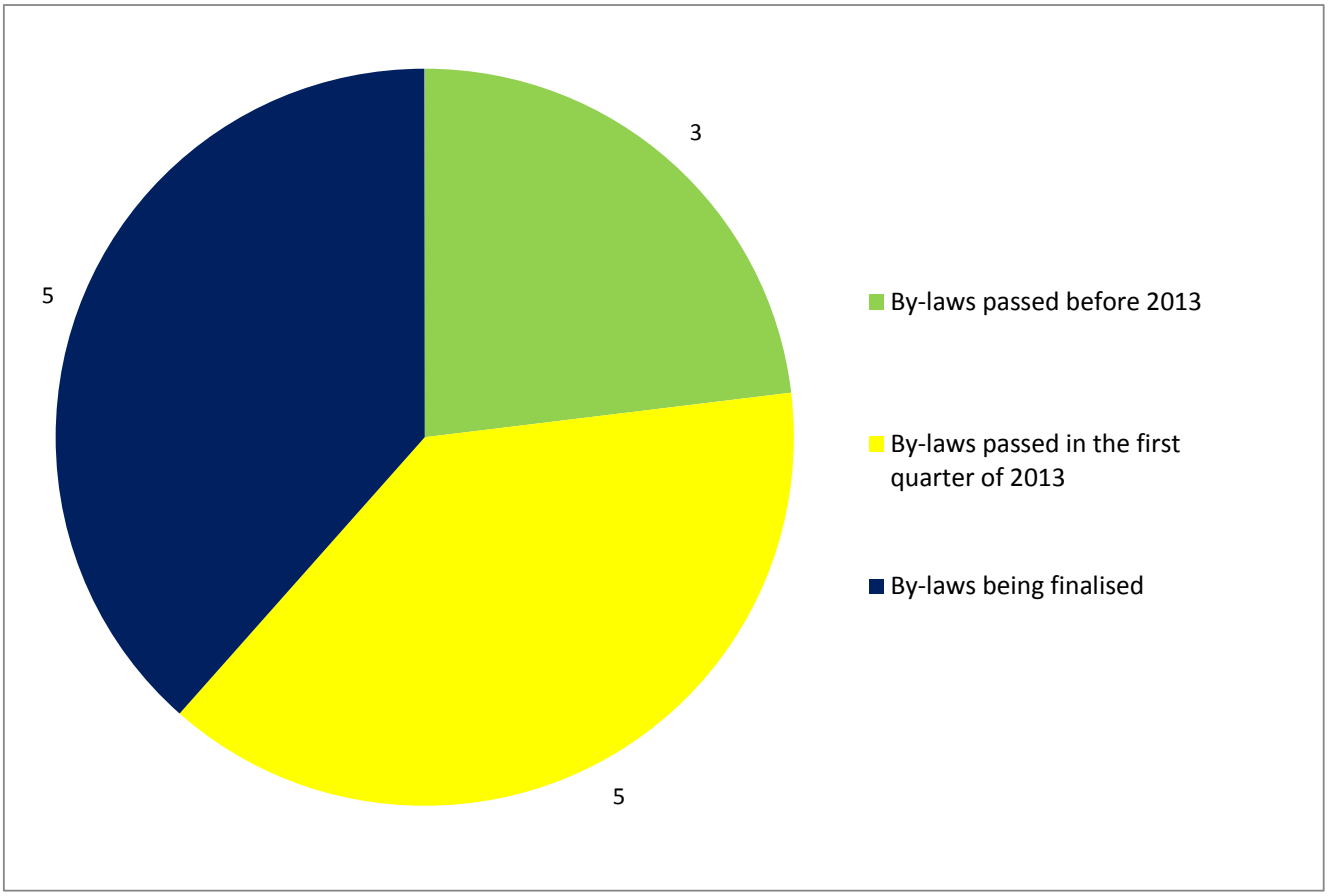
[56] The Official Gazette of Montenegro no. 12/13.

[57] The Official Gazette of Montenegro no. 11/13.

[58] The Official Gazette of Montenegro no. 11/13.

[59] Passing the state examination is a precondition for being eligible to participate in a competition for entering the civil service.

Figure 8. **Overview of the status of the adoption of secondary legislation to the Civil Service Law**



Source: Ministry of Interior (Official Gazette)

Delays in the finalisation of secondary legislation have been significant and have been among the reasons for gaps in the implementation of the new law in early 2013. Having secondary legislation in place well in advance of the actual implementation is necessary to carry out the organisation of adequate training for the public officials most concerned. Furthermore, the Legal and Technical Rules provided by the Secretariat for Legislation foresee that drafts of secondary legislation must already be prepared as drafts before the law itself is adopted. In the case of the Civil Service Law, the necessary secondary legislation was prepared much later than needed for the proper preparation of HRM personnel in the public sector. In a number of cases, the secondary legislation was finalised when the law itself was already in force.

The Competence Assessment Regulation

The most important piece of secondary legislation developed is the Competence Assessment Regulation, which deals with recruitment. This regulation contains many reasonable and necessary rules, but they are overshadowed by a number of shortcomings, some of which could jeopardise the merit principle:

- The regulation does not fully elaborate on the composition of the competition commissions. Specifications included in the draft regulation were not accepted by the Secretariat for Legislation[60]. This could allow for ad hoc decisions and for a high degree of discretion with regard to the composition of competition commissions.

[60] According to the Secretariat, this is because the mandate given by the Civil Service Law was not well developed, and it does not give the Government the authority to regulate this.

- Points for the "personal appearance" of candidates could undermine the objective assessment of candidates in the written and oral examinations[61].
- The psychological evaluation (psychometric tests) of the shortlisted candidates could be misused for distorting the merit principle; additionally it might be deemed too expensive[62] and extremely difficult to implement, as it requires specialised occupational psychologists.
- Competitions for senior managerial posts are not included.

The Secretariat for Legislation is fulfilling a crucial role in quality assurance of legislation. However, some of its interpretations regarding the secondary legislation may have had the opposite effect. It has already been mentioned that the scope and impact of the Competence Assessment Regulation was reduced following consultations with the Secretariat for Legislation. Another example of this situation is the Rulebook on the Content of Notices, which deals with public and internal announcements of vacancies and electronic applications. This regulation was also adopted in a weakened version following consultations with the Secretariat for Legislation. It currently only applies to electronic applications and not hard copy applications. The MoI has not attempted to implement its policy concept in another admissible manner and has instead accepted a weakened regulation. Currently there are no plans to revisit the Civil Service Law in order to strengthen the provisions giving the Government the necessary authority to regulate the above-mentioned matters.

The secondary legislation developing the civil service is mainly in place, but has been, for a large part, finalised at a very late stage, hindering the public administration's preparations for implementing the Law. In some cases, the secondary legislation contains weaker instruments for ensuring merit, when compared to the provisions in the Law itself. Additional instruments, though not of a legally binding nature (such as guidelines), will be necessary for an adequate implementation.

2.3. The conditions and capacities for the implementation of the Civil Service Law

Record of the initial months of implementation

A review of the specific provisions of the Civil Service Law reveals that implementation of the Law has only partially started in 2013. The following paragraphs provide a short overview of some of the main elements that should have been implemented as foreseen in the Law.

Articles 148 and 149 of the Civil Service Law foresee that all public administration organisations prepare Human Resource Plans in January each year and that these are approved by the Government. The introduction of a more systematic HR planning on an annual basis could contribute to greater efficiency and cost awareness. Details still need to be developed in the secondary legislation not yet in place, and unfortunately there is no clear authority for enacting this piece of secondary legislation. Central guidelines and related templates have not yet been prepared, and by the end of March, the HRMA had not been informed of any of the Human Resource Plans being approved by the Government.

Article 109 of the Civil Service Law requires that all public administration organisations carry out performance appraisal by the end of January. In early 2013, this had not been completed by most organisations[63]. Considering that most organisations have also not fully complied with performance appraisal requirements in

[61] During the competition assessment procedure and through the interview, candidates are assessed on additional items, some of which could be inadequately used; for example: making logical, clear, convincing statements and recommendations; knowledge relevant for the post for which the competence assessment has been conducted; communication skills; motivation; personal appearance/attitude.

[62] Based on the 2012 figures (238 competitions with altogether 2 630 candidates), at least 200 competitions could be carried out every year in the next years; this would mean that at least 1 000 psychological evaluations would be necessary if each shortlist comprises five candidates. This is in addition to the medical fitness certification required by the Civil Service Law (Article 32).

[63] According to the HRMA, eight institutions had submitted their 2012 performance appraisal ratings, with a few more expected to do so.

the previous years, this is an area that requires much more attention than simply having clear secondary legislation in place.

On a more positive note, the members of the disciplinary commissions have been (as required by Article 87 of the Civil Service Law) nominated by all the ministries as well as other bodies[64]. The Rules of Procedures of the Disciplinary Commission have been drafted by the HRMA. It has been informed that so far six authorities have initiated disciplinary procedures in 2013 according to the Civil Service Law. In addition, the Appeals Commission has been nominated according to the Civil Service Law[65].

Article 68 of the Civil Service Law requires that all public authorities prepare integrity plans, identifying, among other issues, sensitive staff positions. Guidelines prepared and issued by the Ministry of Justice are available, but they are overly complicated (including a detailed risk assessment) and may therefore be difficult to implement by the institutions concerned. Furthermore, there are no fixed deadlines for these plans. To date, only some public sector organisations have begun internal preparations, therefore the quality of this work cannot yet be determined.

Capacities to implement the Civil Service Law

Overall responsibility for public employment affairs is vested in the MoI and in the HRMA. All critical issues regarding the civil service system are dealt with by the HRMA in consultation with the MoI and the Deputy Prime Minister for the political system. The capacities of the MoI and the HRMA for the huge task of reforming the public employment system are weak. According to the MoI, the State Secretary appointed in March 2013 is specifically in charge of PAR leadership and co-ordination.

The MoI focuses on policy development and legal drafting. The Sector for Public Administration, which also deals with other issues such as public administration organisation and administrative procedures, has only three permanent staff. A merger of the Sector for Public Administration and the Sector for Local Government is planned.

The HRMA continues to operate under the MoI, which supervises this de-concentrated expert body. This is an adequate solution, ensuring that the issue of human resources management has a voice in the Government. The HRMA is structured based on three sectors: recruitment, internal labour market and training. Staffing numbers are moderate, though the overall number has increased from 24 at the beginning of 2011 to 30 at the end of 2012. However, this remains insufficient, particularly regarding the internal labour market sector, which only has one staff member, despite the huge amount of work expected after restructuring measures. The HRMA has prepared a new rulebook on internal organisation and systematisation based on the analysis of the new responsibilities that the HRMA will take on. The new rulebook envisages 10 additional positions, of which several have already been filled.

At the operational level, the HRMA co-operates with the ministries and other authorities to varying degrees. Some ministries, such as the Ministry for Defence, work closely and on a regular basis with the HRMA. One of the reasons for this is that human resources management is well organised within this Ministry. However, there are no regular multilateral meetings with human resources managers from ministries to complement these bilateral interactions.

An indication of the HRMA's authority is provided by the degree of support for the central register it manages. According to the HRMA, the overwhelming majority of authorities who submit data for this register do so reliably. However, the authorities that do not submit data employ more than 60% of all public employees. This indicates that the HRMA has not convinced all the authorities of the usefulness of the services it renders.

Human resources units in ministries and public bodies are mostly small. In many cases, HRM capacities are not located within a separate organisational unit, but are part of the general administrative services with one or two staff dealing with HRM issues. However, every authority has a contact person for the HRMA. Human

[64] The HRMA has posted a list of the members of Disciplinary Commission on the website: www.uzk.co.me (124 members).

[65] Articles 140 and 141.

resources practices are mostly compliance oriented, without a visible managerial approach. For the time being this can be considered as acceptable, if compliance is really ensured.

The HRMA has, over the last few months, conducted a series of seminars and other events across the country[66], within the framework of the regular quarterly training plan. These standardised presentations were aimed at acquainting all interested employees with the contents of the new legislation and did not target specific officials such as human resource managers or secretaries of ministries.

A specific challenge for some ministries, such as the Ministries of Finance, Interior and Justice, comes from having to deal with the integration of formerly independent administrations with large number of employees (over 1 000 in some cases) and sometimes very different working environments[67]. In general, the newly integrated authorities maintain their human resources capacities, but also report to the human resources capacity of the ministry.

The MoI is responsible for supervising the implementation of the Civil Service Law, for which it has administrative inspectors[68]. The competent inspection authority is obliged to inform the HRMA about determined illegalities and irregularities[69]. At the same time, the HRMA is tasked with monitoring the implementation of the law and informing the competent inspection authority of potential illegalities and irregularities[70]. The roles of the two institutions are clearly differentiated, but some additional co-ordination will be needed to ensure positive and coherent results of this effort to ensure proper implementation of the Civil Service Law at all levels.

There is a common understanding at the managerial level of the administration that it will take a long time for the requirements and procedures of the new Law to become routine. However, there is widespread optimism that the transition will be successful and will take place within a rather short period.

The Civil Service Law is a juridical instrument that offers an adequate framework for the management of public personnel based on the principle of merit. The Law introduces important constraints on the discretion of political authorities.

The "blank resignations case"

The background to this case is that 112 senior officials and 36 heads of administrative bodies delivered an undated resignation letter during the last months of 2012. This was not a collection of individual decisions[71], but an organised initiative coming from the political leadership. The resignations were asked for in a relatively discrete way, with no formal decision being taken and no written request being made. The officials followed the request, without any apparent attempt to resist, insisting on their status and due process. The media did not pay much attention to the matter and some of the reactions were rather neutral[72]. According to a recent

[66] In 2012, the HRMA organised seven trainings referring to the application of the new Law. In 2013 the following trainings have been organised so far on the following topics: Towards the new Law on Civil Servants and State Employees; Decree on the Criteria, Form of Qualification Assessment and Evaluation of Candidates; and Decree on the Criteria for Internal Organisation.

[67] For instance the Prison Service, now integrated into the Ministry of Justice.

[68] Competent inspection authority according to the Civil Service Law.

[69] Art. 154 of the Civil Service Law.

[70] Art. 151.

[71] Employment relations can be terminated upon personal request as set out Article 56 of the Civil Service Law. However, the resignation referred to in this article is an individual and private act; it remains an individual and private act even if it is the result of a bargaining process between the employer and the official concerned. However, initiating a collective blank resignation action would contradict this character.

[72] Text of report by Montenegrin newspaper Vijesti website on 29 November [Unattributed report: "Djukanovic Demands Blank Resignations from All Public Officials, Except Ministers"]. Democratic Party of Socialists [DPS] leader Milo Djukanovic has asked all deputy ministers, directors of agencies, bureaus, public companies, and public institutions to submit their blank resignations before the new Government is formed.

SIGMA paper[73], civil servants in the Western Balkans are fairly supportive of the reduction in the level of job protection[74].

The Government's position is that the objective of the measure was to enhance the effectiveness of public administration. In this sense, a note issued to inform the EC stated that "Submission of resignation of all officials appointed by the Government was not a political speculation, but an intent to increase the efficiency and to improve the work of the Government in line with the new challenges of the European integration", and that "There are no hidden motives behind this request [of presenting resignation letters], and no duties have been interrupted in their performance". The note mentions various articles from the legal framework, but without clearly explaining the relationship between the initiative and the law. The articles mentioned were mere procedural details, indicating that the merit principle was never considered.

A small number of the resignations have been activated subsequently. In several cases the persons dismissed had been appointed to an acting function, therefore the vacancy was created to be able to initiate the procedure to fill it.

A foreseen assessment of the implementation of the Civil Service Law

The Government has decided to carry out an assessment of the implementation of the Civil Service Law during the fourth quarter of 2013. Though this might be too early for a comprehensive assessment of how practices have evolved under the new Law, the decision itself has to be welcomed. This review should also deal with the above mentioned shortcomings of the secondary legislation.

The HRMA has taken some initial steps to improve its monitoring capacities by involving the newly appointed president of the Appeals Commission in its top management meetings. This will provide the HRMA with relevant feedback on the practical shortcomings of the implementation of the Civil Service Law brought before the Appeals Commission.

The institutional reform capacities for the implementation of the Civil Service Law are mostly in place and co-ordinated at the central level (MoI and HRMA). However, the central bodies have not established any specific new working arrangements or temporary capacities (with the exception of a planned EU funded technical assistance project) for the challenge of implementing the new rules. This will inevitably lead to gaps in implementing the new Law. The HRM units in public bodies are usually small and compliance oriented. Political support for the new elements of public sector HR management exists through the adoption of the necessary regulation, but only the actual practice will show to what extent the varying organisations are able to improve their personnel policy.

[73] Civil Service Professionalisation in the Western Balkans, SIGMA Paper No. 48, September 2012.

[74] Respondents to the survey were asked whether managers should have more freedom to fire civil servants who perform poorly. A low score indicates a positive response to the question, which is very strong in Montenegro, Kosovo and Serbia and lower in the other countries. On a 5 points scale, in which the regional average is 3.2, Montenegro has the lowest score 2.6.

FUNCTION OF THE OMBUDSMAN

MONTENEGRO

APRIL 2013

1. State of play and main developments since the last assessment

1.1. State of play

The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) has its legal basis in the Constitution, and is governed by the Law on the Protector of Human Rights and Freedoms (the Law on the Ombudsman). The Ombudsman institution has grown into a professional organisation with the necessary capacity to fulfil its legal functions. The focus of its work is on the protection of human rights in the country. Less attention is given to maladministration by the state.

1.2. Main developments since the last assessment

There have been no significant changes in the work of the Ombudsman during the last year, with the exception of an increase in its resources. Its institutional capacities have been enhanced through an increase in the number of expert staff from 10 to 15 between the end of 2011 and the end of 2012.

2. Analysis

The legal framework directly governing the work of the Ombudsman is broadly in line with international practice. However, a working group[75] has been established to draft a proposal to amend the present Law on the Ombudsman, which should be completed in May 2013. The group started its work at the initiative of the Ministry for Human and Minority Rights, due to deficiencies related to the Law on Anti-discrimination. At the time of this assessment, the working group was widening the scope of its work to also address issues related to the independence of the Ombudsman, including the procedure for appointment.

The Ombudsman's overall staff capacity has recently increased, and it is commendable that priority has been given to increasing expert staff, who are divided between the Ombudsman's four deputies. The Deputy for state administration and the Deputy for the rights of the child have four advisors each, and the Deputy for the issues related to torture and the Deputy for discrimination have two each. The Ombudsman, who has one advisor, personally handles complaints related to the judiciary.

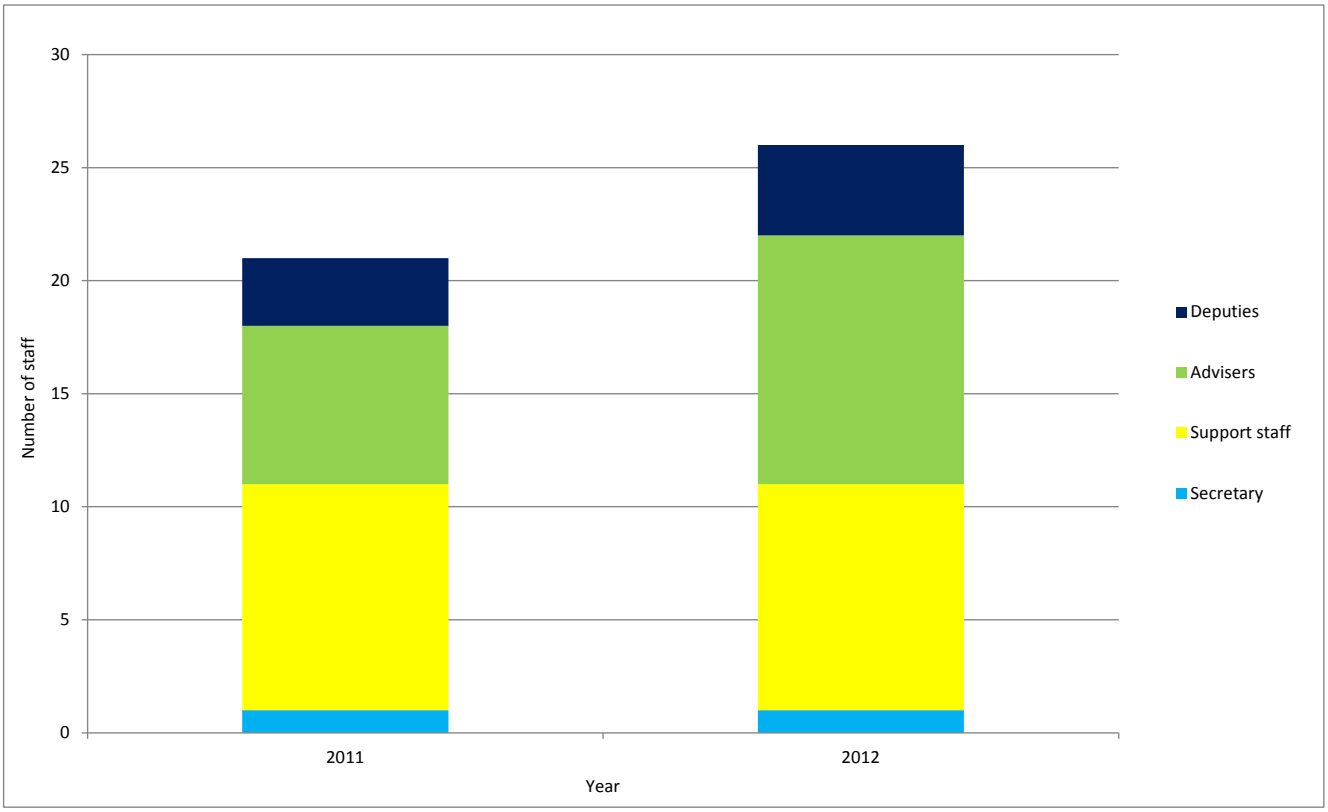
The Ombudsman does not formally decide on the assignment of key areas of work[76] to the deputies. Instead, these are allocated at the meeting of the department heads, where the advisors' tasks are assigned according to the rulebook for internal organisation and systematisation, which defines four groups of tasks. The Ombudsman has a pragmatic view on this, as the number of expert staff does not actually allow for the formal specialisation between the seven key areas of work.

[75] Working group was formed by the Ministry for Human and Minority Rights and is comprised of representatives of the Ombudsman, other ministries, academia and NGOs working in the area.

[76] Article 8 of the Law on the Ombudsman stipulates that by the internal assignment of tasks, the Protector will ensure specialisation, particularly in seven areas, as follows :

1. Protection of rights of persons deprived of freedom, for the purpose of torture prevention
2. Protection against discrimination
3. Protection of minority rights
4. Protection in the area of labour and employment
5. Protection of the rights of the child
6. Protection of the rights of persons with disabilities
7. Gender equality

Figure 9. **Ombudsman total staff**



Source: Ombudsman of Montenegro

2.1. The role played by the Ombudsman for protecting the rights of the citizens during the administrative procedure, and for monitoring maladministration

The Venice Commission has already highlighted the minor way in which the Law on the Ombudsman of Montenegro acknowledges the control of administration and the respect of the rule of law[77]. Interviews with the Ombudsman and with representatives of the Bar Association of the Administrative Court show that this assessment is accurate. Furthermore, even though the law confers on the Ombudsman a general role in monitoring administrative behaviour against maladministration, there is a shared view that this has not been its main focus up to now. The recent allocation of new functions as the anti-discrimination authority and as the National Preventive Mechanism for the Optional Protocol to the UN Convention against Torture will not help redress this situation.

Out of 11 advisors[78], four are assigned to the Deputy for state administration. This Deputy also deals with the area of labour and employment. According to the Ombudsman, state administration is not the priority area for possible future re-enforcements[79]. Based on the current workloads, the distribution is correct, but will not be if the current workload on maladministration increases. Today, around 30% of the Ombudsman's professional staff works on maladministration.

In the last two years, the Ombudsman's reports have addressed administration procedures mainly on two related issues:

[77] European Commission for Democracy through Law (Venice Commission). Joint Opinion on the Law on the Protector of human rights and freedoms of Montenegro. Adopted at its 88th Plenary Session (14-15 October 2011), Opinion No. 637/2011 CDL-AD (2011)034.

[78] All of them lawyers, except one political scientist.

[79] According to the Ombudsman, the weakest area is now "the Deputy for Discrimination who, in addition to discrimination, which is a huge and new area, is assigned tasks in an additional three important areas, but only has two advisors".

- Administrative silence in responding to citizens' demands. This has become a serious problem in the public administration, and the Ombudsman has addressed it repeatedly as a result of individual complaints. The Ombudsman's interventions almost always results in a response from the administration, though there is no assessment on the content of that answer.
- Demands for access to administrative information, which have increased greatly in recent years. Again, the Ombudsman's interventions have resulted in greater access to information, though the public administration officials point to the difficulties of the administration in coping with such a large quantity of demands.

Although the Ombudsman's reports demonstrate the efforts it makes and successes it achieves in fighting administrative inaction, it has not had an influence over the procedure and content of administrative decisions. Its formalistic approach on these issues can contribute to the general acceptance of its work by other public institutions.

A few additional remarks can be made on the approach and results of the Ombudsman's work on administrative decision-making:

- There is no learning and development process in administrative behaviour. The Ombudsman's recommendations may be successful on a case by case basis, but they do not lead to changes in the patterns of administrative behaviour. Therefore, the same kind of complaints are almost endlessly repeated. However, this has not led the Ombudsman to adopt new strategies and types of action.
- The Ombudsman does not discuss the content of administrative decisions. The main goal of the Ombudsman's work is to obtain an administrative response, and not to assess the legality and proportionality of the response. Besides issues of administrative silence, the Ombudsman does not receive a significant number of complaints for maladministration or administrative breaches of citizens' procedural rights. In 2012, it received only 296 complaints[80].
- A rather uncommon feature of the Montenegro Ombudsman when compared with other ombudsmen institutions is that it receives almost no complaints from civil servants and other public employees. This means that unfair practices regarding recruitment, career or dismissal are not addressed by the Ombudsman, whereas they make up a significant part of the work of similar institutions in many EU countries. This can be perceived as a lack of knowledge by public employees of the institution or a lack of confidence in its ability to effectively protect affected rights. It is worth noting here that civil servants can also make their complaints to the specific Appeals Commission[81] and the courts.

The Ombudsman acts as an institution for the protection of the major classical human rights for persons or groups in endangered situations. However, it is not widely recognised as an instrument for protecting citizens against maladministration. The Ombudsman does not prioritise the general monitoring of the public administration and the control of maladministration.

2.2. Challenges to the independence of the institution

Since the reform of the Law on the Ombudsman in 2011, international and independent reports[82] have pointed to the adverse effects of the new procedure to appoint the Ombudsman on the independence of the institution:

[80] According to the written information provided by the Ombudsman, the complaints and requests of citizens are very diverse, and often relate to dissatisfaction with a decision of the competent authority.

[81] The Appeals Commission was established "with the task to decide on appeals filed by civil servants and state employees against a decision on rights and obligations deriving from work and based on work".

[82] In this context, the European Commission Staff Working Document (SWD (2012) 331 final) accompanying the Commission Communication on the Montenegro 2012 Progress Report (COM (2012) 600 final) stated that "the law on the Ombudsman remains to be aligned with the *acquis*, for what concerns its independence". See again the Venice Commission Report (Joint Opinion on the Law on the Protector of human rights and freedoms of Montenegro).

- The Constitution itself contains a regulation that stipulates that only a majority of the members of the Parliament are needed to appoint the Ombudsman. This rule risks resulting in an Ombudsman lacking in authority and independence from the majority, and who may come under criticism from the Opposition. Criticism of the new law focusses on the departure from the previous process of consultation, which had been developed by the Parliament. There is a broad consensus on the need for reverting to the former regulation or some level of public procedure before the nomination by the President.

The Ombudsman's four deputies are elected by the Parliament on the proposal of the Ombudsman, but they have an independent mandate, which can last longer than the Ombudsman's mandate. This has been the case in practice, and two of the present deputies were proposed by the previous Ombudsman and have continued to work under the present one.

Approval of the Ombudsman's budget is the responsibility of the Parliament, which is an adequate arrangement, but the execution of the budget requires an authorisation from the Ministry of Finance in various situations. Two examples are:

- When employing new staff, the Ombudsman must ask for the approval of the Ministry of Finance, even though it already has the funds earmarked for this purpose[83]. This procedure resembles that of every ministry and differs completely with the procedure the Parliament is allowed to follow for contracting its staff. The Government explains this procedure as a result of the current financial restrictions, but it is difficult to see why such restrictions should prevent the Ombudsman from executing his own budget, which has already been approved by the Parliament, without administrative intervention.
- The Ombudsman is not free to manage the performance-related pay of his staff[84], which falls under the same rules and restrictions as other government institutions.

Unlike most of the other European ombudsmen, the staff of Montenegro's Ombudsman does not include temporary detached officials from the administration, which would permit hiring professionals who have a good knowledge of administrative behaviour. This constrains the institution, which is even more problematic considering that it has had difficulties in filling its publicly announced vacancies.

In terms of financial independence, the Ombudsman is, after the annual budget has been approved by the Parliament, treated as any other government body, and not as an independent and autonomous institution founded by the Constitution. The procedure to appoint the Ombudsman does not guarantee the future independence of the institution from the Government and political.

[83] Article 21 of the basic Law on the Budget stipulates that the Ministry of Finance disposes of the funds in the item, other allowances", for all budget- users (including the Ombudsman). Article 36 of the Law on Civil Servants and State Employees states that the Ombudsman, as one of the state authorities, should ask for this authorisation before advertising a vacancy.

[84] According to Articles 14 and 15 of the Law on Salaries of Civil Servants and State Employees, "The criteria and manner for determining variable parts of salary are determined by the Government except for the Parliament and courts".