


**Support for Improvement in Governance and Management**
A joint initiative of the OECD and the EU, principally financed by the EU

# ASSESSMENT

# Montenegro

# 2011

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

**TABLE OF CONTENTS**

# DEMOCRACY AND THE RULE OF LAW

Following the Commission's Opinion, three concerns continue to dominate in Montenegro: the sustainability of reforms in light of the consequences of the global economic crisis, the extent to which the public governance system adequately respects the rule of law (i.e. a set of principles requiring a separation of power between the judicial, executive and legislative branches of government; compliance with the law on the part of the government, individuals and economic operators; the proper functioning of the judiciary; and the consistent application of fair procedures by the administration), and the sustainability of institution-building in view of both the small size of the country and the perceived artificial time pressure created by the EU integration agenda.

The February 2011 Government Action Plan for Monitoring Implementation of Recommendations Given in the European Commission's Opinion (GAP) does not inspire confidence that the size and scope of the challenge to be faced in its implementation has been adequately considered or understood or that the objectives can be achieved in the time allowed in the GAP: Each of the areas mentioned in the GAP are important for better governance and would bring about significant improvements if the objectives for the plan were to be met. However, the GAP is not comprehensive. The indicators are generally weak and do not go beyond the adoption of laws and staff training. Little attention is paid to implementation and enforcement. Finally, the GAP's timeframe is unrealistic.

In parallel to this process, in 2010 the Government of Montenegro created a Government Council for Public Administration Reform (GCPAR) whose task was to produce a Strategy for Public Administration Reform. This comprehensive reform strategy (AURUM) was adopted in March 2011. The development of this strategy was largely driven by the perception that it was requested by donors and primarily by the EU integration process. The GCPAR had weak substantive capacities and did not succeed in producing a convincing and coherent reform agenda. The drafting of the AURUM was thus heavily dependent on input from outside sources and had limited inter-ministerial co-ordination. This generates doubts on its ownership by the Government of Montenegro, concerns on the will and capacity to implement it and – finally – on its sustainability. As a result, the AURUM is loosely connected to the GAP. SIGMA is confident the economic and political elites understand the issues at stake. However, SIGMA notices resistance to change.

The over-abundance of international organisations and donors is placing a strain on state administrative structures, which are overloaded and overstretched. This state of affairs may lead to "reform fatigue", which could be devastating for the country.

***Democracy***

One major reason for the shortcomings in public governance is the lack of respect for the law and democratic institutions by major actors, whether they be parliament, the executive or the judiciary, or civil society and its organisations. This lack of respect is a matter of democratic and legal culture.

The small size of the country (in terms of population) and its social structure makes impartial public administration difficult to attain. The management of European integration mobilises a significant proportion of available capacities in a context where institutions are still being established. It could be argued that in a small state/society, such as in Montenegro, patronage and nepotism are unavoidable ways of life. One could certainly argue that small states need to adapt the basic democratic principles of public institutions, such as a merit-based civil service, to the realities of their small size by modelling those principles accordingly, especially when it comes to ensuring the efficiency of the public sector. However, in small states, transparent and fair decision-making processes, including in personnel matters, are conditions that are just as essential as they are in larger states for ensuring efficiency gains – and trust – in the public sector. The small size of Montenegro explains the lack of political competition which allows state capture to take place unchallenged. Montenegro should, as should other small countries, for a matter of survival, give reinforced priority to good governance, by soundly securing desperately needed public sector reliability and efficiency.

***Rule of law***

The limited extent to which the public governance system adequately respects the rule of law (i.e. a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration) remains a serious source of concern.

The implementation of laws also remains a problem. This is exacerbated because the social and political role of the law is not fully understood. Frequently, public sector institutions do not hesitate to disregard court judgements, legal provisions or binding procedures as they see fit. This problem seems to be a matter of legal culture, which needs to gradually evolve over the long term.

***Constitution***

The Constitution of Montenegro was ratified and adopted on 19 October 2007. It defines Montenegro as a civic, democratic and environmentally friendly country with social justice, established by the sovereign rights of its government. The Constitution also guarantees the separation of religion and state. Constitutional reform will be necessary in order to ensure, among other issues, the legal independence of the judiciary and the professional autonomy of the Prosecutorial Council.

***Parliament***

Parliament has a role in law-making and in controlling the government, but its effectiveness is questioned. The instruments available to parliament are not used sufficiently or effectively. Much more could be done in committee if MPs really wanted to oversee the activities of the executive. Increasing the technical capacity of parliamentary administrative services is crucial in improving parliamentary performance, both in producing legislation and, especially, in controlling the government. The

supervisory and anti-corruption role of parliament continues to be weak. Parliament has a limited role in scrutinising the major decisions of the government, such as in the areas of privatisation or concessions.

***Government***

The essential elements of a structure for facilitating government work are in place. A system for planning the work of the government and inter-ministerial consultation has been established and is in operation. There is a link between the annual work-planning process and strategic priorities. The main framework for policy development is the annual work programme of the government. Rules of procedure establish a fairly complete policy development and decision-making system and have many good features. The rules make provisions for the government to consider draft laws but it appears that these provisions do not extend to policy proposals.

A key weakness is that there is no capacity at the centre of government to advise on policy and strategic matters in ministries. The strengthening of the Secretariat for Legislation is a positive development but a long-standing problem in the overall quality of policy making and legal drafting remains. The quality of legislation is poor, as laws tend to be drafted in isolation, too detailed and without reviewing the existing legal framework. This practice often leads to overlapping and contradictions and may result in confusing, unclear, redundant and internally inconsistent legislation. *Ex ante* impact assessment and cost-benefit analyses of proposed legislation are rarely carried out. The Ministry of Finance has established an Impact Assessment Unit but it is too soon to see any significant progress.

***Public administration***

The current Law on Civil Servants and State Employees does not provide a clear legal definition of the scope of the civil service nor does it fully reflect the merit principle in recruitment and promotion. A Working Group on Law on Civil Servants and State Employees operating at a senior level was formed early in 2010 and has produced a policy paper whose objective was to approximate the Montenegrin civil service legislation to the European Principles for Professional Civil Service. The policy paper was finalised in July 2010 and adopted by the government in March 2011, albeit quite a different version than the original one proposed in July 2010. The draft law will need thorough review in order to fully meet European principles, particularly regarding the merit principle.

The current Law on General Administrative Procedures (LGAP), although revised in 2003, still reflects the authoritarian understanding of the public administration of the past, does not provide complete legal protection against administrative decisions, stipulates unnecessarily complicated and lengthy procedures, and goes into regulatory details that would better be dealt with through secondary legislation or internal administrative rules. The LGAP was marginally amended in March 2011. However, more profound drafting of a new LGAP is needed and, indeed, has begun.

The capacity to design sound fiscal policies is good, and regular improvements have been made to these policies in recent years. Current initiatives – expenditure ceilings and commitment controls – reflect a centralised approach because they are not adequately supported by appropriate instruments for evaluating the operational efficiency of the budget and the responsibility of management. The budget ceiling approach, once adopted, will have to be integrated by means of bottom-up feedback, which will be necessary in order to verify that resource envelopes are compatible with budget priorities. In the absence of such means, there is the risk that expenditure limits by themselves would not enable the delivery of the desired results in terms of fiscal discipline and service provision. The implementation

process of sound financial management will be dependent on the capacity within the administration to initiate and implement reforms in the areas of PEM and PIFC that require significant inter-departmental and inter-institutional co-operation.

The legal framework for procurement is by and large compatible with the EU principles. The institutional capacities for managing the different stages of procurement and concessions still need strengthening. However, it is to be noted that, considering the weaknesses of the anti-corruption mechanisms in the country, public procurement and concessions remain a high risk area.

An important obstacle to good administrative practice is caused by the ill-advised practice in recent years of establishing new administrative institutions (for instance, agencies) for new tasks. This tendency for "***agencification***", instead of integrating new functions in the existing infrastructure, has led to a fragmented administrative system with a number of inefficient sub-elements and overlapping competences. Sometimes newly created bodies remain completely understaffed; they might exist on paper but in reality are nearly empty shells. Sometimes new mechanisms have been established in parallel to already existing institutions (departments in ministries, administrative bodies). Further ***"agencification"*** is weakening the rule of law in Montenegro.

***Judiciary***

Insufficient protection from political influence of judges and prosecutors, particularly through the system of appointments and the composition of the Judicial Council, has been noted by international organisations for a number of years. Similar concerns exist with the prosecution, although the situation is not identical. No measures were undertaken to address these deficiencies in 2010, and the question of judicial independence and threat of political influence is not recognised in the new National Anti-Corruption Strategy. Nevertheless – presumably in response to the 2010 European Commission Report and Opinion – the February 2011 Action Plan for Monitoring Implementation of Recommendations given in the European Commission's Opinion sets very specific objectives on this issue. The anticipated obstacles in realising the stated measures lie in an entirely different sphere: namely, some of the proposed changes, such as the composition of the Judicial Council, would require constitutional changes and there is understandable reluctance to engage in that process.

The refusal of public bodies to execute court decisions issued against them is an indicator that in general the primacy of law and mutual respect among state organs are not internalised by all authorities acting in and for the state.

***Anti-corruption***

The shortcomings of the overall integrity framework in Montenegro combined with the small size of the country explain the lack of political competition which, in turn, allows state capture to take place largely unchallenged. As a result, most of the anti-corruption activity addresses petty corruption and not state capture. In broad terms, the current situation is characterised by the fact that the institutional set-up of the repressive dimension of corruption, while still showing important shortcomings, seems to be consolidating slowly but steadily. In contrast, the preventive dimension of corruption is more problematic, thus depriving law enforcement institutions of the means that they need most, including good legislative proposals which can become coherent laws through the legislative process. The weaknesses in prevention also deprive the public integrity system as a whole of enforceable legislation to

guide the behaviour of public agents (conflict of interest, incompatibilities, financial control of politics and so forth) and effective monitoring mechanisms.

***Recommendations***

It is essential that the Government of Montenegro understands that better governance is a priority issue in view of Montenegro's EU accession, but also that true reforms take time. The **quality and depth of needed reforms should not be compromised by artificial and unpractical deadlines or by disbursement pressure** from the EC. In particular, the government should concentrate on revising a limited number of key legislation (Law on Civil Service, Law on General Administrative Procedures in order to align administrative practices with the *acquis communautaire* [art. 41 of the Charter of Fundamental Rights of the EU, Law on Administrative Organisation, etc.]), and for the rest, ensure the implementation and enforcement of the current legal framework without falling into reformism. This, in particular, calls for the development/training of the human capital in the public sector. Within that context:

1. The government should address key dysfunctionalities of the administrative system in the areas of decision making and the organisation of the work of government (including the system of delegation and deconcentration of power).

2. In parallel to the work initiated in the Prime Minister's Office on enhancing policy-making and policy co-ordination capacities, the Government of Montenegro should urgently develop policy-making capacities in line ministries. Improving policy-making capacities will contribute to improving the quality of legislation and ultimately strengthen the rule of law in Montenegro.

3. The systemic problems of the judicial system must be addressed, and in particular the separation of power, the independence of the judiciary, and the systematic execution of court decisions and rulings. This requires addressing issues more at a cultural level than at a technical level. Nonetheless, constitutional reform will be necessary in order to ensure, among other issues, the legal independence of the judiciary and the professional autonomy of the Prosecutorial Council.

# CIVIL SERVICE AND ADMINISTRATIVE LAW

***Main Developments since the Last Assessment (May 2010)***

No substantial change has taken place over the last twelve months, but preparatory measures taken hint at some result-oriented public administration reform activities.

On 7 February 2011, the Government of Montenegro produced an Action Plan in response to the European Commission's Opinion. The Action Plan sets out in general terms the objectives of the government; some of these objectives are also related to public administration. Each of the areas mentioned are important for better governance and would bring about significant improvements if the objectives of the Plan were met. However, the Action Plan is not comprehensive. The indicators are generally weak and do not go beyond the adoption of laws and staff training. Little attention is paid to actual implementation- and enforcement- related issues. Finally, the time frame attached to the Action Plan is too optimistic. In synthesis, an in-depth scrutiny of the proposals does not inspire confidence that adequate consideration has been given to size and scope of the challenge to be faced in the implementation of the Action Plan.

Another strategic document deals specifically with the reform of public administration: the Strategy of Public Administration Reform 2011-2016 ("AURUM"). The document was drafted by the Government Council for Public Administration Reform, which the Government established for that purpose in January 2010. The drafting process was supported by technical assistance from different international donors, including the EU. The government adopted AURUM and an Action Plan for its implementation in March 2011, following limited inter-ministerial cooperation and consultation and an inappropriate assessment and prioritisation of the problems to be addressed. Together with an overview of progress achieved so far, AURUM aims to provide basic guidelines for further activities in three priority areas: state administration, local self-government, and public services.

Despite some concerns about the quality of both the substance and methodology of AURUM – the Strategy is not fully consistent with the Government's February 2011 Action Plan and lacks a solid analysis of the problems to be addressed (with an explanation of why the problems need to be resolved, a clear prioritisation of areas and activities, and a realistic time table), the document may be perceived as an expression of the general political will to develop good administration and induce new momentum for the implementation of public administration reform.

A Working Group on the Law on Civil Servants and State Employees operating at senior level was formed in early 2010 and produced a policy paper. This document proposes 34 policy options for approximating the Montenegrin civil service legislation to European principles of a professional civil service. The draft policy paper was finalised in July 2010, but the final version adopted by the government in March 2011 departed in many respects from the proposed July 2010 version. In particular, proposals aimed at ensuring full compliance with the merit principle, strengthening professionalism, and improving

transparency of recruitment and promotion procedures were not adopted. Therefore, the new draft civil service law will need, regarding these issues, to go beyond the adopted policy paper, in order to fully meet European principles, in particular the merit principle.

The LGAP was marginally amended in March 2011. However, more profound work on the drafting of a new LGAP is now starting. In parallel to the methodology used for the elaboration of the future Law on Civil Servants and State Employees, a working group has been established and will start drafting a policy option for the future LGAP in June 2011.

***Main Characteristics***

Montenegro is still facing the challenge of building a public administration that ensures both the legality and good quality of administrative actions. The current state suffers from a number of major deficiencies.

It could be argued that some of the deficiencies are inevitable in a small-state/small-society situation such as that of Montenegro, that patronage and nepotism are unavoidable ways of life, and that the way of communicating between administrative authorities and citizens (in other words the administrative decision-making process) is different than in larger countries. Indeed, small states need to adapt the basic democratic principles of public institutions, such as administration through law and a merit-based civil service, to the realities of smallness by modelling those principles accordingly, especially in terms of ensuring the efficiency of the public sector. However, in small states, transparent and fair decision-making processes, including in personnel matters, are conditions that are just as essential as in larger states for ensuring reliability of and trust in the public sector. Internationally[1] there is an increasing recognition of the central importance of good governance and capacity development in enhancing overall competitiveness, and an awareness that small states are more vulnerable to bad governance, political instability and corruption than larger states. Small states should give reinforced priority to good governance as a matter of survival by soundly ensuring badly needed legality of administrative activities and efficiency of the administrative system.

The deficiencies in Montenegro's public administration cannot be addressed without changing the legislation. However, it will be explained below that reform efforts aimed at better implementation are more necessary than the improvement of legal instruments.

A fundamental weakness of the state is that the principle of the rule of law is not adequately respected. Public sector institutions do not hesitate to disregard legal provisions or binding procedures as they see fit. Complaints are widespread that administrative authorities do not respect Administrative Court rulings or obligatory decisions of other administrative bodies. A successful judgement could turn out to be worthless for the claimant with regard to its enforcement against the public administration. Quite frequently, administrative bodies simply do not execute the obligations imposed on them by the Court. Of course, some legal institutions could be introduced into the legislation to tackle this problem, such as fines or other sanctions inflicted on administrative bodies and/or their heads, positive injunctions, or interim relief. However, it is first and foremost a matter of the legal culture of a society whether or not

[1] See Briguglio, Lino, Bishnodat Persaud and Richard Stern (2006), "Toward an Outward-Oriented Development Strategy for Small States: Issues, Opportunities and Resilience-Building – A Review of the Small States' Agenda Proposed in the Commonwealth/World Bank Joint Task Force Report of April 2000", presented to the 2006 Small States Forum, World Bank Group/International Monetary Fund, Singapore, September 2006.

court decisions are respected and executed by the state and its organs. It is a prerequisite of a democratic and rule of law-based state that not only citizens but also all organs executing public power are subject to the law.

Other obstacles to good administrative practice have been caused by the ill-advised practice in recent years of establishing new administrative institutions ("agencies") for new tasks. This tendency towards "agencification", instead of integrating new functions in the existing infrastructure, has led to a fragmented administrative system, with a number of inefficient sub-elements and overlapping competences. Sometimes newly created bodies remain completely understaffed; they might appear on paper but in reality are nearly empty shells. Sometimes new mechanisms have been established in parallel to already existing institutions (departments in ministries, administrative bodies). The task of these new bodies could be achieved more effectively if the mandate for the reform were given to an existing body rather than to a new one. Unfortunately, AURUM gives no clear indication of the political will and commitment of the government to reverse the policy of agencification and integrate new functions in existing institutions.

The internal organisation of administrative decision-making processes in administrative bodies needs to be reconsidered, with a view to allowing for increased delegation of decision-making competences. Currently, only the top level of an administrative body (e.g. minister/state secretary, president, director) is authorised to take a decision and sign a document. This situation, which is seldom questioned in Montenegro's public sector, contradicts insights on modern public administration according to which expertise and authority should rest with those who are closest to the recipient of an administrative service. Crippling consequences of this administrative tradition include:

- The head of a public authority being chronically overburdened. If having to deal with simple, every day issues, he/she will have hardly any time left for managerial tasks such as strategic thinking, supervision and control, leadership, and communication with staff.

- Nobody in a public authority can be familiar with every detail of a subject matter. Thus many decisions, taken through a strictly centralised and hierarchical process, inevitably suffer from a lack of familiarity with the subject matter.

- Even if staff are involved in the internal decision making process, they are neither authorised to take the final decision or appear through their name and signature as the person responsible. This is de-motivating, a waste of resources available from very often qualified and well educated personnel, and, besides the poor quality of laws (see above), another reason for the lack of accountability of civil servants.

The poor quality of legislation remains a general problem. Laws frequently suffer from both substantive and methodological/technical shortcomings. The main deficiencies include the tendency to over-regulate, contradictory provisions, poor systematic order, and incomprehensibility due to an overly bureaucratic or technical language. The reasons for this poor legislation are diverse. First and foremost, the law-drafting capacity in ministries and administrative bodies is insufficient both in terms of quantity and quality of human resources. Of course, time pressure imposed on the legislator by donor-funded projects also explains this unsatisfactory quality. However, besides this, the process of good drafting is also impeded by the following deficiencies:

- The parliament is not in a position to create a strong secretariat responsible for examining the bills that have been tabled and for supporting the law-making process;

- There is a lack of co-ordination between the various agencies and ministries involved in drafting laws;

- A lack of co-operation with interest groups and professional organisations and of public participation leads to a lack of information, which makes later implementation of the law more difficult.

The current Law on General Administrative Procedures (LGAP), although revised in 2003 and marginally amended in March 2011, still reflects the authoritarian understanding of the public administration of the past, does not provide complete legal protection against administrative decisions, stipulates unnecessarily complicated and lengthy procedures, and goes into regulatory details that would be better dealt with through secondary legislation or internal administrative rules. As a result, citizens have to cope with very bureaucratic, formalistic and protracted procedures in order to obtain an administrative decision, for example concerning a licence to operate a firm, a building permission, or access to public information.

The current Law on Civil Servants and State Employees does not provide a clear legal definition of the scope of the civil service, which would help to establish rights and obligations as well as the accountability and liability of all civil servants at both national and municipal levels. It does not fully reflect the merit principle in recruitment and promotion. And finally, a regulation for civil servants on conflict of interest, incompatibilities, gift policies, and whistle-blowing is missing.

Under the responsibility of the HRMA, the training system for civil servants has improved over the last 12 months.

***Reform Capacity***

The Government Council for Public Administration Reform was established at the beginning of 2010. The Council is composed of representatives of various relevant ministries and administrative bodies under the leadership of the Deputy Prime Minister for the Political System, Internal and External Policy. The mandate of the Council is to plan the public administration reform process and to co-ordinate and monitor its implementation. The Strategy of Public Administration Reform (AURUM) was adopted by the government in March 2011. In last year's report, SIGMA identified three requirements for AURUM's success: the Government Council for Public Administration Reform would be deployed as a group of workers substantially involved in the process rather than as a mere bystander for "rubber-stamping" prefabricated strategies; the Council would therefore be composed of practitioners with both the professional capacity and the mandate to actively participate in the reform; and finally, the reform process would be driven and directed by the endeavour to improve the administrative reality to the benefit of Montenegro and its citizens and not by the attempt to respond to formal conditions set from outside. However, both the composition (i.e. the professional capacity of the Council) and its way of working do not meet these requirements, which do not augur well for sustainability and smooth implementation of the reform agenda.

A serious risk for the success of administrative reform is the current situation of the Department of Public Administration in the Ministry of Interior. According to its mandate, the department should

operate as one of the driving forces within the Government Council for Public Administration Reform. The Department's scope of responsibilities includes not only the development of general administrative law, in particular the Law on General Administrative Procedures, but also the overall control of administrative practice ("administrative inspection"). However, the department is completely understaffed. It is therefore difficult to imagine this Department having the capacity to absorb technical assistance, not to speak of acting as a driving force for reforming the system of administrative procedures, whether it be as one of the main contributors to the work of the Government Council for Public Administration Reform or as the nucleus of a law-drafting mechanism.

Based on its excellent performance, the Administrative Court has become a role model throughout the public sector of Montenegro, and probably – in the whole region. Its remarkable success is nevertheless endangered by the fact that its rulings against public authorities frequently cannot be effectively enforced.

The refusal of public bodies to execute court decisions issued against them is an indication that in general the primacy of law and mutual respect among state organs are not internalised by all authorities acting in and for the state. This directly affects the implementation of the reform process, since it is difficult to see how changes could materialise if the steering function of law is largely inoperative.

Even if the Human Resources Management Authority is quite enterprising and certainly serves as a driver of reform in Montenegro, it lacks the capacity to move the civil service forward. There are no human resources contact points in ministries (except in the Ministry of Defence). Social dialogue is underway, but so far it is based on informal agreements only.

***Recommendations***

1. The law is not fully respected. Frequently, public sector institutions do not hesitate to disregard legal provisions or binding procedures if the outcome of their observance would be unwelcome. Complaints are widespread that administrative authorities ignore Administrative Court rulings or obligatory decisions of other administrative bodies. It is first and foremost the responsibility of the top level of the state to start the conversion by ensuring that actions of the executive power are in conformity with the principle of legality.

2. The authorities should consider providing the legal basis for tasking an appropriate institution (e.g. the Ministry of Interior and Public Administration) to systematically monitor if judgements of the Administrative Court are implemented by administrative authorities and publish the findings in an annual report. Results of this report should be reflected in the European Commission's Progress Report.

3. The new Law on Civil Servants and State Employees, currently being drafted under the responsibility of the Human Resources Management Authority foreseen to be adopted in 2011, will need to go beyond the adopted policy paper, in order to fully meet European principles, in particular the merit principle. A period of 12-18 months between the adoption of the law and its entry into force is recommended, during which a programme should be carried out to prepare administrative authorities and the judiciary and all the other relevant stakeholders and institutions for the proper implementation of the new legislation.

4. A new Law on General Administrative Procedures is required, in order to ensure both the complete legal protection of citizens against all administrative actions and simplified and speedy decision-making processes. A period of 12-18 months between the adoption of the law and its entry into force would be necessary to prepare administrative authorities and the judiciary for its proper implementation and to raise the general public's awareness, of the new legislation, in particular the business community's.

5. Both the Department of Public Administration within the Ministry of Interior and Public Administration and the Human Resources Management Authority (HRMA) reporting to that ministry require a significant increase in qualified staff and budget in order to be capable of fulfilling their responsibility as the co-ordinating and driving force for the implementation of AURUM in their respective areas. In particular, the creation of a small but efficient law-making unit is imperative in order to cope with the challenge of upcoming legislative projects.

As a rule, a new administrative function or task has to be integrated into the existing organisational structure of the public administration. The establishment of a new administrative body (independent agency, office, etc.) should be seen as an exemption. Any proposal to establish a new body should therefore include a detailed analysis, justifying why the integration of the new administrative function into the existing system is not possible or advisable. With regard to existing bodies that have recently been established, a transparent review of their organisational status should be carried out in a medium-term (three-year) perspective. For this review, each body should justify the necessity of its separate status, indicating the reasons why its integration into the administrative structure of a ministry would be inimical to its function. In some cases the merger of two or more bodies should also be considered.

# INTEGRITY

***Main Developments since the Last Assessment (May 2010)***

The National Anti-Corruption Strategy of Montenegro was revised in the spring and summer of 2010 by a working group led by the Ministry of Interior, which mirrored to a significant extent the mixed composition of the National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime and included civil society representatives. A particular attempt was initially made to identify more meaningful indicators than had been the case in the past (particularly indicators of impact), but this challenging task was not achieved due to the short time limits and the absence of sustained technical (expert) support.

The government adopted the final version of the strategy ("Strategy for the Fight against Corruption and Organised Crime 2010-2014", hereafter referred to as the National Anti-Corruption Strategy) and the corresponding Action Plan for 2010-2012 ("Action Plan for Implementation of the Strategy for the Fight against Corruption and Organised Crime for the period 2010-2012") on 29 July 2010. The various sections of the document differ in terms of quality and depth of analysis.

The Directorate for Anti-Corruption Initiative (DACI) published a survey on the capacity and integrity of the state administration in December 2010, but there has been no follow-up to some of the previous polls, such as the 2008 survey on corruption in the judiciary or the 2009 survey on corruption at the local level. One poll that has been repeated is the survey on public perceptions of corruption and of the work of DACI, published in January 2011. The data refers to 2010 and references 2009 figures. The perception of an increase in corruption from the previous year (2009) was reported by only about 10% of the respondents, with 3.2% claiming that it had *increased significantly*, while 7.7% noted that it had *increased somewhat*. The most significant proportion of respondents (49%) considered that the level of corruption had *stayed the same*, and more than 30% thought that it had *decreased* (5.8% *significantly* and 25.1% *somewhat*).

No changes in the existing regulatory framework on political party financing have been made over the past year. The relevant legislation remains the 2008 Law on Financing of Political Parties and the 2009 Law on Funding Election Campaigns for the President of Montenegro, Mayors, and Presidents of Municipalities. As noted in previous SIGMA assessment reports, EC Progress Reports and other sources, the current system contains serious flaws. Throughout 2010, no activities were undertaken to address the system deficiencies that were identified long ago (nor had there been any in previous years). The Ministry of Finance, which is officially responsible for the overall implementation of the Law on Financing of Political Parties, did file a total of 16 misdemeanour charges against political parties and responsible persons for having failed to file financial reports, but at the same time, it failed to fully synchronise the reporting templates that were to ensure that all relevant information had been requested. The new National Anti-Corruption Strategy acknowledges the need to improve the system, but the measures indicated in the new Action Plan miss the mark entirely. The failure on the part of political parties to routinely submit financial reports and the absence of a mechanism to check the veracity of such reports and, effectively of an oversight body to pursue compliance with the regulations apparently did not warrant any consideration when the new strategic documents were elaborated.

In contrast to this overall picture of passivity on the part of the various bodies officially responsible for policy-making and co-ordination on this issue, the government demonstrated major effort with the February 2011 Action Plan for Monitoring Implementation of Recommendations given in the European Commission's Opinion. This plan includes, among the measures to be applied through the third quarter of

2011, the drafting and adoption of a new law on political party financing in line with GRECO recommendations. A working group, which includes representatives of three NGOs, was immediately formed, and a draft law is expected by mid-2011. This development, along with all of the other important developments in Montenegro at present, is the result of the European Commission's November 2010 positive Opinion on Montenegro's EU candidate status and the recommendations contained therein.

While the EC did not explicitly recommend the establishment of a single anti-corruption agency, it did note in its November 2010 Analytical Report that co-ordination on this issue among the various bodies was lacking, while important oversight functions remained unfulfilled. The idea of creating an independent anti-corruption agency had been raised in the past, including by a national NGO – CEMI (also a member of the National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime) – which in May 2010 published a policy paper examining the institutional framework for the fight against corruption and essentially arguing for the establishment of such a body. Many local observers, as well as SIGMA, remained rather sceptical about such an undertaking.

***Main Characteristics***

The lack of integrity in the public sector is still one of the most pressing problems in Montenegro. In recent years, many anti-corruption activities in Montenegro have been carried out, anti-corruption strategies and action plans developed and monitored, and numerous laws reviewed and adopted; law enforcement capacities are being strengthened. However, anti-corruption controls in several important sectors, such as those concerning conflicts of interest of senior officials in the executive branch and politicians, use of public funds in privatisation and concessions, and control of political party financing, remain insufficient. No major criminal cases have been completed yet. The overall impact of measures implemented by the government on the actual level of corrupt ion is not clear. As a result, it appears that the political will of the government to address corruption, especially at a high level, is not sufficient.

The tendency to establish new administrative institutions ("agencies") for new tasks, as explained more in detail in the SIGMA Assessment 2011 on Civil Service and Administrative Law, has led to a fragmented administrative system with a number of inefficient sub-elements and overlapping competences. The disadvantages of this development on the public integrity system: less transparency; higher susceptibility for corruption; bigger difficulties for the supervisory and controlling role of the state.

The current situation is characterised by the fact that the institutional set-up concerning the repressive dimension of corruption – namely law enforcement, prosecutors and the judiciary – still shows important shortcomings but seems to be consolidating slowly but steadily. By contrast, the preventive dimension of corruption is more problematic, thereby depriving law enforcement institutions of the means that they need the most, including good legislative proposals that can become coherent laws through the legislative process. The weaknesses in prevention also deprive the entire public integrity system of enforceable legislation to guide the behaviour of public agents (conflict of interest, incompatibilities, financial control of politics, etc.) and of effective monitoring mechanisms.

The insufficient transparency of the public administration remains a concern. The continuing resistance of the executive level (such as ministers, presidents, department, heads of units) in many sectors to the provision of access to information has not been effectively addressed over the past year. Public consultations on key reforms or development projects are not systematic. The establishment of a commissioner for personal data protection and access to information would be necessary.

Transparency, integrity and anti-corruption controls in sectors where significant public funds are used – such as privatisation, public procurement/concessions, and urban planning – are neither well defined nor effective. In these three areas, control and oversight processes at all stages (from planning to selection of contractors to execution of contract) are fragmented and unsystematic. There is no clear strategy, institutional capacity or practical procedures to ensure integrity and prevent corruption.

Common regulations on conflict of interest have been established for MPs, members of the executive branch, and local officials, which is not effective for the management of conflict-of-interest situations or for the enforcement of sanctions on the different branches of power. In addition, the body responsible for the implementation of the conflict-of-interest regime, including the monitoring of officials' asset declarations, is neither independent nor proactive. No improvements to the conflict-of-interest and asset declaration regime took place in 2010, but a new, strong commitment to change the status quo is palpable, as reflected in the February 2011 Action Plan for Monitoring Implementation of Recommendations given in the European Commission's Opinion.

There is essentially no oversight of the implementation of political party and campaign financing regulations; the roles played by the Ministry of Finance and the State Electoral Commission are insignificant. The State Electoral Commission does not have the capacity to analyse the annual or electoral reports of political parties and can only publish them on its website. The capacity and willingness of the Ministry of Finance to carry out oversight of the implementation of political party and campaign financing regulations are limited, which should be also seen as an indicator that the Ministry of Finance is not the appropriate institution for this task. The system lacks any means of detecting unofficial parallel financing of political parties and campaigns that may significantly exceed the permitted funding limits.

The Directorate for Anti-Corruption Initiative (DACI), which was meant to be the leading body for the prevention of corruption and co-ordination of anti-corruption activities, has not yet grown into this leading role, despite years of capacity development funded by many donors. Even though DACI is a body dealing with corruption-prevention tasks, such as research, analysis and policy recommendations, information exchange and co-ordination with both international and national bodies (including reporting on the implementation of the National Anti-Corruption Strategy), as well as education, there seems to be no particular issue with its lack of independence as a body incorporated within the structures of the executive. Its institutional position as a directorate in the Ministry of Finance could pose problems, and it would perhaps be better placed at the centre of government under the remit of the Prime Minister. As DACI has no role in interpreting or enforcing anti-corruption legislation, such a placement would not be compromised by its lack of independence. DACI's main flaw is its still-modest capacity, particularly in terms of technical capacity/expertise, even concerning issues on which it has been actively working for some time. It is not recognised as a source of expertise by other state agencies implementing anti-corruption activities, but this situation is not the result of its lack of independence or limited powers, but rather of the inability to strengthen its knowledge and capacities, despite considerable financial and technical assistance over the years.

Monitoring the implementation of the National Anti-Corruption Strategy is the task of the high-level National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime (hereafter referred to as the National Anti-Corruption Commission) established in February 2007, and redefined with minor adjustments in fall 2010.[1] As the Commission is composed mainly of the heads of the institutions that are to be monitored, these members are also in a position to exert pressure on the institutions that are not performing and, in that sense, its composition is effective. The valid criticisms that the Commission is essentially the government monitoring itself are balanced by the participation of rather vocal and active civil society representatives who have, over the years, made public their disagreements with the majority's assessment as to whether or not certain measures have been implemented. This process should improve with the foreseen opening to the public of the Commission's sessions.

There are other regulatory regimes that could be considered as part of the overall institutional framework for the prevention of corruption. Explicitly mentioned by national observers are the regimes dealing with freedom of information, public procurement, and anti-money-laundering. Montenegro has an

[1] The tasks of the National Anti-Corruption Commission have changed due to some shifts in the mandates of ministries.

anti-money-laundering unit as well as a public procurement directorate, whereas there is no oversight body for the enforcement of freedom of information regulations – issues of compliance with these regulations are addressed by the courts, the Administrative Court in particular.

The Commission for Monitoring the Implementation of the Action Plan for the Fight against Corruption at the Local Level (hereafter referred to as the "local-level Commission"), established in 2008, has continued to monitor the implementation of obligations at local level and to report progress to the National Anti-Corruption Commission. There has been no change in the content of the local-level Action Plan or in the mode of the local-level Commission's work. As was previously the case, the local-level Commission operates under the auspices of the Ministry of Interior and reports to the National Anti-Corruption Commission on progress at the local level. These reports are compiled on the basis of information voluntarily provided by the municipalities (21 in total). Local governments are autonomous, and the central government has no legal authority over them in this area other than to urge harmonisation with the National Anti-Corruption Strategy.

Considering its limited scope of activity and influence, it may be time to reconsider whether the local-level Commission is needed at all. Consideration could be given to the possibility that the fight against corruption at local level might be better promoted if municipalities reported directly to the National Anti-Corruption Commission, without any intermediary. The local-level Commission otherwise offers no added-value, in particular considering the existence of another co-ordinating mechanism at local level: the Union of Municipalities, which works much more closely with municipalities on a number of issues, including the fight against corruption.

Insufficient protection from the political influence of judges and prosecutors, which is exercised in particular through the system of appointments and the composition of the Judicial Council, has been noted by international organisations for a number of years. In brief, the independence of judges is compromised by the appointment by parliament and the government of most members of the Judicial Council. Similar concerns relate to the prosecution. All state prosecutors are elected by parliament on the recommendation of the Prosecutorial Council, which in turn is also elected by parliament. No measures were undertaken in 2010 to address these deficiencies, and the issue of judicial independence and the risk of political influence are not recognised in the new National Anti-Corruption Strategy.

Nevertheless – presumably in response to the European Commission's 2010 Progress Report and Opinion – the February 2011 Action Plan for Monitoring Implementation of Recommendations given in the European Commission's Opinion sets very specific objectives concerning this issue. Section 3 of the Action Plan is dedicated to "strengthening of the rule of law – particularly through de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of public prosecutors, as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors". Although the key judicial authorities had not clearly identified the above measures as necessary, they nevertheless expressed support for the proposed measures and indicated their readiness to comply with the recommendations of the European Commission. The anticipated obstacle to the application of these measures lies in an entirely different sphere: some of the proposed changes, such as the composition of the Judicial Council, would require constitutional changes, and there is an understandable reluctance to engage in that process.

Interim solutions are being negotiated, including directly with the European Commission. It is anticipated that many of the changes will be possible through amendments to the laws on judges, prosecutors, and their respective councils, all of which is expected to take place in 2011. In the end, however—even if constitutional changes are ultimately undertaken—in a small country like Montenegro the question will always remain as to whether it is possible to fully eliminate political and other forms of influence when the political and economic elite is so small and inevitably closely interlinked.

The Police Directorate has in place a number of mechanisms aimed at preventing corruption among its members. The most significant recent change has been the institutional shift of the Internal Control unit from the Police Directorate to the Ministry of Interior, as a consequence of the 2010 amendments to the Law on the Police. Overall, the control of corruption within the police is improving.

The Customs Administration has a fairly long record of co-operation with international organisations and a fairly well-developed system of corruption prevention and control. The Tax Administration has in place a number of mechanisms aimed at preventing, detecting, and sanctioning corruption among its ranks.

While recognising the health sector as an area of "special risk," the National Anti-Corruption Strategy has not been particularly insightful in defining anti-corruption measures in that sector (unlike the measures applied in the education sector). The quality of anti-corruption reforms will therefore depend to a large extent on the autonomous activities of the Ministry of Health. The National Anti-Corruption Strategy recognises education as a high-risk area for corruption that warrants more extensive and in-depth risk analysis. This analysis has not been undertaken to date, but it appears to be relatively high on the agenda due to the interest in this issue of the European Commission.

Privatisation is widely recognised as a process that is particularly vulnerable to corruption, and various privatisation processes in Montenegro over the years have been subject to many allegations of wrongdoing, including the conflicts of interest of members of the Privatisation Council, the body responsible for the process. The government redefined the competences of the Privatisation Council in 2009 so that members of the Council, and their immediate relatives, could no longer hold any function in the enterprises that were being privatised. A parliamentary body to oversee the process—the Commission for the Monitoring and Control of the Privatisation Process—was strengthened to some degree, in particular by the appointment of a member of the opposition as the Chair of the Commission. These measures have not fully eliminated the shortcomings of the privatisation process, however, and many problems remain. Some improvements have been made recently, however.

As for privatisation and several other sectors noted in this report, urban planning was identified in the new National Anti-Corruption Strategy as an area of "special risk" requiring an in-depth risk assessment. In this area more resolute prevention measures need to be taken, as the problems are complex and difficult to tackle.

Overall, GRECO finds the legislative framework for the criminalisation of corruption generally in line with the standards of the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol. However, there remain a number of inconsistencies and unclear descriptions of corruption-related crimes in the Penal Code (such as the definition of illicit enrichment, which prevents the police and prosecutorial services from investigating the suspicious accumulation of wealth). Nevertheless, the legislative framework concerning the detection, investigation and prosecution of corruption is generally viewed as satisfactory, with specialised units in organised criminality and corruption, although some staff improvements and better implementation actions are needed. However, the lack of financial and economic expertise in the Special Prosecutor's Department limits its capacity to investigate complex corruption cases.

The Tripartite Commission, composed of representatives of the Supreme Court, the State Prosecutor and the Police Directorate, seems to be ensuring smooth and effective co-operation in the prosecution of corruption-related criminality. The major outstanding issue regarding the effectiveness of law enforcement work concerns the ability of the prosecution to effectively assume the leading role in the investigations. The full application of the related provisions of the new Criminal Procedure Code has been delayed until September 2011 so as to allow sufficient time to train and otherwise raise the capacity of prosecutors in this task, but this is an issue about how well any prosecutor can be prepared through training alone rather than through actual practice. (The special unit for organised crime and corruption has been applying the new practices since August 2010, with generally satisfactory results.)

Montenegro is well integrated into the system of international and regional anti-corruption conventions and bodies. An important amount of international assistance has been provided to the government in the area of integrity and anti-corruption, but donor co-ordination could be improved.

***Reform Capacity***

The lack of internalisation of the values of a transparent and open public administration affects the reform capacity, but the awareness of the need to prevent and combat corruption seems to be taking root among the political establishment in Montenegro, if only as a result of the pressure of European institutions within the EU accession framework. This situation poses the question of future sustainability.

Currently, no institution in place has the reform capacity to promote integrity in the public sector, neither in the executive branch, nor in the judiciary or parliament.

***Recommendations***

1. Constitutional reform will be necessary sooner rather than later in order to ensure, among other issues, the legal independence of the judiciary and the professional autonomy of the Prosecutorial Council.

2. Sufficient anti-corruption controls in several important sectors need to be established, such as those concerning conflicts of interest of senior officials in the executive branch, politicians and local officials; the use of public funds in privatisation, public procurement and concessions; and the control of political party financing.

3. The current Conflict-of-Interest Commission should be fundamentally restructured, in order to enable it to control the conflicts of interest of MPs. The conflicts of interest of civil servants should be controlled by the executive level (such as ministers, presidents, department directors of department, heads of units) of the bodies in which civil servants hold their positions.

4. Political party and electoral campaign financing needs to undergo a complete overhaul in order to increase its credibility. The State Electoral Commission should be given both competences and capacity to analyse the annual or electoral reports of political parties. The involvement of the Ministry of Finance in this area should be abolished.

5. The insufficient transparency of the public administration remains a concern. The government as a collective organ should reaffirm its commitment to the rule of law, in particular in respect to transparency, by addressing the continuing resistance of the executive level in many line ministries and administrative bodies to providing access to information. Systematic public consultations on key reforms or development projects need to be carried out. The establishment of a commissioner for personal data protection and access to information would be necessary.

# PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

***Main Developments since the Last Assessment (May 2010)***

In 2010 the **public expenditure management (PEM)** legal environment has seen some important initiatives and several plans. Among the initiatives that have already been approved, the government has adopted various acts (i.e. the Human Resources Plan, Decision on Severance Pay, Decision on Increase in Wages of Civil Servants and State Employees), with the aim of ensuring the complete control of labour costs and rationalising the number and wages of public employees. Also relevant is the Decision on Capital Budget Development, approved in 2010 and applied as from 2011, which has enhanced the multi-annual perspective in capital budgeting and promoted project prioritisation and resource planning.

The increase in arrears has been one of the risky legacies of the resource restrictions that were established subsequent to the financial crisis. In 2010 the government attained the transparent recording of arrears by spending-units, and the presentation of total arrears together with the state balance is now accompanied by plans to introduce formalised procedures for commitment control. This means that the Ministry of Finance (MoF) sustains centralistic controls rather than promotes wider financial accountability. Until managerial accountability is fully incorporated into the operating systems, centralised core controls might be the best way forward.

Montenegro is in the process of introducing regulatory impact assessment (RIA) in its regulatory system. This process is conducted by the Ministry of Finance's Department for Improvement of Business Environment, which provides professional and administrative support to the Council for Regulatory Reform and Improvement of Business Environment. The regulatory impact assessment system will be formally introduced in January 2012.

There were three legislative developments as regards public internal financial control **(PIFC).** The PIFC Law was amended on 31 March 2011. The obligation for independent bodies such as, for example, the Supreme Auditors Institution, to report to the MoF on financial management and control as well as internal audit (when applicable), has been repealed. They now report on their own use of budgetary funds to parliament. The Rulebook on the manner and procedure for establishing and implementing Financial Management and Control (FMC) was endorsed by the Minister on 9 July 2010. The rulebook defines the responsibilities of the head of budget users[1] in creating the overall financial management framework, and of the person designated to establish, implement and develop financial management and control in an entity. Directions on State Treasury Operations were changed on 4 August of 2010. The rulebook and the amended directions promote understanding and compliance with the PIFC Law.

With regard to **external audit,** the State Auditors Institution (SAI) has focused on consolidating its internal procedures and further drafting the Audit Manual. The basic components are developed but they are not yet compiled into a comprehensive manual. The decision to develop a Strategic Development Plan (SDP) has been pursued and a first version is under way.

[1] The users of the Budget of Montenegro, budgets of municipalities, state funds, independent regulatory bodies, shareholders companies and other legal entities in which the government or municipalities have a controlling stake.

***Main Characteristics***

In 2010, Montenegro's economy started growing again. GDP growth in 2010 exceeded the projected 0.5% and will probably reach 1%. The government managed to improve the budget position and the government sector budget deficit has fallen below 4% (including arrears) of GDP, compared with an initial target of 4.5%. Public debt as a proportion of GDP was 42%.

The main strategic objectives for the future are rooted in the search for long-term control and increased efficiency in public spending in order to promote competitiveness and to secure a stable business environment.

The scope of the State Budget is comprehensive. It covers all items, including donations, foreign assistance, and transfers to the public sector. There were no supplementary budgets issued in 2010, but by reducing the monthly profiled allocations on current expenditures, funds were transferred to mandatory expenditures (mainly pensions) when needed. The procedure implies a certain unpredictability which is likely to jeopardise efficient use of current expenditures.

In May, the MoF, based on the government's decision on targets and directives of fiscal policy, issues technical instructions for the preparation of budgets of spending-units and local government for the following fiscal year. Spending-units are to submit requests to the MoF for the allocation of budgetary funds by the end of July, including current programme budget, capital budget, outflow estimates according to various classifications, funding resources, and explanation of expenditure estimates.

The (Organic) Budget Law (OBL) provides a sound fiscal framework for budgeting and public expenditure control, but it must be read jointly with both the Law on Public Internal Financial Control (PIFC) and the Law on Financing of Local Self-government. The OBL does not include a formalised rolling-fixed expenditure framework consistent with good international practice. Therefore, an amendment to the Law is planned. The expenditure limits are to be set down in the Annual Budget Law and fixed for the first two years, since these limits were already approved in the previous budget, and the limits are to be decided for the third year. These limits will cover the state budget, excluding municipalities, and will not include either EU funds or national co-financing resources. When fixing the expenditure limits, safety margins will be identified so as to guarantee budget execution in the event of unexpected expenditure.

The lack of proper commitment controls makes it difficult to manage the recent arrears accumulation. Montenegrin MoF is aware of this and plans to introduce such controls to limit the risk of increasing arrears. The new controls, which concern mainly procurement plans and small capital expenditures, would require the specific authorisation of the Ministry of Finance for any commitment decision, and electronic systems may be set up to limit any excess commitment compared to cash appropriations.

These initiatives, expenditure ceilings and commitment controls reflect approaches to top-down expenditure management which are based on a centralistic perspective. This perspective is strengthened by the fact that it is not balanced by appropriate instruments to evaluate operational effectiveness and efficiency of the budget and the responsibility of management. The programmes developed within the programme budgeting system sometimes reflect the managerial structure of responsibilities, but proper performance measurements do not exist, partly due to the fact that the development of performance indicators related to the programmes is at an early stage. In practice, the monitoring of the budget is line item oriented. The budget ceiling approach, once adopted, will have to be integrated by means of bottom-up feedback, which will be necessary in order to verify that resource envelopes are compatible with budget priorities, accompanied by spending reviews on existing projects. In the absence of such reviews, there is the risk that expenditure limits by themselves would not enable the delivery of the desired results in terms of fiscal discipline and service provision, and they would have to be integrated with commitment controls.

With regard to the EU fiscal framework, Montenegro has to deal with some aspects in order to be ready for participation as an EU Member State. Structural balances are compiled and presented, but the calculation of potential growth is not completely reliable due to existing weaknesses in macroeconomic statistics. General government statistics could benefit from the introduction of regular commitment recording by spending-units and from a more universal review of public enterprises owned by sub-national governments. No proposal is currently under debate on the strengthening of co-ordination with self-governments. Such a proposal seems to be necessary and is particularly important for new debt, which the authorisation procedures of the Ministry of Finance should consider in terms of its consistency with aggregate expenditure and general government balances. Moreover, information in this regard is apparently not shared with municipal governments, which is incomprehensible in an environment where the entire funding system is based on shared revenues and where the requirements for shared information are much greater.

The (Organic) Budget Law and the Law on the Public Internal Financial Control System (PIFC Law) address good governance procedures and the implementation of accountability measures. The legal structure is also supported by the Treasury Directions, which constitute an implementing guide on the responsibilities of managers in line ministries with regard to financial management. The treasury system is part of the government's internal control system, and the Treasury Directions enable the implementation of sensible internal financial control.

The legal structure provided by the (Organic) Budget Law, the PIFC Law and the Treasury Directions has become unclear, however, for the users that it aims to serve. The Treasury Directions are an implementing guide for the Treasury, but some articles address the responsibilities of the executive level of administrative authorities such as ministers, directors of agencies, heads of departments and units. The amendment to the Treasury Directions shows that this problem is recognised and that measures are taken to improve the situation.

According to the PIFC Law (article 14), a person is to be appointed as responsible for the establishment, implementation and development of financial management and control. These FMC managers (state secretary or deputy minister) have now been designated in 53 entities (there are in total some 100 direct budget users and in addition around 280 second-tier bodies). These appointments represent a step forward in developing the awareness that financial management should be considered as a tool for improving the use of public resources. However, internal rules, procedures and guidelines to sustain this process are still missing, but the framework for developing these documents will be supported by the technical assistance project 'Strengthening the Management and Control Systems for EU Financial Assistance in Montenegro' conducted by East West Consulting (EWC).

There is a central harmonisation unit (CHU) responsible for the development of PIFC methodology. It has 6 staff and 2 vacancies. The CHU has two sections, covering internal audit and financial management & control. At the time of writing (April 2011), the CHU was not performing its full set of responsibilities as set out in the PIFC Law, but progress has been made compared to last year. For example, a reporting instruction (covering internal audit and financial management & control) has been developed which will allow the CHU to submit an annual report for 2012 (covering 2011) in accordance with the PIFC Law. However, the CHU will have to make considerable efforts to ensure that the PIFC Law and the meaning of managerial accountability are understood and explain what is needed for its implementation. It is clear that the CHU's current resources are insufficient to complete the full development of PIFC without external assistance. The Unit is currently partly supported by the above-mentioned technical assistance project.

The CHU has raised awareness regarding the need to integrate PIFC with other existing requirements, such as those set out above, or with developments such as the introduction of programme budgeting and performance indicators, but so far the concrete results of this insight have been limited. According to the Budget Law (article 46), the Ministry of Finance is to prescribe the manner and methodology of conducting internal control of the budget. The adopted FMC Rulebook meets these requirements, but only

on a general level, and it does not clarify the relationship and interface of FMC with other parts of the legislation.

A first version of the Financial Management Manual is basically ready and is currently being translated. A revised Internal Audit Manual is foreseen to be issued in June 2011. It has not yet been possible to assess the relevance of these two manuals.

The PIFC Law establishes a semi-decentralised internal audit system throughout the administration. In total, 22 larger institutions have been identified as requiring their own internal audit units. Of these 22 institutions, 16 have established an internal audit function. When ministries are in the process of establishing internal audit units, it has turned out to be difficult to recruit new auditors. In April 2011, 14 established posts out of 33 were filled and various options are currently being considered to promote a better balance between resources and tasks. One way of making use of the limited internal audit resources is to organise joint internal audit units (semi-decentralised functions). The joint unit arrangement is likely to be particularly suitable for smaller central government bodies and also for municipalities.

Preparations for the decentralised management of EU funds have intensified, but Montenegro has not yet been accredited with any components of the IPA programme. The ambition is to adhere to the deadlines of the current roadmap for decentralisation, which foresees the request by Montenegrin authorities for the decentralisation of IPA components I and II in January-March 2012 and for components III and IV in May-July 2012.

The Audit Authority is currently part of the State Auditors Institution (SAI) as a functionally separate entity, but there has been an agreement whereby the Government of Montenegro by 31 December 2011 is to propose a law or regulation on the organisation of the Audit Authority of IPA funds as an independent body, outside the organisational structure of the SAI.

Regarding **external audit,** the State Auditors Institution (SAI) is a young institution (established in 2004) and has a sound legal basis which provides for independent external audit of the budget execution. Its independence is ensured by provisions in the Constitution. The independence of the SAI is also ensured by the legal provision that it submits its budget request directly to parliament. In addition the members of the SAI Senate and the President of the Senate are appointed by parliament. In practice, the SAI independence's does not seem to have been obstructed by influence from the executive government.

The SAI is governed by a Senate of 5 members; one post has been vacant for almost a year. It has opted for a sound step-by step approach whereby it gradually improves its institutional capacity by increasing the number and the professional capacity of its staff. Currently, 54 staff are employed in the SAI, of whom 34 are auditors. These elements constitute a good step forward in strengthening the SAI`s capacity to contribute to building a sound base for public finance in Montenegro. The institutional capacity building process is currently supported by the German International Cooperation (GIZ) technical assistance project 'Strengthening of External Audit in Montenegro'.

The institution has developed a real role in the checks and balance system of the state. However, the evolution of the external audit process will also depend on improvements in the quality of budget execution, public internal financial control, the internal audit practice as well as parliament's administrative capacity to discuss its reports.

***Reform Capacity***

The area of **public expenditure management** has general limitations in terms of resources and staff. Training and awareness-raising efforts are required to explain interrelation between budget constraints and effectiveness and efficiency principles. The driving force behind this would be the MoF, and its acceptance by the executive level of administrative authorities, such as ministers, directors of agencies, heads of departments and units, would entrench the sustainability perspective in expenditure management. Given these capacity constraints, there are doubts as to how many future reforms will be implemented and as to whether those that are implemented will be of sufficient quality to have a positive impact.

The implementation process of sound financial management **(PIFC)** will be dependent on the capacity within the MoF to initiate and implement the reforms in the area of PEM and PIFC that require significant inter-departmental and inter-institutional cooperation. It is however recognised that national resources alone do not have the capacity to develop the full scope of public expenditure management and public internal financial control. The constraints for the development of PIFC due to lack of experienced staff in general are significant. The CHU's key capacities for raising awareness of the requirements of managerial accountability and of the need for delegated financial control are limited. These factors limit the potential result of current and future technical assistance projects in this area. Given these constraints, the near future should not set too high and therefore unrealistic goals or expectations. In a mid-term perspective future further external support is envisaged.

The idea of possibly using joint internal audit units proves that initiatives are taken to consolidate reform initiatives that have been taken too far forward, and balance requirements with limited resources, thereby strengthening reform capacity. A successful implementation, driven by the CHU, will call for agreed and precise working and reporting arrangements especially in terms of funding of the internal audit service.

The reform capacity in preventing fraud and corruption has to be seen in the context of execution of the budget at both central and local government levels. In general, professional standards and audit activities contribute to strengthening accountability and integrity in the public sector, but the MoF's capacity to promote internal control mechanisms also plays an important role in preventing fraud and corruption. As mentioned above, concerns can be raised regarding the resources available to promote both. These concerns mainly deal with the capacity to train the executive level of administrative authorities (such as ministers, directors of agencies, heads of departments and units) on concrete indications of fraud and corruption, and to train auditors on evaluating the risk of fraud and the manner in which prevention of fraud and corruption is managed in the organisation.

As for **External Audit,** the Senate of the State Auditors Institution (SAI) is fully aware of the need to strengthen the institutional capacity of the SAI. However, there is an in-built conflict of resource allocation between the huge audit mandate, development activities and training of staff. It will be important for the Senate to strike an appropriate balance between these important components in the SDP. The implementation of the SDP will imply major efforts from the SAI in this regard and will stretch its medium-term and long-term capacities to accommodate changes in its limits and in its capacity to act strategically.

The future development process will be defined in the SDP. The development of a supreme audit institution takes time and the initiative of developing the SDP is welcomed. The approach sought for in the SDP is to consolidate the institution internally in such as way that it improves its audit and professional capacities over the years. It will constitute an important document for the President and the Senate in setting priorities on how to lead the institution forward for it to be in a position to undertake the full range of audits envisaged in the legislation and to contribute to an improved discussion of the execution of the state budget.

***Recommendations***

On a general level, it is essential that reform activities are based on quality and depth and are not compromised by artificial and unpractical deadlines. The current legal framework should be applied in practice and drafting of new legislation be kept to a minimum. This calls for extensive development of human capital.

1. Both the State Auditors Institution and the Ministry of Finance should at an early stage start to consider the purpose and design of the next generation of external support projects. The internal absorption capacity should be considered in this regard.

2. The State Auditors Institution should continue to strengthen its institutional capacity using the SDP as the leading document. This process should primarily focus on the robustness of financial and compliance audit in order to guarantee the high quality of its mandatory audit.

3. The State Auditors Institution should continue to promote and develop the two-way communication with parliament and, by doing so, promote and upgrade the capacity of parliament to deal with SAI reports.

4. The Central Harmonisation Unit in the Ministry of Finance should consider to what extent the development of FMC at central and local levels should follow different paths. By nature, the conditions in municipalities are different from those in line ministries and central agencies. These differences should be reflected in training activities conducted within the framework of the technical assistance project and elsewhere.

# PUBLIC PROCUREMENT

***Main Developments since the Last Assessment (May 2010)***

The regulatory framework for public procurement, including concessions, in Montenegro comprises the Law on Public Procurement of 21 July 2006 and the Law on Concessions of 26 January 2009, which were supplemented by several pieces of secondary legislation. During the past year no significant change has been observed in this regulatory framework or in procurement operations and practices, but a new draft Law on Public Procurement, prepared in the framework of a technical assistance project, was submitted to the government for discussion in December 2010.

***Main Characteristics***

The **Law on Public Procurement (PPL)** reflects the basic requirements of the classical directive (Directive 2004/18/EC). However, it still presents several areas of non-compliance. Moreover, concerns continue to be expressed about the inflexible and bureaucratic nature of some requirements and also the over-formalistic interpretation and application of the PPL, which may result in poor and inefficient procurement practices.

The key areas of non-compliance with the *acquis* are the following:

- Time limits shorter than those provided by Directive 2004/18/EC;
- Restricted procedure that is not in line with the EU model;
- Need to seek prior approval from the Public Procurement Directorate (PPD) to employ the negotiated procedure;
- Different approach to abnormally low tenders;
- Provisions of Directive 2004/18/EC relating to green and social procurement have not been transposed;
- Lack of a separate and more flexible regime of procurement for entities operating in the utilities sector (non-transposition of Directive 2004/17/EC).

Some examples of bureaucratic practices that do not contribute to transparency and competitiveness but increase the time and cost of procedures (for both contracting authorities and economic operators) are as follows:

*Cost of advertising* – Contracting authorities are required to publish contract notices on the website of the PPD (which is free of charge) and to advertise in one daily newspaper. In the shared opinion of contracting authorities and the business community, this additional publication is expensive (between 200 EUR and 900 EUR for an advertisement) and does not increase transparency.

*Cost of tender documents* – In Montenegro's economic context, the cost of tender documents(up to 100 EUR or more) is relatively high, especially when the contract value is small.

A new **Law on Concessions** was adopted in January 2009, but it fails to satisfy some fundamental requirements of the procurement *acquis*, especially in terms of definitions and procedures. The services and works concessions as defined by Directive 2004/18/EC, where compensation for work to be carried out or services to be provided constitutes the right to exploit the work or service or this right together with payment, definitely fall into the scope of application of the Montenegrin Law on Concessions.

However, the definition of concessions laid down in this law is much wider than the definition provided in Directive 2004/18/EC. Indeed, the law mentions several activities that may be the subject-matter of a concession: exploration and/or exploitation of mineral resources, forest exploitation, use of radio frequencies, etc. In these situations, even if it is given the right to use state-owned goods through a "concession contract", the contractor does not really exploit a work or service with the aim of providing a service to the public; it carries out this activity in its own interest. The "concession contract" is thus an authorisation or licence given by the public authority rather than a commitment of the contractor to provide a service to the public.

Moreover, some concessions within the meaning of the law might be procurement contracts (probably with a credit payment) under Directive 2004/18/EC. For instance, in the case of a concession for the construction and use of sport facilities, it is questionable whether there will be a sufficient number of users to compensate for the total operating cost of the facilities, previously covered by the contractor. It is more likely that the contractor will be reimbursed mainly by the contracting authority.

In addition, several key provisions of the law do not comply with the provisions of Directive 2004/18/EC:

- The time limit provided for by the law for submitting a request to participate in the procurement process is shorter than in the Directives;
- An accelerated procedure can be used in some cases, whereas no similar procedure exists in the Directive;
- A concession can be awarded to an initiative presented by a private entity, without any explicit obligation in the law for the contracting authority to issue a notice;
- The law does not include any provision related to the award of works contracts by works concessionaires.

It should also be mentioned that the award of the concession that was probably the most important in Montenegro in recent years, which related to the planning, financing, construction and operation of the Bar-Boljare Highway (approximately 2 billion EUR), was not based on the Law on Concessions but on the special Law on the Concession on the Bar-Boljare Highway (dated 22 October 2008).

As an EU candidate country, Montenegro has to transpose the provisions of Directive 2004/18/EC related to works concessions into its legislation. Concessions that are not works concessions according to the definition provided in the Directive may be subject to similar rules, but if the Government of Montenegro considers that more flexible rules than those laid down by Directive 2004/18/EC are necessary for such concessions, it should provide for two sets of rules: the first for works concessions and the second for all other concessions.

The PPL meets the **main requirements of the Remedies Directives** (Directives 89/665/EEC and 92/13/EEC as amended by Directive 2007/66/EC), although the provisions of the PPL are less detailed than those of the

directives. Thus, the Commission for Control of Procurement Contracts (the State Commission) appears to be in a position to enforce the procurement rules by public authorities if an economic operator lodges a justified complaint in due time.

By contrast, the Law on Concessions does not fully transpose the provisions of the above-mentioned directives. It has indeed established a Concessions Commission, but this commission is not really independent from the government since the term of office of its members may be terminated "upon a revocation proposed by the entity that proposed his/her appointment". Moreover, its powers are defined in very general terms: "The Commission shall act upon appeals presented by the participants in the procedure for awarding concessions, with regard to the evaluation and the ranking list of tenderers, and it shall decide thereupon […]". Thus, the provisions of the Law on Concessions relating to the Concessions Commission need to be amended.

The overall **institutional capacity** of the Public Procurement Directorate (PPD) and the State Commission appears to be sufficient when compared to equivalent institutions of countries in the region. The PPD is actively involved in providing opinions on procurement issues to stakeholders. However, there is still room for improvement, especially regarding training and practical support to procurement officers in contracting authorities. The State Commission appears to be coping well with the steadily growing number of cases and to have the confidence of stakeholders.

The institutional capacity of the Concessions Commission to enforce the EU *acquis* on concessions needs to be improved. However, this can be undertaken only once the Law on Concessions has been amended and clarified so as to comply with the provisions of Directive 2004/18/EC related to works concessions and with the remedies Directive.

**Integrity**: Due to the weakness of anti-corruption mechanisms and the lack of a systematic approach to analysing, identifying and preventing corruption at various stages of the public procurement process, the system is vulnerable to corruption. Actually, several analyses of integrity in the Montenegrin public administration have identified public procurement as a high-risk area.

***Reform Capacity***

Montenegro's public procurement system has noticeably undergone a number of positive changes in recent years: the adoption of rules based on the EC Directives, which have been supplemented by a comprehensive set of secondary legislation; the elaboration of a programme for training; the provision of information to contracting entities and to the private sector; and the creation of a review mechanism. However, any further capacity development will depend on the availability of central institutional resources for supporting and monitoring public procurement efficiently. In this respect, several measures currently under preparation or discussion should have a positive impact in the coming months.

A new draft Law on Public Procurement, prepared in 2010 in the framework of an IPA technical assistance project, is currently under discussion. While not achieving full compliance of the Montenegrin legislation with the EC Directives, the new PPL should include several positive measures:

- The government could set up a centralised purchasing body that would be entitled to purchase off-the-shelf goods on behalf of the state administration through framework agreements.
- Contracting authorities, in particular local authorities, would be allowed to jointly purchase goods of common interest.

- A monitoring system supplementing the current review mechanisms would be set up, with the aim of ensuring the better application of the law.

- The powers of the State Commission would be widened.

Moreover, the State Audit Institution of Montenegro has identified the most frequent irregular practices concerning procurement, and this information will enable the authorities to better target measures aimed at fighting corruption. For its part, the government is currently considering measures that have the objective of limiting corruption, particularly in the public contracts area.

All of these measures, provided that they are adopted, well co-ordinated and properly implemented, would improve the integrity and efficiency of procurement in Montenegro, as requested by the European Commission.

***Recommendations***

1. Submit shortly for adoption by parliament the new draft Law on Public Procurement (PPL), preferably with specific rules of procurement complying with Directive 2004/17/EC for entities operating in the utilities sector;

2. Set up a central purchasing entity, as foreseen by the new PPL, as soon as the law is adopted;

3. Provide the administrative unit that will be in charge of monitoring procurement contracts with appropriate human and material resources;

4. Amend the Law on Concessions to the effect that it is compatible with Directive 2004/18/EC as well as with the key provisions of the Remedies Directives;

5. Ensure that the State Commission and the Concessions Commission have sufficient human and material resources to carry out their missions, particularly if the monitoring process results in the submission to these commissions of a larger number of contracts or amendments to contracts.

*PROCUREMENT/CONCESSIONS STATISTICS for 2010*

| ***A. Number of contracting entities*** | | |
|---|---|---|
| Central government | 65 | |
| Regional and local authorities | 24 | |
| Other (bodies governed by public law) | 790 | |
| Utilities | / | |
| Total number of contracting entities | 980 | |
| ***B1. Awarded public contracts/Contracting entities*** | **Total (estimated) value** | **Total number** |
| Central government | 177 375 000 € | 741 |
| Regional and local authorities | 34 516 000 € | 305 |
| Other (bodies governed by public law) | 92 061 000 € | 549 |
| Utilities | / | / |
| Total public contracts awarded | 303 952 000 € | 1595 |
| ***B2. Awarded concessions/Contracting entities*** | | |
| Central Government | | |
| Regional and local authorities | | |
| Other (bodies governed by public law) | | |
| Utilities | | |
| Total concessions awarded | | |
| ***C1. Awarded public contracts above the EU thresholds*** | | |
| Works | 65 000 000 € | 3 |
| Services | 24 109 000 € | 50 |
| Goods | 57 377 000 € | 75 |
| Mixed contracts | / | / |
| Total public contracts above the EU thresholds | 146 486 000 € | 128 |
| ***C2. Awarded concessions above the EU thresholds*** | | |
| Works | | |
| Services | | |
| Other | | |
| Total concessions above the EU thresholds | | |
| ***D. Procurement methods used (above the national thresholds)*** | | |
| Open procedure | 274 520 000 € | 1657 |
| Restricted procedure | 29 000 € | 1 |
| Negotiated procedure with prior publication of a notice | 283 000 € | 2 |
| Negotiated procedure without prior publication of a notice | 26 321 000 € | 174 |
| Other procedures (competitive dialogue, etc) | 3 024 000 € | 46 |

| | | |
|---|---|---|
| ***D1. Low value procurement*** (estimated) | 12 577 000 € | 1896 |
| **E. Participation rate (average number of submitted tenders)** | | |
| Works | | |
| Services | | |
| Goods | | |

| | | |
|---|---|---|
| **F. Review procedures** | | |
| Number of complaints received | N/a | 330 |
| Number of rulings issued | N/a | 330 |
| Number of appeals against rulings of the review body | N/a | 76 |
| Number of decisions with interim measures | N/a | / |

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. Title of contracting authority: **Transport Directorate of Montenegro**
Main activity: **management, development, construction, reconstruction, maintenance and protection of all state roads**
Estimated annual budget for public procurement: **85 000 000 €**

2. Title of contracting authority: **Public Works Directorate of Montenegro**
**Main activity: construction, reconstruction and modernization of urban roads and local roads, in the utility infrastructure, hydro-engineering and electrical facilities in the area of high construction, monitoring of the land configuration, performance of analysis and creation of conceptual designs, preparation of project documentation of all technical aspects and others.**
Estimated annual budget for public procurement: **37 800 000 €**

3. Title of contracting authority: **Montenegrin Electric Enterprise – Functional Unit Distribution**
Main activity: **distribution, supply and sale and purchase of electricity distribution, network operator, maintenance of power facilities and supervision**
Estimated annual budget for public procurement: **13 000 000 €**

4. Title of contracting authority: **Health Insurance Fund of Montenegro**
Main activity: **Securing rights in health care and health insurance**
Estimated annual budget for public procurement: **12 850 000 €**

5. Title of contracting authority: **Ministry of Interior of Montenegro**
Main activity: **Work on security and protective operations, emergency response and civil security, border management and border crossings**
Estimated annual budget for public procurement: **10 400 000 €**

6. Title of contracting authority: **Agency for construction and development of Podgorica**
Main activity: **Construction of buildings or their parts - civil engineering**
Estimated annual budget for public procurement: **10 300 000 €**

7. Title of contracting authority: **Montenegrin Electric Enterprise – Functional Unit Production**
Main activity: **Production, construction of power facilities and project-making**
Estimated annual budget for public procurement: **8 400 000 €**

8. Title of contracting authority: **Ministry of Defence of Montenegro**
Main activity: **Defence policy of the State of Montenegro**
Estimated annual budget for public procurement: **8 000 000 €**

9. Title of contracting authority: **National Police of Montenegro**
Main activity: **Public order, supervision and control of road safety, prevention and work of the police in the community, protection of property and persons, etc.**
Estimated annual budget for public procurement: **6 050 000 €**

10. Title of contracting authority: **Municipality of Bar**
Main activity: **Management of all municipal institutions in the Municipality of Bar**
Estimated annual budget for public procurement: **5 100 000 €**

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2010 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

1. Performance of works on the maintenance and protection of main and regional roads in Montenegro for the period from 2010 to 2014
**Transport Directorate of Montenegro (**contracting authority); **Crnagoraput AD Podgorica (**bidder);
Estimated value: **40 000 000 €**; Time of execution: **06/01/2010**

2. Purchase of ID and other documents
**Ministry of Interior of Montenegro** (contracting authority); **DataCard Group USA** (bidder);
Estimated value: **7 745 000 €**; Time of execution: **11/15/2010**

3. Construction of office building for the Montenegrin Academy of Sciences and Arts in Podgorica
**Public Works Directorate of Montenegro** (contracting authority); **''Kroling'' d.o.o. Danilovgrad** (bidder);
Estimated value: **7 000 000 €**; Time of execution: **07/12/2010**

4. Preparation of technical documentation and construction of housing facility
**Agency for Housing** (contracting authority); **''Kroling'' d.o.o. Danilovgrad** (bidder);
Estimated value: **3 200 000 €**; Time of execution: **10/14/2010**

5. Telecommunication services
**Ministry for Information Society and Telecommunications** (contracting authority); **Crnogorski Telekom** (bidder);
Estimated value: **3 200 000 €**; Time of execution: **10/14/2010**

6. Procurement of equipment and material for repair of the Thermal Power Plant Pljevlja: supplies, spare parts and equipment for the delivery of coal and drainage system for ash and slag, spare parts and equipment for the turbo installation, spare parts and equipment for the boiler and heating oil station, spare parts and equipment of the systems for preparation of coal dust and drainage of slag under the boiler, spare parts and equipment for HTV and the starting boiler room, electrical equipment, heating oil and equipment for the exploitation service operation
**Montenegrin Electric Enterprise AD Nikšić – Functional Unit Production** (contracting authority); **Comexport d.o.o. Podgorica, Demibos d.o.o. Podgorica, Efel Travel d.o.o. Podgorica, Hemija Patenting, Ina Crna Gora d.o.o. Podgorica, Manikmon d.o.o. Pljevlja, Markant d.o.o. Valjevo, Mašinounion d.o.o. Podgorica, Messer Tehnogas AD Beograd – Fabrika Petrovac, Montavar Metalac d.o.o. Nikšić, Montex Hidromont d.o.o. Nikšić, Monting Energetika d.o.o. Trebinje, Neckom d.o.o. Nikšić, Neksan d.o.o. Nikšić, Patenting d.o.o. Beograd, Pljevaljska knjižara Pljevlja, Potens Perforacija d.o.o. Požega, Ramel d.o.o. Nikšić, Tei Mont d.o.o. Nikšić, Tekom Promet d.o.o. Podgorica, Termooprema d.o.o. Beograd, Trgoprodukt d.o.o. Pljevlja, Vaduk d.o.o. Beograd, Znak d.o.o. Podgorica** (bidders);
Estimated value: **2 800 000 €**; Time of execution: **May/June 2010**

7. Assignment of works on maintenance of local and unclassified roads and urban roads in the Municipality of Bar
**Municipality of Bar** (contracting authority); **AD ''Put'' Bar** (bidder);
Estimated value: **2 400 000 €**; Time of execution: **04/16/2010**

8. Procurement and distribution of 2 200 000,00 liters of heating oil for educational institutions in the territory of Montenegro in 2010
**Ministry of Education and Sport of Montenegro** (contracting authority); **AD Jugopetrol Kotor** (bidder);
Estimated value: **1 720 000 €**; Time of execution: **11/04/2010**
9. Construction of bypass road in Becici - Phase II
**Municipality of Budva** (contracting authority); **Gugi Commerce d.o.o. – Budva** (bidder);
Estimated value: **1 630 000 €**; Time of execution: **12/01/2010**

10. Works on the mini-bypass road from the junction with ''Nikola Tesla'' street to the building ''Bozolla''
**Agency for construction and development of Podgorica** (contracting authority); **Tehnoput d.o.o.** (bidder);
Estimated value: **1 500 000 €**; Time of execution: **01/21/2011**

# POLICY-MAKING AND CO-ORDINATION

***Main Developments since the Last Assessment (May 2010)***

The government and parliament have collaboratively adopted a "plan of sessions" for the better timetabling of the discussion by parliament and its committees of draft laws foreseen in the government programme. A weekly meeting of senior government and parliament figures is held to discuss timetabling.

In the field of general policy coordination, every proposal submitted to the government must now also explain how the decision is to be communicated to the public. This is being done but the effectiveness of this process depends on the communications capacity of the originating ministry. These capacities are variable.

The quarterly monitoring by the General Secretariat of the Government (GSG) of implementation of the government work plan has been supplemented by a monthly report on relevant issues to the deputy prime ministers who chair each of the committees that review business before it is submitted to the government.

The government has developed a regulatory reform programme. As part of this process, 35 pieces of legislation have been repealed and the repeal of 65 more is in prospect. An action plan on licensing reform is to be considered by the government in April 2011. There are also changes proposed to the Law on General Administrative Procedures to shorten many deadlines for responses to the public by the administration. There are also changes proposed to introduce a ‘silence is consent rule’ for certain administrative procedures.

A programme of work has been established to improve the administrative environment for business which, among other matters, has generated proposals to simplify the employment of foreign workers and the issuing of construction permits.

The Ministry of Finance has established a three member regulatory impact assessment unit with that has started to screen proposed draft regulations. A full RIA system is being developed for implementation by late 2011.

The Government Office for Cooperation with NGOs (the Office) created a working group that proposed a new law on NGOs, currently the subject of public consultation. The Council for Cooperation between the Government and NGOs, appointed in late 2010 and the Office have also developed proposals to implement the requirements in the law on public administration to make consultation on draft laws mandatory.

In the European integration field, the 35 working groups for individual chapters of the *acquis* have now been established and are functioning. The government is now receiving monthly reports on the seven priority areas identified in the Commission's *avis.*

***Main characteristics***

A good system for planning the work of the government and inter-ministerial consultation is in place. The main body responsible for supporting the decision-making system is the General Secretariat of the Government (GSG). It has the authority to return to ministries any items that have not been prepared in conformity with the Rules of Procedure, and it has assumed a proactive role in the annual planning process and in monitoring the performance of ministers in accordance with the plan.

The Secretariat for Legislation also plays a significant coordinating role in the policy system. It is the main public administration institution that performs a legal oversight role, which includes ensuring conformity with the Constitution and with other legal acts, as well as legal linguistic coherence.

The main framework for policy development is the annual work programme of the government. It plays a dominant role in determining the agenda of the weekly government meetings. There is a link between the annual work-planning process and strategic priorities. It is compiled in both a bottom-up and top-down manner. The Strategic Planning Unit of the GSG takes a proactive role in drafting the annual work programme of the government by guiding ministries as they prepare their inputs to the programme, ensuring that they take into consideration the strategic priorities of the government. However, the limited resources available for the training of line managers and staff, as well as the lack of good data, make policy planning a difficult task.

There is no formal connection between the annual government work plan and the budgeting process; though there is some link, in that the annual government work plan and the annual budget are based upon agreed general annual economic policy measures and the budget is built around particular projects. It would appear that the Ministry of Finance reviews proposals put to the government to ensure that there is a budgetary coverage, but these reviews need to be strengthened.

The legal framework underlying the policy-making system is adequate. It provides for a hierarchy of decision-making bodies which, taken together, set up a sequential process of preparation of material for decision-making and the time frame for each step of the process. The weekly government session is the only formal decision-making body entitled to make binding decisions**.** There are two main commissions (permanent working bodies) of the government to filter items and discuss proposals in depth before they reach the government session. In addition, the Executive Council, consisting of the prime minister, the three deputy prime ministers (DPMs) and the secretary general of the government, plays an important role in deciding the policy priorities of the government, in resolving conflicts between ministers, and in instructing ministers and commissions with regard to items brought forward to the government for formal decision.Rules of Procedure establish a fairly complete policy development and decision-making system and have many good features, such as the strict limitations on including items in the government sessions that have not been properly processed beforehand, and a requirement that submissions should not be longer than 10 pages or should include a summary if they are. The Rules make provision for government to consider draft laws but it appears that these provisions do not extend to policy proposals.

Central arrangements for policy making, coordination and planning are evolving incrementally. The quality of explanatory material put forward by ministries to accompany draft laws submitted to the

government continues to improve. The GSG is also considering a system of "concept papers" -- policy analysis documents that should be discussed and approved by the government before a ministry starts drafting a law.

The steering of the general strategic planning work of the government could also be improved. Montenegro has over sixty sectoral and intersectoral strategies, which raises the issue of their mutual coordination, budget correspondence and ownership. There is limited horizontal coordination and human capacity in the Government General Secretariat for public policy planning, monitoring, and coordination.

There are limited capacities in line ministries for the preparation and drafting of legislation and there is disparity in methodological approaches adopted by different ministry staff. The Secretariat for Legislation provides some training and direct mentoring to ministries, but lacks the staff capacity to do more. The Secretariat for Legislation has issued rules on the technical standards to be observed when drafting legislation but more work will be needed to build capacities and improve the quality of legislation.

Ministries also need to ensure efficient policy implementation, which may become gradually more difficult because of the tendency for creating more and more agencies that have more administrative freedom than ministries. This may create problems for ministries in terms of governing their policy agenda and steering the work of their respective agencies.

Regarding the business enabling environment, progress has been made to rationalise existing legal requirements, identify business barriers and reform licensing procedures. However, some weaknesses remain and it is far too soon to assess the quality or the sustainability of any of these developments.

There is a strong emphasis in Montenegro on public consultation. Every important law is first adopted by the government as a draft. The draft is then made available for public consultation before being adopted by the government as a bill and sent to parliament. Public consultations are normally carried out on laws and on all important issues brought to the government, such as strategies, policies and decisions. However, practice in this regard is not uniform across the government, and there is little guidance available to ministries on how to undertake consultation. The capacity of some sectors of civil society to provide a timely and constructive response is also limited.

Montenegro's European integration efforts appear to be well co-ordinated. The structure put in place to manage and co-ordinate European integration is quite comprehensive. It includes the National Council on European Integration for a broader discussion at the national level, the parliamentary Committee for European Integration, and the Collegium for European Integration, the body responsible for the government's strategic steering of the European Integration agenda. The Commission for European Integration provides administrative and expert level horizontal co-ordination within the government. The focal point of co-ordination of European Integration policy is the Ministry for European Integration. The staff numbers in the ministry are adequate and there are EI units in all ministries, with between 2 and 5 staff. However, staff turnover presents a challenge for the integration process.

***Reform capacity***

The capacity of Montenegro to reform and develop its public administration is constrained by the enormous volume of work that needs to be undertaken by a relatively small number of officials with relatively limited experience. The GSG has shown a good capacity for undertaking reforms on its own, without external assistance. In the field of public consultation a strong collaboration between the Government Office for Cooperation with the NGO Sector and leading NGO organisations, assisted by the joint cooperation council suggests some reforms may be driven by NGO involvement in the policy-making process.

In the field of regulatory reform, change is being driven by a small group within the Ministry of Finance. There is political support for this initiative but changes in political direction and the lack of support from more junior officials may easily throw these reforms off balance. This work has received strong support from USAID and IFC and it remains to be seen whether this work would survive in the absence of donor support. Plans for the second-half of 2011 include the creation of a business licensing centre and the introduction of "one-stop shop" facilities but these initiatives may be constrained by the lack of adequate human resources.

The improvement of the policy making system is also one of the priorities of the Strategy for Public Administration Reform in Montenegro for the years 2011–2016 (“AURUM”). One of the elements of the strategy is the implementation of measures to improve the quality of regulations and strategic documents, which includes regulatory impact assessment, the design of laws and strategic documents, and coordination of public policies.

***Recommendations***

The government should keep implementing its current initiatives. In the short term:

- A major initiative should be taken to improve the capacities of line ministries for legal drafting, policy planning and steering of the implementation of their respective policies
- Regulatory reform work should go forward as planned.
- Regulatory impact assessment should be implemented as planned and should be closely coordinated with the GSG's proposal for concept papers.
- The GSG should proceed with its plans for concept papers and for review by expert groups in advance of government commission meetings.
- The strong partnership between government and NGOs should continue to implement the agreed strategy for the development of public consultation. Balanced guidance should be provided to line ministries on how to consult, and for NGOs on how to participate effectively in consultation.