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MONITORING REPORT

The **Principles** of **Public** **Administration**

MONTENEGRO

November
2021

Monitoring Report

The Principles of Public Administration

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Table of contents

List of abbreviations and acronyms	2
Introduction.....	4
Methodology	5
Executive summary	7
Strategic Framework of Public Administration Reform.....	11
Policy Development and Co-ordination.....	23
Public Service and Human Resource Management.....	54
Accountability	82
Service Delivery.....	97
Public Financial Management.....	114
Budget management	121
Internal control and audit.....	131
Public procurement	140
External audit	156

List of abbreviations and acronyms

ACA	Anti-Corruption Agency
AI	Administrative Inspection
AIA	Administration for Inspection Affairs
BFR	Budget and Fiscal Responsibility
BMIS	Budget Planning Information System
CPRPPP	Commission for Protection of Rights in Public Procurement Procedures
CEFB	Committee on Economy, Finance and Budget
CEJN	Montenegrin electronic procurement system
CHU	Central Harmonisation Unit
CoG	Centre of government
CPR	Central Personnel Record
CS	Civil service
CSL	Law on Civil Servants and State Employees
CSO	Civil society organisation
DPP	Directorate for Public Procurement Policy
EI	European Integration
EIO	European Integration Office
ESA	European System of Accounts
ESPD	European Single Procurement Document
FBA	Final Budget Accounts
FPG	Fiscal Policy Guidelines
FRA	Financial and regularity audit
GAWP	Government Annual Work Plan
GSB	Government service bus
HRM	Human resource management
HRMA	Human Resource Management Authority
HRMIS	Human Resource Management information system
HRN	Human Resources Network
IA	Internal Audit
ILM	Internal Labour Market
IPA	Instrument for Pre-accession Assistance
IPPF	International professional practice framework
ISSAI	International Auditing Standards of Supreme Audit Institutions
LAP	Law on Administrative Procedures

LC	Law on Concessions
LFAI	Law on Free Access to Information
LPC	Law on Prevention of Corruption
LWPSE	Law on Wages of Public Sector Employees
MDD	Montenegro Development Directions
MEA	Ministry of European Affairs
MoFSW	Ministry of Finance and Social Welfare
MIA	Montenegrin Investment Agency
MP	Member of Parliament
MPADSM	Ministry of Public Administration, Digital Society and Media
MPAEU	Montenegro's Programme of Access to the EU
MTBF	Medium-term budgetary framework
NIPAC	National Instrument for Pre-accession Assistance Co-ordinator
PAR	Public Administration Reform
PFM	Public Financial Management
PFMRP	Public Finance Management Reform Programme
PIFC	Public internal financial control
PIP	Public investment project
PP	Public procurement
PPL	Law on Public Procurement
PPP	Public-private partnership
PPPL	Law on Public-Private Partnership
RIA	Regulatory Impact Assessment
SAI	State Audit Institution
SCS	Senior civil service
SL	State legislature
SoE	State-owned enterprise
TNA	Training needs assessment
ToC	Table of concordance
TSA	Treasury single account
UNDP	United Nations Development Programme
WCAG	Web Content Accessibility Guidelines

Introduction

The Principles of Public Administration and the EU integration path – measuring the fundamentals

The *Principles of Public Administration*¹ set out what good public governance entails in practice and outline the main requirements to be followed by countries during the European Union (EU) integration process. Good public governance is key for achieving economic growth, competitiveness and better quality of life. Democratic governance and the rule of law require capable, accountable and effective public administrations. In its 2014 and 2018 Enlargement Strategies, the European Commission (EC) highlighted public administration reform (PAR) as one of three “fundamentals first” areas of the EU enlargement process: “Addressing reforms in the area of rule of law, fundamental rights and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU”².

A regional series, with a long-term perspective

This monitoring report assesses the state of play and progress in improving the quality of national public administrations. Given the geostrategic importance of the Western Balkans to the EU, and the ongoing accession negotiations, SIGMA (Support for Improvement in Governance and Management) conducts regular monitoring of the region. In 2017, SIGMA established a baseline in all areas of public administration. In 2019, monitoring was conducted against selected Principles. The full scope is covered again in this 2021 report, which compares performance against the 2017 baseline and regional averages. By analysing the long-term perspective, significant changes are identified.

The assessment period is from July 2017 to July 2021. The data collection period was February-May 2021. The COVID-19 pandemic was at its highest, so in-person meetings were replaced by virtual ones. National experts provided invaluable support during this period in securing the necessary data.

Structured to provide key insights and recommendations to decision makers and detailed performance data to practitioners

The structure of the report mirrors that of the Principles. Each Principle has a dedicated section for its associated indicator(s). A country executive summary and summaries for each of the six thematic areas have been introduced to the 2021 report. The analytical findings and the short- to medium-term recommendations are developed to guide reform efforts and inform the policy dialogue and discussions between the EC and the Government.

SIGMA wishes to thank the Government for its collaboration in providing the necessary administrative data and documentation, as well as for its active engagement during the two rounds of validation to improve the factual accuracy of all the information used. The collaboration with the Regional Cooperation Council on the Balkan Barometer has been excellent. We also thank the experts from EU member countries who contributed to the report. Finally, the support of the EC is, as always, appreciated.

¹ OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

² European Commission (2018), *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, p. 4, [communication-credible-enlargement-perspective-western-balkans_en.pdf \(europa.eu\)](#)

Methodology

Overall approach – focus on implementation and outcomes, analysing a variety of primary data sources against precise criteria and benchmarks for an objective assessment

The *Methodological Framework for the Principles of Public Administration*³ contains a set of standard indicators that SIGMA applies consistently to measure the preconditions and enablers of successful reforms (good laws, policies and procedures, institutional structures, human resources) and the actual implementation of reforms and subsequent outcomes (how the administration performs in practice).

The overall approach recognises that no single measurement method can fully capture the complex issues related to organisational and behavioural change. SIGMA uses information from administrative data, surveys, statistics, interviews, etc., which is cross-checked and triangulated to arrive at a balanced assessment.

Data sources and validation

The main quantitative and qualitative methods applied in the framework are:

- Desk reviews of legislation, regulations, reports (most recent are analysed if adopted before July 2021)
- Interviews (conducted virtually March-May 2021 with 100+ interviewees per administration, including civil society)
- Review of cases and samples of government documentation (most recent are analysed)
- Observations of practice and on-site verification (conducted virtually March-May 2021 with national expert support)
- Analysis of administrative data from public registries and national statistics (most recent when possible, otherwise from 2020)
- Surveys of the population and businesses through the Balkan Barometer (conducted February-March 2021)⁴
- Surveys of 950 contracting authorities across the region (conducted February-April 2021).

Data was collected through SIGMA's tool for data collection, analysis and validation (PAR.IS). More than 10 000 documents were received regionally for analysis. In 2021, hundreds of government officials were provided direct access to SIGMA's detailed working sheets for calculation of numerical sub-indicator values and justifications for fulfilment of each of the criteria, in addition to fact-checking the draft monitoring reports. The monitoring reports only show the overall indicator values, but the detailed criteria-level analysis will be accessible in 2022 through a public portal.

Indicator values reflect the level of maturity and preparedness of administrations – from 0 to 5

The indicator values provide an indication of the administrative capacity and overall performance of national public administrations. This provides an indication of the capability to effectively implement the EU *acquis* and participate in the policy-making processes of the EU.

The point allocation is constructed so that a country can only receive an overall value of 2 on the basis of the quality of its legislative and regulatory framework; a value of 3 cannot be achieved without showing that implementation of key processes is happening in practice; and in order to obtain a value of 4, the country needs to show a consistent achievement of relevant outcomes. The value of 5 is reserved for outstanding performance and full compliance with the Principles and the standards for good public governance.

³ OECD (2019), *The Methodological Framework of the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>.

⁴ Regional Cooperation Council, <https://www.rcc.int/balkanbarometer/home>.

In 2021, averages of the indicator values have also been calculated for each of the six thematic areas of the Principles of Public Administration. This enables comparison of overall trends across the whole administration, over time, and across the region, as shown in the indicator comparison charts:

- 1) Strategic framework of public administration reform
- 2) Policy development and co-ordination
- 3) Public service and human resource management
- 4) Accountability
- 5) Service delivery
- 6) Public financial management.

Understanding how the indicator values are calculated

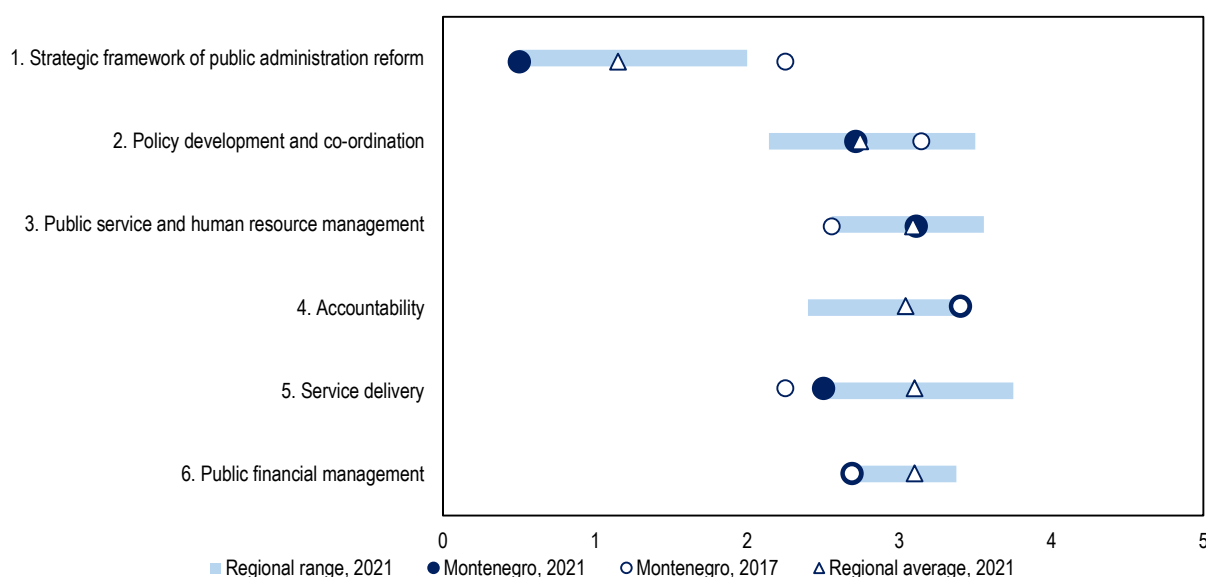
Across the six thematic areas, the framework is composed of 48 Principles. Each Principle has one or two indicators. There are 52 indicators in total, with 340 sub-indicators and 1000 individual criteria. Indicator values are presented at the top of the overview tables, on a scale from 0 (lowest) to 5 (highest). The indicator value is based on the total number of points received for the sub-indicators. The point conversion tables are accessible in the Methodological Framework. A three-digit reference number precedes the titles of the indicators: the first number refers to the area, the second to the Principle and the third shows whether this is the first or second indicator belonging to that Principle.

If the required information to assess a sub-indicator is not available or is not provided by the administration, 0 points are awarded. All data requested is needed for a well-functioning public administration and SIGMA does not estimate performance in the absence of credible evidence.

Executive summary

Montenegro has made some progress on reforms in the areas of public service and human resource management (HRM) and service delivery, while in other areas reforms have stalled. Compared to its neighbours in the Western Balkans, Montenegro is exceeding the regional average in the area of accountability. However, in other reform areas Montenegro is at or below the regional average. The limited progress compared to the 2017 assessment mirrors the situation in accession negotiations, where Montenegro has opened negotiations on all chapters of the EU *acquis* but has not closed any for more than four years. The change of Government in late 2020, the first since Montenegro's regaining of independence in 2006, laid bare the deep level of political influence rooted in the senior civil service. The majority of managers were dismissed or left voluntarily, creating a significant hiatus in the functioning of the administration.

Progress has been made in the areas of public service and human resource management, and service delivery since 2017, while performance has deteriorated in other areas



European integration remains one of the priorities of the new Government, according to the exposé of the Prime Minister as well as the Government Programme. To regain its position as a regional leader in EU integration process, however, Montenegro needs to establish a professional, merit-based civil service and significantly improve the functioning of rule of law in order to benefit from the new EU Enlargement methodology.

The strategic framework of public administration reform (PAR) is in the phase of transition

While PAR remains a political priority, the new strategies laying out the framework for reforms are still under development. The implementation of reforms foreseen in the previous PAR Strategy and in the Public Finance Management Reform Programme remain limited, as fewer than half of the objectives were achieved by their expiration date in 2020. The quality of monitoring reports has improved since 2017. The actual financing of reform measures relies heavily on donor assistance, which can undermine the sustainability of reforms.

Improvements in strategic planning and evidence-based policy making have been made, but a coherent policy development process is still not in place

In the area of policy planning, the poor implementation of central planning documents in 2020 overshadowed the noteworthy improvements achieved by the establishment of requirements for drafting strategies and by largely following these requirements in practice. Still, the costing of strategic plans, as well as the overall link between policy and fiscal plans, remains limited. The quality of Regulatory Impact Assessments (RIA) accompanying the draft laws and the consistency of conducting public consultations have improved. However, the different elements of the policy-development process do not form a logically interconnected cycle that is purposefully implemented for developing and enforcing effective policies. The alternative options for achieving the goals are not analysed during the development of policies, the impact analyses are not shared with the public during consultation, the affected ministries are not consulted consistently and the consultation reports are not submitted to Parliament together with the draft laws. In addition, laws are enforced without the necessary secondary legislation in place. The effectiveness of parliamentary scrutiny over the Government's policy making is limited by the high share of draft laws adopted in extraordinary proceedings.

Effective management of human resources is hampered by formalism and strong political influence on senior civil servants

The legal and institutional framework for HRM in the civil service is in place. The enhanced legal framework is one of the main reasons for progress in the indicator values since 2017, along with the improved availability of data for assessment. However, HRM is still focused mainly on ensuring compliance with legislation, not actual management of human resources. The majority of senior civil servants left their positions due to resignations, abolition and reorganisation of the public bodies after the change of Government in 2020, which indicates heavy political influence among the senior managers. Recruitments continue to attract a low number of candidates. The unreliability of data in the Central Personnel Records further hampers effective HRM. Its professionalism and efficiency could be enhanced by centralising the sectoral HRM to the responsible line ministry. The Human Resource Management Authority proactively manages civil-service training in horizontal areas, but a training-needs analysis is not yet fully implemented, and capacities in public bodies to develop sector-specific training are weak.

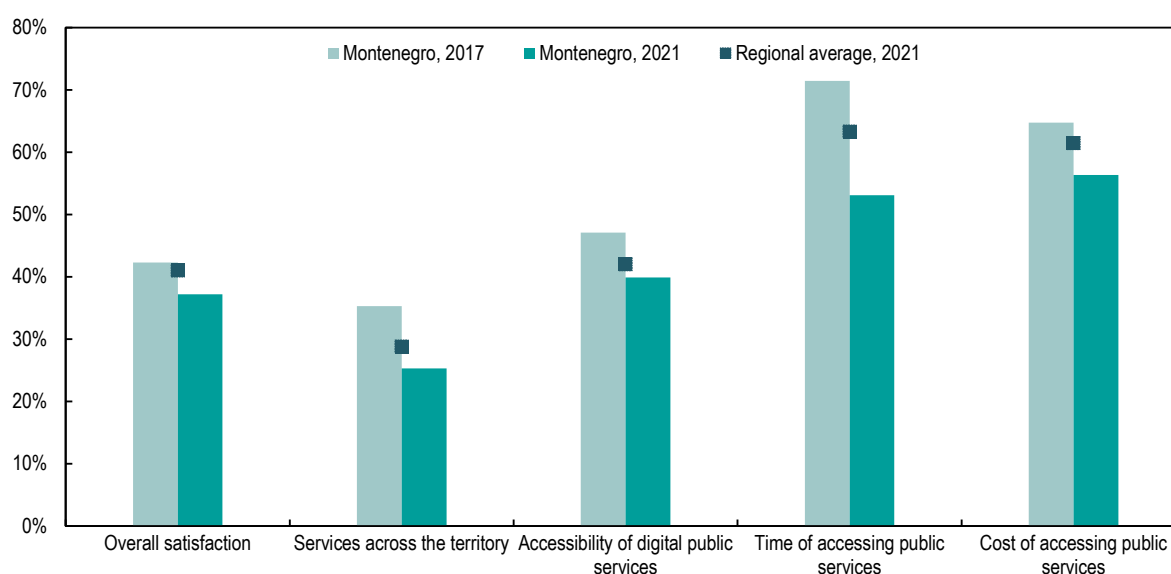
The legal framework for an accountable state organisation is in place, but not implemented purposefully

Management of public administration is not focused on results, but on compliance with formal requirements. Access to information is not fully functional, as evidenced by the significant number of appeals and the high share of successful appeals. The Administration is often unresponsive to requests within the statutory deadline, and proactive publication of information is inconsistent. The effectiveness of the work of the oversight institutions is limited, based on the low implementation rate of their recommendations. The average duration of administrative court procedures has significantly increased compared to 2017 due to the high number of incoming cases.

Modest progress with digital enablers, but a lack of ownership for the general modernisation of services

The establishment of the interoperability framework and the provision of free digital signatures are the key developments in service delivery since 2017. The potential of the digital enablers is still underutilised, however, as the number of available digital services is very low. The modernisation of public service delivery has stagnated, and Montenegro is lagging behind most others in the region. A central problem is the lack of responsibility for the modernisation of services in general; only the digital services have clear ownership. Therefore, no service standards are set, nor are performance data centrally collected for public services, and the use of quality-management tools is minimal. The simplification efforts are not co-ordinated and lack a coherent policy framework. This results in a low level of user-centricity and accessibility of public services.

Satisfaction with delivery of public services has decreased and is below the regional average



Note: The average share of citizens who answered “mostly satisfied” or “completely satisfied” to the statements: “Could you please tell how satisfied you are with each of the following in your place of living?” in relation to: “Administrative services from central government (such as passports and personal identification [ID])”*, “Accessibility to public services” and “Accessibility to public services via a digital channel”*. The average share of citizens who answered “good”, “very good” and “excellent” to the following question: “How would you grade the following issues?” in relation to: “Time required to obtain public services”* and “Price of public services”*. *Only those respondents who have been in contact with central government services in the past year are included.

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

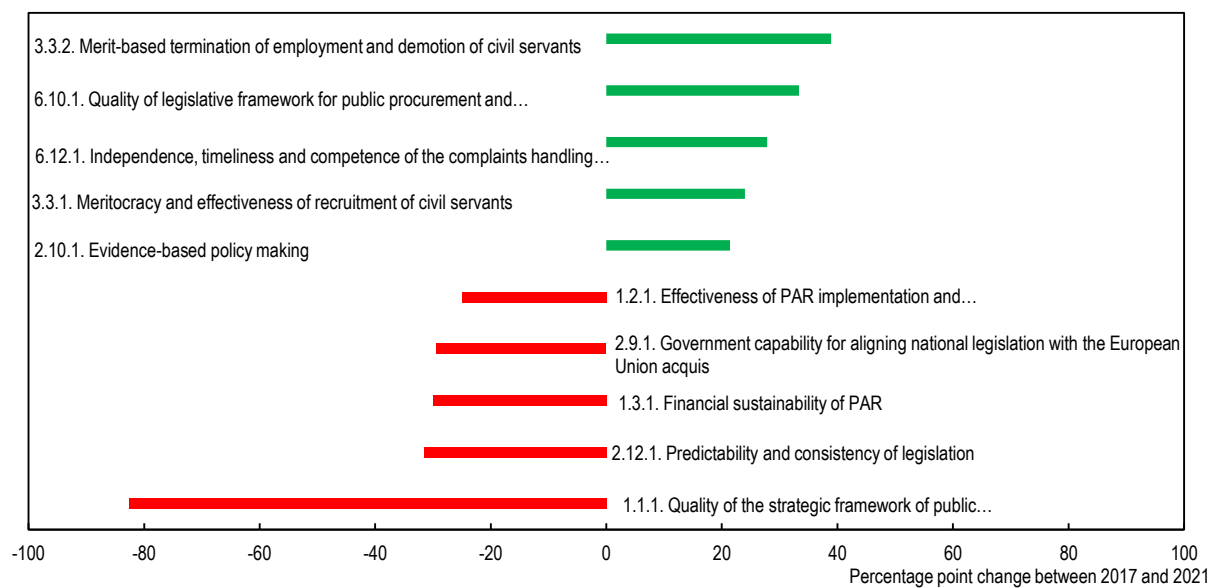
Introduction of programme budgeting, improvements in legislation, but continued weaknesses in delegation of decision-making and the low competitiveness in public procurement

The introduction of the programme budget in 2021 marks an improvement in the transparent management of public finances, but the quality of fiscal planning in the short and medium-term remains low. The level of public debt is high and increasing. The legal framework for public internal financial control and for internal audit has improved, but actual implementation lags behind. Delegation of decision-making authority is limited in practice, and the quality of audit reports is hampered by the inconsistent focus on achieving value for money. The legal framework for public procurement is largely aligned to the *acquis*, following the recent changes to the respective laws. The average number of bids remains low, and awards are usually based only on the lowest price. Centralised purchasing has limited functionality, and framework agreements are rarely used. The number of complaints against the contracting authorities has decreased, which has enabled the administration to shorten the average duration of the complaints procedure. The independence of the State Audit Institution (SAI) is ensured, but external audit is not fully effective due to the Parliament’s limited use of the SAI’s reports.

The way forward for PAR:

- The Government should ensure that civil servants are selected based on merit and not due to political connections to promote competitiveness in recruitment and professionalism in the civil service.
- The interoperability of registers and availability of electronic ID should be utilised for actual improvements in the quality and accessibility of public services.
- Authorities should ensure proactive publication of public information, as well as timely responses to requests for information to reduce the number of appeals in the area of access to information.
- Policy making should be made more inclusive by sharing RIA reports with the stakeholders and by informing the Parliament about the results of consultations.

Indicator values for the legal framework on HRM and public procurement have improved since 2017, but the quality of strategic framework of PAR has deteriorated



Strategic Framework of Public Administration Reform

The Principles of Public Administration

Strategic Framework of Public Administration Reform

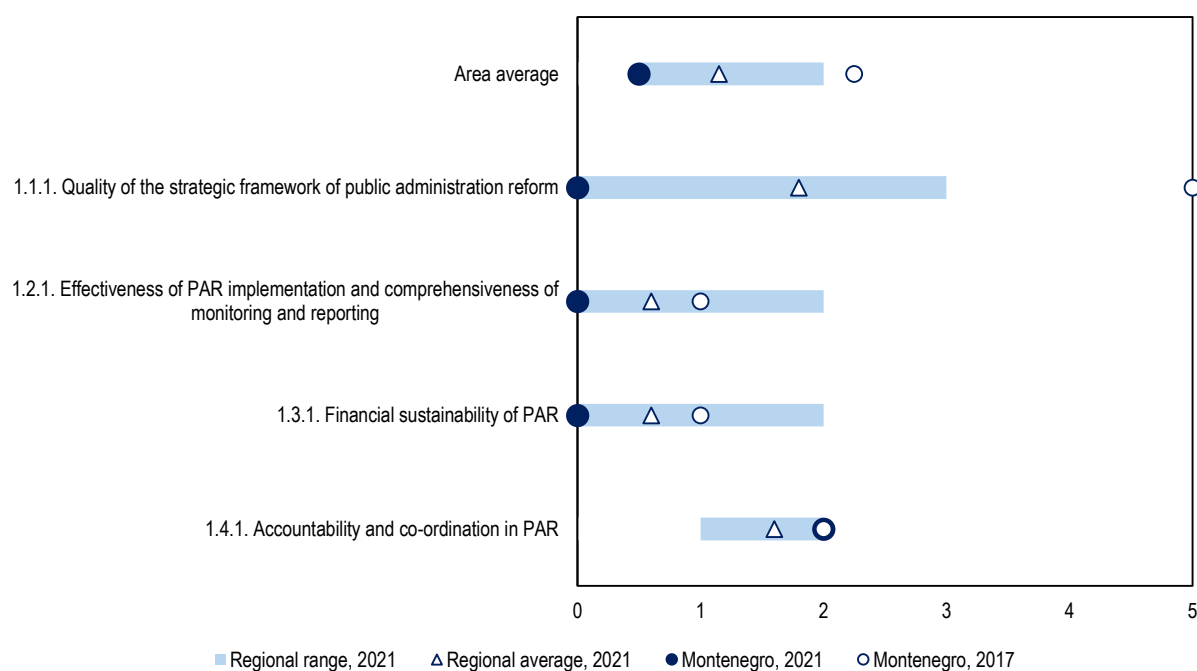
Principle 1	The government has developed and enacted an effective public administration reform agenda which addresses key challenges.
Principle 2	Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.
Principle 3	The financial sustainability of public administration reform is ensured.
Principle 4	Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

Strategic Framework of Public Administration Reform

Summary and recommendations

Montenegro is in the transition phase of establishing a new strategic framework of public administration reform (PAR). The average indicator value in the area of strategic framework of PAR in Montenegro has decreased from 2.25 in 2017 to just 0.5 in 2021. This is due to the expiry of the two key PAR strategies in 2020, while the preparation of new strategies covering all key areas has not been completed on time.

The expiry of PAR strategies left a strategic vacuum and results in a significant reduction in the indicator values



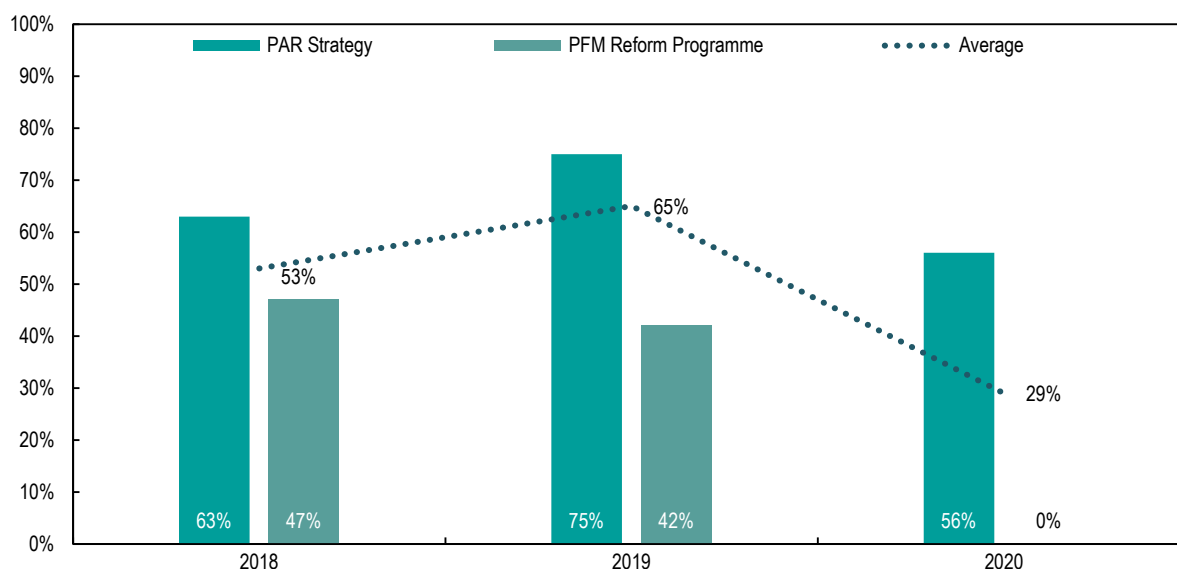
Since the expiry of the Public Administration Reform Strategy (PAR Strategy) and the Public Finance Management Reform Programme (PFM Reform Programme) in 2020, the new strategic framework for PAR in Montenegro is not in place yet. However, PAR is comprehensively recognised as a priority in key government central planning documents, including the Exposé of the Prime Minister, the Montenegro Development Directions and the Montenegro's Programme of Accession to the EU. Work on the development of a new PAR Strategy and a new PFM Reform Programme is ongoing, with the involvement of the implementing institutions of the strategies as well as the non-governmental stakeholders.

The monitoring and reporting system for PAR is also incomplete, given that the key planning documents have expired and new ones, which would further elaborate the key monitoring and reporting details, are not in place yet. The monitoring frameworks for the expired PAR Strategy and the PFM Reform Programme were functional during the implementation of the two strategies, and the quality of monitoring reports has improved. Nevertheless, while the 2020 report on PAR Strategy was adopted in April, the report on the implementation of the PFM Reform Programme was approved only in late July. This was too late to provide timely and meaningful insights for steering 2021 activities. **The implementation rate of reform activities was modest during 2018 and 2019, and it slowed even further in 2020. Less than half of the PAR objectives from the previous strategic framework were achieved by the final deadline.**

In the absence of valid planning documents for PAR, the financial sustainability and quality of costing of PAR commitments could not be assessed. The availability of funds, based on the review of the most expensive activities planned for implementation in the expired planning documents for 2020, is in place for the donor-funded activities but cannot be verified for activities requiring national budget resources. The actual financing of PAR measures included in the expired PAR plans relied heavily on donor assistance, which can undermine the sustainability of reforms.

Accountability and co-ordination in PAR is only partially established. The PAR Council is the political-level co-ordination body and includes representatives from the non-governmental organisations as members. However, in 2021 it did not discuss or approve the annual reports on PAR strategies and held the first meeting only in July to discuss the scope and draft objectives of the upcoming PAR Strategy. While the overall institutional and managerial responsibility for PAR is established, responsibility for implementing individual PAR activities cannot be assessed, as the new planning documents are still under development and the responsibilities have not been assigned. Administrative-level co-ordination, which significantly improved for the previous PAR Strategy under the leadership of the Ministry of Public Administration, Digital Society and Media (MPADSM), is currently not in place.

The annual implementation rate of activities from the PAR Strategy has been higher than the one for PFM Reform Programme, but decreased in 2020



Source: Annual reports of the above-mentioned strategies.

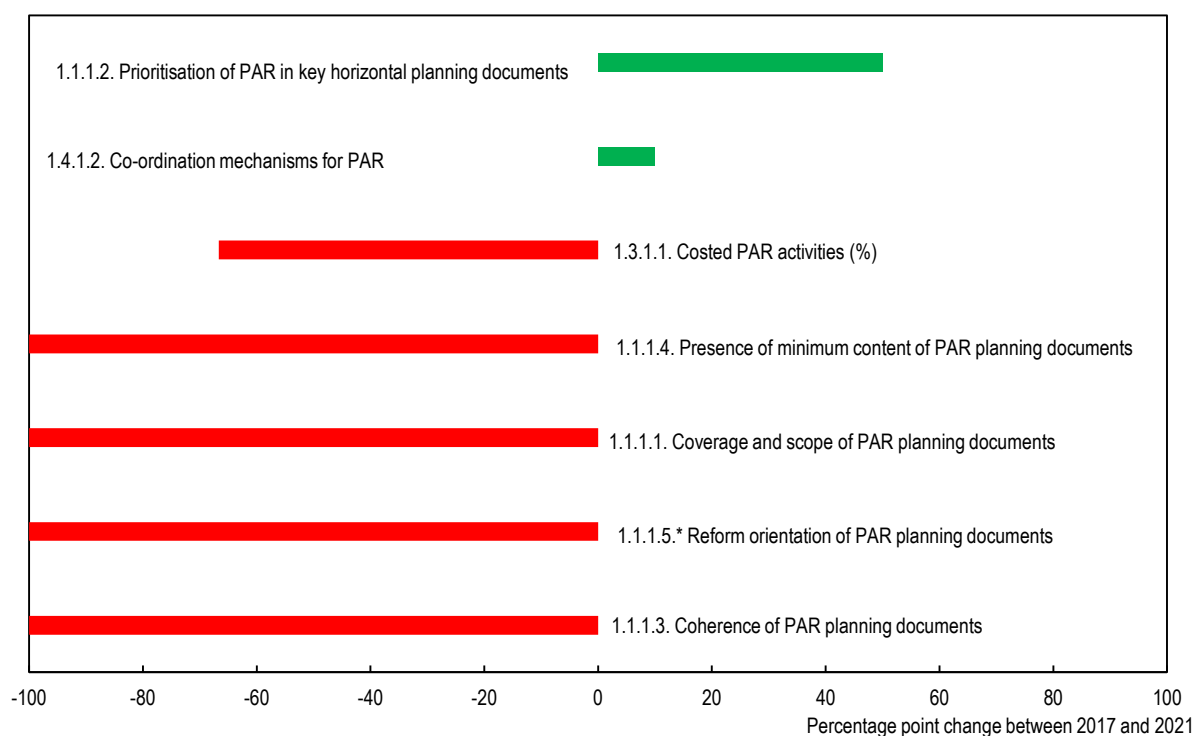
Short-term recommendations (1-2 years)

- 1) The MPADSM and the Ministry of Finance and Social Welfare (MoFSW) should finalise the new PAR Strategy and the PFM Reform Programme, with proper costing and the development of the indicator specifications to ensure effective monitoring. Public and interministerial consultations should be carried out before the final drafts are prepared for the decision of the PAR Council and the Government.
- 2) The Government should establish functional administrative level co-ordination bodies for both strategies, consisting of senior-level representatives of all key implementing institutions as well as non-governmental organisations, to support the implementation of the future strategic framework of PAR.
- 3) The MoFSW, as the lead institution for monitoring the PFM Reform Programme, should ensure that the reports on the implementation provide clear and accurate information about the implementation results, including on the progress towards achievement of the ultimate policy objective.
- 4) Annual monitoring reports on new reform strategies should be prepared and published earlier in the year, aiming for finalisation during the first quarter, to increase their relevance and impact.
- 5) The MoFSW, in co-operation with the MPADSM, should include in the annual and medium-term budget plans a clear reference to the total cost of the national PAR policy (e.g. as a separate budget programme), including recurrent expenditures of the key institutions involved.

Medium-term recommendations (3-5 years)

- 6) During the development of the next action plans for the PAR Strategy and the PFM Reform Programme (entering into force from 2024 onwards), the MPADSM and the MoFSW should undertake a review of implementation progress to be able to address potential implementation challenges and to ensure a higher implementation rate of the final objectives and targets.
- 7) The Government should gradually increase the domestic funding for PAR to reduce the overreliance on financing by donors and ensure better financial sustainability of reforms.

Improvements in prioritisation of PAR and with the functioning of co-ordination mechanisms, but regression elsewhere mainly due to absence of valid PAR planning documents




Note: * marks where points have been deducted because data was not available or of poor quality.

Analysis

Principle 1: The government has developed and enacted an effective public administration reform agenda which addresses key challenges.

Overall, the value for the indicator 'Quality of the strategic framework of public administration reform' is 0. In 2017, the value for this indicator was 5, and the difference occurs because the two main documents comprising the strategic framework of the PAR in Montenegro, the PAR Strategy in Montenegro 2016-2020 and the PFM Reform Programme 2016-2020, have both expired and new strategic documents have not yet been developed and adopted.

Indicator 1.1.1 - Quality of the strategic framework of public administration reform		
This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms.		
A separate indicator (1.1.3) measures financial sustainability and cost estimates in detail.		
Overall 2021 indicator value  since 2017	0	1 2 3 4 5
	Points 2021	Change from 2017
1. Coverage and scope of PAR planning documents	0/5	-5
2. Prioritisation of PAR in key horizontal planning documents	2/2	+1
3. Coherence of PAR planning documents	0/4	-4
4. Presence of minimum content of PAR planning documents	0/7	-7
5. Reform orientation of PAR planning documents (%)	0/3*	-3
6. Quality of consultations related to PAR planning documents	0/2	-1
Total	2/23	-19

Note: *Data not available or provided.

PAR is comprehensively recognised as a priority in various key central planning documents. The Exposé of the Prime Minister from December 2020 and the 2021 Government Work Programme, adopted in March 2021, both include objectives and attainable activities related to all five PAR substance areas. Similarly, the Montenegro Development Directions 2018-2021 recognises all five PAR substance areas, though in the case of the area of Accountability, only in general terms with reference to the reorganisation of the administration. Except for the PFM area, the Montenegro Programme of Accession 2021-2023, adopted in March 2021, also comprehensively recognises PAR through a detailed indication of objectives and activities.

With the expiry of the PAR Strategy and the PFM Reform Programme, the coherence of PAR planning documents, the reform orientation of the PAR activities or the quality of the planning documents and the transparency of their development cannot be assessed, as the relevant valid documents were not available as of the end of the current assessment period (end of June 2021)¹.

Nevertheless, there is ongoing work on developing a new PAR Strategy and PFM Reform Programme, including consultations with non-governmental stakeholders. In July 2020 the MPADSM established a

¹ The Government approved an extension of the Action Plan for the PFM Reform Programme for 2021 only in July 2021, together with the report on the implementation of the strategy during 2020. However, the purpose of this Action Plan as a planning document remains unclear as it also includes activities with deadlines in 2023 and 2024. Furthermore, none of the targets of the outcome level indicators was extended, so the planning document remains without a relevant framework for monitoring performance.


working group for the development of the new strategy². Though initial discussions had already been held in 2020, the work on the new strategy properly began only in 2021, after the new Government took office. The composition of the working group was amended in May 2021 to reflect the changes that took place due the reorganisation within the MPADSM and other administrative authorities. The body includes civil society representatives as well. Though a working group has not been formally established, the MoFSW has also started its work on the new PFM Reform Programme with the involvement of all key stakeholders, including non-governmental ones. Both the developers of the new PAR Strategy and PFM Reform Programme held a series of meetings and focus-group discussions in the first half of 2021.

Conclusion

Since the expiry of the key PAR planning documents in 2020, the new strategic framework of PAR has not been developed and enacted yet. However, PAR is comprehensively recognised as a priority in key government central planning documents. Work on the development of a new PAR Strategy and a new PFM Reform Programme is ongoing, but no new documents have yet been finalised and adopted. Non-governmental stakeholders are involved in the development process of the new strategic framework.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

Overall, the value for the indicator 'Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting' is 0. Compared with the value 1 of this indicator in 2017, the difference comes from the lack of a framework from monitoring the implementation of reforms as there are no PAR strategies in force, while the implementation of reform activities and attainment of reform objectives remained low.

Indicator 1.2.1 - Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting								
This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR.								
Overall 2021 indicator value		since 2017	0	1	2	3	4	5
						Points 2021	Change from 2017	
1. Comprehensiveness of PAR reporting and monitoring systems						0/7	-4	
2. Implementation rate of PAR activities (%)						0/4	=	
3. Fulfilment of PAR objectives (%)						0/4	=	
Total						0/15	-4	

With the expiry of the PAR strategic planning documents in 2020 and lack of new plans, the monitoring and reporting system for PAR is currently not fully in place. The general reporting and monitoring obligation for PAR is established through the Government Decision on the Council for Public Administration Reform³ as well as by the Government Decree regulating strategic planning⁴. It was further detailed in the

² Decision of the Minister of Public Administration, Digital Society and Media (MPADSM) on the formation of the working body for the preparation of the Public Administration Strategy of Montenegro 2021-2025; Decision No. 01-078/20-3099 of 6 July 2020.

³ Article 7 of the Government Decision on the Formation of the Council for Public Administration Reform; Government Decision No. 04-1327, 18 March 2021.

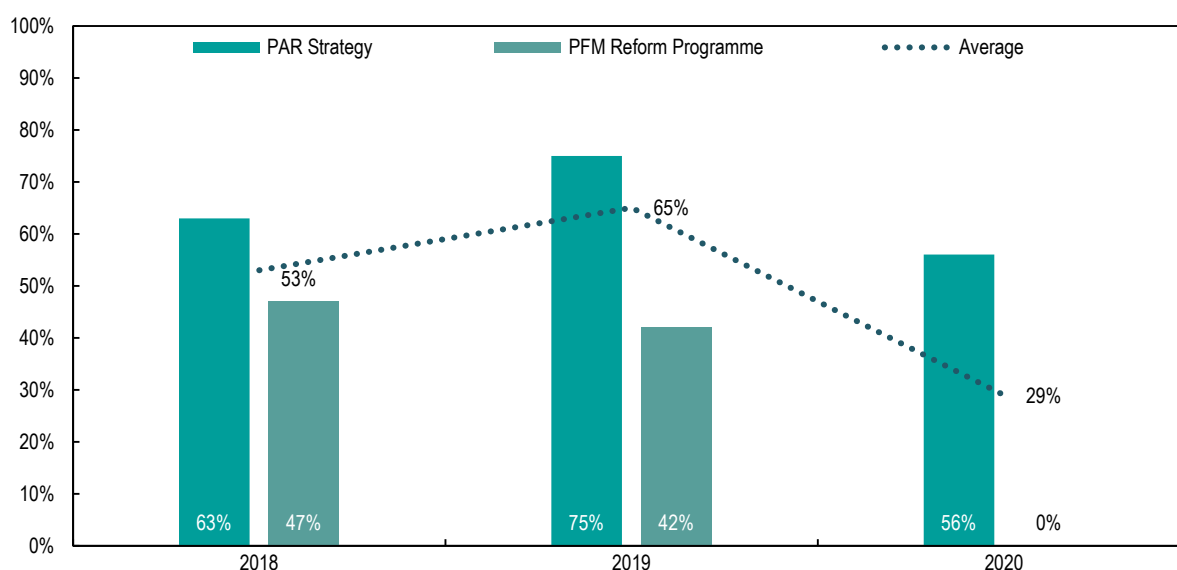
⁴ Article 19 of the Government Decree on Modalities and Procedure of Drafting, Alignment and Monitoring of Implementation of Strategic Documents; adopted on 19 July 2018, Official Gazette 54/2018.

systematisation of the MPADSM regarding roles related to monitoring and reporting on the PAR Strategy⁵. However, similar details for the PFM Reform Programme reporting are not set, as the systematisation of the MoFSW was not adopted by 30 June 2021. Furthermore, the details of the monitoring and reporting system were elaborated in the expired strategic plans, which were also complemented by detailed indicator passport documents.

The Government adopted and published a final report on the implementation of the PAR Strategy, including information about its implementation in 2020, on 29 April 2021⁶, but no final or annual report was adopted regarding the implementation of the PFM Reform Programme in 2020 by the time of finalising this assessment⁷. An annual implementation report, which is approved more than six months after the end of the reporting period, significantly limits the usefulness and relevance of the information from the report for management purposes.

The 2020 report on PAR Strategy illustrates well the general significant improvements made in the quality of the PAR reports in recent years. The report contains clear performance data based on the outcome-level indicators of the strategy and provides a detailed overview of the implementation of activities. Infographics are used to highlight the key elements regarding implementation and achievements. The elaboration of the final report on the PAR Strategy was done in an inclusive manner, offering an opportunity for civil society organisations (CSOs) to comment the draft report. It is noteworthy, however, that the PAR Council, which includes also CSO representatives, convened for the first time only on 15 July 2021. Consequently, the Government adopted the final report on the implementation of the PAR Strategy without prior deliberation by the PAR Council as had been the practice in previous years.

Figure 1. Implementation rate of PAR-related activities, 2018-2020



Source: Annual reports of the above-mentioned strategies.

⁵ Article 4 of the Government Decision on the Rulebook on internal organisation and systematisation of the Ministry of Public Administration, Digital Society and Media; Government Decision No. 04-1250/2, 18 March 2021.

⁶ <https://www.gov.me/dokumenta/50f923ab-72b8-477e-ad0f-f052ff388bc4>.

⁷ The SIGMA assessment covers the period until the end of June 2021. The Government adopted the report on the implementation of the PFM Reform Programme during 2020 only on 22 July 2021. In addition to the limited usefulness of an annual report being adopted so late, it is clear that the findings of the monitoring report were not used even for the preparation of the extension of the Action Plan for the PFM Reform Programme, which was approved together with the report. This is evident based on 23 of the activities that are reported to be implemented in 2020, but appear also in the extended Action Plan as commitments for 2021.

The implementation rate of activities from the PAR Strategy was low in 2020 (56%) and declined compared with previous years. The overall implementation rate for the PAR Strategy 2018-2020 Action Plan is 69%. As the report on the implementation of the PFM Reform Programme in 2020 has not been developed and official results were not available by the time of finalising this assessment, all of its 40 planned activities for 2020 are considered as not implemented in this assessment⁸. Hence, as of June 2021 the overall implementation rate of all PAR-related activities in 2020 is assessed to be 29%.

Based on attainment of the targets of outcome-level indicators, the achievement of objectives is even slightly lower than the implementation rate of activities. Some 44% of objectives (21 of 48) of the PAR Strategy were achieved: the areas of accountability and service delivery had the highest share of objectives achieved (55% for both), while policy development (25%) and public service and human resource management (14%) indicated the lowest achievement rate. Given that no report was available on the implementation of the PFM Reform Programme in 2020 by the time of finalising this assessment in June 2021⁹, all of its 41 indicators with targets for attainment are considered as not achieved. Thus, the overall rate of fulfilment of PAR-related objectives is 24%.

Conclusion

The monitoring and reporting system for PAR is not in place fully, given that the key planning documents expired in 2020 and new ones, which would further elaborate the key monitoring and reporting details including the indicators, are not in place yet. The quality of annual reports has improved significantly since 2017. However, the annual monitoring report on implementation of activities and achievement of objectives in 2020 exists only for the PAR Strategy, not for the PFM Reform Programme. The implementation rate and the fulfilment of PAR-related objectives are low.

⁸ The report that was adopted on 22 July 2021 suggests a 60% implementation rate for the Public Finance Management Reform Programme (PFM Reform Programme) in 2020, but according to the report even activities that are only “80% implemented” are considered to be fully implemented (according to footnote on p. 53). In addition, the extension of the Action Plan for the PFM Reform Programme for 2021 that was approved together with the report contains 23 activities that were supposedly fully implemented in 2020, according to the report. This suggests that these activities were not actually implemented in 2020. Therefore, the 60% implementation rate cannot be considered accurate.

⁹ The 2020 monitoring report that was adopted on 22 July suggests a 59% achievement rate of the targets of the outcome-level indicators. However, some of the results presented in the report are questionable and somewhat contradictory. In particular, several of the targets that are marked as achieved in the report are in fact not achieved based on the information provided in the report (e.g. indicators on average number of bids in procurement procedures, share of the use of electronic public procurement, difference between planned and realised public debt, average number of internal auditors).

Principle 3: The financial sustainability of public administration reform is ensured.

Overall, the value for the indicator ‘Financial sustainability of PAR’ is 0, which is lower than 1 in 2017. This negative trend is largely because there are no valid PAR planning documents in place, hence most of the aspects of financial sustainability cannot be assessed. Also, the actual funding of PAR cannot be fully verified, as the most expensive activities planned for implementation in 2020 with the use of national resources were not identifiable in the corresponding annual budget.

Indicator 1.3.1 - Financial sustainability of PAR		
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.		
Overall 2021 indicator value  since 2017	0	1 2 3 4 5
	Points 2021	Change from 2017
1. Costed PAR activities (%)	0/3	-2
2. Completeness of financial information in PAR planning documents	0/4	-1
3. Actual funding of the PAR agenda	0/3	=
Total	0/10	-3

Given that the PAR Strategy and the PFM Reform Programme expired at the end of 2020 and new planning documents are not in place, the quality of costing information in the plans and the share of costed activities cannot be assessed. The expired planning documents, however, provided information on the necessary additional funds required for their implementation and – in the case of the PFM Reform Programme – regarding the division between needed donor funds and national budget resources.

With regard to the actual funding of PAR, based on the assessment of the most expensive activities planned in the previous strategies for implementation in 2020, their actual funding cannot be identified when compared with the 2020 annual national budget¹⁰. However, the identified most expensive donor-funded activities for 2020 were all covered by identifiable corresponding donor plans¹¹. The funding of PAR relies heavily on EU support. All activities from the PAR Strategy Action Plan for 2018-20, which indicate the need for additional funding, refer to Sector Budget Support or other EU support as one of the sources. Even though the evaluation on the implementation of the PAR Strategy concluded that the resources for the implementation of the Strategy were generally sufficient¹², the heavy reliance on EU funds can limit the financial sustainability of the reform process (as also indicated in the 2021 final report on the implementation of the PAR Strategy¹³).

¹⁰ The following five activities requiring national budget resources were assessed from the PAR Strategy Action Plan: 4.6.1. 5c. Fostering inter-municipal cooperation on the basis of international practice analysis; 4.3.3. 2b: Strengthen capacities of human resources employees in central and local level in accordance with accredited educational program for human resources management; 4.3.3. 3c. Implementation of optimization plan; 4.2.3. 4c. Promotion of e-services to users; 4.2.3. 1c. Setting up a unique point of access to services – One-stop Government.

¹¹ The following three objectives/activities requiring donor funds were assessed from the PFM Reform Programme and the PAR Strategy Action Plan: e-Procurement; Enhancement of the Tax Administration administrative and institutional capacities in the field of application of VAT EU common system; Put in place the excise IT system at the national level.

¹² Mid-term Evaluation of the Public Administration Reform Strategy 2016-2020 in Montenegro, 2020, p. 47.

¹³ Final report on the implementation of the Public Administration Reform Strategy 2016-2020, with a review of activities for 2020, March 2021, pp. 13-14.

Conclusion

In the absence of valid planning documents for PAR, the financial sustainability and quality of costing cannot be assessed. The availability of funds, based on the review of the most expensive activities planned for implementation in the expired planning documents for 2020, is in place for the donor-funded activities but cannot be verified for activities requiring national budget resources.

Principle 4: Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

Overall, the value for the indicator 'Accountability and co-ordination in PAR' is 2. This is identical to the indicator value in 2017. Some positive developments, however, were observed compared with 2017, especially as the PAR Council has become functional and operative, including the representation of non-governmental stakeholders in the implementation management of PAR.

Indicator 1.4.1 - Accountability and co-ordination in PAR						
This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative level, and the performance of the leading institution.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Establishment of organisational and managerial accountability for PAR				4/6	=	
2. Co-ordination mechanisms for PAR				4/10	+1	
Total				8/16	+1	

Overall institutional responsibility for PAR is within the mandate of the MPADSM¹⁴, while the overall PAR co-ordination responsibility at the managerial level is assigned to the Ministry's Directorate for Strategic Planning in Public Administration, International Cooperation and Instrument for Pre-accession (IPA) projects¹⁵. Given that the PAR planning documents have expired and no valid new documents are in place, managerial accountability for the implementation of PAR-related activities is in place.

The highest political-level co-ordination forum for PAR is the PAR Council, which is led by the Prime Minister, and both the MoFSW and the MPADSM are members. The representatives of CSOs are involved as members of the PAR Council as well. The Council held one meeting in 2020 and was re-established after the general elections and formation of the new Government in March 2021. In 2021, the Council met for the first time only on 15 July to discuss the general objectives of the upcoming PAR strategy.

Administrative-level co-ordination of PAR is currently not in place, given that the Interdepartmental Operational Team established in 2018 by the Minister of Public Administration¹⁶ for the support of the

¹⁴ Article 8 of the Regulation on the Organisation and Manner of Work of the State Administration ("Official Gazette of Montenegro", No. 118/20 of 7 December 2020, 121/20 of 10 December 2020, 001/21 of 4 January 2021, 002/21 from 5 January 2021).

¹⁵ Article 4 of the Rulebook on internal organization and systematisation of the Ministry of Public Administration, Digital Society and Media (Government Decision No: 04-1250/2 of 18 March 2021).

¹⁶ Decision of the Minister of Public Administration on establishing the Interdepartmental Operational Team for coordination during implementation of the activities from the Action Plan for implementation of the 2016-2020 Public Administration Reform Strategy; Decision Number: No. 01-050/18-21 1 of 23 January 2018. The Team also included

implementation of the expired PAR strategic framework, had no meetings in 2020 and its mandate expired with the expiry of the planning document. Administrative-level co-ordination for the PFM Reform Programme was not functional throughout the duration of the previous reform strategy.

Conclusion

The PAR Council, as the political-level co-ordination forum for PAR including non-governmental members, was re-established but met only once in 2020 and convened for the first time under the new Government only in July 2021. While the overall institutional and managerial responsibility for PAR is established, responsibility for implementing individual PAR activities cannot be assessed, as the new planning documents are still under development and the previous ones have expired. Administrative-level co-ordination is currently not in place.

representatives from the Ministry of Finance and hence also covers the PFM thematic area. However, a separate PFM Co-ordination Working Group was also established in 2017 to monitor the implementation of the PFM Reform Programme 2016-2020, but its mandate also expired with the expiry of the PFM RP.

Policy Development and Co-ordination

The Principles of Public Administration Policy Development and Co-ordination

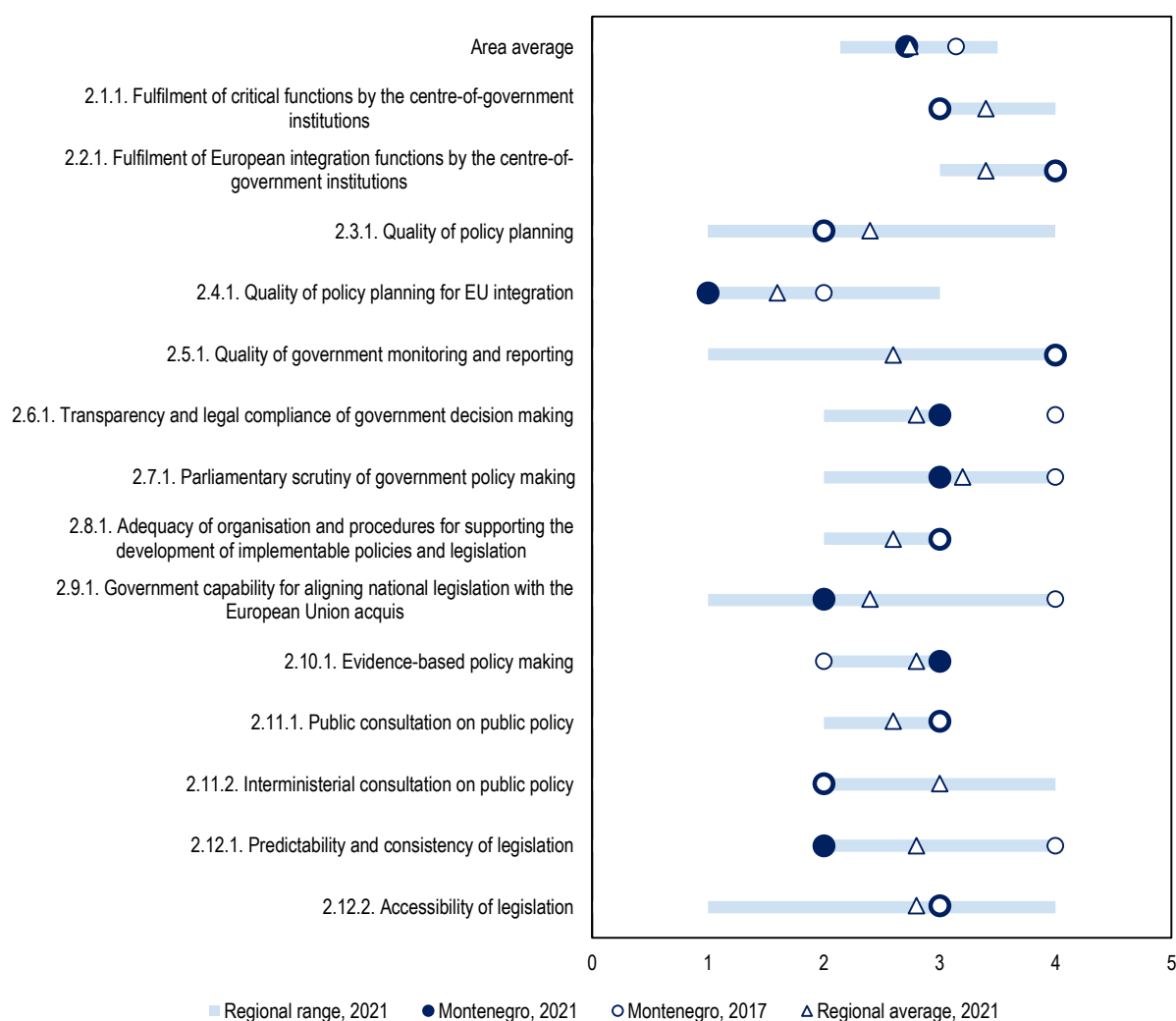
Principle 1	Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.
Principle 2	Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.
Principle 3	Harmonised medium term policy planning is in place, with clear whole of government objectives, and is aligned with the financial circumstances of the government; sector policies meet the government objectives and are consistent with the medium term budgetary framework.
Principle 4	A harmonised medium term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.
Principle 5	Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.
Principle 6	Government decisions are prepared in a transparent manner and based on the administration's professional judgement; legal conformity of the decisions is ensured.
Principle 7	The parliament scrutinises government policy making.
Principle 8	The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.
Principle 9	The European integration procedures and institutional set up form an integral part of the policy development process and ensure systematic and timely transposition of the European Union <i>acquis</i> .
Principle 10	The policy making and legal drafting process is evidence based, and impact assessment is consistently used across ministries.
Principle 11	Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.
Principle 12	Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

Policy Development and Co-ordination

Summary and recommendations

Montenegro has an area average of 2.7 for policy development and co-ordination. This is the same as the regional average. Compared to 2017, the area average has fallen from 3.1. Only the value for the indicator on evidence-based policy making improved over the period, while the values decreased for six indicators (and remained the same for seven). The challenges with the implementation of central planning documents in 2020 contributed most to the reduction in indicator values, especially in the area of planning for European integration.

On average, performance has deteriorated in the policy development and co-ordination area since 2017. The only improvements are in evidence-based policy making



The critical functions for ensuring well-organised policy making are assigned to the centre of government (CoG) bodies. Challenges remain with the co-ordination of activities between CoG bodies, an example being the preparation process for the Government Annual Work Plan (GAWP). The General Secretariat of the Government (GSG) and the European Integration Office (EIO) co-operate during its preparation to ensure alignment between domestic and EI-related plans, but the Ministry of Finance and Social Welfare (MoFSW) is not participating in this co-ordination.

The institutional responsibility for overall co-ordination of EI activities was transferred to the EIO in 2018 after the dissolution of the former Ministry of European Affairs (MEA). The EIO co-ordinates all key EI-related functions from the negotiation process, the planning and monitoring to the review of legislation on harmonisation with the EU *acquis*. However, **the co-ordination forums for EI at both the administrative and political levels, established to ensure the smooth running of the accession process, continue to convene only rarely despite significant challenges with the implementation of the planned EI commitments.**

The main positive development in the area of policy planning is the establishment of the regulatory and methodological framework supporting strategic planning 2018. The GSG is responsible for reviewing the compliance of draft strategies with the new requirements and performs well, as most of the sample draft strategies that SIGMA has reviewed met the basic content-related requirements. Challenges remain with complying with the requirements for costing of strategies and with ensuring the alignment of the cost estimates with the Fiscal Policy Guidelines (FPG) as the medium-term budget plan. This is indicative of the **wider disconnect between policy and fiscal plans**: the priorities of the FPG are not aligned to the ones from the Exposé of the Prime Minister or the GAWP. In addition, 72% of the draft laws and 52% of the draft strategies planned for adoption in 2020 were carried forward to the 2021 plan. This suggests significant room for improvement in the preparation of high-quality and realistic work plans for the Government and in ensuring their implementation during a challenging period.

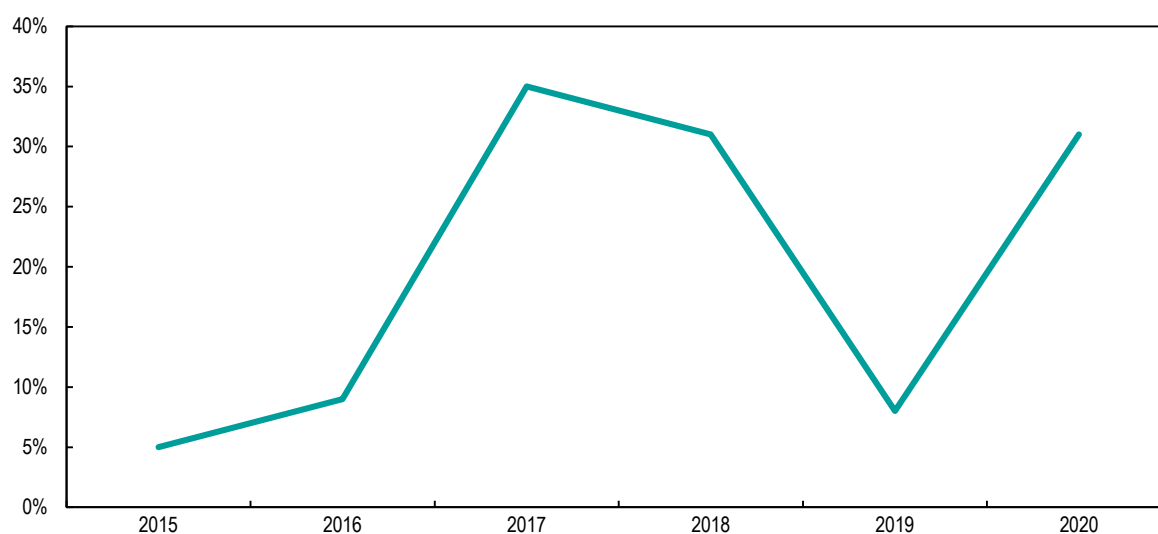
Montenegro's Programme of Access to the EU (MPAEU) as the plan for all EI-related commitments, suffers from the same challenges as the GAWP. Only 18% of the planned legislative commitments were approved in 2020, and 62% were carried forward to the plan for 2021. The MPAEU is well aligned to the GAWP, but it does not include any cost estimates or sources of funding for ensuring that a sufficient budget is available for implementing EI-related activities.

Reports on the implementation of central planning documents are publicly available but do not contain any outcome-level data on the achievement of objectives. They only contain information on the implementation of individual activities.

The requirements for ensuring a high-quality government decision-making procedure are largely in place. In practice, the procedural requirements are complied with, but **there is no review of the coherence of draft proposals with Government priorities at the administrative level for most drafts.** The GSG is reviewing only sector strategies, but the coherence of the content of draft legislation with previously announced policies is not conducted by any CoG body. In addition, the effectiveness of the decision-making process, as well as the transparency, has been hampered by the high share of items submitted to the agenda after the formal deadline.

The legal framework for enabling parliamentary scrutiny of Government policy making is in place, but challenges remain with its purposeful implementation. **Thirty-one percent of Government-sponsored draft laws were adopted in extraordinary proceedings in 2020, limiting the possibilities for parliamentary debate.** Moreover, 69% of draft laws proposed by the Government to the Parliament did not originate from the GAWP. This increases the need for regular co-ordination arrangements between the administrations of the Parliament and the Government to ensure the effective processing of the drafts, yet these arrangements are missing. Furthermore, the Government is not consistent in providing its opinions on the draft bills that members of the Parliament initiate.

The Parliament adopted nearly one-third of the Government-sponsored draft laws in extraordinary procedures in 2020



Source: Annual reports of the Parliament.

Twelve line ministries are in charge of policy development according to their areas of responsibility. However, there are no regulations or consistent practices in place that would enable them to fully utilise their internal capacities for the benefit of good policy making. For example, the ministerial budget departments are not involved in the drafting of policies. Furthermore, the **capacities and experience of officials drafting policy documents for EU affairs are not applied in the domestic policy development process.**

Procedures to ensure effective transposition of the *acquis* are in place and followed in practice. The drafts dealing with *acquis* alignment undergo similar requirements for prior consultation and analysis as domestic policy proposals. However, challenges remain with the translation of the *acquis* by the time of planned transposition. In addition, **in 2020 the Government approved only 35% of planned draft laws and regulations dealing with *acquis* alignment.**

Regulatory Impact Assessment (RIA), covering all key impact areas, is mandatory for all draft laws and regulations. The MoFSW is co-ordinating the process and ensuring the quality control on analysis, but it is focusing only on impacts to businesses and budget impacts. **There is no control over the quality of analysis covering wider economic, social or environmental impacts.** Based on the review of sample policy proposals, the quality of analysis has improved compared with 2017, but alternative regulatory and non-regulatory options for achieving the policy goals are still not covered in the analysis.

The requirements for public consultation and interministerial consultation are in place. The Ministry for Public Administration, Digital Society and Media (MPADSM) is functionalising its mandate as the body ensuring compliance with the requirements for public consultation. Based on the review of practices of four sample ministries, **drafts are made available for public consultation relatively consistently, but challenges remain with the publication of RIA reports alongside draft legislation.** The effectiveness of the interministerial consultation process is hampered by the lack of a minimum duration for the review of draft proposals of other ministries. In addition, there is no administrative-level conflict resolution in place: all potential differences of opinion have to be resolved at the political level at Government committees or in the Government session. In practice, the CoG bodies are consulted consistently, but not all other affected ministries.

The legal drafting process is supported by the relevant manuals, as well as a functional quality control performed by the Secretariat for Legislation (SL). Nevertheless, a high share of laws is amended within a year after adoption (17%¹). In addition, **the mandatory by-laws for implementing the laws are not adopted by the time laws take effect, contributing to a lack of legal certainty.**

Access to legislation is hampered by the absence of consolidated versions of legal acts free of charge. The perception of availability of laws and regulations among businesses has further deteriorated compared with 2017.

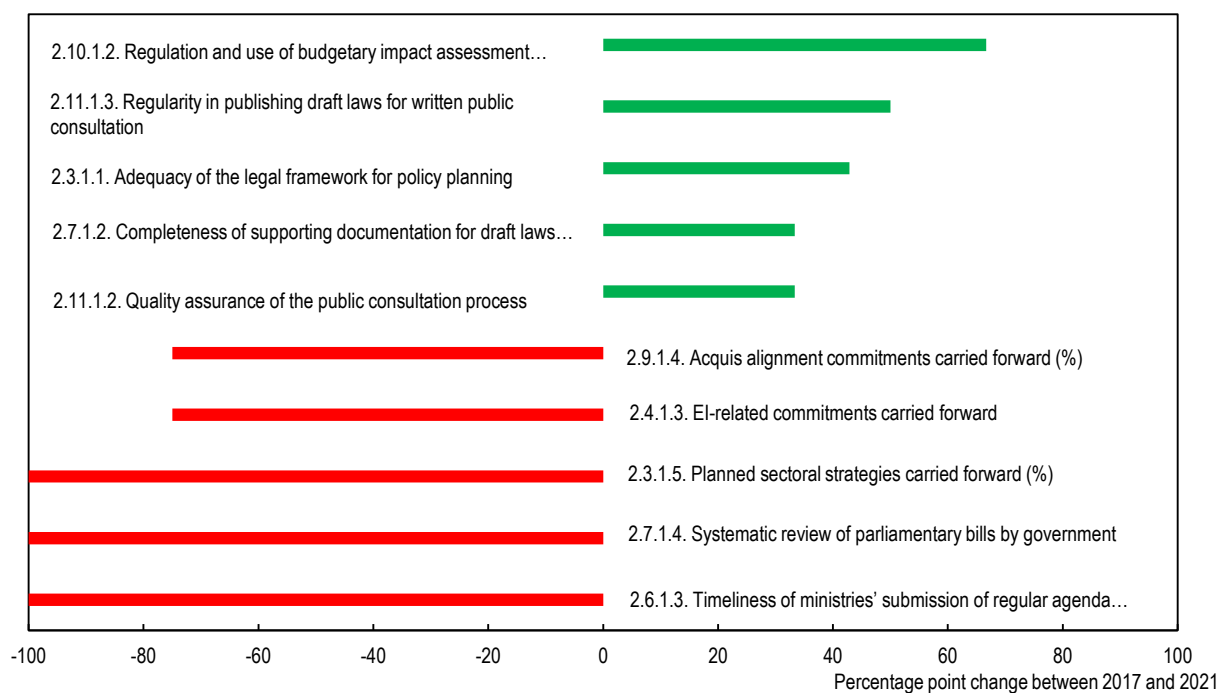
Short-term recommendations (1-2 years)

- 1) The Government, under the leadership of the MoFSW and the GSG, should ensure alignment between the objectives of policy and fiscal plans.
- 2) The Government should ensure that the EI co-ordination bodies at the political and administrative levels become fully functional with meetings taking place regularly. Both forums should be actively involved in the planning of EI and in monitoring progress of key reforms crucial for the EU accession process.
- 3) The GSG should gradually include information on the outcomes of Government policies into the annual reports on the implementation of the GAWP by using the indicators and targets established in the GAWP.
- 4) The Government should strengthen the GSG's role by mandating it to return draft legal acts and strategies to the ministries with requests for consideration of adjustments, if the substance requires further improvement or is inconsistent with the Government's priorities.
- 5) The Government should follow its legislative plans when submitting drafts to the Parliament. It should request the processing of drafts in urgent procedures only in case of unforeseen circumstances and should not use this possibility for the regular adoption of the state budget.
- 6) The EIO should ensure that the EU legislation that is planned for transposition is available in the local language before the drafts dealing with the harmonisation of legislation are drafted.
- 7) The Government, under leadership of the MoFSW, should establish quality control over the RIA covering all key impact areas, including economic, environmental and social impacts.
- 8) The MPADSM should establish the internal procedures for ensuring that all draft proposals from all ministries are reviewed prior to their submission to the Government to ensure their compliance with the requirements for public consultation.
- 9) The Government, under the leadership of the SL, should ensure that all draft laws foresee an adequate transitional period after the adoption of the law and before the law takes full effect, to allow for the timely adoption of all by-laws necessary for the implementation of the law.
- 10) The Government should ensure that all primary and secondary legislation is available online in consolidated format, free of charge.

Medium-term recommendations (3-5 years)

- 11) The Parliament should increase oversight of the implementation of laws, by establishing a system of reporting on major legislation.
- 12) The line ministries should further engage the officials currently involved exclusively in the EU-related affairs into the domestic policy development in order to use their experience most effectively.

The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Improvements in evidence-based policy making and public consultation, while the co-ordination between the Parliament and the Government regressed and high share of planned commitments were carried forward by the Government



Analysis

Principle 1: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.

Overall, the value for the indicator “Fulfilment of critical functions by the centre-of-government institutions” is 3, the same as in 2017. The legal and methodological framework supporting the policy development process has become more complete after the adoption of the regulation and manual for the preparation of strategic documents in 2018, but challenges remain with the co-ordination between CoG bodies during policy planning and with the review of draft policy proposals within the GSG.

Indicator 2.1.1 - Fulfilment of critical functions by the centre-of-government institutions

This indicator measures to what extent the minimum requirements for functions critical to a well-organised, consistent and competent policy-making system are fulfilled by the centre-of-government (CoG) institutions.

As this indicator is used to assess the fulfilment of the minimum requirements, it does not measure outcomes or include quantitative sub indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.

Overall 2021 indicator value	0	1	2	3	4	5
				3		
				Points 2021	Change from 2017	
1. Critical functions are assigned to CoG institutions by legislation				8/8	=	
2. Availability of guidelines to line ministries and other government bodies				3/4	+1	
3. Institutionalisation of co-ordination arrangements between the CoG institutions				0/4	=	
Total				11/16	+1	

Laws and regulations assign the CoG functions have been assigned to the GSG, the SL, the MSW and the EIO²¹. The GSG is responsible for co-ordinating the preparation of Government sessions, leading the preparation of the GAWP and monitoring its implementation, co-ordinating Government communication activities and managing the relationship between the Government and other parts of the state. The GSG and the MoFSW share the responsibility for checking the policy content of proposals, as the MoFSW scrutinises the quality of RIA reports attached to draft laws and regulations and the GSG co-ordinates the development of strategies. The GSG is responsible for checking the overall compliance of submitted materials with Government policies. In addition, the MoFSW is tasked with public resource planning and ensuring the affordability of policies. The SL is responsible for ensuring legal conformity. The EIO co-ordinates the policy reforms related to the EI process, as well the use of the EU financial assistance supporting those reforms.

In 2018, the Government adopted a decree²² stipulating the requirements for the development of strategies, together with the methodology²³. Initially, the MEA was responsible for the co-ordination of strategic planning, but the task was transferred to the GSG after the dissolution of the MEA in 2018. In

²¹ The key legal acts regulating the functioning of CoG institutions include the Law on State Administration (Official Gazette No. 78/2018), the Law on Budget and Fiscal Responsibility (Official Gazette No. 20/14), the Rules of Procedure of the Government (Official Gazette No. 03/12), the Decree on the Government (Official Gazette No. 080/08) and the Decree on the Organisation and Operation of the Public Administration (Official Gazette No. 118/20).

²² The Government Decree on the manner and procedure of preparing, harmonizing and monitoring the implementation of strategic documents (Official Gazette, 54/2018) is available at: <https://www.gov.me/dokumenta/23c216b2-3eb7-453c-b0a7-3cdae9e9742e>.

²³ The Methodology for policy development, preparing and monitoring of the implementation of strategic documents, prepared and published by the General Secretariat, is available at: <https://www.gov.me/dokumenta/2af986d7-06a4-492a-a356-facac7597d38>.

addition, according to the new systematisation act of the GSG²⁴ adopted in 2021, the same unit is now responsible for the preparation of the Government work plans as well as for the co-ordination of strategic planning and for quality control on sector strategies, ensuring a co-ordinated approach to all policy planning processes.

However, apart from the review of draft strategies, there is no review of the content draft policy proposals submitted to the Government within the GSG at the administrative level. The proposals are discussed at the sessions of the Government committees, which are the political-level bodies administratively supported by the GSG. When preparing materials for the sessions of these committees, the GSG focuses on procedural compliance of received proposals, not on the substance (e.g. compliance with Government priorities).

The GSG and the EIO co-operate and co-ordinate their activities during the preparation of the GAWP, but the MoFSW is not involved in these discussions and provides only a separate opinion on the draft GAWP prior to its adoption. This illustrates the overall disconnect between the processes of policy planning and budget planning.

Conclusion

Critical CoG functions are all established and assigned to responsible institutions. A key step forward since 2017 has been the adoption of the legal and methodological framework for strategic planning and its implementation by the GSG. However, apart from draft sector strategies, the GSG does not review the content of other policy proposals submitted to the Government for decision. The GSG and the EIO co-operate during the preparation of the GAWP, but the MoFSW is not participating in this process.

²⁴ Rulebook on Internal Organisation and Systematisation of the General Secretariat of the Government of Montenegro, adopted on 8 April 2021.

Principle 2: Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.

Overall, the value for the indicator ‘Fulfilment of European integration functions by the centre-of-government institutions’ is 4. The EIO has been established as the institution co-ordinating EI in place of the former MEA, but there has been no change in the indicator value compared with 2017, nor at the level of the sub-indicators.

Indicator 2.2.1 - Fulfilment of European integration functions by the centre-of-government institutions

This indicator measures to what extent the minimum criteria for European integration (EI) functions are fulfilled by the CoG institutions.

As this indicator is used to assess the fulfilment of the minimum criteria, it does not measure outcomes or include quantitative indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.

Overall 2021 indicator value	0	1	2	3	4	5
					Points 2021	Change from 2017
1. Proportion of the EI functions that are assigned to the CoG institutions by law					6/6	=
2. Availability of guidelines to line ministries and other government bodies					4/4	=
3. Government’s capacity for co-ordination of EI					6/8	=
Total					16/18	=

The Decision on the Establishment of the Negotiating Structure for the Accession of Montenegro to the EU²⁵, as well as the Rulebook on Internal Organisation and Systematisation of the Cabinet of the Prime Minister of Montenegro²⁶, assigns the EI co-ordination functions to the EIO. These include the overall daily co-ordination of EI, the planning of EI, the monitoring of the country’s preparations for the EU accession process (including the preparation of reports on EI policies), the co-ordination of alignment of national legislation with the *acquis*, the overall programming and monitoring of the EU financial assistance to key reforms and the co-ordination of the EU accession negotiations.

The necessary guidelines and manuals have been developed to support the implementation of the established EI related functions, including the Guidelines on the Alignment of Montenegrin Legislation with the EU Acquis, the Manual for the Translation of EU Legal Acts and the Methodological Guidelines for Developing Montenegro’s Programme of Accession to the EU.

The Collegium for Accession Negotiations, chaired by the Prime Minister, has been established as the main political-level co-ordination forum for EI. The Commission for European Integration is the administrative-level co-ordination body. However, the Collegium and the Commission are not fully functional as co-ordination bodies, as they each held only one meeting during 2020²⁷.

The MPAEU is an annually updated three-year plan. The Government adopted the 2021-2023 MPAEU²⁸ on 30 March 2021. The EIO co-ordinates its preparation and the drafting of annual reports on its

²⁵ The Government’s Decision on Establishing Negotiating Structure for the Accession of Montenegro to the European Union (Official Gazette No. 9/12, 15/14). The Decree is available at the following link: <https://www.gov.me/dokumenta/999c9c81-cd93-4a1c-858f-cb40e34eb85d>.

²⁶ The Rulebook is available at: <https://www.gov.me/dokumenta/9c85d913-5e30-49f9-a12d-49d6d5f43f5a>.

²⁷ According to the SIGMA assessment methodology, more frequent meetings of the respective bodies are expected for the relevant body to be considered as fully functional.

²⁸ Adopted on 30 March 2021. The MPAEU (in English) is available at the following link: <https://www.gov.me/en/documents/0b00010a-937a-4b56-8e87-6cf4a8be0a20>.

implementation. In addition, the EIO consistently provides opinions on the draft legislation transposing the *acquis*. The overall co-ordination of the programming and implementation of the EU pre-accession financial assistance lies with the National IPA Co-ordinator (NIPAC), which is appointed within the EIO. It acts as the main counterpart of the European Commission for the overall process of strategic planning, co-ordination of programming, monitoring of implementation, evaluation and reporting of IPA assistance.

Conclusion

The necessary regulatory and methodological framework to support key EI functions is established. The EIO, as the successor to the former MEA, has been assigned all key CoG functions related to the EI process, including the planning and monitoring of EI as well as providing opinions on legal acts transposing the *acquis*. The main challenge is still related to ensuring effective functioning of the established EI co-ordination mechanisms at both the political and administrative levels.

Principle 3: Harmonised medium-term policy planning is in place, with clear whole-of-government objectives, and is aligned with the financial circumstances of the government; sector policies meet the government objectives and are consistent with the medium-term budgetary framework.

The value for the indicator ‘Quality of policy planning’ is 2. This is the same value as in 2017. Progress has been made with the establishment and implementation of the requirements for the development of sector strategies, but links between policy and fiscal planning remain limited. Additionally, a high share of GAWP commitments are being carried forward from one year to the next.

Indicator 2.3.1 - Quality of policy planning						
This indicator measures the legislative, procedural and organisational set-up established for harmonised policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated.						
Overall 2021 indicator value	0	1	2	3	4	5
			Points 2021			Change from 2017
1. Adequacy of the legal framework for policy planning			6/7			+3
2. Availability of guidance to line ministries during the policy-planning process			3/4			+1
3. Alignment between central policy-planning documents			3/6			+1
4. Planned commitments carried forward in the legislative plan (%)			0/4			-2
5. Planned sectoral strategies carried forward (%)			0/4			-4
6. Presence of minimum content in sector strategies			5/6			new ²⁹
7. Completeness of financial estimates in sector strategies			2/5			+1
8. Alignment between planned costs in sector policy plans and medium-term budget			0/3			=
Total			19/39			+5

The status of key Government planning documents is established in the legislative framework, together with the responsibilities for their preparation. The Law on Budget and Fiscal Responsibility foresees the FPG as the medium-term fiscal plan and provides instructions for the preparation of the budget³⁰. According to the Government rules of procedure (RoP), the GSG co-ordinates the preparation of the GAWP, based on the Mid-Term Work Programme of the Government and the Exposé of the Prime

²⁹ This is a new sub-indicator since the 2017 assessment.

³⁰ Articles 18, 22 and 29.

Minister³¹. The MPAEU is a three-year rolling plan for all activities related to EU accession. The 2018 Decree on the Manner and Procedures of Drafting, Harmonising and Monitoring the Implementation of Strategic Documents establishes the requirements for the development of strategic planning documents.

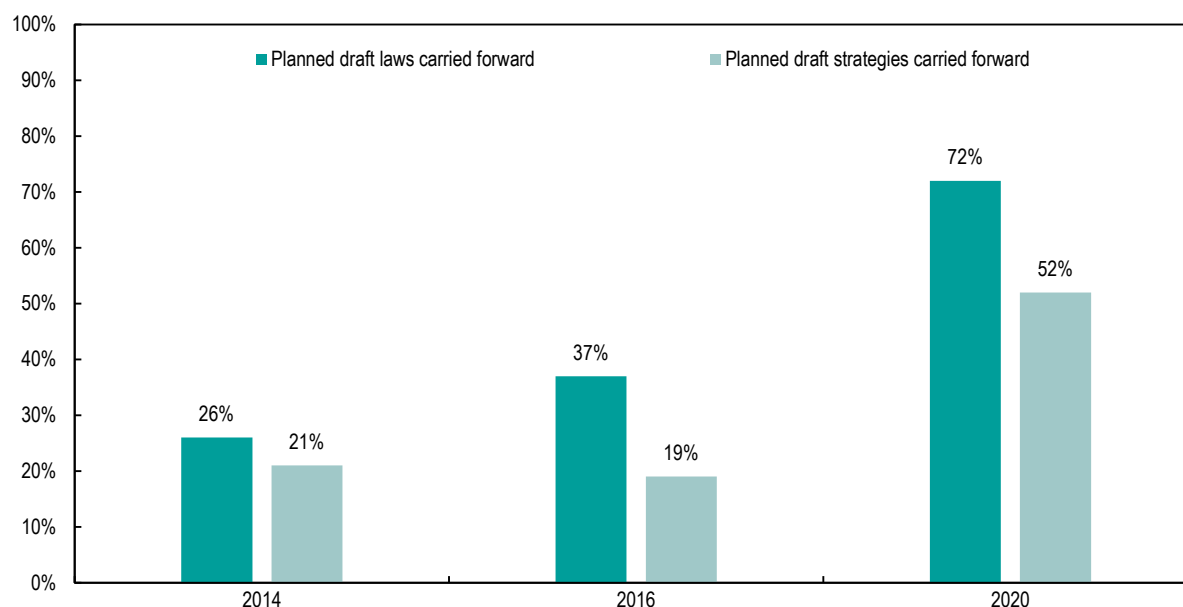
However, the hierarchy of planning documents is not entirely clear, as the role and position of the Montenegro Development Directions (MDD), which according to the document itself determines the strategic development goals of Montenegro, is not clearly established in the legal framework. Furthermore, it is not clear how the goals of the MDD relate to the objectives in other planning documents. The MDD is based on a completely different framework of pillars than the seven sectors stipulated in the Decree on the Manner and Procedures of Drafting, Harmonising and Monitoring the Implementation of Strategic Documents. As a consequence, the planning documents are not logically linked.

The GSG is responsible for the review of draft strategies to ensure their alignment with other planning documents determining the general development directions of Montenegro, while the MoFSW is reviewing the financial affordability of the planned measures.

In 2021, for the first time, the Government introduced outcome-level indicators for each Government priority included in the 2021 GAWP³². This is a positive development that will help measure the progress towards policy objectives. However, the disconnect between the policy and fiscal plans is highlighted by the fact that the GAWP 2021 priorities are not reflected in the FPG 2021-2023, which was updated in March 2021 at the same time the most recent GAWP was being finalised. In addition, the list of indicators put forward by the FPG 2021-2023 is not linked to the Government priorities as stated in the Exposé of the Prime Minister from December 2020.

The share of planned draft laws carried forward from the 2020 GAWP to the next is high (72%) and has almost doubled compared with 2017 (37%). The same applies for the share of planned sector strategies carried forward (52%), which has almost tripled compared with 2017 (19%).

Figure 1. Commitments carried forward in the Government Annual Work Plan



Source: Government Annual Work Plans.

³¹ Article 28.

³² Adopted on 30 March 2021.


The sample sector strategies³³ reviewed for the assessment are largely compliant with the established requirements. They contain situation analysis, policy objectives with indicators and targets for their measurement, as well as describe the monitoring and reporting arrangements. In three of the five strategies, however, a large share of activities are not accompanied by a precise implementation deadline and do not contain cost estimates for some activities with additional spending needs. None of the analysed five sample sector strategies includes complete information about the total cost estimates of the planned activities, nor the sources of funding, in a clear manner for all activities with additional spending needs. Finally, it is not possible to find the cost estimates for the implementation of the corresponding objectives and activities of sample sector strategies from the FPG. Therefore, the planned costs of the sectoral policy plans are not considered to be aligned with the medium-term fiscal plan.

Conclusion

The legal and methodological framework for policy planning is in place. The quality of the policy planning system has been enhanced by the adoption of the requirements for the development of sector strategies, in addition to the inclusion of outcome-level indicators into the GAWP. Challenges remain with the coherence between the priorities of the policy and fiscal plans, as well as with the costing of strategies. A high share of GAWP commitments were carried forward in 2020.

Principle 4: A harmonised medium-term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.

The total value for the indicator 'Quality of policy planning for European integration' is 1, down from 2 in 2017. The main reason for the lower indicator value is the high number of items carried forward from the 2020 MPAEU to 2021.

Indicator 2.4.1 - Quality of policy planning for European integration		
This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI related commitments.		
Overall 2021 indicator value  since 2017	0	1
	2	3
	4	5
	Points 2021	Change from 2017
1. Adequacy of the legislative framework for harmonised planning of EI	1/2	=
2. Quality of planning documents for EI	4/6	=
3. EI-related commitments carried forward (%)	0/4	-3
4. Implementation rate of the government's plans for EI related legislative commitments (%)	0/4	=
Total	5/16	-3

The adoption of the MPAEU, as the main planning document for all EI-related activities, is based on the Stabilisation and Association Agreement signed between Montenegro and the EU³⁴. The EIO is directly responsible for its preparation, and the plan is discussed at the meeting of the Commission for EI

³³ The following five sample strategies have been analyzed: 1) Strategy for Prevention and Suppression of Radicalisation and Violent Extremism 2020-2024; 2) Diaspora and Emigrant Cooperation Strategy 2020-2023; 3) Strategy for LifeLong Entrepreneurial Learning of Montenegro 2020-2024; 4) Strategy for Development of Vocational Education in Montenegro 2020 – 2024; 5) Maritime Economy Development Strategy 2020-2030.

³⁴ Article 72 of the Stabilisation and Association Agreement specifies the requirement for the preparation of a programme covering all legal approximation-related activities.

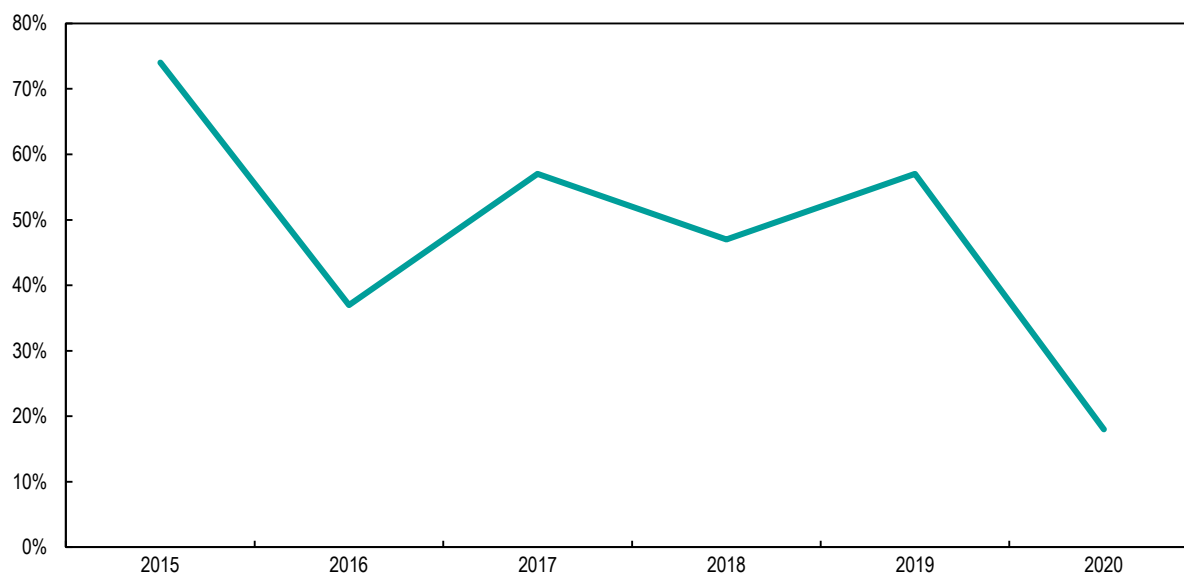
(the administrative-level co-ordination forum for EI) before the Government adopts it. However, the legal framework does not stipulate any other rules or requirements for the development process or its content (e.g. duration, frequency of revision, requirements for costing of measures). The Government RoP highlights only the need to align the Government work programme with the obligations stemming from the EU accession process.

In practice, the MPAEU is a rolling three-year plan, updated annually. The most recent version was adopted by the Government on 30 March 2021, for the period 2021-2023³⁵. The plan contains all commitments related to the EU accession process, structured according to the chapters of the *acquis*. It stipulates the deadlines for their completion, as well as the responsible institutions. However, the activities in the MPAEU are not costed, and there is no information on potential sources of funding for implementing the aligned legislation.

The EIO, in co-operation with the GSG, has well integrated the preparation of the MPAEU into the domestic policy planning processes. As a result, there is a high level of alignment between the MPAEU and the GAWP, as evidenced by the fact that 96% of legislative activities planned for implementation in 2021 in the MPAEU are also included in the 2021 GAWP.

Challenges remain with the implementation of the plan. The implementation rate of legislative commitments from the MPAEU has been consistently below 60% since 2016. In 2020 it reached its lowest-point at 18%³⁶. Only 7 out of 40 EI-related draft laws from the 2020 plan were adopted. Weak implementation is also reflected in the high carry-forward rate: 62% of commitments were carried forward from the 2020 to the 2021 plan. This is significantly higher compared with the results of the 2017 assessment, when 27% of commitments were carried forward.

Figure 2. Implementation rate of European Integration-related legislative commitments, 2015-2020



Source: Reports on the implementation of the Montenegro Programme of Access to the EU.

Conclusion

The legal framework for the medium-term planning of EI is in place. The EIO and the GSG co-ordinate during the preparation of the MPAEU, thus the MPAEU is well aligned to the GAWP

³⁵ Available at: <https://www.gov.me/en/documents/75fd43fa-de2e-4e70-9a1f-08e6fa224235>.

³⁶ As the statistics related to the implementation of the 2020 plan seem to be a clear outlier compared with previous years, the rather negative trends can be partly explained by the impact of COVID-19, as well as parliamentary elections held in 2020 (the previous lowest implementation rate was in 2016, at the time of the parliamentary elections).

in substance. Nevertheless, the absence of costing for activities included in the MPAEU and the low implementation rate of planned activities remain the biggest challenges.

Principle 5: Regular monitoring of the government’s performance enables public scrutiny and supports the government in achieving its objectives.

The overall value for the indicator ‘Quality of government monitoring and reporting’ is 4, the same as in 2017. The main positive development relates to the establishment of the requirement to report on implementation of sector strategies.

Indicator 2.5.1 - Quality of government monitoring and reporting						
This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.						
Overall 2021 indicator value	0	1	2	3	4	5
					Points 2021	Change from 2017
1. Adequacy of the legislative framework for monitoring and reporting					8/8	+1
2. Quality of reporting documents					6/12	=
3. Public availability of government reports					5/5	=
Total					19/25	+1

The legislative framework for monitoring and reporting is in place. The Law on Budget and Fiscal Responsibility stipulates the regular monitoring and reporting obligation on the implementation of the budget, including the independent analysis of indicators of fiscal responsibility by the State Audit Office³⁷. The Government RoP stipulate the obligation of quarterly monitoring and reporting on the implementation of the GAWP, which includes all legislative commitments³⁸. The EIO is responsible for monitoring the implementation of the MPAEU and for preparing the annual reports. The main change in the legal framework is the adoption of the Decree on the Modalities and Procedure of Drafting, Alignment and Monitoring the Implementation of Strategic Documents, which introduced for the first time a clear obligation to regularly monitor and report on the implementation of sector strategies³⁹. All reports on central planning documents have to be made publicly available, according to the RoP⁴⁰.

The GAWP report provides information on the achievement of outputs, with an overview of adopted acts and percentage of achievement of obligations for each ministry. In 2020, the reports were prepared only for the first three quarters due to the Parliamentary elections in August, after which the caretaker Government remained in power until the new Government was voted in in early December 2020. The 2021 GAWP was the first Government work plan to include outcome level indicators and targets; therefore, the report on the 2020 plan still does not provide any information on the achievement of outcomes. The same focus on output-level reporting is present in the report on the implementation of the MPAEU 2020-2022 for 2020, which contains the overview of the achievement of obligations stemming from all chapters of the EU accession negotiations and the progress in the transposition of the *acquis* into the national legal system.

All five analysed sector strategy reports include information on the achievement of outputs, but not on outcomes. None of the strategies includes clear outcome-level indicators or target values. This may be

³⁷ Article 26.

³⁸ Article 31.

³⁹ Article 19.

⁴⁰ Article 30.

due to their adoption before the entry into force of the new Decree on the Modalities and Procedure of Drafting, Alignment and Monitoring the Implementation of Strategic Documents in 2018.


A review of a sample of reports confirms that the quarterly reports on the implementation of the GAWP⁴¹ and the annual report on the implementation of the state budget, as well as the annual report of the MPAEU and the implementation reports on sector strategies, are all publicly available⁴².

Conclusion

The legal framework for monitoring and reporting on Government performance is fully in place. It was recently enhanced with the adoption of a new requirement for the monitoring of implementation of sector strategies. In practice, the reports on planning documents still focus on outputs, not outcomes. Government reports are publicly available.

Principle 6: Government decisions are prepared in a transparent manner and based on the administration's professional judgement; legal conformity of the decisions is ensured.

Overall, the value for the indicator 'Transparency and legal compliance of government decision making' is 3, which is lower than the value 4 in 2017. This is mainly due to the new challenges in the timely submission of proposals for final approval by the Government.

Indicator 2.6.1 - Transparency and legal compliance of government decision making								
This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision making, and businesses' perception of the clarity and stability of government policy making.								
Overall 2021 indicator value		since 2017	0	1	2	3	4	5
			Points 2021	Change from 2017				
1. Adequacy of the legislative framework for government session procedures			4/5	=				
2. Consistency of the CoG in setting and enforcing the procedures			3/4	=				
3. Timeliness of ministries' submission of regular agenda items to the government session (%)			0/3	-3				
4. Openness of the government decision-making process			4/4	+1				
5. Perceived clarity and stability of government policy making by businesses (%)			0/4	-1				
Total			11/20	-3				

The Government RoP establish clear rules and procedures for the preparation, follow-up and communication on Government sessions, as well as the role of the GSG in checking the procedural compliance with the main requirements for materials submitted to the sessions⁴³. In addition, the Rulebook on Internal Organisation and Systematisation of the General Secretariat stipulates the responsibility of the GSG to conduct expert analysis of submitted policy proposals with respect to their compliance with Government policies established in relevant areas and to oversee the quality of the strategy development process⁴⁴. However, the GSG does not have the mandate to return draft proposals in case of substantial

⁴¹ Due to the Parliamentary elections and the change in Government in the second half of 2020, quarterly reports are exceptionally considered as sufficient samples.

⁴² <https://www.gov.me/biblioteka/izvjestaji>.

⁴³ Articles 19 and 49.

⁴⁴ Article 4.

shortcomings. The MoFSW is responsible for reviewing the quality of the RIA reports accompanying all laws and regulations⁴⁵. The SL is responsible for the scrutiny of all draft legislation⁴⁶ and the EIO verifies the compliance of draft legislation with the *acquis*. As a novelty compared with 2017, the MPADSM has been nominated as the institution ensuring the compliance of draft proposals with the standards of public consultation⁴⁷ but, at the time of this assessment, the internal systematisation act of the ministry had not yet assigned the function to any unit.

Based on the analysis of sample policy proposals⁴⁸, the MoFSW, the SL and the EIO are all consistently performing their functions as CoG bodies reviewing the draft proposals in their respective responsibility areas and providing the mandatory opinions. Apart from the review of draft sector strategies, however, there is no administrative-level review of the coherence of proposals with Government priorities and previously announced policies at the GSG. In practice, the review of proposals takes place only at the political-level Government committee meetings, which decide whether to submit the items to the Government session for decision.

The agreed process for preparation and submission of items for final Government approval is not consistently adhered to. In the fourth quarter of 2020, 57% of items were submitted to the Government agenda later than required and without being considered at the sessions of the Government committees (compared with just 4% in the fourth quarter of 2016).

The agendas of formal Government sessions are published a few hours before the session, while the materials are made available soon after the session⁴⁹. Minutes from Government sessions are shared among the participants of the session on the Government portal (under restricted access). Government decisions are distributed to the public via the Government website⁵⁰ and, after each session, the Government Service for Public Relations regularly publishes press releases with the main conclusions⁵¹.

Despite the transparency of the Government decision-making, the perception of its clarity and stability has deteriorated among business representatives. According to the Balkan Barometer 2021 Business Opinion Survey, only 36% of businesses agree that laws and regulations affecting their company are clearly written, are not contradictory and do not change too frequently. This is a noticeable decline compared with the results of the 2017 survey, when 44% of businesses agreed with the same statement.

⁴⁵ Articles 33, 40, 41 and 67 of the rules of procedure of the Government.

⁴⁶ Articles 32, 40, 42 and 52.

⁴⁷ Article 8 of the Decree on the Organisation and Manner of Work of Public Administration.

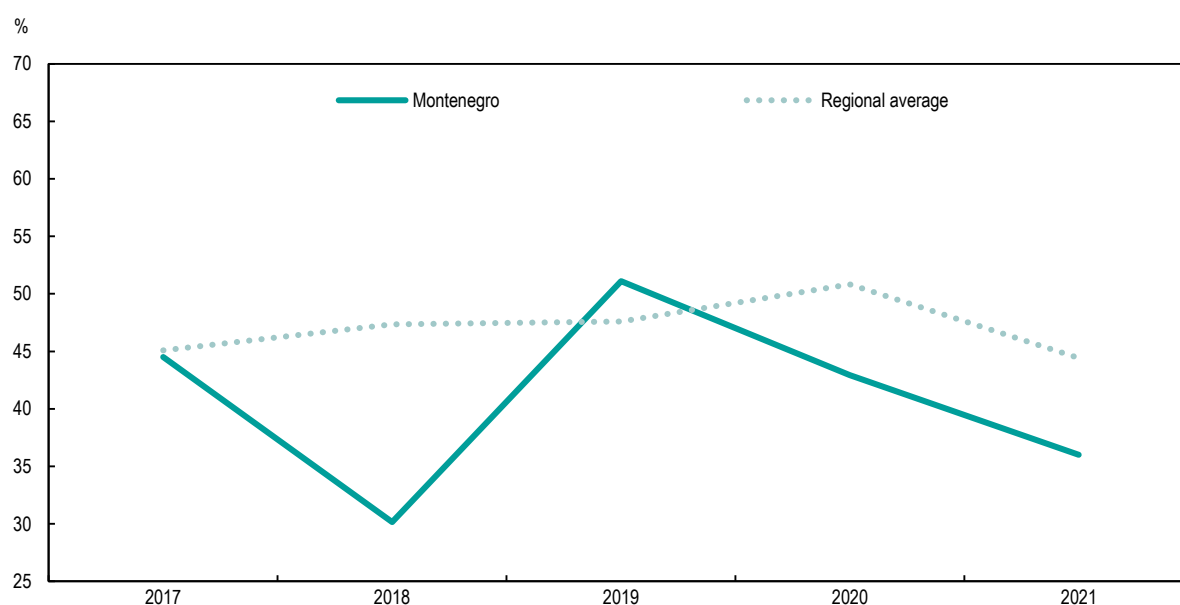
⁴⁸ The full packages of the following sample draft laws approved by the Government in 2020 were analysed: 1) Draft Law on Amendments to the Law on Fiscalisation in Trade in Products and Services; 2) Draft Law on Amendments to the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities; 3) Draft Law on Amendments to the Law on Rehabilitation of Credit Institutions; 4) Draft law on Amendments to the Law on Credit Institutions; 5) Draft Law on Comparability of Fees Related to Consumer Payment Account, Switching Consumer Payment Account and Basic Service Payment Account.

⁴⁹ Civil society representatives continue to draw attention to the need to publish the agenda of closed Government sessions as well: <https://institut-alternativa.org/inicijativa-povecati-transparentnost-rada-vlade/>.

⁵⁰ https://www.gov.me/pretraga?sort=published_at&tags=239&at=8.

⁵¹ <https://www.gov.me/clanak/29-sjednica-vlade-crne-gore-24062021-godine>.

Figure 3. Perceived clarity and stability of government policy making by businesses



Note: Positive responses (“Strongly agree” and “Tend to agree”) to the question whether the laws and regulations affecting businesses are considered.


Source: Regional Cooperation Council, Balkan Barometer Business Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

The requirements for a high-quality Government decision-making procedures are largely in place. The procedural requirements are followed in practice. However, challenges remain with the substantial review of draft proposals at the administrative level to ensure coherence with Government policies. The GSG reviews only the content of draft strategies, and the coherence of laws and regulations with Government priorities is not reviewed at all at the administrative level. In addition, both the effectiveness of the decision-making process and the transparency have been hampered by the high share of items submitted to the agenda after the formal deadline.

Principle 7: The parliament scrutinises government policy making.

The value for the indicator 'Parliamentary scrutiny of government policy making' is 3, down from 4 in 2017. The share of Government-sponsored draft laws adopted in extraordinary proceedings has further increased compared with 2017, and the Government is not consistent in providing opinions on draft laws that members of the Parliament (MPs) initiate.

Indicator 2.7.1 - Parliamentary scrutiny of government policy making						
This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making				4/5	=	
2. Completeness of supporting documentation for draft laws submitted to the parliament				3/3	+1	
3. Co-ordination of governmental and parliamentary decision making processes				1/2	-1	
4. Systematic review of parliamentary bills by government				0/1	-1	
5. Alignment between draft laws planned and submitted by the government (%)				0/2	-1	
6. Timeliness of parliamentary processing of draft laws from the government (%)				2/2	=	
7. Use of extraordinary proceedings for the adoption of government sponsored draft laws (%)				0/5	-3	
8. Government participation in parliamentary discussions of draft laws				2/2	=	
9. Basic parliamentary scrutiny of the implementation of policies				2/2	=	
Total				14/24	-5	

The legal framework for parliamentary scrutiny of Government policy making is established in the Decree on the Government of Montenegro⁵² and in the Rules of Procedure of the Parliament and the Government⁵³, which provide a solid basis for the Parliament to debate, monitor and amend Government policies and programmes. Parliament's Legislative Committee checks the compliance of submitted drafts before the start of the first reading, following the same technical rules of legislative drafting as the Government. The RoP of the Parliament foresees, among others, the right of MPs to ask oral or written questions to the Prime Minister, a minister or another authorised representative of the Government⁵⁴. The Government representatives are obligated to take part in the parliamentary committee meetings. Ministers or their deputies are present at plenary and committee sessions when issues under their responsibility are being discussed.

Draft laws that the Government submits to the Parliament must be accompanied by the explanatory memorandums, as well as RIA reports (including the opinion of the MoFSW on the quality of the RIA)⁵⁵. However, the report on the outcome of public consultation that is a mandatory part of the proposal when it is submitted to the Government does not have to be included in the package that is submitted to the

⁵² Articles 26-29.

⁵³ Articles 50, 67 and 75 of the Rules of Procedure of the Parliament, Article 37 of the RoP of the Government.

⁵⁴ Articles 187-203.

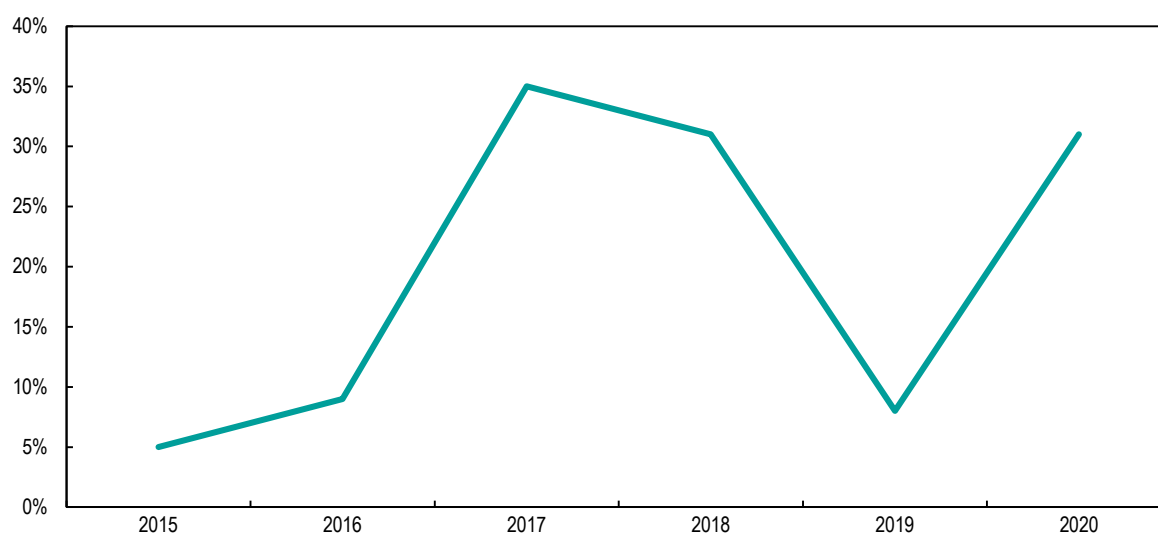
⁵⁵ Article 130 of the Rules of Procedure of the Parliament.

Parliament. The requirements are followed in practice, based on an analysis of a sample of five legislative packages submitted by the Government to the Parliament⁵⁶.

The Government consistently shares its annual work plans with the Parliament to provide advance information on its legislative initiatives. However, in 2020 the alignment between planned and submitted draft laws that the Government proposed was rather low: 31%, compared with 65% in 2017. This could be explained by a need to adjust the focus of legislative proposals that helped address the COVID-19 pandemic. However, in such circumstances the co-ordination of governmental and parliamentary decision-making processes can remain limited if the annual plans are objectively not relevant anymore and as other formalised co-ordination arrangements between the administrations of the Government and the Parliament (e.g. regular meetings to discuss upcoming proposals in advance) are not in place. Furthermore, even though the Government is required to provide an opinion on all drafts laws initiated by MPs within 15 days, it is not performing this task consistently. The Government provided an opinion on only one of the three most recent laws initiated by the MPs at the end of 2020⁵⁷.

The Parliament continues to process draft laws proposed by the Government in a reasonable amount of time. Some 94% were adopted or rejected within a year after their submission by the Government. Nonetheless, the share of Government-sponsored draft laws adopted in extraordinary proceedings is very high, at 31%. This seems to be a systemic problem, as a similar practice was observed in 2017 and 2018.

Figure 4. Government-sponsored draft laws adopted in extraordinary proceedings



Source: Annual reports of the Parliament.

Basic parliamentary scrutiny of the implementation of policies is in place. For example, in 2020 the Parliament discussed the information on the Government's activities undertaken in dealing with the COVID-19 pandemic (submitted by the Government).

⁵⁶ The full packages of the following sample draft laws were analysed: 1) Draft Law on Amendments to the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities; 2) Draft Law on Amendments to the Law on Rehabilitation of Credit Institutions; 3) Draft Law on Amendments to the Law on Credit Institutions; 4) Draft Law on Amendments to the Law on Fiscalisation in Trade in Products and Services; 5) Draft Law on Ratification of the Agreement with the Host Country between Montenegro and the United Nations, represented by the United Nations Office for Project Services.

⁵⁷ The following three draft laws initiated by the members of Parliament were analysed: 1) Draft Law on Amendments to the Law on Innovation Activity; 2) Draft Law on the Protection of Strategic National Interests in the Field of Air Traffic; 3) Draft Law on Montenegrin Development Bank. The Government provided its opinion only on the third draft law.

Conclusion

The legal framework for parliamentary scrutiny of the Government's affairs is solid, but it is not fully applied in practice. The Government is inconsistent in the provision of opinions on proposals initiated by the MPs, and a high share of Government-sponsored draft laws are adopted in extraordinary proceedings. In 2020, the majority of draft laws that the Government proposed did not originate from the GAWP.

Principle 8: The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.

Overall, the value for the indicator 'Adequacy of organisation and procedures for supporting the development of implementable policies' is 3, the same as in 2017. There is no substantial change at the level of the sub-indicators.

Indicator 2.8.1 - Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Adequacy of the regulatory framework for effective policy making				3/4	=	
2. Staffing of policy development departments (%)				0/2*	-1	
3. Adequacy of policy-making processes at ministry level in practice				4/6	=	
Total				7/12	-1	

Note: *Data not available or not provided.

The new Government that took office in December 2020 reorganised the former 17 line ministries into 12. Ministries are responsible for policy development according to the Law on State Administration. The Decree on State Administration Organisation and Manner of Work prescribes the responsibility areas for all ministries. The rulebooks on internal organisation and systematisation of ministries specify the roles of directorates and other units, including the ones that lead the development of policies in different areas. As a rule, there are no separate directorates or departments for co-ordinating legal drafting or development of strategies; the directorate in charge of a policy area also drafts the legal acts and strategies for that area.

Generally, ministries are responsible for submitting draft policy proposals to the Government. The Law on State Administration establishes the overall responsibility of the minister for the management of the ministry and overall situation in the administrative area of the ministry. The minister may confer functions to the state secretary. In addition, the law stipulates the role of the general director (appointed by the Government) for the management of specific policy development-related affairs, within the competence of the ministry.

Due to the recent restructuring of the Government, the adoption of new rulebooks on internal organisation and systematisation of the line ministries has not yet been finalised, and the process of re-allocation of staff among different policy department is still ongoing. Therefore, information about the planned and actual number of allocated staff to different policy development departments was not available for analysis⁵⁸.

Although there are no internal regulations stipulating the rules regulating the policy development processes in line ministries, in practice there is an established procedure of internal approval of draft

⁵⁸ Information was not available by 30 June 2021, the cut-off date for data submission for this assessment.


proposals that are submitted to the Government. At least two officials sign off on the policy proposals (usually the head of department and general director in the responsible directorate of the ministry) before the final approval by the minister and subsequent submission to the GSG. However, the internal capacities of the ministries are not used to the fullest during the co-ordination and approval procedure. For example, the budget departments are not consulted during the preparation of draft laws and strategies, which can limit the quality of costing and the availability of funds for the implementation of policies. Furthermore, there are often separate departments in ministries dealing with EI affairs and the co-ordination of the use of EU financial assistance. The officials in these departments regularly draft documents that need to comply with EU-level quality requirements and expectations. Due to the strict division of responsibilities between domestic and EI-related affairs, however, the capacities developed by these units through the management of EU affairs and funds are not applied in domestic policy development processes.

Conclusion

Ministries are responsible for policy development. The main challenges are related to the insufficient use of internal capacities for developing policies. For example, internal budget departments that could contribute to the costing and ensuring the availability of necessary funds are not involved. Due to delays in the adoption of the systematisation acts of ministries, it was not possible to assess the adequacy of staff dealing with policy development.

Principle 9: The European integration procedures and institutional set-up form an integral part of the policy-development process and ensure systematic and timely transposition of the European Union *acquis*.

Overall, the value for the indicator 'Government capability for aligning national legislation with the European Union *acquis*' is 2, compared with 4 in 2017. The reason for the deterioration in the indicator value is the low implementation rate of the MPAEU in 2020 and the high share of commitments carried forward to 2021, as well as delays in the translation of EU legal acts planned for transposition.

Indicator 2.9.1 - Government capability for aligning national legislation with the European Union <i>acquis</i>						
This indicator measures the adequacy of the legal framework for the <i>acquis</i> alignment process, the government's consistency in using tables of concordance in the <i>acquis</i> alignment process and the availability of the <i>acquis</i> in the national language. It also assesses the results of the <i>acquis</i> alignment process, focusing on the planned <i>acquis</i> alignment commitments carried forward from one year to the next and how the government is able to achieve its <i>acquis</i> alignment objectives.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
			Points 2021		Change from 2017	
1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process			5/5		=	
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)			2/2		=	
3. Translation of the <i>acquis</i> into the national language			0/2		=	
4. <i>Acquis</i> alignment commitments carried forward (%)			0/4		-3	
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)			0/4		-2	
Total			7/17		-5	

The responsibilities of ministries and other government bodies in the *acquis* alignment process are established by the Government Decision on the Establishment of the Negotiating Structure for the Accession of Montenegro to the EU, the Government RoP and the Rulebook on the Internal Organisation and Systematisation of the Cabinet of the Prime Minister of Montenegro. The EIO co-ordinates the alignment of domestic regulations with the *acquis*. Line ministries submit the draft proposals dealing with

transposition, along with the tables of concordance (ToC), to the EIO for opinion. Both the ToC and the EIO opinions are mandatory components of the final package to be submitted to the Government for approval. The requirements for interministerial and public consultations as well as for analysis of impacts remain the same for both domestic and EI-related proposals.

All five analysed samples dealing with *acquis* alignment included the ToC and complied with the established requirements⁵⁹. On the other hand, the *acquis* planned for transposition had not been translated in time for the development of draft legislation for the actual transposition. None of the five sample EU directives to be transposed in 2021 according to the MPAEU had been translated⁶⁰. This indicates a lack of connection between the planning of transposition and the planning of translation and can negatively influence the quality of transposition (e.g. if the officials working on the transposition proposal or officials who need to be consulted do not understand the full content of the *acquis*).

The *acquis* transposition process slowed in 2020. The Government approved or adopted only 35% (34 of 96) of the planned draft laws and regulations dealing with the transposition of EU directives. This is significantly lower than the 77% implementation rate recorded during the 2017 assessment. Furthermore, 64% of the *acquis* alignment commitments from the 2020 plan were carried forward to the 2021 plan (compared with 27% in 2017).

Conclusion


Formal rules and procedures to ensure effective legal harmonisation of national legislation with the *acquis* are in place, including the requirements for analysis and consultation. The EIO is reviewing all proposals related to EI, and the ToC are used consistently. However, the transposition process slowed in 2020, as the Government passed only 35% of the *acquis* alignment commitments. The timely translation of the *acquis* prior to its transposition is also a challenge.

⁵⁹ The following five cases were analysed: 1) Proposal for the Law on Amendments of the Sectoral Agreement between the Government of Montenegro and the European Commission, setting out provisions for the management and implementation of Union financial assistance to Montenegro under the Instrument for pre-accession assistance in the Policy area 'agriculture and rural development' (IPARD); 2) Proposal for the Amendments on Law on Electronic Communications; 3) Proposal for the Law on Interchange Fees and Special Rules for card-based Payment Transactions; 4) Proposal on the Law on Comparability of Fees, related to payment accounts, payment account switching and access to payment accounts with basic features; 5) Proposal for the Law on Standardisation.

⁶⁰ As of 30 June 2021, the translations of the relevant directives were not available for SIGMA assessment.

Principle 10: The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries.

Overall, the value for the indicator ‘Evidence-based policy making’ is 3, which is an improvement compared with 2 from the 2017 assessment. The main reason is the improvement in the quality of analysis in the analysed samples of RIAs.

Indicator 2.10.1 - Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
	Points 2021	Change from 2017				
1. Regulation and use of basic analytical tools and techniques to assess the potential impact of draft new laws	2/2	=				
2. Regulation and use of budgetary impact assessment prior to approval of policies	3/3	+2				
3. Regulation and use of Regulatory Impact Assessments	2/3	=				
4. Availability of guidance documents on impact assessment	2/2	=				
5. Quality control of impact assessment	2/3	=				
6. Quality of analysis in impact assessment	7/15	+4				
Total	18/28	+6				

The use of basic RIA analytical tools and techniques is required by regulations and is generally followed in practice. The Government RoP establish the obligation of ministries to conduct RIA for laws and other regulations, in accordance with the instruction⁶¹ of the MoFSW. The instruction foresees that the analysis should cover a broad range of impacts, including budgetary, environmental, economic and social ones, as well as the assessment of administrative burdens. If the line ministry assesses that the RIA is not necessary, it needs to provide a proper justification. The MoFSW is required to prepare an opinion on the quality of the RIA report or on the adequacy of the possible justification for not conducting the RIA, which needs to be attached to the policy proposal sent to the Government for approval.

The requirements for RIAs are supported with the necessary guidance documents. The up-to-date version of the RIA Manual (Guide for the Regulatory Impact Assessment Analysis) was published in May 2018⁶². The RIA Manual includes a number of practical examples of completed RIAs and methodological step-by-step guidance for preparing the analysis, including the estimation of costs and benefits of policy proposals.

All analysed samples⁶³ include the mandatory RIA reports, as well as the opinions from the MoFSW. The samples cover the impacts on the budget and the economy (including administrative burdens) but do not consistently focus on other areas like social and environmental impacts. Therefore, the requirement for analysing a broad range of impacts is not fully applied in practice. The same shortcoming is apparent

⁶¹ Ministry of Finance - Instruction for preparing the report on conducted RIA (Official Journal 09/2012 of 10 February 2012).

⁶² The Manual is available at the website of the Ministry of Finance and Social Welfare: <https://mif.gov.me/ResourceManager/FileDownload.aspx?rId=418584&rType=2&alphabet=cyr>.

⁶³ The RIA forms for the following draft laws have been analysed: 1) Draft Law on Comparability of Fees Related to Consumer Payment Account, Switching of Consumer Payment Account and Basic Services Payment Account; 2) Draft Law on Interbank Fees and Special Business Rules Concerning Payment Cards; 3) Draft Law on Control of Export of Dual-use Goods; 4) Draft Law on Innovation Activity; 5) Draft Law on Incentives for the Development of Research and Innovation.

regarding the quality control of RIAs: the MoFSW checks the quality of analysis on budget and business impacts (administrative burden), but no institution checks the quality of analysis on other impact areas.

Compared with the samples reviewed in 2017, the overall quality of analysis has improved, most notably by providing more information about how the policy will be implemented and by whom, as well as about the arrangements for monitoring the implementation of the policy. The majority of analysed samples included a reasonable assessment of costs and benefits for the preferred option. Still, challenges remain with considering alternative options for the implementation of the policy (aside from the preferred option). None of the samples included any information on alternative regulatory or non-regulatory options that were considered for achieving the policy goals.

Conclusion

The requirements for RIAs covering a wide range of impacts are in place and supported with relevant manuals, but the quality and relevance of analysis is checked only for business and budget impacts. The majority of the reviewed samples included sound problem definition and a reasonable assessment of costs, but alternative options were not considered for achieving the policy goals.

Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.

Overall, the value for the indicator ‘Public consultation on public policy’ is 3, the same as in 2017. At the level of sub-indicators, however, the consistency of conducting public consultations has improved, and the legal basis for ensuring quality assurance has been established (but is not fully functional yet).

The value for the indicator ‘Interministerial consultation on public policy’ remained 2, the same as for the 2017 assessment. No significant changes have taken place at the level of sub-indicators.

Indicator 2.11.1 - Public consultation on public policy						
This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved draft laws.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Adequacy of the regulatory framework for an effective public consultation process				9/10	+1	
2. Quality assurance of the public consultation process				1/3	+1	
3. Consistency in publishing draft laws for written public consultation				3/4	+2	
4. Test of public consultation practices				12/24	=	
Total				25/41	+4	

The legal requirements for public consultations have been established in the Law on State Administration⁶⁴ and more specifically in the Decree on the Selection of Representatives of NGOs in Working Committees of Public Administration Bodies and Implementing Public Debates in Preparing Laws and Strategies⁶⁵. The Law sets out the general obligation for conducting public consultations on draft laws and strategies as well as the exceptions from that obligation, while the Decree stipulates the details for

⁶⁴ Official Gazette 78/2018.

⁶⁵ The Decree was adopted by the Government of Montenegro on 14 June 2018 (Official Gazette 41/2018).

the process and its duration and provides the templates that have to be used. One of the main weaknesses of the current regulatory framework is the absence of the legal obligation to conduct public consultations on draft secondary legislation.

The central quality control on the public consultation process is not yet fully functioning. The general mandate has been established as the MPADSM has been nominated as the responsible institution⁶⁶, and the procedural aspects of conducting the quality control have been determined by the Government⁶⁷. However, it is not yet clear which unit within the MPADSM should perform this task, and the quality control is not yet functional in practice. Currently, the ministry has been retroactively collecting data and preparing annual reports on the implementation of the requirements by other ministries, but it is not reviewing the consistency of applying consultation requirements on draft policy proposals prior to their submission to the Government.

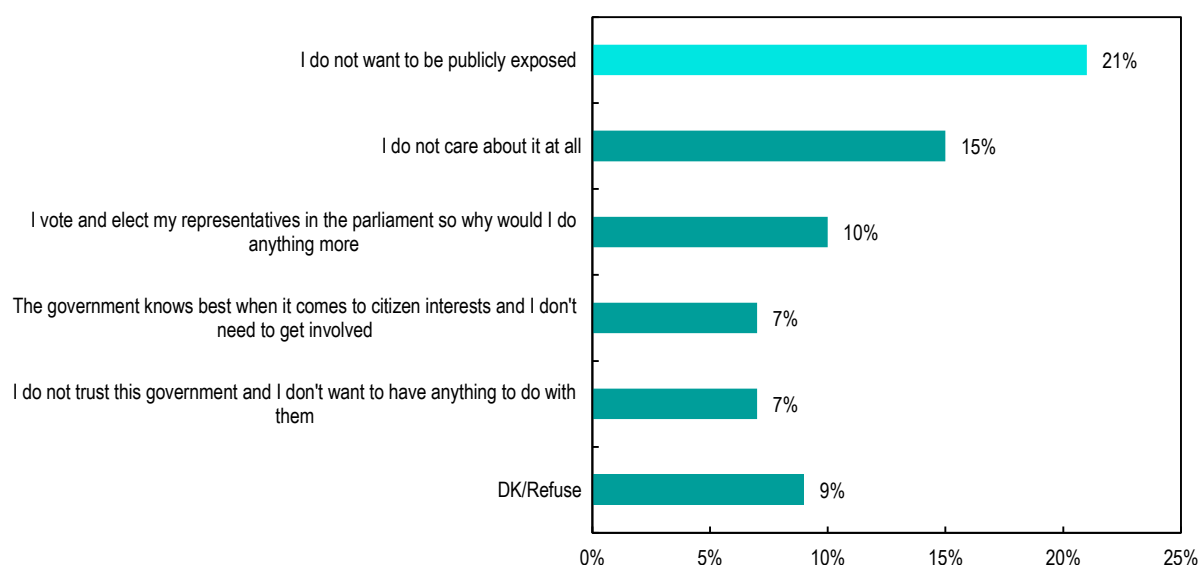
Despite the shortcomings in the functioning of quality control, in 2020 three of the four analysed line ministries complied with the general requirement for publishing draft laws for public consultation⁶⁸. However, at the more detailed level, the requirement to notify the potential stakeholders in advance about the upcoming consultation process (e.g. through the publication of a consultation plan) was not met by any of the five analysed sample draft laws. Furthermore, none of the samples was published for consultation with the mandatory RIA report containing the analysis that supports the adoption of the proposal. Challenges with effective engagement of stakeholders into the policy development process are also evident from the results of the Balkan Barometer survey among the general public. Thirty-one percent of respondents (the highest share in the region) that have not done anything to affect government decision, cite their perception that they cannot influence government decisions as the main reason. Twenty-one percent do not want to be publicly exposed.

⁶⁶ The Decree on the Organisation and Operation of Public Administration, adopted by the Government on 7 December 2020, reaffirmed the mandate of the new Ministry of Public Administration, Digital Society and Media to perform the quality scrutiny of public consultations in preparing laws and strategies, but it has not yet been operationalised.

⁶⁷ The Information on the Status of Implementing the Process of Monitoring of the Quality of Public Consultations (including the List for checking the Compliance of Line Ministries' Procedures of Implementing Public Consultations with Established Public Consultation Standards). The document was adopted by the Government on 6 November 2020: <https://www.gov.me/ResourceManager/FileDownload.aspx?rId=419503&rType=2>.

⁶⁸ Ministries responsible for agriculture, economic development and social affairs had published all draft laws for consultation prior to submitting them to the Government for decision. The Ministry of Sustainable Development and Tourism (according to 2021 Government structure renamed the Ministry of Ecology, Spatial Planning and Urbanism) published half of its draft laws for public consultation.

Figure 5. The reasons for not being actively involved in government decision-making



Note: The question "What is the main reason you are not actively involved in government decision-making?" was asked from those respondents who answered "I do not even discuss it" or "I don't know/ refuse to answer" to the following question: Have you ever done something that could affect any of the government decisions?

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

Indicator 2.11.2 - Interministerial consultation on public policy

This indicator measures the adequacy of the regulatory framework for the interministerial consultation process and tests the system in practice for five draft laws.

Overall 2021 indicator value

0 1 **2** 3 4 5

	Points 2021	Change from 2017
1. Adequacy of the regulatory framework for an effective interministerial consultation process	5/9	=
2. Test of interministerial consultation practices	2/12	-1
Total	7/21	-1

The Law on State Administration and the Government RoP set out the procedure for interministerial consultation, including the general obligation of line ministries to co-operate during the preparation of policy proposals and the list of CoG bodies that have to provide a mandatory opinion on the proposal prior to its submission to the Government. The RoP stipulate a maximum duration for the interministerial consultation process (14 days). This period can be shortened, and no minimum duration is established in regulations to ensure adequate time for the review of drafts by other ministries. In addition, no co-ordination or conflict resolution mechanisms are in place at the top administrative level. After the ministries submit the materials to the GSG for inclusion into the agenda of the Government session, the ministerial committees as political-level bodies review the proposals and address any remaining issues or comments from the interministerial consultation process.

The sample draft laws⁶⁹ that were analysed for understanding the interministerial consultation practises indicate that while mandatory CoG bodies explicitly listed in Article 40 of the RoP of the Government (the MoFSW, the SL, the EIO and the MPADSM, as well as the Ministry of Justice) are consulted consistently, there was no evidence of sharing the draft laws with other line ministries during interministerial consultation, even if the subject matter affected them (e.g. Ministry of Economic Development on the law dealing with fiscalisation of trade). The final package of the proposal submitted to the Government for approval does not contain any overview of the comments received during the interministerial consultation or of how the comments were handled.

Conclusion

The main requirements for public consultation are in place. The MPADSM has been established as the quality control body for public consultation and is currently functionalising its mandate. The consistency in conducting the public consultation process has improved, but stakeholders are not informed in advance about upcoming consultations. Despite the requirement, the RIA report was not published for consultation alongside the reviewed sample draft laws.

The main rules and procedures for interministerial consultation are established. However, the minimum duration of the consultation is not regulated, which can hamper the effectiveness of the process due to a lack of adequate time for the review of drafts proposed by other ministries. Based on the review of samples, CoG bodies are consistently consulted, but not all other affected line ministries.

⁶⁹ The following draft laws have been analysed for this purpose: 1) Draft Law on Amendments to the Law on Fiscalisation in Trade in Products and Services; 2) Draft Law on Freedom of Religion or Belief and the Legal Status of Religious Communities; 3) Draft Law on Amendments to the Law on Rehabilitation of Credit Institutions; 4) Draft Law on Amendments to the Law on Credit Institutions; 5) Law on Comparability of Fees Related to Consumer Payment Account, Switching Consumer Payment Account and Basic Service Payment Account.

Principle 12: Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

The value for the indicator 'Predictability and consistency of legislation' is 2. This is lower than the value of 4 in 2017. The deterioration is largely due to the significant increase in the share of laws amended one year after adoption, which raises questions about the overall quality and stability of legislation.

The value for the indicator 'Accessibility of legislation' is 3, the same as in 2017. However, the perception of availability of laws and regulations among businesses has deteriorated.

Indicator 2.12.1 - Predictability and consistency of legislation

This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.

Overall 2021 indicator value  since 2017

0 1 **2** 3 4 5

	Points 2021	Change from 2017
1. Availability of guidance documents on legal drafting	2/2	=
2. Quality assurance on legal drafting	3/3	=
3. Laws amended one year after adoption (%)	0/3	-2
4. Perceived clarity and stability of government policy making by businesses (%)	0/2	=
5. Timeliness of adoption of mandatory bylaws (%)	0/3	new ⁷⁰
Total	5/13	-2

As the body in charge of ensuring legal scrutiny, the SL has adopted the Legal and Technical Rules for Legal Drafting⁷¹, which provide all necessary guidance and standards for the drafting of the new legislation. The SL is consistently performing its quality control function and providing opinions on the legal quality of all laws and regulations prior to their submission to the Government for approval (as evidenced by the review of the sample draft laws and confirmed during interviews)⁷².

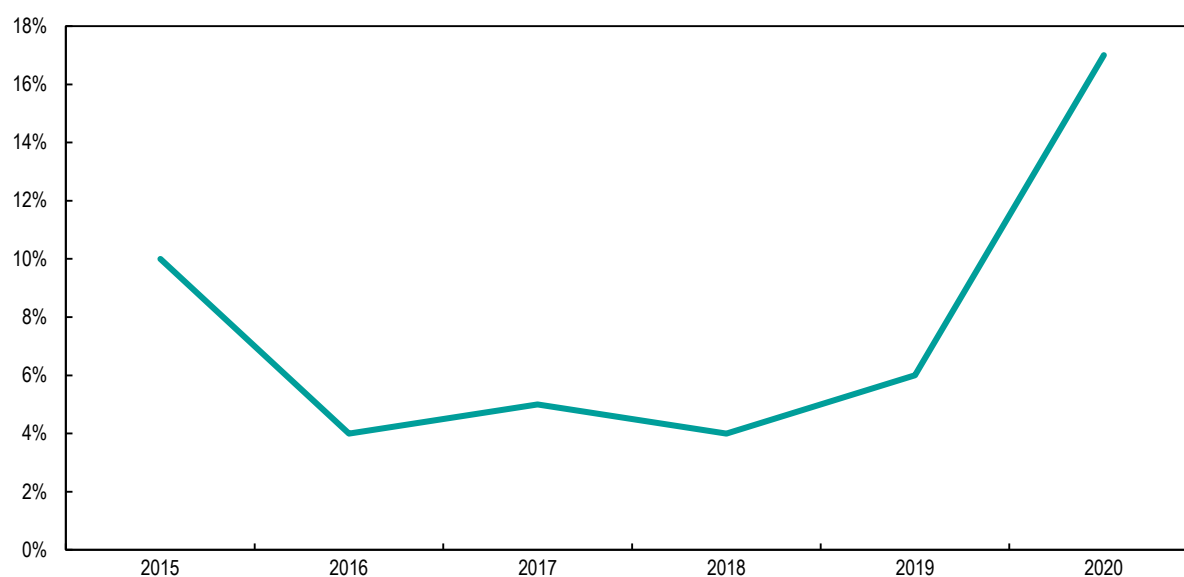
The share of laws amended within one year after adoption increased considerably in 2020 compared with the previous years. The challenges with ensuring the clarity and stability of Government policy making is also evident from the results of the Balkan Barometer survey among representatives of businesses. Only 36% of respondents agreed that laws and regulations affecting their company are clearly written, are not contradictory and do not change too frequently (down from 44% in 2017).

⁷⁰ This is a new sub-indicator since the 2017 assessment.

⁷¹ The up-to-date version of the Legal and Technical Rules for Legal Drafting is available online on the website of the Secretariat for Legislation, including in English: <https://www.szz.gov.me/rubrike/dokumenti/140891/Pravno-tehnicka-pravila-za-izradu-propisa-na-engleskom-jeziku.html>.

⁷² The following five draft laws were analysed for the assessment: 1) Draft Law on Amendments to the Law on Fiscalisation in Trade in Products and Services; 2) Draft Law on Amendments to the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities; 3) Draft Law on Amendments to the Law on Rehabilitation of Credit Institutions; 4) Draft Law on Amendments to the Law on Credit Institutions; 5) Draft Law on Comparability of Fees Related to Consumer Payment Account, Switching Consumer Payment Account and Basic Service Payment Account.

Figure 6. Laws amended within one year after adoption, 2015-2020



Source: Data provided by the Parliament and Government.

Finally, the Government is not adopting the sub-legal acts that are necessary for implementing the laws in a timely manner. Based on the analysis of three laws that took effect during the assessment⁷³, none of the mandatory by-laws foreseen in these laws was adopted by the time the law took effect. The gaps in the legal framework that is necessary for enforcement of policies cause legal uncertainty among the stakeholders that need to implement the laws and postpone the achievement of policy goals foreseen in the legal acts.

Indicator 2.12.2 - Accessibility of legislation

This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.

Overall 2021 indicator value

0 1 2 **3** 4 5

	Points 2021	Change from 2017
1. Adequacy of the regulatory framework for public accessibility of legislation	5/6	=
2. Accessibility of primary and secondary legislation in practice	4/8	=
3. Perceived availability of laws and regulations affecting businesses (%)	0/2	-1
Total	9/16	-1

The Law on Publishing Legislation and Other Acts regulates the procedure for making legislation available to the public via the Official Gazette of Montenegro. The legislation and other acts submitted to the Official Gazette are published, as a rule, in the next issue of the Official Gazette at most 10 days from the day of submission of the act.

⁷³ The three laws include Law on Medicines, Law on Innovation Activity and Law on Incentive Measures for the Development of Research and Innovation. All three were adopted in July 2020.

All primary and secondary legislation is available free of charge on the publicly accessible online database of the Official Gazette.⁷⁴ The obligation to publish consolidated versions of legal texts has not yet been established, however, and the consolidated versions are available online only through a paid service (offered by private service providers, as well as by the Official Gazette). Thus, even the state institutions that use legal acts daily in their work (judges, prosecutors, officials in ministries and other administrative bodies, et al.) need to pay in order to provide access to the up-to-date consolidated versions of legal acts to their officials.

The perception of availability of laws and regulations is rather low among businesses, according to the results of the Balkan Barometer survey (40%), and has deteriorated compared with 2017 (52%).

Conclusion

The legal drafting process is supported by the relevant manuals, in addition to a functional quality control performed by the SL. Nevertheless, a high share of laws is amended within a year after adoption. In addition, based on reviewed samples, the mandatory by-laws for implementing the laws are not adopted by the time laws take effect, contributing to a lack of legal certainty.

Access to legislation is hampered by the absence of consolidated versions of legal acts free of charge. The perception of availability of laws and regulations among businesses has deteriorated compared with 2017.

⁷⁴ <http://www.sluzbenilist.me/>.

Public Service and Human Resource Management

The Principles of Public Administration

Public Service and Human Resource Management

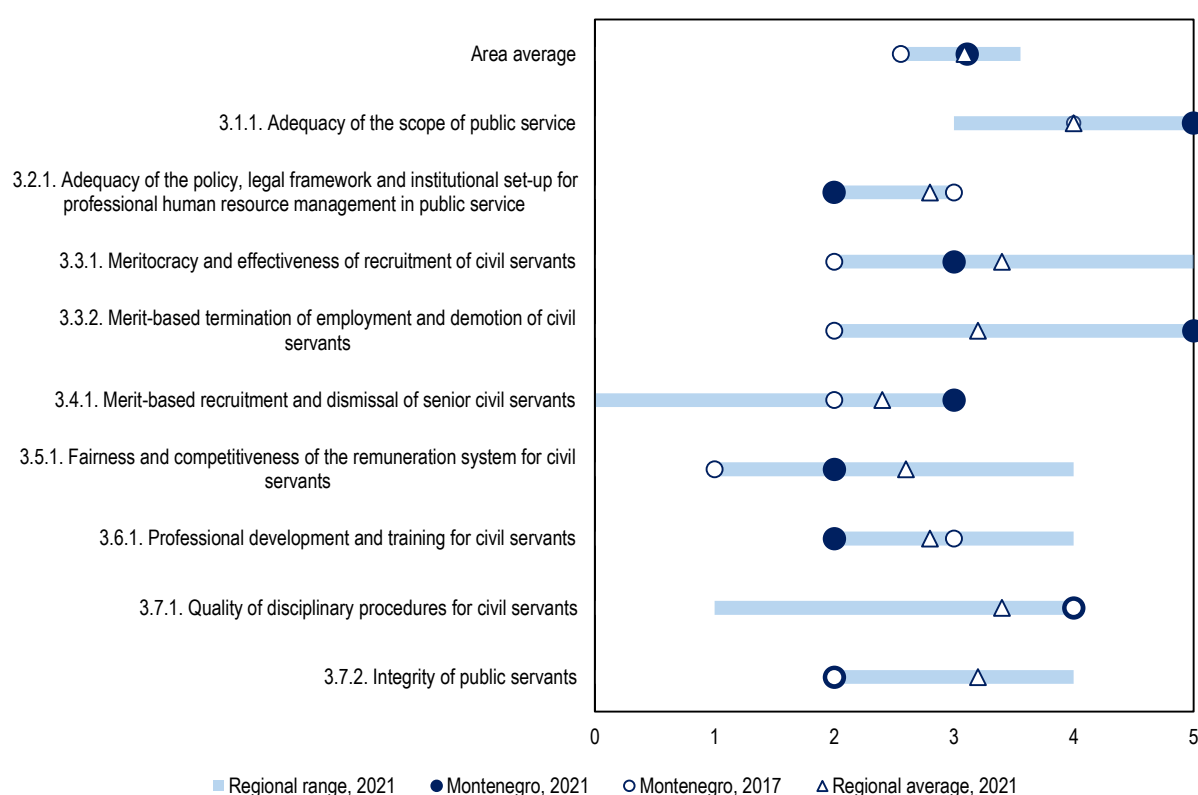
Principle 1	The scope of public service is adequate, clearly defined and applied in practice.
Principle 2	The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set up enables consistent and effective human resource management practices across the public service.
Principle 3	The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.
Principle 4	Direct or indirect political influence on senior managerial positions in the public service is prevented.
Principle 5	The remuneration system of public servants is based on job classifications; it is fair and transparent.
Principle 6	The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.
Principle 7	Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Public Service and Human Resource Management

Summary and recommendations

In the area of public service and human resource management, Montenegro has the same average as the Western Balkans region, with an aggregate value of 3.1. This result reflects moderate progress from the last assessment in 2017, due mainly to amendments in legislation and improved availability of data. Nevertheless, several challenges remain concerning the implementation of evidence-based and professional human resource management (HRM) practices.

Montenegro's average value in the public service and HRM area matches the regional average and shows moderate progress from 2017



The Law on Civil Servants and State Employees (CSL) provides an adequate, comprehensive horizontal scope of the civil service. However, the staff of some regulatory and independent bodies are excluded from the civil service through special laws without clear grounds. The law improved the vertical scope by including heads of public bodies subordinated to ministries in the senior civil service.

The Human Resource Management Authority (HRMA), under the supervision of the Ministry of Public Administration, Digital Society and Media (MPADSM), actively promotes horizontal co-ordination and implementation of HRM procedures across the civil service system. However, **HRM functions are still mainly focussed on ensuring compliance with legislation and the performance of administrative tasks**. A fragmented organisation of the HRM function in the central government, with many public bodies having a single-officer HRM unit, contributes to this situation. The gradual implementation of a new HRM information system (HRMIS) is ongoing, including the interoperability with the centralised payroll system. But for the time being, **data in the HRMIS remains incomplete and is not updated, which hampers accurate analysis and monitoring of civil service policy and HRM practices**.

Overall, legislation provides for merit-based selection of non-senior civil servants. Nevertheless, **recruitments continue to attract low numbers of candidates, particularly in internal competitions, which are largely ineffective.** Implementation improved on some technical aspects, e.g. the practical part of the written test is now conducted electronically. But institutions prepare content without following common standards. The lack of well-developed job descriptions and competency-based selection tools, the difficulties in having external experts on selection panels, together with the possibility of appointing any of the three best-ranked candidates challenge the professionalism of the procedures. Almost all public bodies prepare annual staffing plans, but they have a rather formalistic character, are adopted long after the approval of the budget, and only 61% of recruitments planned in 2020 were implemented.

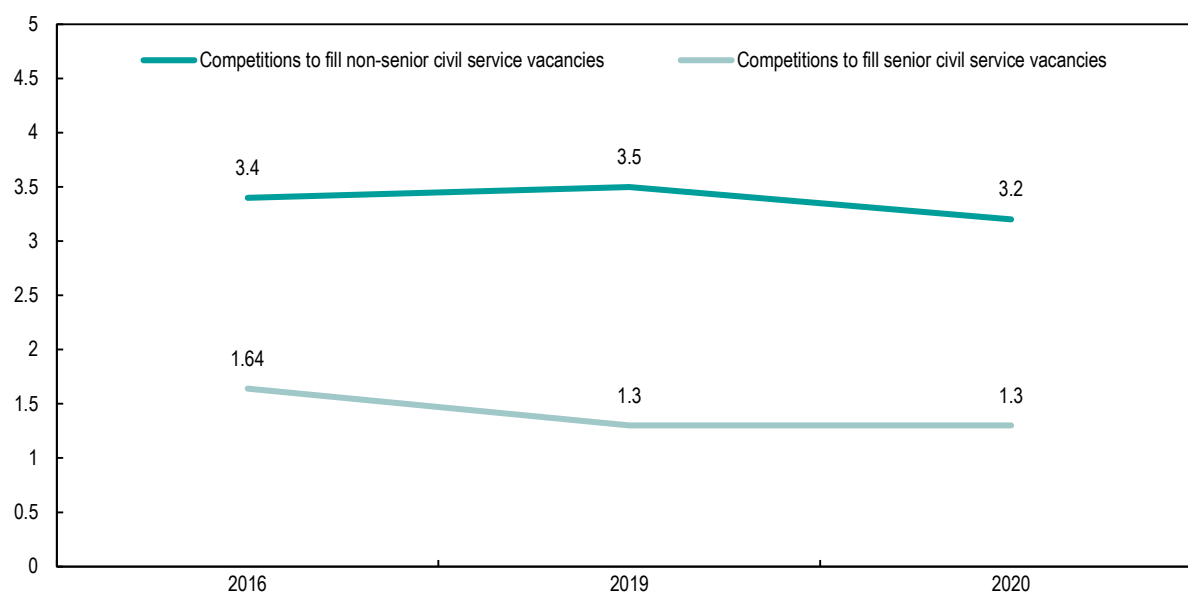
The CSL does not explicitly exclude politically appointed persons as members of competition commissions in the senior civil service, which leaves room for undue political influence. Selection methods for senior civil service positions improved in the new CSL, which made both written and oral assessments compulsory. However, the law allows for other methods without specification in competitions to fill vacancies of heads of administration authorities. The percentage of senior civil service vacancies offered for competition and filled is high, but with a very low and declining number of candidates. Official data on the turnover in the senior civil service after the formation of the current government is not available. Nevertheless, an estimation based on publicly available data shows high instability: 55% of senior civil servants left their positions due to resignation, the abolition or reorganisation of the public body between December 2020 and June 2021. Dismissal procedures concerning the heads of administration authorities offer broad discretion to ministers without sufficient procedural safeguards.

The Law on Wages of Public Sector Employees (LWPSE) defines all salary elements for all public employees. However, it does not provide clear criteria for awarding specific salary components. Fair allocation of the base salary is hampered by insufficient development of job descriptions and classification, and heads of institutions have broad discretion to award bonuses. Information on salaries is not publicly disclosed. Only the relevant legislation is published, which includes only the basic salary coefficients. Data on salaries is scarce and does not allow a comparison with the private sector to assess their competitiveness.

The HRMA proactively manages the civil service training in horizontal areas. Nevertheless, **training-needs analysis is not properly implemented for all civil service positions, and the capacities and resources of public bodies to develop sector-specific training are scarce.** The effectiveness of internal mobility and promotion mechanisms is limited. Implementation of performance appraisals is low, and results are significantly skewed toward the higher rating categories. Overall, the lack of accurate and complete data on all these topics prevent an adequate analysis.

There were some improvements in legislation concerning civil service disciplinary procedures. Nevertheless, more than one-third of disciplinary decisions challenged in the courts were not confirmed, which indicated quality issues in first-instance decisions. **There is no overall policy to promote integrity in the civil service at the national level,** nor an institution responsible for co-ordinating and monitoring implementation across the civil service.

The average number of candidates that fulfil the requirements to participate in competitions to fill civil service vacancies remains very low, especially for senior civil service positions



Source: Data provided by the HRMA.

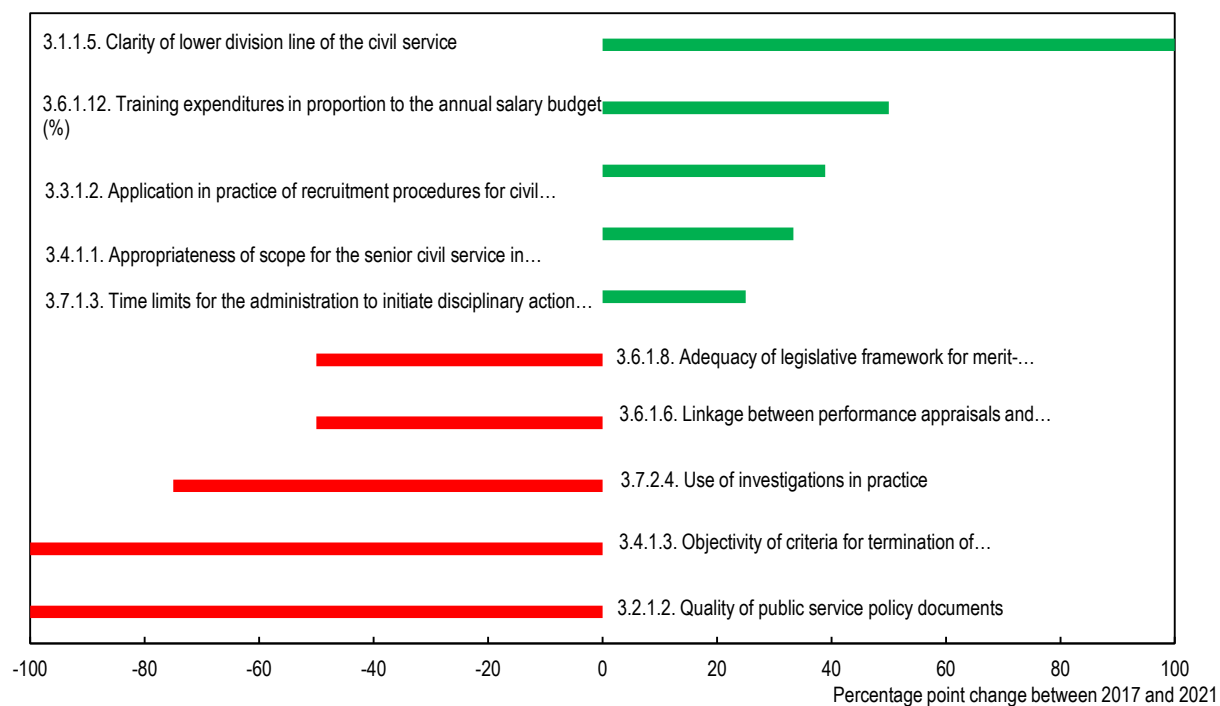
Short-term recommendations (1-2 years)

- 1) The Government should complete the implementation of the new HRMIS and ensure strategic use of data in the system for civil service policy formulation, monitoring and enhancement of HRM practices.
- 2) The Government MPADSM, and the Ministry of Finance and Social Welfare (MoFSW) should ensure the alignment between staffing plans and the annual budget and medium-term expenditure frameworks.
- 3) The Government should further invest in strengthening the HRM function across the civil service and make it more strategic. The creation of shared HRM services could be considered as an option.
- 4) The Government should adopt measures to ensure adequate and harmonised implementation of job descriptions, evaluation and classification in the civil service.
- 5) The HRMA should analyse the causes of the low number of eligible candidates participating in competitions and prepare and implement a plan to attract more qualified candidates.
- 6) The Government should adopt measures to exclude political appointees from selection panels in competitions to fill senior civil service vacancies.
- 7) The HRMA should develop competency-based assessment tools for selecting civil servants in managerial positions, based on the newly developed competency framework, and develop the capacities of members of competition commissions to apply them.
- 8) The Parliament should amend the LWPSE to establish clear criteria and procedures for awarding salary supplements.

Medium-term recommendations (3-5 years)

- 9) The Government should consider including the staff of regulatory agencies in the scope of the civil service.
- 10) The Government should develop a comprehensive multi-annual policy – as part of an existing strategy or as a standalone plan – to promote integrity and fight against corruption in the public sector, encompassing the whole civil service.


The evolution of sub-indicators below reflects a better regulation of the civil service vertical scope and disciplinary procedures, as well as some progress in training budget, although still insufficient. Selection procedures improved with the generalisation of online testing. However, the dismissal of heads of authorities, which are now civil servants, is highly vulnerable to arbitrary political decisions.



Analysis

Principle 1: The scope of public service is adequate, clearly defined and applied in practice.

Overall, the value for the indicator 'Adequacy of the scope of public service' is 5, the maximum value. It has improved by one point since 2017 due to the adoption of the new CSL, with a more adequate civil service vertical scope and its subsequent implementation.

Indicator 3.1.1 - Adequacy of the scope of public service								
This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service, and whether it is consistently applied across the public sector.								
Overall 2021 indicator value  since 2017	0	1	2	3	4	5		
							Points 2021	Change from 2017
1. Clarity in the legislative framework of the scope of the civil service							2/2	=
2. Adequacy of the horizontal scope of the public service							5/6	=
3. Comprehensiveness of the material scope of civil service legislation							2/2	=
4. Exclusion of politically appointed positions from the scope of the civil service							2/2	=
5. Clarity of the lower division line of the civil service							1/1	+1
Total							12/13	+1

The horizontal scope of the civil service is clearly established in the CSL⁷⁵. It includes the state authorities, defined as ministries and other administrative bodies reporting to them, the staff working in the office of the President, the Parliament, the Government, the courts including the Constitutional Court, and the State Prosecutor's Office. Special groups of public servants (e.g. those working in the customs and tax administrations and the Foreign Service) and employees of public funds and other legal entities⁷⁶ belong to the civil service. Employees of the local administration are also civil servants, as provided by the Law on Local Self-Government⁷⁷.

The CSL applies to staff in regulatory and independent bodies and other authorities if so prescribed by a separate law⁷⁸. Otherwise, employees of these bodies are subject to the Labour Code or special laws. For example, the Labour Code and special laws apply to the Regulatory Agency for Energy⁷⁹, the Regulatory Agency for Aviation⁸⁰ and the Regulatory Agency for Telecommunications⁸¹. The legal framework does not fully ensure professional, merit-based HRM in these cases⁸².

⁷⁵ Law on Civil Servants and State Employees (CSL) of 29 December 2017, Official Gazette No. 002/2018, 034/2019, 008/2021.

⁷⁶ The Pension and Disability Insurance Fund, the Health Insurance Fund, the Employment Office, the Labour Fund, and the Agency for Peaceful Settlement of Labour Disputes.

⁷⁷ The Law on Local Self-government Article 98, Official Gazette No. 2/2018, 34/2019, 38/2020.

⁷⁸ CSL, Article 3.

⁷⁹ Law on Energy, Official Gazette No. 005/2016, 051/2017, 082/2020.

⁸⁰ Law on Air Traffic, Official Gazette No. 030/2012, 030/2017, 082/2020.

⁸¹ Law on Electronic Communication, Official Gazette No. 040/2013, 056/2013, 002/2017, 049/2019.

⁸² Among others, the special legal framework does not include the following elements: the principle of merit to access public service positions, clear and non-discriminatory eligibility criteria, competitions as the only avenue to access

The upper end of the vertical scope of the civil service is clearly and adequately established in the CSL. The heads of administrative bodies are now included in the civil service and form a specific professional category, different from other senior management positions⁸³. The latter include the positions of Secretary and Director General in ministries, Deputy Head of administrative bodies, Deputy Head of Service of the Government and Deputy Director of the public funds, and the Employment Office and the Agency for Peaceful Settlement of Labour Disputes.

Ministries may have state secretaries, which are political positions equivalent to deputy ministers or ministers of state, and therefore are not part of the civil service. Their duties terminate at the expiration of the minister's term of office⁸⁴. The President, the President of the Parliament and the Prime Minister may have advisors. These positions are also excluded from the civil service. The term of office of advisors ends with the expiry of the mandate, by resignation or dismissal. The titles of advisors, their appointment, rights and duties are governed by the regulations of the respective bodies where they are appointed⁸⁵.

The CSL draws a clear line between civil servants of the lower professional category and state employees, and defines distinct functions for these professional groups. Positions classified as state employees perform ancillary tasks (technical maintenance, driving, courier services, cleaning, and other similar tasks)⁸⁶. Civil servants in the lower civil service professional category perform administrative tasks such as keeping records and the gathering, exchange and processing of information. The new law improved the previous regulation⁸⁷, which distinguished between state employees and civil servants of the lower professional category but assigned similar tasks to both groups.

The CSL includes all the general provisions relevant to the civil servants' employment relations and the civil service management except remuneration, which is regulated in the LWPE⁸⁸ and applies to all employees paid from the state budget. The Law on Prevention of Corruption (LPC) complements the CSL in aspects related to the integrity of senior civil servants⁸⁹.

Conclusion

The CSL adequately defines the horizontal, vertical and material scope of civil service. Certain categories of public servants (customs and tax administrations, Foreign Service) are subject to the CSL. However, employees of some regulatory agencies are excluded from the civil service. Amendments to the law improved the civil service vertical scope, which now encompasses the heads of administrative bodies, and draws a clearer dividing line between the civil service and state employees.

public service positions, a professional composition of selection committees, written and oral examinations, the appointment of the first-ranked candidate in competitions and objective criteria for termination of employment.

⁸³ CSL, Article 18. The general classification of job positions in the civil service includes five professional categories: head of state authority, senior management staff, expert-management staff, expert staff and operational staff.

⁸⁴ Law on State Administration, Article 30, Official Gazette No. 78/2018, 70/2021.

⁸⁵ CSL, Article 62.

⁸⁶ CSL, Article 30 and Decree on criteria for internal organisation and systematisation of job positions in state administration authorities, Article 11.

⁸⁷ CSL of 3 August 2016, Official Gazette No. 016/16, Articles 2 and 26.

⁸⁸ Law on Wages of Public Sector Employees of 8 March 2016, Official Gazette No. 016/2016, 083/2016, 021/2017, 042/2017, 012/2018, 039/2018, 042/2018, 034/2019.

⁸⁹ Law on Prevention of Corruption (LPC) of 19 December 2014, Official Gazette No. 053/2014, 042/2017.

Principle 2: The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set-up enables consistent and effective human resources management practices across the public service.

Overall, the value for the indicator ‘Adequacy of the policy, legal framework, and institutional setup for professional human resources management in public service’ is 2, lower than in 2017 when it was 3. The legal and institutional framework are adequately established. However, a new civil service policy is not in place and challenges concerning the Central Personnel Record (CPR), civil service policy monitoring capacities, and capacities of HRM units persist.

Indicator 3.2.1 - Adequacy of the policy, legal framework and institutional set up for professional human resource management in public service

This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service, and assesses whether policies and laws are implemented to ensure proper management of the civil service, for example a functioning civil service database, availability and use of data, etc.

Overall 2021 indicator value  since 2017

0 1 **2** 3 4 5

	Points 2021	Change from 2017
1. Establishment of political responsibility for the civil service	2/2	=
2. Quality of public service policy documents	0/4	-4
3. Implementation and monitoring of public service policy	3/4	+2
4. Right balance between primary and secondary legislation	0/2	=
5. Existence of a central, capable co-ordination body	3/4	-1
6. Professionalism of HRM units in civil service bodies	0/2	-1
7. Existence of a functional HR database with data on the civil service	0/4	=
8. Availability and use of data on the civil service	3/5	=
Total	11/27	-4

The MPADSM is the political authority in charge of the civil service⁹⁰. It supervises the HRMA, which is established as an independent administrative authority. The HRMA participates in the formulation of the civil service policy and legislation; it is responsible for developing personnel plans, the announcement of vacancies, professional training of civil servants, keeping the CPR and the Internal Labour Market (ILM) record. The MPADSM and the HRMA provide opinions on proposals of internal organisation and systematisation of state authorities⁹¹. The Ministry has no responsibility for the remuneration policy, which, together with the payroll management, is handled by the MoFSW.

The Public Administration Reform (PAR) Strategy 2016-2020, adopted in July 2016⁹², included the area of civil service and HRM. The scope of the PAR Strategy covered the entire civil service as defined by the

⁹⁰ The Ministry of Public Administration, Digital Society and Media (MPADSM) replaced the previous Ministry of Public Administration in October 2020. Decree on organisation and manner of work of state administration, Article 8, Official Gazette No. 118/2020, 121/2020, 001/2021, 002/2021.

⁹¹ CSL, Article 151, Decree on organisation and manner of work of state administration Article 27, and Law on the State Administration, Article 28.

⁹² Public Administration Reform (PAR) Strategy 2016-2020, section 4 (Reform objectives), sub-section 4.3 (civil service system and HRM), pp. 47-50.

CSL. The Strategy was of good quality, and the level of implementation was adequate in 2020. Nevertheless, a new civil service policy was neither in place nor under preparation in the first half of 2021⁹³.

In July 2018, the Government adopted the 2018-2020 Public Administration Optimisation Plan⁹⁴ to increase public administration efficiency and preserve fiscal sustainability. It included measures to limit employment for an indefinite period, promote agreed termination of employment, and enhance HR planning and internal mobility in central and local governments, among others. Results achieved were limited, owing mainly to poor planning and limited supervision and enforcement capacities⁹⁵.

The HRMA strives to promote horizontal co-ordination and monitor the implementation of HRM procedures across the civil service system. In 2020, the HRMA operated at almost full capacity, with 55 civil servants, accounting for 86% of the positions of its internal structure⁹⁶. The Human Resources Network (HRN), established and co-ordinated by the HRMA, includes around 150 members at the national and local levels. The HRN meetings were suspended in 2019 and 2020, although HRMA organised some training activities on human resource topics for the members. The network resumed meetings in 2021. Despite these efforts, HRM functions are still mainly focussed on ensuring the compliance of HRM procedures with legislation and the performance of administrative tasks⁹⁷. A rather fragmented organisation of the HRM function in public bodies, with 81 public bodies having a single-officer HRM unit, contributes to this situation⁹⁸.

According to the CSL, the HRMA keeps the CPR and the ILM record⁹⁹. Both systems are part of the HRMIS. The CSL transferred the responsibility for entering and keeping data in the system updated from the HRMA to the state institutions in practice, and the data continues to be incomplete and unreliable.

The HRMA recently completed the development of a new HRMIS. It encompasses different modules (e.g. the civil servants' personal file, the ILM, a module for training, preparing the personnel plan, calculating salaries, and producing reports). The gradual implementation of the new system started in November 2020 in four pilot organisations¹⁰⁰. The full implementation of the interoperability with the centralised payroll system is planned for the end of 2021. For the time being, all issues concerning the

⁹³ Final Report on the Implementation of the PAR Strategy 2016-2020, including an overview of activities for 2020, MPADSM, March 2021, p. 29. A high proportion (86%) of the activities planned for 2020 in the area of civil service reform were implemented, but only 14% of the targets were achieved within the planned deadlines. The COVID-19 pandemic and changes in working methods stemming from it influenced these results. In addition, the deadlines set were overly ambitious in some cases, and the planned activities had tenuous linkages to the relevant indicators and targets.

Adopted by the Government on 6 July 2018, available at:
<http://arhiva.gov.me/ResourceManager/FileDownload.aspx?rId=325848&rType=2>.

⁹⁵ Final Report on the Implementation of the PAR Strategy 2016-2020, p. 33.

⁹⁶ Annual Work Report of HRMA for 2020, p. 48. In September of the same year, HRMA's internal organisation was modified by creating the HRM Standards Monitoring Department. Among other areas, it handles the monitoring of implementation of HRM procedures, the monitoring of the implementation of the PAR Strategy concerning the civil service and HRM, and the co-ordination of the Human Resources Network (HRN). Thus far, however, many of the activities for implementing HRM standards and good practices planned by the new department have not taken place due to COVID-19-related restrictions.

⁹⁷ The analysis of HRM units conducted in five state authorities shows that, in 2020: 1) only two units enabled at least one HRM employee to participate in training on modern human resource tools; 2) none of the units participated in professional networks; 3) only one unit prepared reports on human resource issues for managers; 4) only one has a developed HRM strategy.

⁹⁸ MPADSM. Analysis of the implementation of the CSL. June 2021, p. 5. The report provides data on the type of organisational unit responsible for HRM functions in 107 state bodies. Eighty-one of them, i.e. 76%, report having a single officer in charge of HRM. Unfortunately, the report does not provide data on the size of public bodies to analyse the correlation between both variables.

⁹⁹ CSL, Article 151.

¹⁰⁰ The HRMA, the Service of the Parliament of Montenegro, the Customs Administration and the Court of Appeals.

completeness and quality of data remain, hampering accurate analysis and monitoring of civil service policy and HRM practices.

The Appeal Commission and the Administrative Inspection (AI) complete the central government's institutional landscape concerning the civil service. The former reports to the Government¹⁰¹ and the latter is an integral part of the MPADSM¹⁰². The AI supervises the implementation of the CSL concerning the adoption and execution of the HR plan, CPR data submission and upkeep, procedures for filling vacancies and performance appraisal of civil servants¹⁰³. However, no information is available on inspection activities and results.

Conclusion

Political responsibility for the civil service is adequately established. But a new, multi-annual civil service policy is not in place after the expiration of the last PAR Strategy in 2020. Gradual implementation of a new HRMIS is ongoing. For the time being, data in the system is neither comprehensive nor updated, which hampers accurate analysis and monitoring of civil service policy and HRM practices.

¹⁰¹ CSL, Chapter XI. It is made up of civil servants appointed by the Government for a term of five years. All decisions of the Appeal Commission can be appealed to the court.


¹⁰² CSL, Chapter XIII, and Law of Administrative Inspectorate of 5 July 2016, Official Gazette No. 042/2016.

¹⁰³ CSL, Article 155.

Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

Overall, the value for the indicator 'Meritocracy and effectiveness of recruitment of civil servants' is 3. Compared with 2017, when the indicator's value was 2, the legal framework and the implementation of recruitments have improved but still do not fully ensure merit-based recruitment.

Overall, the value for the indicator 'Merit-based termination of employment and demotion of civil servants' is 5, compared with 2 in 2017. The legal framework and organisation of dismissals and demotions are adequate. Data provided by five institutions on court rulings related to dismissals in 2020 indicate the absence of court appeals in this area.

Indicator 3.3.1 - Meritocracy and effectiveness of recruitment of civil servants						
This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job seekers and performance of the public sector.						
This indicator measures only external recruitment. The indicator on merit based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
				Points 2021	Change from 2017	
Legal framework and organisation of recruitment						
1. Adequacy of the legislative framework for merit based recruitment for civil service positions				11/18	+1	
2. Application in practice of recruitment procedures for civil service positions				13/18	+7	
Performance of recruitment practices						
3. Time required to hire a civil servant				2/2	+2	
4. Average number of eligible candidates per vacancy				2/4	=	
5. Effectiveness of recruitment for civil service positions (%)				3/4	=	
6. Retention rate of newly hired civil servants (%)				2/4	+2	
Total				33/50	+12	

In line with the CSL, the HRMA develops staffing plans for its adoption by the Government, based on draft plans prepared at the institution level¹⁰⁴. The number of public bodies submitting the plans has increased steadily in the past few years. In 2020, 111 public institutions adopted them, out of 112 legally bound to do so¹⁰⁵. Nevertheless, the percentage of recruitments implemented from those planned was only 61% in 2020¹⁰⁶. Furthermore, staffing plans lack a comprehensive approach to workforce needs and HR policies to cope with them, and suffer from the scarcity of reliable data necessary to conduct a proper analysis.

The CSL regulates recruitments based on the principle of equal access to vacant positions and establishes the public announcement of vacancies, equal terms for all candidates and the assessment of candidates based on merit¹⁰⁷. Testing procedures, including written and oral examinations, are set forth for all

¹⁰⁴ CSL, Articles 148-151.

¹⁰⁵ HRMA Report on the analysis of HRM in 2020, p. 23.

¹⁰⁶ MPADSM Report on the implementation of the CSL in 2020, pp. 23-24.

¹⁰⁷ CSL, Article 10.

competitions to fill vacancies in non-senior civil service positions¹⁰⁸. Procedures and assessment criteria are regulated in the secondary legislation¹⁰⁹.

The new legal framework simplified recruitment procedures by abolishing internal competitions within public bodies, which were highly ineffective¹¹⁰. Moreover, the COVID-19 pandemic spurred fully online applications in 2020, which contributed to the streamlined implementation of recruitments. In 2020, the average length of competitions was well below 90 days in the five public bodies analysed¹¹¹.

The CSL and secondary legislation also brought improvements in selection procedures. The main changes concerned the practical part of the written test, which is now implemented electronically protected by a code to preserve the anonymity of candidates, and questions are randomly assigned as in the general written test. This strengthens objectivity and minimises the influence of the human factor in this selection phase, which was an issue in the previous system.

Despite these positive developments, the recruitment regulations and practices still present areas for improvement. First, it remains difficult to secure the participation of external experts with adequate qualifications in selection panels¹¹². Second, the secondary legislation is not detailed enough concerning criteria and methods for drafting job descriptions. Recruitment announcements contain only the basic formal job requirements set out in the CSL¹¹³. They do not specify the scope of the tasks nor the knowledge, competence and skill requirements necessary for adequate performance in the job, which form the basis of professional selection. Third, there are no standard guidelines on the methods of conducting selection interviews. Fourth, despite the improvements in legislation concerning the practical part of the written test, its implementation in practice does not guarantee a standardised approach across public bodies. The reason is that the content preparation is still under the control of the employing institutions¹¹⁴, while there are no standard guidelines on the matter and the HRM capacities differ across organisations. Under these conditions, computer-based testing, including random selection of assignments prepared by the employing institution, does not ensure a high quality of the assessment.

Finally, the merit principle is also challenged by the margin of discretion provided in legislation for the appointment of candidates. The appointments are decided by the head of an institution (often a minister) after an interview with the three best-ranked candidates¹¹⁵. Nevertheless, in 2020, in all of the analysed cases the first-ranked candidates were appointed.

In 2020, the effectiveness of competitions to fill non-senior civil service positions open to external candidates was high (86% of the vacancies announced were filled). But this occurred despite a low average number of eligible candidates per vacancy (Figure 1), which evidences a weak capacity of the system to attract and select the best professionals.

¹⁰⁸ CSL, Article 46.

¹⁰⁹ Decree on the criteria and more detailed manner of conducting the examination of knowledge, abilities, competencies and skills for work in state bodies, Official Gazette No. 50/2018.

¹¹⁰ OECD (2017), *SIGMA Monitoring Report: Montenegro*, OECD, Paris, p. 62.
<http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf>.

¹¹¹ In four of the five public bodies analysed, the average time to hire a civil servant was around 60 days, while in one it was 82 days.

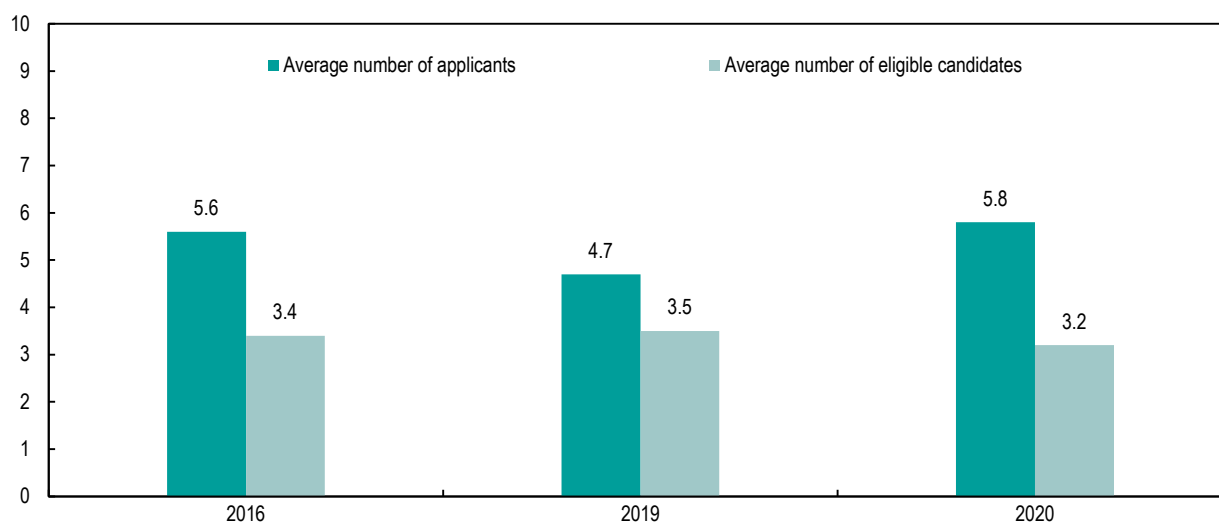
¹¹² Report on the implementation of the Law on Civil Servants and State Employees, MPADSM, p. 14.

¹¹³ CSL, Article 34.

¹¹⁴ Decree on the criteria and more detailed manner of conducting the examination of knowledge, abilities, competencies and skills for work in state bodies, Article 9.

¹¹⁵ CSL, Article 48. It implies an improvement concerning the previous CSL, by which the list of best-ranked candidates could include up to five names. Furthermore, the appointment of a candidate who is not the highest-ranked requires a written justification.

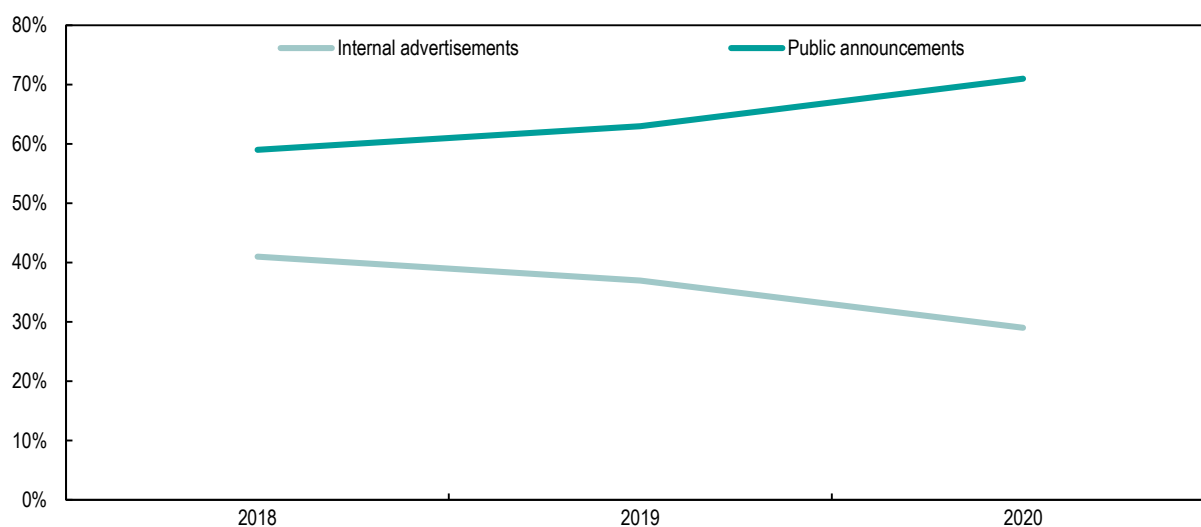
Figure 1. Average number of applicants and eligible candidates per vacancy in open competitions to fill non-senior civil servant positions



Source: Data provided by the HRMA.

Data available indicate much lower effectiveness of internal recruitment (22%)¹¹⁶. In practice, implementation of internal competitions has been declining since 2018 in favour of external recruitment (Figure 2), which is consistent with the difference in results.

Figure 2. Percentage of internal and external competitions, 2018-2020



Source: HRMA Annual Report for the years 2019 and 2020.

Conclusion

Detailed criteria and methods to prepare job descriptions are not developed, which has a negative impact on the quality of selection. The professional composition of selection panels is challenged by the difficulty in involving experts and the lack of explicit exclusion of political representatives. There is no obligation to appoint first-ranked candidates. The low average number of eligible candidates per vacancy raises questions about the quality of results, despite the high proportion of vacancies filled.

¹¹⁶ HRMA Report for the year 2020.

Indicator 3.3.2 - Merit-based termination of employment and demotion of civil servants

This indicator measures the extent to which the legal framework and the HRM practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with the termination of employment and demotion of senior civil servants.

Overall 2021 indicator value  since 2017

0 1 2 3 4 **5**

Points
2021

Change from
2017

Legal framework and organisation of dismissals and demotions

1. Objectivity of criteria for termination of employment in civil service legislation	6/6	=
2. Objectivity of criteria for demotion of civil servants in the legislative framework	0/2	-1
3. Right to appeal dismissal and demotion decisions to the courts	2/2	=

Fairness and results of dismissal practices

4. Dismissal decisions confirmed by the courts (%)	4/4	+4
5. Implementation of court decisions favourable to dismissed civil servants (%)	4/4	+4
Total	16/18	+7

Termination of employment in non-senior civil service positions is precisely regulated in the CSL¹¹⁷. It is based on objective criteria and specifically defined reasons. A separate chapter¹¹⁸ also regulates termination in connection with the abolition of a body and reorganisation. Data provided by five selected institutions (two ministries and three central offices employing the highest number of civil servants) indicates that there were no cases of recourse to the court of appeals concerning dismissal decisions in the assessment period.

The CSL allows for the demotion of civil servants because of disciplinary proceedings in cases of serious violations¹¹⁹. The law does not prescribe explicitly other grounds for demotion. However, Article 63 of the law could also be used for demotions (permanent reassignments). This article does not contain any criteria or detailed procedures.

Conclusion

Termination of employment is well defined by the CSL. Civil servants are provided with a two-instance appeal procedure against dismissal and demotion decisions. However, legal provisions on reassignment can be misused to demote civil servants.


¹¹⁷ CSL, Chapter IX.

¹¹⁸ CSL, Chapter X.

¹¹⁹ CSL, Article 96.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

Overall, the value for the indicator 'Merit-based recruitment and dismissal of senior civil servants' is 3, compared with 2 in 2017. The new CSL made the implementation of competitions for senior positions more efficient and transparent. There are still areas for improvement, but the changes implemented justify the indicator's value increase.

Indicator 3.4.1 - Merit-based recruitment and dismissal of senior civil servants						
<p>This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.</p> <p>Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.</p>						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
				Points 2021	Change from 2017	
Legal framework and organisation of recruitment and dismissal of senior civil servants						
1. Appropriateness of the scope for the senior civil service in legislation				2/3	+1	
2. Adequacy of the legislative framework for merit based recruitment for senior civil service positions				12/15	+3	
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework				0/4	-4	
4. Legislative protection of the rights of senior civil servants during demotion				1/2	=	
Merit-based recruitment and termination of employment in senior civil service positions in practice						
5 Application in practice of recruitment procedures for the senior civil service				4/9*	+3	
6. Ratio of eligible candidates per senior level vacancy				0/4	=	
7. Effectiveness of recruitment for senior civil service positions (%)				4/4	=	
8. Women in senior civil service positions (%)				4/4	=	
9. Stability in senior civil service positions (%)				0/4*	-2	
10. Dismissal decisions confirmed by the courts (%)				4/4	+4	
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)				4/4	+4	
Total				35/57	+9	

Note: *Data not available or provided.

The senior civil service includes positions one and two levels below the ministers, i.e., Secretary and Director General in ministries, heads and deputy heads of administrative bodies reporting to the ministries¹²⁰. Secretaries of ministries, while responsible for the overall co-ordination of the ministry, do not have key responsibility for HRM, which remains with the minister unless explicitly delegated¹²¹.

¹²⁰ CSL, Article 24. As explained in the analysis of Principle 1, in the CSL, the positions of heads of administrative authorities constitute a professional category different from senior civil service (SCS) management positions. Nevertheless, from the perspective of the Principles of Public Administration in the area of public service and HRM, both groups of positions are part of the senior civil service.

¹²¹ CSL, Article 135.

Senior managers, including heads of administration authorities are appointed for five years¹²². This term is one year longer than the government's four-year mandate, which should contribute to enhancing stability in these positions. Official data on the turnover in senior civil service positions six months after the new government's appointment in 2020 is not available. However, the analysis of publicly available data shows a high turnover rate (55%), i.e. 103 out of 187 senior managers and heads of administration authorities left their positions due to resignation, the abolition or reorganisation of the state body, or the abolition of a position between December 2020 and June 2021¹²³.

The new legal provisions improve the selection procedures for senior managers and heads of administration authorities. The CSL establishes compulsory testing of competencies, knowledge and skills. It is carried out in two stages through written tests and a structured interview¹²⁴. Interviews must be conducted using the competency framework adopted in 2019 for senior management positions and heads of administrative authorities¹²⁵. However, there is no data on the degree of implementation of competency-based selection for senior civil service positions or on capacity development of HRM staff and members of selection panels on the topic. Concerning appointments, the CSL limits political discretion by reducing the number of candidates the minister can pick from five to three, compared to the previous law¹²⁶.

Despite these developments, recruitments for senior management positions and heads of administration authorities still present several areas for improvement. First, they suffer from the lack of adequate specification of requirements set out in job descriptions, which affects all civil service positions (see Principle 3). Without these elements, the recruitment procedure cannot be carried out properly, even with an adopted competency framework. Second, the regulation of selection procedures for heads of administration authorities is ambiguous and allows for other assessment methods¹²⁷ without further specification in legislation. Third, the composition of recruitment committees does not guarantee sufficient expertise in selecting senior managers, considering the difficulty in involving qualified experts and the lack of capacity development on competency-based selection discussed above. Fourth, the CSL does not explicitly exclude politically appointed persons in the selection panels¹²⁸. In one of the five institutions analysed, a political appointee participated in the panel¹²⁹.

The effectiveness of competitions for senior civil service positions is exceptionally high in terms of the percentage of vacancies filled (100% in 2019 and 2010). However, it is very low in attracting enough

¹²² Law on State Administration, Articles 31-35.

¹²³ More precisely, the period analysed went from 4 December 2020 until 3 June 2021.

¹²⁴ CSL, Article 56.

¹²⁵ Competency Framework - Manual, HRMA, 2019. It consists of five core competencies, namely Communication, Innovation, Leadership, Performance and Co-operation. It includes a description of each competency and positive and negative examples of incumbents' behaviour as evidence of whether or not the competency is demonstrated. It also provides examples of questions to ask the candidate to elicit information confirming specific candidate behaviours as well as a scale for assessing the competency.

¹²⁶ CSL, Articles 56-57.

¹²⁷ CSL, Article 58.

¹²⁸ The Law stipulates that selection committees for senior positions are formed by the HRMA and consist of the Head of the HRMA, a representative of the employing institution (person performing the tasks of senior management staff) and an expert distinguished in the relevant area of work. In case of competitions to fill vacancies of heads of state authorities, the commissions are also formed by HRMA and the senior manager must come from the line ministry to which the authority reports. If the vacancy corresponds to the position of Head of the HRMA, exceptionally the competition commission is formed by the Minister responsible for administrative affairs, and the composition includes one senior manager of the Ministry and two experts (LCS, Articles 56 and 58).

¹²⁹ This was the case of the Customs Administration. In one recruitment file analysed, a state secretary was member of the selection panel.

qualified candidates, given that the average number of eligible candidates per vacancy was only 1.3 in both years¹³⁰, lower than in previous years (Figure 3).

Figure 3. Average number of eligible candidates per vacancy in competitions to fill senior civil service vacancies



Source: Data provided by the HRMA.

Although the proportion of women in senior civil service positions is high (40%)¹³¹, there is not yet a full gender balance.

The law provides clear grounds justifying the termination of employment of civil servants in the senior management category¹³². However, the objectivity of the criteria for termination in positions of heads of administrative authorities is not fully ensured. The CSL, through amendments adopted in 2021¹³³, provides for specific cases of dismissal if information included in the annual activity report of the administrative body indicates irregularities or in the event of failure to submit reports. But the procedure for applying this provision is undefined, which leaves ample discretion to the appointing authority that can be used arbitrarily, without procedural safeguards, as in standard performance appraisal and disciplinary procedures.

The demotion of senior positions is possible due to a disciplinary procedure in case of serious violations¹³⁴. Provisions of the CSL on permanent reassignment¹³⁵ can also lead to a transfer to a lower-level position, with a written justification (see Principle 3).

Conclusion

The CSL included the heads of administrations reporting to ministries in the civil service and improved selection procedures for senior civil service positions. However, selection methods for heads of administrations are not fully specified, and shortcomings in job descriptions hamper the quality of selection. Procedures for dismissal of heads of administrations leave broad discretion and can be used arbitrarily. Official data on stability in senior civil service positions within six months after the current government's formation is not available, but calculations based on publicly available data show a high turnover rate (57%).

¹³⁰ Data provided by the HRMA.

¹³¹ Data provided by HRMA: 78 women out of 196 senior civil servants.

¹³² CSL, Article 134.


¹³³ CSL, Article 60a.

¹³⁴ CSL, Articles 96 and 100.

¹³⁵ CSL, Article 63.

Principle 5: The remuneration system of public servants is based on job classifications; it is fair and transparent.

Overall, the value for the indicator ‘Fairness and competitiveness of the remuneration system for civil servants’ is 2, compared with 1 in 2017. There is still insufficient clarity and transparency in the criteria for awarding individual salary components. In legislation, managers’ discretion to influence total remuneration remains high, but the percentage of bonuses paid in 2020 over the total wage budget was below 1%.

Indicator 3.5.1: Fairness and competitiveness of the remuneration system for civil servants			
This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the system in practice.			
Overall 2021 indicator value  since 2017	0	1	2
		Points 2021	Change from 2017
Legal framework and organisation of the remuneration system			
1. Legal obligation to base salaries on job classifications		2/2	=
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation		0/2	=
3. Availability of salary information		0/3	=
Performance and fairness of the remuneration system in practice			
4. Fairness in the allocation of base salaries in the job classification system		1/4	-1
5. Base salary compression ratio		2/2	=
6. Managerial discretion in the allocation of bonuses		1/2	+1
7. Motivational character of bonuses (%)		2/2	+2
8. Competitiveness of civil service salaries (%)		0/3*	=
Total		8/20	+2

Note: *Data not available or not provided.

The LWPSE¹³⁶ covers the civil service and employees of agencies or other legal entities established by the government or local governments, independent or regulatory bodies, and publicly owned enterprises¹³⁷.

The LWPSE defines all salary elements, including the fixed salary, which comprises the base salary and some salary supplements, and variable pay. The biggest weakness of the law is the lack of clear criteria for awarding specific salary components, which does not fully guarantee that the remuneration system is fair and transparent.

Regarding the base salary, the Law specifies coefficients for its calculation for all positions in the civil service¹³⁸, following the classification defined in the CSL. The Government approves the value of the coefficient annually¹³⁹. However, fair allocation of base salaries is not fully ensured due to insufficient regulation of job descriptions, evaluation and classification.

¹³⁶ Law on Wages of Public Sector Employees (LWPSE), Official Gazette of 8 March 2016 No. 016/2016, 083/2016, 021/2017, 042/2017, 012/2018, 039/18, 042/2018, 034/2019.

¹³⁷ LWPSE, Article 2.

¹³⁸ LWPSE, Articles 22 and 24.

¹³⁹ LWPSE, Article 12.

Although the Law regulates salary supplements and establishes a ceiling for them of 45% over the fixed salary¹⁴⁰, the criteria for granting certain salary supplements are unclear. The Law applies in particular to the salary supplement for work in certain positions, which can account for up to 30% of the base salary. The secondary legislation¹⁴¹ defines eligible authorities, job categories and the maximum amount of the supplement for work in these positions but does not specify the criteria for granting a specific amount of the supplement. The provisions on the granting of salary supplements for managing Instrument for Pre-Accession Assistance (IPA) funds¹⁴² are similarly formulated.

As for the variable pay component, according to legislation¹⁴³, it may be awarded to an employee who achieves exceptional results and quality of work. The quality of work is defined, among other factors, as “the special contribution to improving the work process, exceptional productivity and quality of work performed”, without further specification of the criteria or procedure to assess these aspects. While the variable pay for a given month can account for as much as 50% of the average salary in Montenegro, in the absence of clear criteria, its granting depends solely on the decision of the head of the authority. Moreover, the by-law does not specify to whom the variable component may be granted among the outstanding employees or how the specific amount of this part of the salary is determined. The variable part of the remuneration, although linked to performance and additional workload, is not directly connected to the results of the performance appraisal of civil servants. Despite these shortcomings in legislation, bonuses paid represented only 0.8% of the wage budget in 2020¹⁴⁴, and only 17% of civil servants in the central government received them¹⁴⁵.

The LWPSE was amended in 2018 and 2019. One main modification is establishing severance pay in case of agreed termination of employment¹⁴⁶, aimed to support measures included in the 2018-2010 Optimisation Plan. The coefficients in the salary scale were also adjusted, leading to a lower but still adequate compression ratio in civil service salaries compared with the previous law (4.4 after the amendments, versus 5.1)¹⁴⁷.

General information on civil service salaries (e.g. the salary scale, average salaries by civil service category) is not publicly disclosed beyond the publication of the LWPSE. Information on the salary (or salary range) offered in job vacancies is not included in job announcements; rather, only a reference to the job category. The scarcity of data and lack of analysis on public sector wages prevent a legitimate comparison between civil service salaries and salaries in the private sector for similar employees.

¹⁴⁰ LWPSE, Article 19.

¹⁴¹ Decision on for performing work at specific job positions of 30 September 2017, Official Gazette No. 060/2017, 036/2018, 059/2019.

¹⁴² Decision on the salary supplement for performing work at positions for decentralised and centralised, indirect and direct management of IPA funds of 1 March 2019, Official Gazette No. 013/2019.

¹⁴³ LWPSE, Article 21, and Decree on the variable part of salary of 20 May 2016, Official Gazette No. 032/2016, 028/2017, Articles 3-6.

¹⁴⁴ Data provided by the Ministry of Finance and Social Welfare (MoFSW): the wage salary implemented in 2020 was EUR 499.1 million, and the amount paid for variable pay the same year was EUR 3.8 million.

¹⁴⁵ Data provided by the MoFSW, referred to the General Secretariat of the Government and 15 ministries: 482 civil servants employed in these authorities received bonuses, from 2 892 civil servants employed in them at the end of 2020.

¹⁴⁶ LWPSE, Article 33.


¹⁴⁷ The comparison considers the coefficients for the position of Secretary of Ministry in the upper end (15.56 in the current LWPSE, and 18 in the previous law). The coefficients for the lower civil service position remains the same in both laws (3.5).

Conclusion

The legislation clearly establishes the civil service salary structure based on the job classification. However, fairness in the allocation of base salaries is not fully ensured due to shortcomings in regulations on the job description, evaluation and classification. The definitions of salary components and criteria to allocate them remain unclear. Managerial discretion in allocating bonuses is high, although bonuses paid represented only 0.8% of the wage budget in 2020. Information on salaries is not publicly disclosed.

Principle 6: The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.

Overall, the value for the indicator 'Professional development and training for civil servants' is 2, lower than in 2017, when it was 3. There has been no progress concerning resources and capacities for decentralised (sector-specific) training, implementation of TNA and training plans need improvement. The effectiveness of internal mobility and promotion mechanisms remains limited, and the new LCS does not establish formal verification of competencies for promotion. Implementation of performance appraisal is insufficient and data is not fully reliable. The perceived level of meritocracy is low and decreased from 2017.

Indicator 3.6.1 - Professional development and training for civil servants						
This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
			Points 2021		Change from 2017	
Legal framework and organisation of professional development						
1. Recognition of training as a right and a duty of civil servants			2/2		=	
2. Co-ordination of the civil service training policy			2/3		-1	
3. Development, implementation and monitoring of training plans			2/3		-1	
4. Evaluation of training courses			2/2		=	
5. Professionalism of performance assessments			2/4*		-1	
6. Linkage between performance appraisals and measures designed to enhance professional achievement			0/4		-2	
7. Clarity of criteria for and encouragement of mobility			2/2		+1	
8. Adequacy of legislative framework for merit based vertical promotion			0/2		-1	
9. Absence of political interference in vertical promotions			0/2		=	
10. Right of civil servants to appeal against performance appraisal decisions			2/2		=	
11. Right of civil servants to appeal mobility decisions			2/2		=	
Performance of professional development practices						
12. Training expenditures in proportion to the annual salary budget (%)			2/4		+2	
13. Participation of civil servants in training (%)			0/5		-1	
14. Perceived level of meritocracy in the public sector (%)			2/5		-1	
Total			20/42		-5	

Note: *Data not available or not provided.

The CSL establishes training and professional development as the right and responsibility of civil servants and public employees¹⁴⁸. However, only 27% of civil servants participated in training organised by the

¹⁴⁸ CSL, Article 86.

HRMA¹⁴⁹ in 2020, and the budget of such training activities was far below 1% of the wage budget¹⁵⁰. Comprehensive data on the training budget and civil servants trained, encompassing both centralised and decentralised (sector-specific) training, is not available.

The HRMA is responsible for preparing and implementing centrally organised training programmes, their monitoring and evaluation. It also must assist state authorities in implementing sector-specific training¹⁵¹. Due to limited resources and capacities in public bodies to organise sector-specific training, the system remains rather centralised in practice. Some public bodies such as the tax and the customs administrations are exceptions¹⁵².

The HRMA proactively manages centralised training. In the first half of 2020, it implemented a new training needs assessment (TNA) methodology¹⁵³. The analysis was carried out separately for senior managers and other civil service positions. The TNA for senior civil service positions was more specific and suggested several types of training to be delivered, depending on the level of managerial experience and the development needs identified. Concerning other civil service positions, the analysis was not applied properly, and it did not manage to identify knowledge and skills gaps to be filled through training¹⁵⁴. The training plan that the HRMA prepared for 2021 specifies training activities, general objectives and target groups, and an indicative training calendar. However, it does not refer to the TNA or identified knowledge and skills gaps.

In 2020, the HRMA organised general, specific and accredited training courses dealing with horizontal functions. General training aims to acquire and improve the basic knowledge and skills necessary to work in state bodies¹⁵⁵. Specific training programmes aim to deepen knowledge of a particular area¹⁵⁶. Accredited education programmes are specialised training courses in different thematic areas¹⁵⁷. Furthermore, HRMA organised other training activities foreseen in the action plans of specific strategies and twinning programmes or that resulted from co-operation with international organisations¹⁵⁸.

Due to COVID-19 restrictions, most of the training was organised online; some was cancelled or postponed. However, in 2019 and 2020, a high proportion of planned courses was implemented (Figure 4).

¹⁴⁹ Data provided by the HRMA: The number of civil servants who participated in centralised training in 2020 was 2 134. The number of civil servants employed at the beginning of 2020 was 7 934.

¹⁵⁰ Data provided by HRMA: The total amount spent on training centrally organised in 2020 was 368 000 EUR. No data is available on training expenses of individual states' authorities. The total amount planned for salaries for 2020 was EUR 498 747 790. The figure actually spent is not currently available. The percentage of centralised training budget from total wage budget is 0.07%.

¹⁵¹ CSL, Article 151.

¹⁵² According to information provided by the Tax Administration and the Customs Administration, both institutions carried out TNA and prepared training plans in 2020.

¹⁵³ Annual Work Report of HRMA for 2020.

¹⁵⁴ The assessment focussed mostly on training management issues, i.e. on analysing whether the authorities conduct their own assessment or rely on the training plans of HRM.

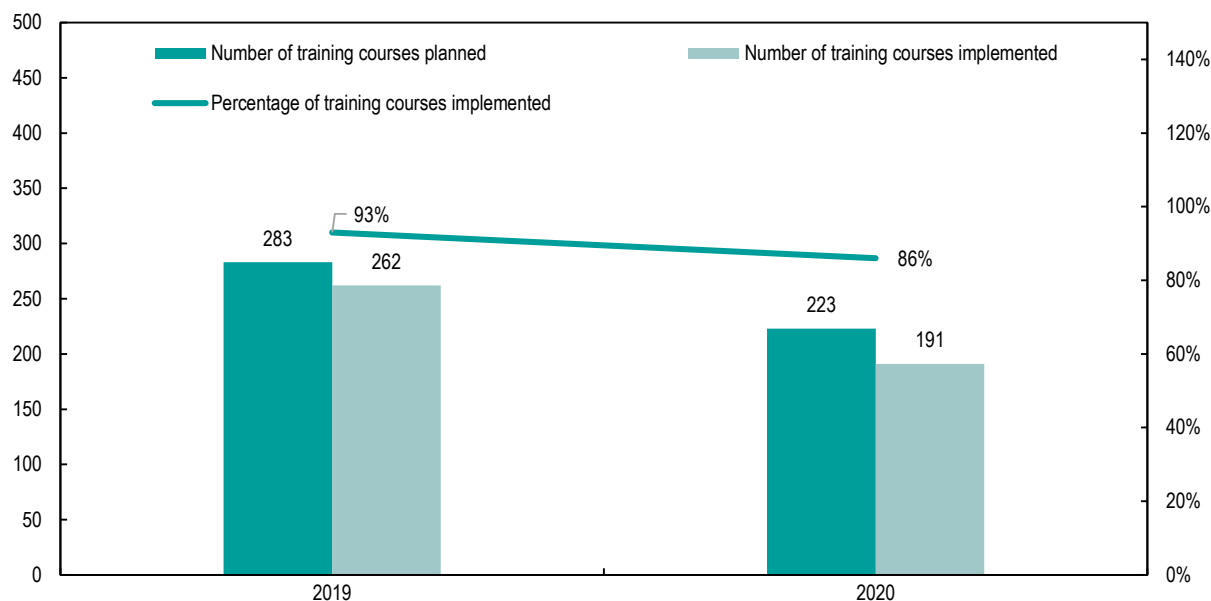
¹⁵⁵ Annual Work Report of HRMA for 2020, pp. 26-27. The topics of these training courses included: integrity in public administration, financial reporting, the Law on Administrative Procedure, free access to public information, prohibition of discrimination, gender equality, performance appraisal, public procurement, language courses.

¹⁵⁶ Annual Work Report of RMA, pp. 29-32. Training implemented in 2020 concerned financial management and control, internal audit, Central Personnel Record, management of IPA funds, regulatory impact assessment (RIA). Managerial training was also organised under this category.

¹⁵⁷ Annual Work Report of HRMA, pp. 32-37. In 2020, the scope of these courses included HRM, strategic planning, training programme for integrity managers, certification course for accountants, certification course for internal auditors, training programme on communication and public relations in the public sector.

¹⁵⁸ Annual Work Report of HRMA, pp. 37-41. A total of 32 sessions were conducted and attended by 526 participants.

Figure 4. Training courses planned and implemented in 2019-2020



Source: Data provided by the HRMA.

Evaluation of training is mandatory, and reports are prepared for all training programmes. Training organised by the HRMA was evaluated very positively¹⁵⁹. However, training evaluation is based only on perceived quality by participants; the impact of training programmes is not yet analysed.

Performance is assessed against individual objectives, aligned with the functions and level of responsibility of the position. The evaluation criteria are established in secondary legislation separately for senior civil servants and heads of administration authorities, civil servants and state employees¹⁶⁰. Civil servants are informed about the objectives on which they will be evaluated. The results of performance appraisals are recorded in the form of a decision¹⁶¹. Line managers must monitor civil servants' work continuously; encourage them to perform tasks efficiently, respect job duties, and behave appropriately; and point out irregularities in work¹⁶². Positive performance appraisal results may lead to a promotion for those who obtain the highest rating, to compulsory training in the event of unsatisfactory performance¹⁶³ or to dismissal after two consecutive negative appraisals. There are no other consequences concerning professional development or the award of the variable pay.

Complete data on civil servants eligible for appraisal in 2020 is not available. The existing data shows that only 34% of all employed civil servants were assessed in 2020¹⁶⁴. The main reason that the HRMA cited for the low percentage of assessments is the COVID-19 pandemic. Reliable data on the results of

¹⁵⁹ Annual Work Report of HRMA for 2020.

¹⁶⁰ Decree on performance appraisal of civil servants and state employees of 21 February 2019, Official Gazette No. 2/2018, Chapter II.

¹⁶¹ CSL, Article 83.

¹⁶² Decree on performance appraisal of civil servants and state employees, Article 6.

¹⁶³ CSL, Article 82.

¹⁶⁴ Data provided by HRMA; 3 027 civil servants were assessed in 2020, from 9 021 civil servants in central government bodies. Data included in HRMA's Annual Work Report for 2020 relates to 2019 and encompasses both civil servants and other public employees. It shows a higher implementation rate, with 8 670 staff evaluated from 13 679 total staff, i.e. 63%.

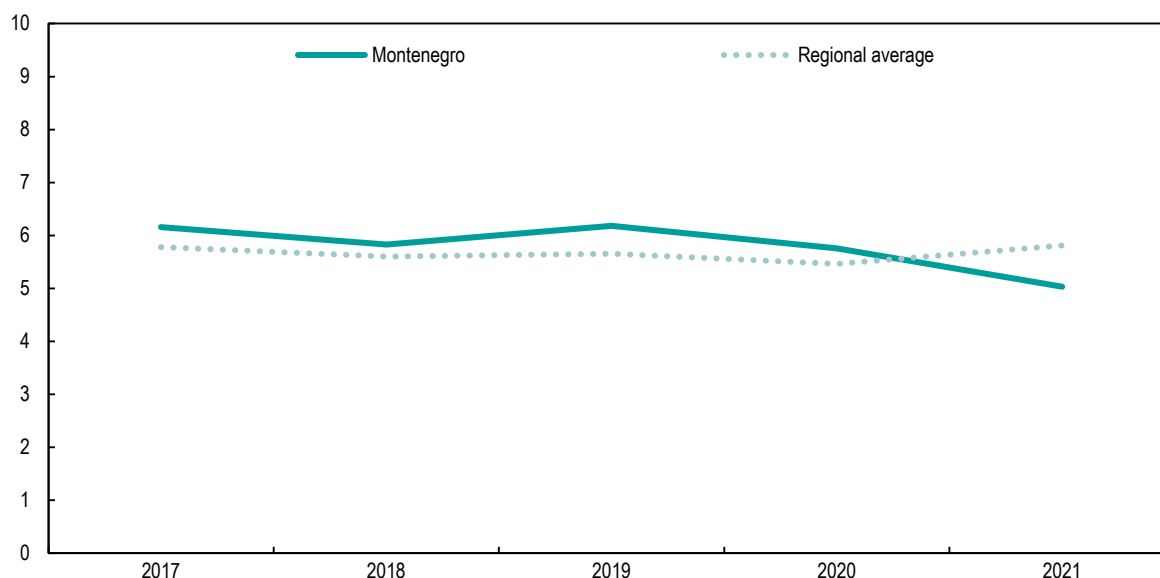
performance appraisals in the civil service is not available, either. Data collected by the MPADSM¹⁶⁵ reflects that 72.7% of results fell in the highest rating category (“outstanding”) in 2018 and 73.4% in 2019, which indicates an inadequate implementation.

The main form of promotion in the civil service is reassignment¹⁶⁶ to a higher-level position. It does not involve a formal checking of competencies but only fulfilling the conditions concerning the level of qualification and professional experience and having obtained “outstanding” performance appraisal results in the latest annual evaluation. Given the high proportion of civil servants whose performance is assessed as outstanding, this criterion does not constitute a sound basis for promotion. Nevertheless, in 2020, only 0.5% of civil servants were promoted through this process.

According to the CSL, mobility takes place through internal competitions. But their effectiveness in practice is low. In 2020, only 22% of the vacancies offered in internal announcements were filled¹⁶⁷. The percentage of civil servants transferred to another position through an internal announcement was only 1%¹⁶⁸. However, the availability and relevance of mobility data is low and may not reflect the actual situation.

The perceived level of meritocracy in the public sector was moderately low in 2020, and a downward trend is observed compared with previous years (Figure 5).

Figure 5. Perceived level of meritocracy in the public sector



Notes: Proportion of respondents to the question "To what extent do you agree or not agree with the following statement? 'In the public sector most people can succeed if they are willing to work hard'. Only responses from those currently working in the public service are analysed. Scale from 1 (completely disagree) to 10 (strongly agree).

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

¹⁶⁵ MPADSM. Report on the implementation of the CSL. April 2021, p. 22.

¹⁶⁶ CSL, Article 63.

¹⁶⁷ Annual Work Report of HRMA for 2020, p. 11.

¹⁶⁸ According to the Annual Work Report of HRMA for 2020, pp. 9-11, 76 persons were selected and transferred to positions through internal announcements, i.e. 1% from 7 766 civil servants employed at the beginning of the year, based on data also provided by the HRMA.

The HRMA continued its proactive management of civil service training in horizontal areas. However, TNA is not properly implemented for all civil service positions, and training plans do not refer to the needs identified. Data on training is available only for HRMA's programmes and shows insufficient budget and low participation. Only a few institutions develop sector-specific training. There is no complete data on the level of implementation of performance appraisal and its results; the data available shows a significant margin for improvement. The effectiveness of internal mobility mechanisms is low.

Principle 7: Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Overall, the value for the indicator 'Quality of disciplinary procedures for civil servants' is 4, the same as in 2017. There were some improvements in legislation (statute of limitations extended in the case of serious violations). However, more than one-third of disciplinary decisions challenged in the courts were not confirmed in the judgements.

Overall, the value for the indicator 'Integrity of public servants' is 2, the same as in 2017. There were no changes in the legal, institutional or policy framework. Values concerning the use of investigations in practice and the perception of bribery by citizens worsened slightly, although they were already low in 2017.

Indicator 3.7.1 - Quality of disciplinary procedures for civil servants						
This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases.						
Overall 2021 indicator value	0	1	2	3	4	5
					Points 2021	Change from 2017
Legal framework and organisation of disciplinary system						
1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures					4/4	=
2. Compliance between disciplinary procedures and essential procedural principles					6/6	=
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour					1.5/2	+0.5
4. Legislative safeguards for suspension of civil servants from duty					2/2	=
Performance of professional development practices						
5. Disciplinary decisions confirmed by the courts (%)					0/4	=
Total					13.5/18	+0.5

The CSL defines the duties of civil servants and the disciplinary responsibility for their violation¹⁶⁹. The disciplinary provisions clearly regulate the procedure related to a breach of law by a civil servant. These violations can be either minor or serious. Investigation of minor disciplinary cases is conducted in individual administrative institutions by staff members that the head of that state authority designates. Disciplinary procedures for serious breaches of official duty are the responsibility of the Disciplinary Commission¹⁷⁰, with the administrative support of the HRMA. The disciplinary procedure is governed by the principle of the presumption of innocence. The civil servant or state employee has the right to be heard and the right

¹⁶⁹ CSL, Chapter VIII.

¹⁷⁰ CSL, Articles 100, 105-106. The Disciplinary Commission is a professional body made up of five persons (one chair and four members) nominated and dismissed by the Government, at the proposal of the Ministry, following public competition for a period of five years. The Commission is independent and autonomous in its work, adjudicates at meetings and takes decisions collegially by a majority of all members.

of defence. The procedure also provides for a catalogue of possible sanctions, which has been formulated according to the principle of proportionality. The decision of the Disciplinary Commission may be challenged in the administrative court. The CSL extended the statute of limitations concerning serious violations to four years, which is an improvement in relation to the previous law¹⁷¹.

In 2020, the Disciplinary Commission handled 251 cases and concluded 172 of them (69%). The most common reasons for the Commission to initiate proceedings were breaches relating to failure or negligent performance of official duties – 20% (52 cases) – and abuse of office or power, 11% (27 cases). The Administrative Court issued 12 decisions on appeals against Disciplinary Commission decisions, of which 8 (66%) upheld the decision of the Disciplinary Commission. This indicates that there is still a margin for improvement in the implementation of disciplinary procedures.

Indicator 3.7.2 - Integrity of public servants				
This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service.				
The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.				
Overall 2021 indicator value	0	1	2	3 4 5
			Points 2021	Change from 2017
Legal framework and organisation of public sector integrity				
1. Completeness of the legal framework for public sector integrity			5/5	=
2. Existence of a comprehensive public sector integrity policy and action plan			0/4	=
3. Implementation of public sector integrity policy			0/3	=
Public sector integrity in practice and public perceptions				
4. Use of investigations in practice			0/4	-3
5. Perceived level of bribery in the public sector by businesses (%)			3/4	+1
6. Bribery in the public sector experienced by the population (%)			0/4	-1
Total			8/24	-3

The legal framework of the integrity and the anti-corruption system is formed by the LPC¹⁷², the CSL and the civil service Code of Ethics. The LPC refers only to public officials, which, in the case of the civil service, include only senior managers and heads of administration authorities¹⁷³. The CSL and the Code of Ethics, in turn, cover all civil servants and state employees. Some issues are regulated by both the CSL and the LPC (conflicts of interest¹⁷⁴, secondary employment issues¹⁷⁵, receipt of gifts and benefits¹⁷⁶), while others are regulated only by the LPC (restrictions to minimise “revolving doors”, including post-employment¹⁷⁷; obligation to disclose assets) and apply solely to the narrow group of civil servants included in the definition of “public officials”. The obligation to comply with the Code of Ethics stems from

¹⁷¹ CSL, Article 103. In the previous CSL, it was only one year.

¹⁷² Law on Prevention of Corruption of 19 December 2014, Official Gazette No. 053/2014, 042/2017.

¹⁷³ LPC, Article 3.

¹⁷⁴ CSL, Articles 7, 74, 76, and LPC, Articles 7, 8.

¹⁷⁵ CSL, Article 79 and LPC, Articles 9-14.

¹⁷⁶ CSL, Article 78 and LPC, Articles 16-20.

¹⁷⁷ LPC, Article 15.

the CSL¹⁷⁸. Furthermore, the Criminal Code¹⁷⁹ contains penalties for financial fraud against the state, acts of forgery/counterfeiting documents, active bribery, passive bribery, embezzlement, abuse of functions/power, trading in influence, illicit enrichment and money laundering.

The system's biggest weakness is the absence of an anti-corruption policy adopted at the national level for the public sector. Nevertheless, integrity plans exist at the individual institution level. Public bodies must prepare them every two years¹⁸⁰, and the heads must appoint integrity managers whose main task is to prepare and monitor these plans¹⁸¹. In 2020, 98% of authorities had appointed an integrity manager¹⁸². The same percentage of public bodies complied with the obligation to prepare an integrity plan and report on its implementation to the Anti-Corruption Agency (ACA)¹⁸³.

The ACA is an independent institution established in January 2016. It ensures compliance with laws related to anti-corruption¹⁸⁴ and performs its tasks based on annual work plans. In 2020, in the field of conflicts of interest, the Agency issued 135 opinions, conducted 63 investigations and found violations in 60.3% of these cases. As a result of the Agency's opinions and decisions, 41 officials resigned. Twelve cases were referred to court. In addition, in 2020, the ACA collected and verified 8 108 asset declarations, 24% more than in 2016. The statutory obligation to submit an annual report on income and assets was fulfilled on time by 95.5% of public officials subject to the obligation, including 99.9% of civil servants¹⁸⁵. The ACA was also involved in the analysis of whistle-blowers' requests and their protection. In 2020, 114 investigations related to whistle-blowers' requests were underway and 31 were concluded, of which 9.7% considered that there was a threat to the public interest.

Evidence of integrity investigations conducted by the ACA in 2020 affecting only civil servants exists solely in the area of whistle-blowing protection. Information submitted related to conflicts of interest, secondary employment, post-employment and disclosure of assets refers to public officials who are not civil servants. There is no evidence of cases of investigation on gifts and benefits in the same year. Overall, data on integrity issues related only to the civil service; data covering all civil service categories is not available.

According to the 2021 Balkan Barometer survey, the perceived level of bribery in the public sector by businesses in 2021 remained at about the same moderately high level as in previous years (Figure 6), while the value was higher for bribery in the public sector experienced by citizens (10.1%).

¹⁷⁸ CSL, Articles 6, 70 and 74.

¹⁷⁹ Criminal Code, Official Gazette No. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017, 49/2018, 3/2020.

¹⁸⁰ LPC, Article 71-77 and Rules for preparing and implementing integrity plans of 31 December 2015, Official Gazette No. 078/2015.

¹⁸¹ LPC, Article 74.

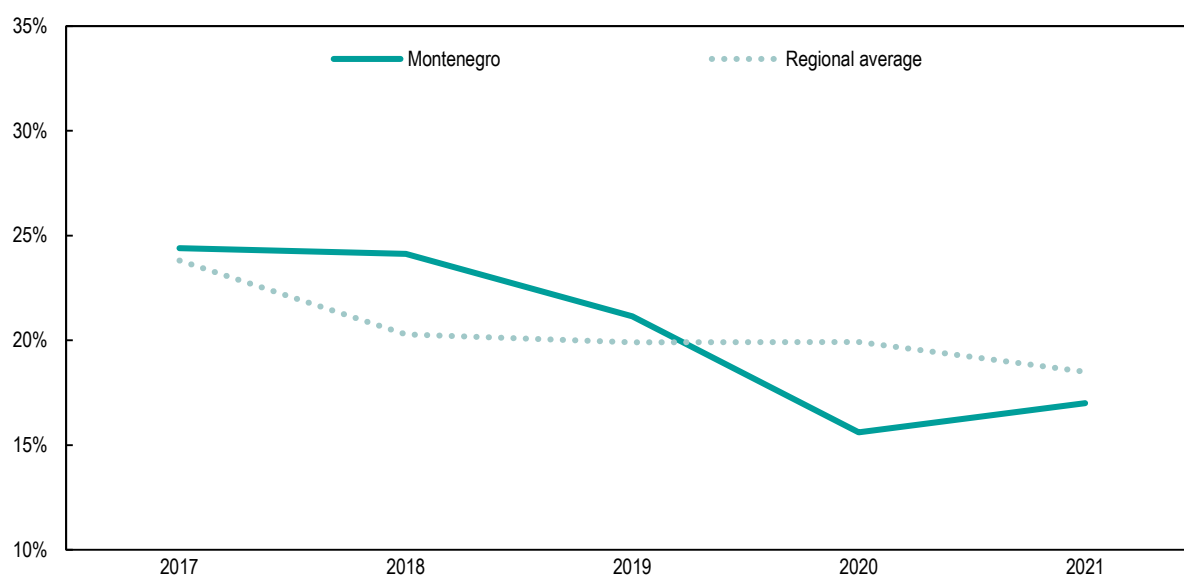
¹⁸² Annual Work Report of the Anti-Corruption Agency (ACA) for 2020, p. 55.

¹⁸³ Annual Work Report of the ACA for 2020, p. 58.

¹⁸⁴ LPC, Articles 78-101.

¹⁸⁵ Annual Work Report of the ACA for 2020, p. 28.

Figure 6. Perceived level of bribery in the public sector by businesses



Note: The percentage of respondents who answered “totally agree” or “tend to agree” to the question: “Thinking about officials, to what extent would you agree with the following statement? It is common for firms in my line of business to have to pay some irregular ‘additional payments/gifts’ to ‘get things done’”.

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

There were improvements in the legal framework on disciplinary procedures (extended statute of limitations for serious violations). However, 34% of disciplinary decisions appealed were not upheld by the courts, which points to a scope for improvement in implementation. A multi-annual policy to promote integrity and fight against corruption in the public sector, encompassing the whole civil service, has not yet been developed.

Accountability

The Principles of Public Administration Accountability

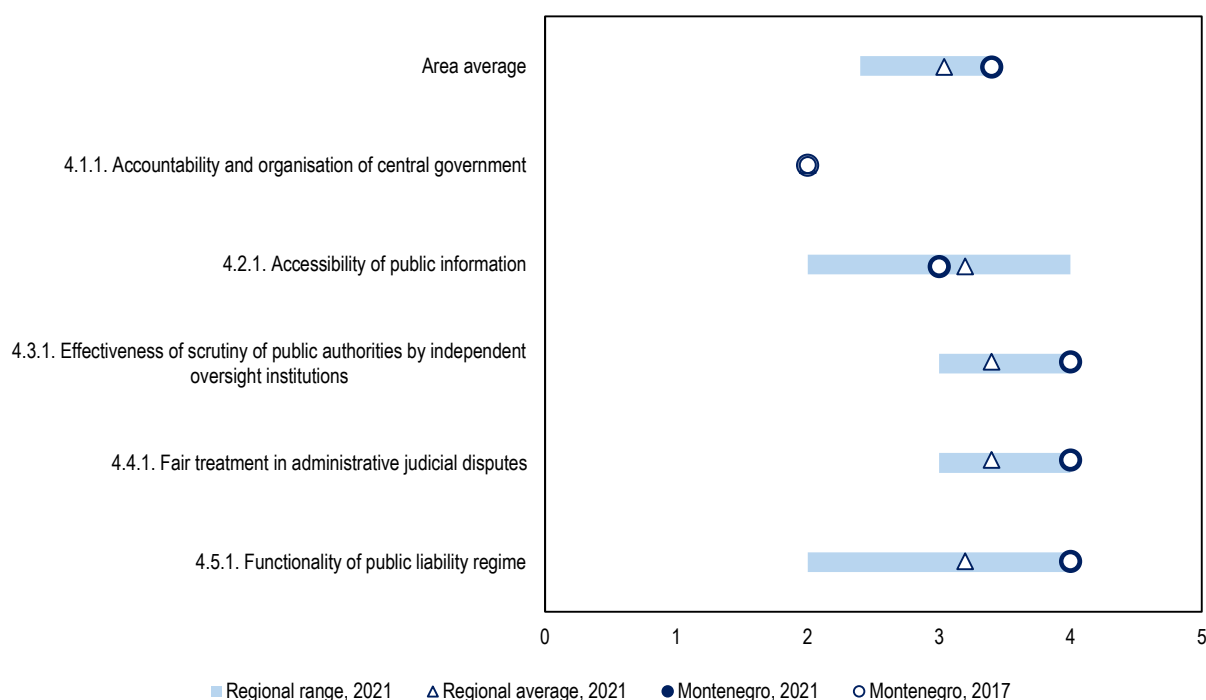
Principle 1	The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.
Principle 2	The right to access public information is enacted in legislation and consistently applied in practice.
Principle 3	Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.
Principle 4	Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.
Principle 5	The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

Accountability

Summary and recommendations

Montenegro is above the regional average in the accountability area. The average indicator value is 3.4, the same as in 2017. There have been changes to the legal framework regulating the organisation of state administration, and the public perception has deteriorated in several aspects (e.g. regarding public availability of information, independence of oversight institutions) but these were not significant enough to change the indicator values.

The area average is the same as in 2017, as there has been no change at the level of indicator values



The 2018 Law on State Administration provides a new legal framework for state organisation, but it has not been fully implemented nearly three years after its adoption as the majority of the existing agencies have not been aligned to the law. Furthermore, the Government did not consistently follow the existing legal requirements for analysis and prior consultations in place for merging and creating new administrative bodies when carrying out reorganisations after the establishment of the new Government in December 2020. The annual plans and reports of subordinate institutions to the ministries are not used as management tools, but are prepared for formal reasons. Decision-making regarding even the most basic administrative issues like requests for training, annual leave and business trips is usually kept at the level of the minister or state secretary and not delegated down.

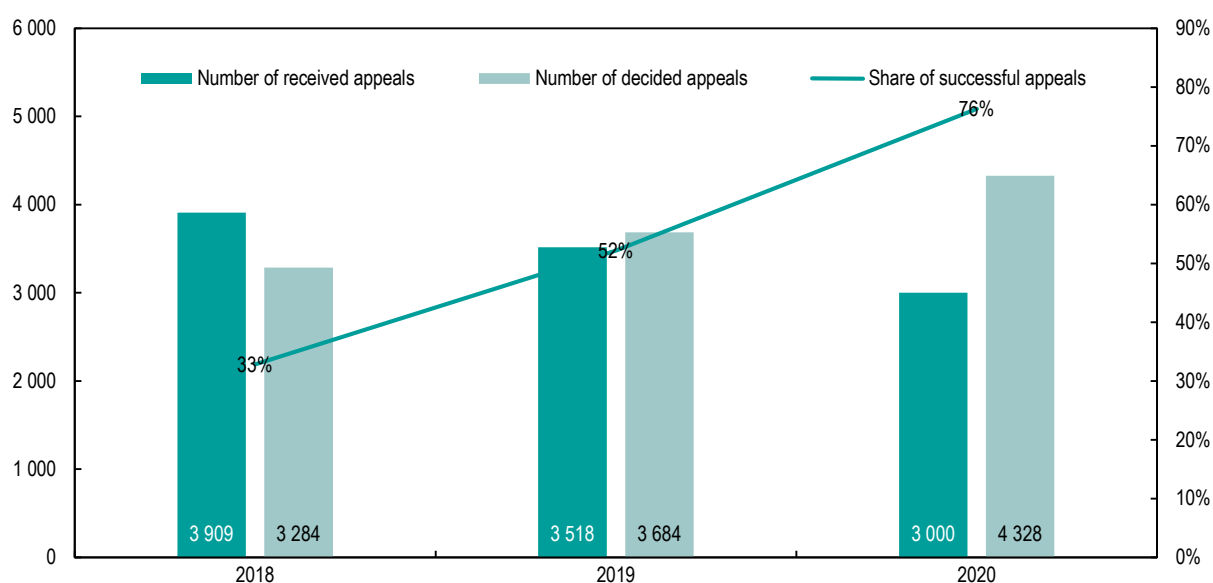
The right to access public information is well established in the legal framework, but the system is not fully functional. This is evidenced by the high share of successful appeals against the decisions of public authorities, often due to administrative silence. The large number of requests for information, as well as of subsequent appeals, can at least partially be explained by inconsistent proactive publication of data by state administration bodies. The perception of the general public and businesses of the accessibility of public information has deteriorated.

Legislative safeguards for the mandate and the independence of the Ombudsman Institution, the State Audit Institution (SAI) and the courts are in place. However, the **effectiveness of the work of the oversight institutions is limited based on the low implementation rate of their recommendations**,

especially the recommendations of the Ombudsman. The perception of the oversight of institutions' independence and public trust in them have deteriorated.

The Administrative Court is functional but has been negatively affected by the significant increase in the number of incoming cases since 2017. The number of incoming cases has recently been the highest in the area of access to information, where a significant number of cases are submitted just for claiming the compensation of court costs in confirmed cases of administrative silence. Additional judges and legal advisers have enabled the court to reduce slightly the case backlogs from the highest levels of 2017 and 2018, but the average duration of handling administrative disputes is still more than double than in 2016. As a consequence, the number of requests for the acceleration of court proceedings has increased significantly in recent years. In addition, the perception of the independence of the judiciary has deteriorated compared with 2017.

The high number of appeals on access to information requests, as well as the high share of successful appeals, indicate that the access to information system is not fully functional



Source: Annual reports of the Agency for Personal Data Protection and Free Access to Information.

The legal framework for the public liability regime is in place. The high number of court decisions according to which the Government is obligated to compensate damages, as well as the high expenses associated with these payments, indicates that the system is also functional. However, **the Government has not analysed the reasons for the compensation claims and has not taken any measures to address their causes in order to be able to avoid them in the future.**

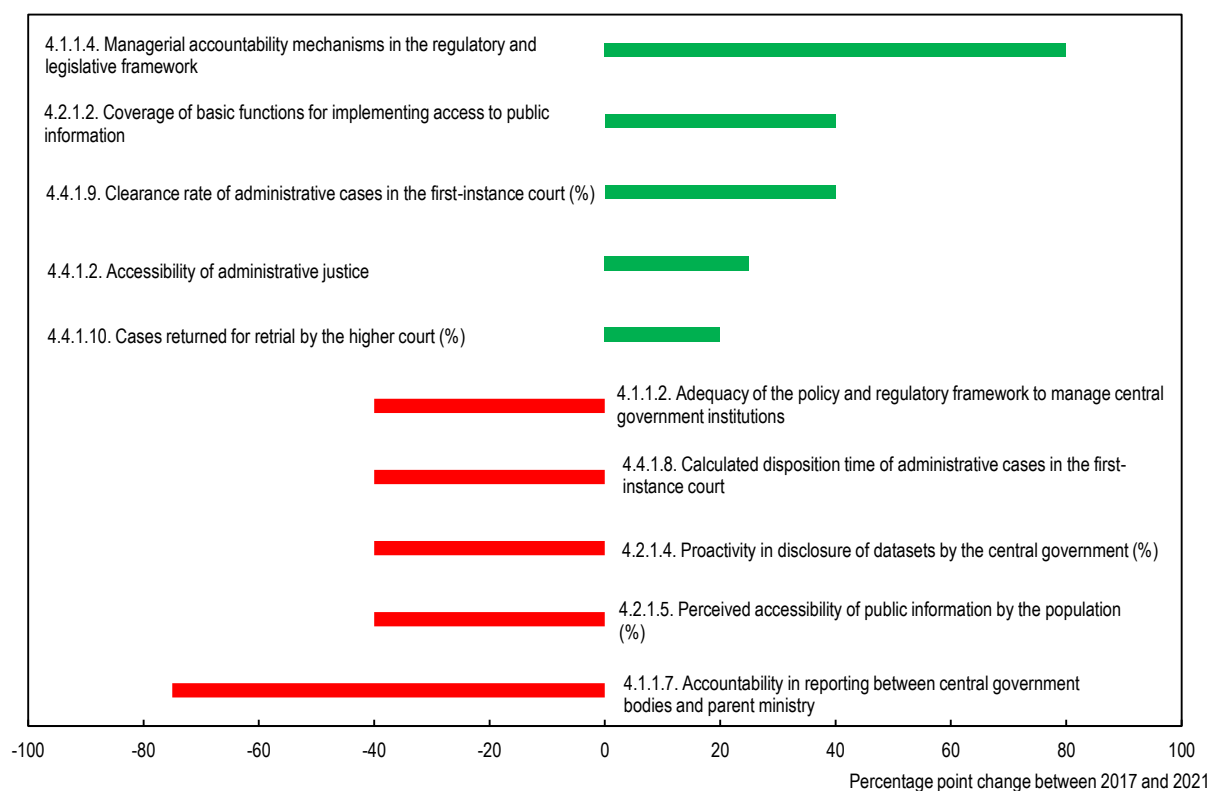
Short-term recommendations (1-2 years)

- 1) The Government, under the institutional leadership of the Ministry of Public Administration, Digital Society and Media (MPADSM), should ensure full implementation of the Law on State Administration and align all agencies and funds to the requirements of the law.
- 2) The Agency for Personal Data Protection and Free Access to Information should address the causes of the large number of appeals, by providing targeted guidance to the public bodies against which the majority of successful appeals are submitted.
- 3) The Parliament, in co-operation with the Ombudsman and the SAI, should establish mechanisms for ensuring more consistent implementation of recommendations of the oversight institutions; for example, by requesting explanations from the bodies that fail to implement the recommendations.
- 4) The judiciary, in co-operation with the Ministry of Justice, Human and Minority Rights, should adjust the principles for compensating court costs in administrative disputes in order to limit the submission of complaints for the sole purpose of claiming the disproportionate compensation.
- 5) The Ministry of Finance and Social Welfare (MoFSW) should analyse the causes of compensation payments due to Government liability and address them to decrease the number of cases claiming damages, as well as the amount of payments.

Medium-term recommendations (3-5 years)

- 6) The Government, led by the MPADSM, should introduce proper accountability schemes between ministries and subordinate bodies that enable them to establish performance-oriented objectives, ensure the allocation of relevant funds and monitor the achievement of these objectives.
- 7) The Agency for Personal Data Protection and Free Access to Information should use a case-management system for handling the appeals that enables it to automate the more technical steps of the process and to produce reports for systemically analysing the causes of appeals.

The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Improvements in the regulatory framework for managerial accountability, but regression in actual use of accountability mechanisms as management tools



Analysis

Principle 1: The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.

Overall, the value for the indicator 'Accountability and organisation of central government' is 2. The value is the same as in 2017. Some improvements regarding the legal framework regulating the typology of central government bodies as well as managerial accountability mechanisms have been made, but several implementation challenges remain.

Indicator 4.1.1: Accountability and organisation of central government				
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice.				
Overall 2021 indicator value	0	1	2	3 4 5
			Points 2021	Change from 2017
Policy and legal framework for central government organisation				
1. Clarity and comprehensiveness of official typology of central government bodies			3/5	+1
2. Adequacy of the policy and regulatory framework to manage central government institutions			2/5	-2
3. Strength of basic accountability mechanisms between ministries and subordinated bodies			4/5	-1
4. Managerial accountability mechanisms in the regulatory framework			5/5	+4
Central government's organisation and accountability mechanisms in practice				
5. Consistency between practice and policy in government reorganisation			0/4	=
6. Number of public bodies subordinated to the parliament			2/4	=
7. Accountability in reporting between central government bodies and parent ministry			0/4	-3
8. Effectiveness of basic managerial accountability mechanisms for central government bodies			0/4	=
9. Delegation of decision-making authority within ministries			0/4	=
Total			16/40	-1

The Law on State Administration from 2018 stipulates the legal status of the central government bodies, which include ministries, other administration bodies (usually called administrations) and holders of public powers (usually called state agencies and funds). The law regulates the managing bodies, as well as the degree of autonomy in the management of finances and human resources for all types of central government bodies. However, challenges remain with the consistent implementation of the law. Article 87 of the Law on State Administration foresees that only 8 of the existing 20 agencies and funds should be aligned to the provisions of the law, and only 5 have been aligned in practice nearly 3 years after the adoption of the law. One of the functional criteria for establishing agencies according to the law is that there should be a 'clear requirement for the functional and organisational independence of the body resulting from the EU law or international agreement', but in practice bodies that do not require such independence operate as agencies as well (e.g. Employment Agency of Montenegro, The Montenegrin Investment Promotion Agency). Finally, according to the Law on State Administration, agencies should be

subordinated to the Government, but in practice several of them are subordinated to the Parliament instead¹⁸⁶.

With the expiry of the public administration reform (PAR) Strategy 2016-2020 together with the optimisation plan of the Government and while the new reform strategy is still under development, there is no plan for institutional development of the central government. On the positive side, the MPADSM has published an online registry of public institutions¹⁸⁷, including state administration bodies, but its contents need to be updated after the most recent reorganisations among ministries and subordinate bodies in late 2020 and early 2021.

Procedures for establishing, merging and abolishing central government bodies exist, which foresee the mandatory opinion of the MPADSM as the ministry responsible for state organisation. However, these procedures are not consistently followed as the ministry did not provide an opinion on the mergers of the Property Administration and the Real Estate Administration into the Cadastre and State Administration, decided by the Government on 14 January 2021. Furthermore, the opinion of the human resource management (HRM) authority is not even required prior to such reorganisations. *Ex ante* analysis in the form of a regulatory impact assessment (RIA) is mandatory prior to the creation of new central-government bodies. However, the requirement is not consistently complied with, as a RIA report was prepared for only one of the three most recent reorganisations within the structure of central government bodies (the merger of Revenue and Customs Administrations in April 2021).

Basic accountability mechanisms between ministries and subordinated bodies exist, including the requirement to submit and approve annual plans, budget proposals and reports of the subordinate body by the responsible ministry. But these requirements are not consistently applied in practice. Even when annual plans and reports are submitted to the ministry for approval, they do not include clear objectives (supported by measurable targets) or information on their achievement.

Delegation of decision-making within ministries remains limited since the majority of decisions are taken by the minister or the state secretary. This is true even for the purely administrative decisions like approval of training, business trips and annual leave, as well as procurement of low-level purchases.

Conclusion

The Law on State Administration is not yet fully implemented, as illustrated by discrepancies between the law and the special laws regulating agencies and funds. The procedure for establishing new bodies exists, but it is not followed in practice and does not include the mandatory opinion from HRM authority nor the consistent requirement for prior analysis. Plans and reports are not used as management tools between ministries and subordinate bodies, but seem to be prepared only as a formality.

¹⁸⁶ Electronic Media Agency, Agency for Personal Data Protection and Free Access to Information, Insurance Supervision Agency, Agency for the Prevention of Corruption, Energy Regulatory Agency, Fund for the Protection and Exercise of Minority Rights.

¹⁸⁷ Available at <https://drzavniorgani.gov.me>.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

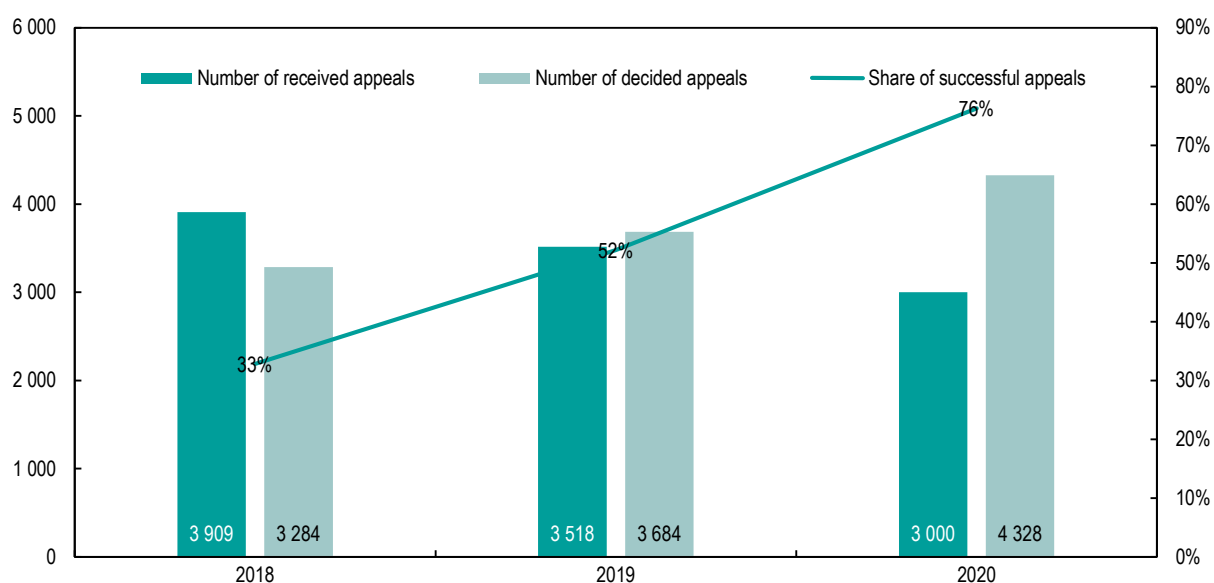
Overall, the value for the indicator 'Accessibility of public information' is 3. There is no difference in the value compared with 2017, but challenges remain with the proactive publication of data and with the low public perception regarding access to public information.

Indicator 4.2.1 - Accessibility of public information						
This indicator measures the extent to which the legal and institutional framework regarding access to public information is established, promoting timely responses to public information requests free of charge or at a reasonable cost. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information and perceptions of availability of public information.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
Legal and institutional framework for access to public information						
1. Adequacy of legislation on access to public information				10/10	=	
2. Coverage of basic functions for implementing access to public information				3/5	+2	
Citizens' level of access to public information						
3. Proactivity in disclosure of information by state administration bodies on websites (%)				2/5	=	
4. Proactivity in disclosure of datasets by the central government (%)				2/5	-2	
5. Perceived accessibility of public information by the population (%)				1/2.5	-1	
6. Perceived accessibility of public information by businesses (%)				1/2.5	=	
Total				19/30	-1	

Access to public information is enshrined in the Constitution of Montenegro (Art. 51) and regulated in more detail in the Law on Free Access to Information (LFAI). Public information is defined broadly. According to the Constitution, the right of access to information may be limited only if this is in the interest of the protection of life, public health, morality and privacy, or for carrying out criminal proceedings, for security and defence of Montenegro and for foreign, monetary and economic policy. The requesters are not obligated to justify their requests, and the statutory deadline for processing the requests is 15 days. All refusals as well as inactivity of an administrative body can be appealed against to the Agency for Personal Data Protection and Free Access to Information and to the Administrative Court. The LFAI stipulates a comprehensive list of information that has to be made available proactively, including public registers and documents, in addition to the list of public officials and their earnings.

Nevertheless, significant challenges remain with the effective functioning of the system of access to information. This is illustrated by the high number of appeals submitted to the Agency as the body responsible for access to information. The number of appeals slightly decreased in 2019 and 2020 to 3 000 per year, but it is still high for a population of 620 000; what is more, the share of successful appeals increased to 76% in 2020. This indicates that the public bodies are having difficulties when dealing with the requests for information in a lawful manner. Furthermore, the Agency has upheld approximately one-third of appeals in recent years solely due to the silence of the administration. Based on data that the Agency provided, 88% of appeals in 2020 were submitted by two civil-society organisations that are active in the area and 76% of the appeals were submitted against just 10 public bodies (including 4 ministries).

Figure 1. Processing of appeals on requests for information by the Agency for Personal Data Protection and Free Access to Information



Source: Annual reports of the Agency for Personal Data Protection and Free Access to Information.

Processing the high number of appeals is requiring significant resources from the Agency, which is not able to perform its functions on time nor to properly analyse the causes of appeals and address them (e.g. by providing targeted guidance or training). Nor does the legal framework fully support efficient handling of appeals, as the merger of appeals (e.g. from the same appellant and against the same public body, which should occur relatively often based on the data provided above) is not allowed. As one of the consequences, about two-thirds of the complaints on access to information that reach the Administrative Court are concluded by simply confirming that the Agency was not able to solve the appeal within the statutory deadline. In addition, in 2020, 51% of access to information cases where the Court dealt with the matter in substance ended in favour of the complainant, indicating room for improvement in the quality of the decisions when the Agency manages to solve the appeal in time.


Consistent proactive publication of information on the websites of state administration bodies continues to be a challenge, based on the analysis of websites of sample institutions. Even when basic information like organisational structure, contact details of officials, annual plans and budgets are published, they are not always available in fewer than four clicks or are not up to date. This problem with the former version of Government websites is also observed with the new ones, launched in May 2021. Consolidated versions of legal acts are still not available free of charge, and the salary information of officials is not published, either. As a consequence, based on the results of the Balkan Barometer survey, the perceived accessibility of public information by citizens and business deteriorated in comparison with the previous assessment, from 69% to 49% for the citizens and from 44% to 37% for the businesses.

Conclusion

Despite a sound legal framework, the system of access to information is dysfunctional, as illustrated by the high number of appeals resulting in the repeal of the decisions of first-instance bodies as well as in confirmed cases of silence of the administration. Proactive publication of data is inconsistent, and public perception of access to information has deteriorated.

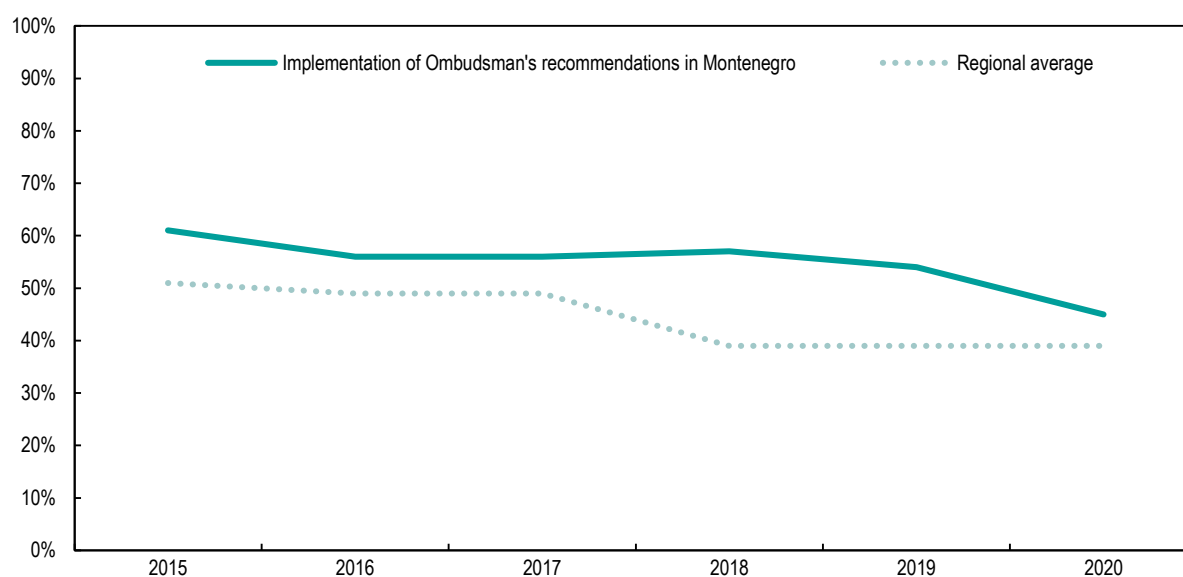
Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

Overall, the value for the indicator 'Effectiveness of scrutiny of public authorities by independent oversight institutions' is 3, down from 4 in 2017. This is mainly due to the lower implementation rate of the recommendations of oversight institutions and the deteriorating public perception of their independence.

Indicator 4.3.1: Effectiveness of scrutiny of public authorities by independent oversight institutions						
This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
					Points 2021	Change from 2017
Legal and institutional framework for oversight institutions						
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution					9/10	+1
2. Legislative safeguards for the independence and adequate mandate of the SAI					10/10	=
3. Legislative safeguards for the independence of courts and judges					10/10	=
Effectiveness of and public trust in oversight institutions						
4. Implementation of ombudsman recommendations (%)					2/8	-2
5. Implementation of SAI recommendations (%)					4/8	=
6. Perceived independence of oversight institutions by the population (%)					1/5	-1
7. Trust in oversight institutions by the population (%)					2/5	=
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)					3/5	=
Total					41/61	-2

Legislative safeguards for the independence and the mandate of oversight institutions, including the Ombudsman, the Supreme Audit Institution and the courts, are stipulated in the Constitution as well as respective laws regulating their functioning and are in accordance with international standards. The only discrepancy is the requirement that the Ombudsman's Office needs the approval of the executive on its annual staff plan for initiating any needed recruitments. Even though the staff plans are largely formal in nature, this requirement could be used to negatively influence the capacities of the Ombudsman to effectively perform its duties.

The main challenge illustrating the effectiveness of the work of the oversight institutions remains the low implementation rate of their recommendations. The implementation rate of Ombudsman's recommendations is higher than the regional average but has still deteriorated in recent years (45% in 2020). Some 62% of the recommendations of the SAI were implemented in 2020, compared with 51% in 2017.

Figure 2. Implementation of Ombudsman' recommendations

Source: Annual reports of the Ombudsman.

According to the Balkan Barometer survey, only 31% of the population considers the oversight institutions to be independent of political influence (down from 37% in 2017) and 38% have trust in them (versus 45% in 2017). The judiciary and the SAI are considered to be the least independent among oversight institutions and have the lowest level of trust. Nevertheless, the perception of the ability of oversight institutions to effectively hold the Government accountable remains the same at 49% (48% in 2017).

Conclusion

The legal framework regulating the oversight institutions is in place but their impact is limited, as illustrated by the low share of implementing the recommendations of the Ombudsman. The general public does not perceive the oversight institutions as independent.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

Overall, the value for the indicator 'Fairness in handling of administrative judicial disputes' is 4, the same as in 2017. While the clearance rate of administrative cases has improved, the average duration of cases is significantly longer due to the considerable increase in the number of incoming cases in recent years.

Indicator 4.4.1 - Fairness in handling of administrative judicial disputes						
This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes and the administrative judiciary is characterised by efficiency, quality (including accessibility) and independence. Outcomes in terms of case flow and public perceptions of independence are also measured.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021		Change from 2017
Legal framework and organisation of judiciary						
1. Adequacy of the legislative framework for administrative justice				4/6		=
2. Accessibility of administrative justice				4/4		+1
3. Effectiveness of remedies against excessive length of proceedings in administrative cases				2/2		=
4. Use of an electronic case management system				1/1		=
5. Public availability of court rulings				2/2		=
6. Organisation of judges handling administrative justice cases				5/5		=
Performance of the administrative justice system						
7. Perceived independence of judicial system by the population (%)				1/5		-1
8. Calculated disposition time of first instance administrative cases				1/5		-2
9. Clearance rate in first instance administrative courts (%)				5/5		+2
10. Cases returned for retrial by a higher court (%)				5/5		+1
Total				30/40		+1

The Law on Administrative Disputes¹⁸⁸ provides the legislative framework for the functioning of administrative justice. The main challenges in the legal framework continue to stem from the relatively short deadline for the submission of complaints (20 days) and from the lack of safeguards for ensuring effective implementation of the court's rulings. The law does not provide a mandate for the court to apply any sanctions in the case of non-enforcement of court decisions, and cases are rarely decided on the merits (143 cases in 2020, i.e. 2%). The lack of mechanisms for ensuring enforcement of court decisions, as well as the low number of decisions on the merits, can contribute to the alternation of the same dispute between the judiciary and the administration (also known as the 'ping-pong effect'), as the Council of Europe has also found¹⁸⁹.

Administrative justice is generally accessible. The fees (EUR 10) do not create barriers, and those in need can apply for an exemption from the payment. All persons have the right to apply for necessary legal aid.

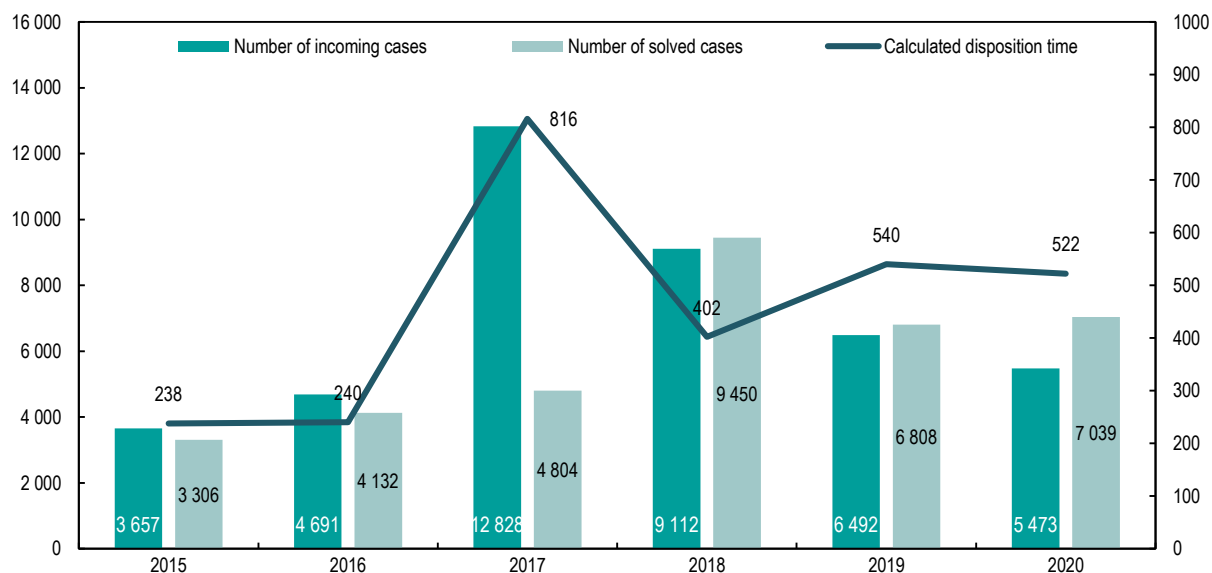
The Administrative Court is situated in the capital and deals with administrative disputes in the first instance. Motions to review the decisions of the Administrative Court can be submitted to the Supreme Court as the highest-instance court in administrative disputes. The 16 Administrative Court judges have 13 legal assistants. The number of judges has increased in recent years (12 in 2017) due to the

¹⁸⁸ Official Gazette No. 54/16.

¹⁸⁹ Lazarova Trajkovska, Mirjana; Velimirović, Maja (2019), "Analysis of the Legal Framework and Case-Law of Montenegrin Courts in the Implementation of Effective Remedies in Respect of a Trial within a Reasonable Time", Council of Europe: <https://rm.coe.int/eng-finalna-analiza-duzine-sudskih-postupaka-u-crnoj-gori/1680966dd7>.

significantly increased number of incoming cases. The electronic case-management system is operative and contains the basic functionalities for supporting the handling of disputes as well as monitoring court statistics.

Figure 3. Workload of administrative court judges and duration of proceedings



Source: Annual reports of the Administrative Court.

The number of incoming cases increased more than threefold from 2015 to 2017 due to the high number of complaints originating from the silence of the administration, as well as the confusion and frequent legal changes to the system of social benefits associated with children. The number of complaints has slightly normalised in recent years but is still high given Montenegro's population of 620 000 (5 473 complaints in 2020). One reason for the high number of incoming cases in the area of access to information has been the abuse by some complainants of the opportunity to claim full compensation of the court costs when the court finds in favour of the complainant (e.g. confirms the silence of the administration). This has incentivised certain complainants to produce a large number of requests for information, which the administration is not able or not willing to respond to, and to subsequently be rewarded approximately EUR 500 per each unanswered request for information.

The judges were not able to deal with the huge increases in the number of complaints; as a result, the court backlogs and average duration of proceedings increased (from 238 days in 2015 to 816 in 2017). With the additional judges and some reduction in the number of incoming cases, the average duration of administrative proceedings was reduced to 522 days in 2020. Nevertheless, the number of resolved cases per presiding judge (440 in 2020) is not sustainable for enabling a judge to get acquainted with the details of the case and to make a well-informed decision each time. Still, only 14% of the cases that the Supreme Court reviewed were returned for retrial to the Administrative Court in 2020.

The longer waiting times have also increased the number of requests for the acceleration of proceedings and compensation requests against the excessive duration of court procedures, which are foreseen as a remedy according to the Law on the Protection of the Right to Trial in a Reasonable Time¹⁹⁰. While during 2008-2018, a total of 193 requests for acceleration of proceedings were submitted, 522 were submitted in 2019 alone and 178 in 2020. In 2020, the Supreme Court ruled on six requests for fair satisfaction related to excessively long administrative proceedings and administrative disputes, and it partially upheld two of them. The public perception of the independence of the judicial system has deteriorated, according to the results of the Balkan Barometer survey, from 36% in 2017 to 27% in 2020.

¹⁹⁰ Official Gazette No. 011/07.

Conclusion

The main legal and organisational safeguards for an effective administrative judiciary are in place, except for ensuring effective execution of rulings. However, due to the large number of incoming cases in recent years, the backlog is considerable and the average duration of proceedings is long. The public perception of the independence of the judiciary remains low.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

Overall, the value for the indicator 'Functionality of public liability regime' is 4. There has been no change compared with 2017 at the level of individual sub-indicators, either.

Indicator 4.5.1 - Functionality of public liability regime						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded.						
Overall 2021 indicator value	0	1	2	3	4	5
	Points 2021			Change from 2017		
Legal framework for public liability						
1. Comprehensiveness of the scope of public liability	1/1			=		
2. Coverage of the public liability regime to all bodies exercising public authority	1/1			=		
3. Non-discrimination in seeking the right to compensation	1/1			=		
4. Efficiency and fairness of the procedure for seeking compensation	3/3			=		
Practical implementation of the right to seek compensation						
5. Application of the public liability mechanism in the courts in practice	3/3			=		
6. Payments made to entitled applicants (%)	0/3			=		
Total	9/12			=		

The main legal grounds for the public liability regime are established in the Law on State Administration and the Law on Obligations. Accordingly, the regime encompasses all bodies executing public authority, and every unlawful administrative act falls within the scope of public liability. In addition, the right to compensation for damages is granted without discrimination of any sort. The public liability request must be submitted no later than three years after the victim's injury or loss is confirmed and the responsible party that caused the damage is identified (subjective deadline), and no later than five years after the damage was caused or when the event that caused the damage happened (objective deadline). Final decisions on the right to compensation, the form of compensation and the amount can be made by the court in a single lawsuit. Article 149 of the Law on Obligations defines the methodology for determining the right to compensation. According to the law, injury or loss is a diminution of someone's property (simple loss) or prevention of its increase (profit lost), as well as infliction of physical or psychological pain or fear and violation of rights of person and reputation of legal entity (non-material damage).

Precise data on the number of first-instance court rulings in public liability cases was not provided by the administration, but there were 54 rulings in 2020 at the Supreme Court according to which the Government was obligated to compensate damages on various grounds, including material and non-material damages. This indicates that the courts apply the public liability mechanism in practice, as the number of cases in the first-instance courts should be even higher.

In addition, according to the information provided by the MoFSW, the Government of Montenegro paid EUR 17.8 million as a result of court cases ending in favour of the other party in 2020, but there is no reliable data on how many of these payments were the result of the public liability cases. The main challenge is still that there is no system for monitoring the causes of these court cases and payments,

which would enable the Government to avoid similar mistakes in the future and decrease the significant costs currently incurred due to compensation payments.

Conclusion

The legal framework for the public liability scheme is in place and functional, as shown by the significant amounts the Government is required to pay as compensation. The main challenge is that there is no analysis about the causes of cases ending in compensation payments or how to avoid them.

Service Delivery

The Principles of Public Administration Service Delivery

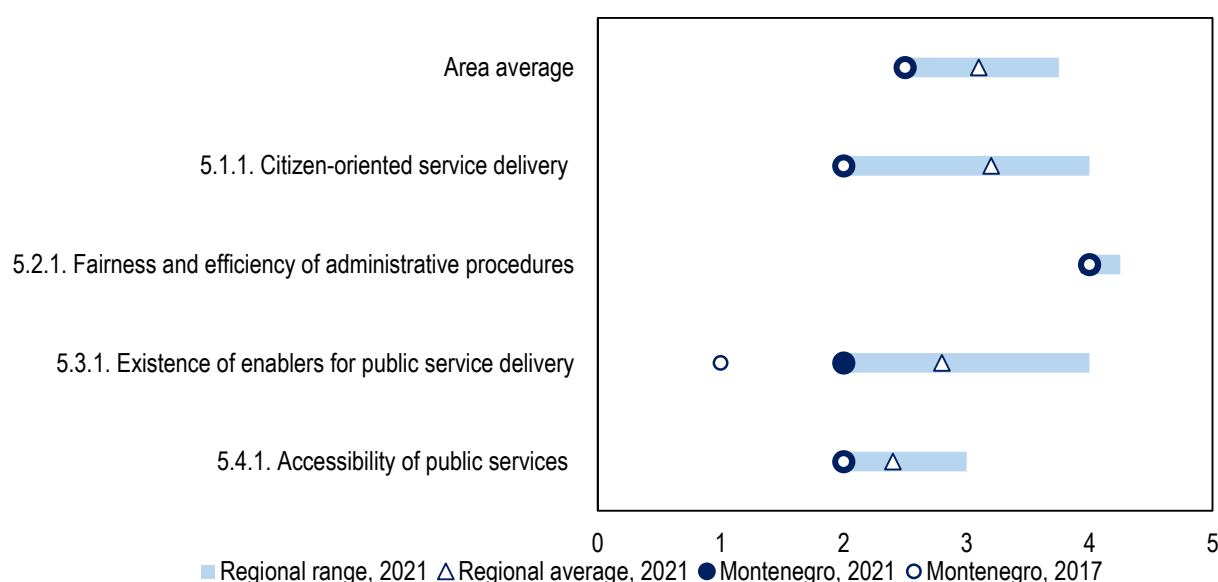
Principle 1	Policy for citizen oriented state administration is in place and applied.
Principle 2	Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.
Principle 3	Mechanisms for ensuring the quality of public service are in place.
Principle 4	The accessibility of public services is ensured.

Service Delivery

Summary and recommendations

The process of modernising public service delivery in Montenegro has stagnated in recent years, and the values of all indicators are in the lowest range in the region. This is due partly to the expiration of guiding strategic policy documents, but also to a drastic decrease in the satisfaction rates of both citizens and businesses regarding public service delivery. There has been an improvement compared with 2017 only with the enablers for public service delivery owing to developments in the interoperability infrastructure and the affordability of e-signature. Still, the digitalisation of public services is modest, particularly in the case of services offered to individuals, and services in general remain bureaucratic and non-user-friendly.

Montenegro is below the regional average across the service delivery area, and improved the indicator value for enablers compared to 2017



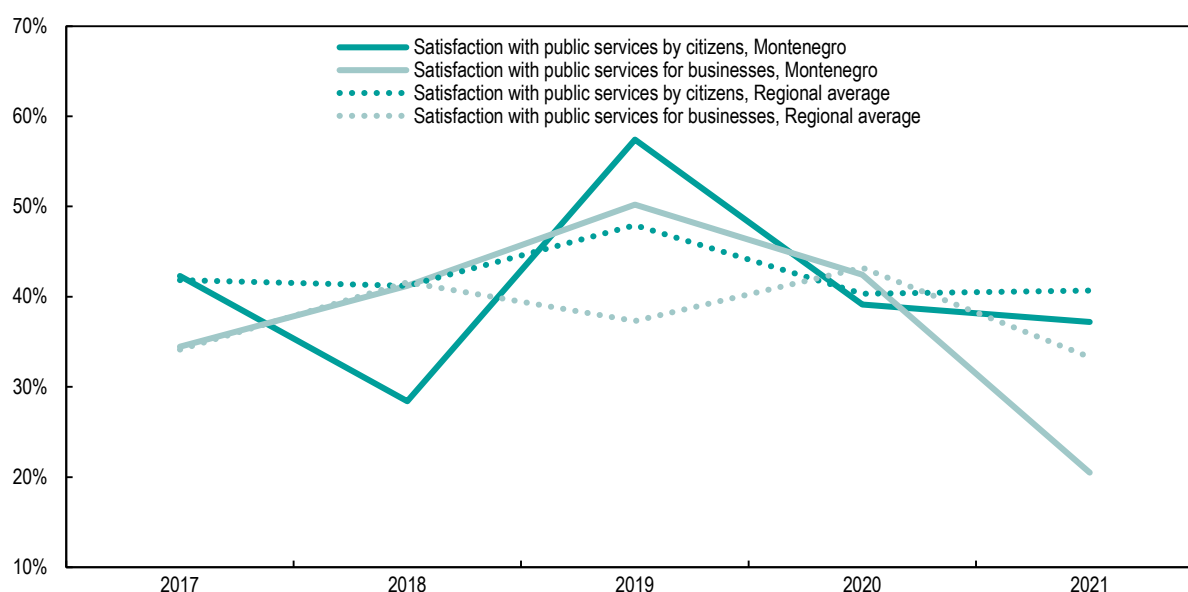
The policy framework for the modernisation of service delivery and digital service delivery was not in place during the assessment period as all respective strategies had expired, while the targets set in the previous strategies were largely unattained. The progress in improving both in-person and digital service delivery has been slow. The Ministry of Public Administration, Digital Society and Media (MPADSM), which is responsible for developing digital services, has made some progress in strengthening the enablers of the digital government. But even in this area, the MPADSM's role across the administration is rather weak. **Clear ownership and leadership for the development of public services in general is missing.**

The principles of good administrative procedure are safeguarded by the Law on Administrative Procedures (LAP). Although **most of the special laws have been harmonised with the LAP, there is no information on the harmonisation of the secondary acts.** Therefore it is not possible to say whether the encompassing principles and values are fully applied, even after the law has been in force for four years, and the public services and their underlying administrative processes remain bureaucratic and burdensome. Guidance and support on how to integrate different perspectives (legal, technological and user-centric service design) into a coherent approach in improving administrative procedures are missing.

Due to the lack of ownership over the modernisation of service delivery in general, the progress in its enabling environment has been moderate. **The central monitoring of service delivery performance and perception has not been established,** and support to service delivery institutions in developing their services is missing. Therefore, no service standards exist for either in-person or digital services. This

results in very weak feedback mechanisms for improving services. The adoption of quality-management and user-engagement tools and techniques is modest and not centrally encouraged or supported.

Declining satisfaction with public services in Montenegro, 2017-2021



Note: The respondents were asked "Could you please tell how satisfied you are with each of the following in your place of living? The percentage shows the share of citizens and businesses who "strongly agree" or "tend to agree" in relation to the following statements: "Administrative services from central government (such as passports and personal identification [ID])" and "Public services for businesses". Only those respondents who have been in contact with central government services in the past year are included.

Source: Regional Cooperation Council, Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>)

Even though the established interoperability framework is solid, in practice the quality of public services is hindered by a limited data exchange between public registries. A free option of obtaining a digital certificate has been provided recently, which should improve the current low uptake. The number of registries connected to the technical interoperability Government Service Bus (GSB) system is still limited, which hinders the user-friendliness and efficiency of public services. A positive development is the creation of the catalogue of e-services, which is still at an initial stage and will have great potential once fully established.

The legislative and policy framework aims to increase the accessibility of services to people with disabilities, alongside standards for accessibility. Progress has not been evident, however, and a mechanism to centrally monitor the accessibility of services for disadvantaged groups has not been established. **No valid policies exist for improving territorial access, nor is there clear evidence of major progress in the area.** Common guidelines for government websites exist and, owing to a recent overhaul of their design, the compliance is very good.

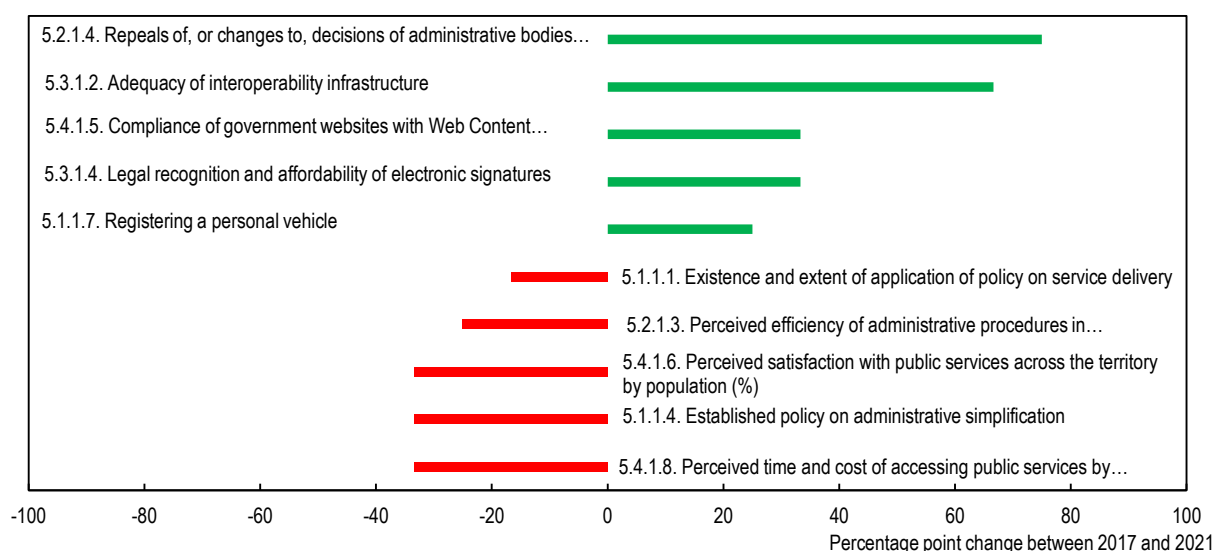
Short-term recommendations (1-2 years)

- 1) The Government should establish an ambitious and comprehensive strategic framework to improve user-centric service delivery (general and digital services, ICT, accessibility, simplification).
- 2) The Government should clearly assign ownership for overall service delivery to ensure a user-centric and integrated approach across the administration, establish service standards and monitor the performance of both digital and in-person services.
- 3) The MPADSM should finalise the catalogue of e-services, containing key information about the delivery process for each service (service passport including cost, actions/documents required, etc.) and extend it to all public services as the foundation of the e-Government portal.
- 4) The Government should increase the number of registries connected to the GSB and ensure that all institutions involved develop the digital services necessary for data exchange and adjust their procedures to reduce the volume of data currently required from applicants.
- 5) The MPADSM, in co-operation with the General Secretariat and the Secretariat for Legislation, should start monitoring the harmonisation of the secondary acts with the LAP. The MPADSM should also use the harmonisation process to promote simplification and re-engineering of administrative procedures.
- 6) The MPADSM, in co-operation with other key service provision institutions and private-sector service providers, should design a roadmap for increasing the use of digital authentication tools by the general population and integrating them into administrative processes.

Medium-term recommendations (3-5 years)

- 7) The MPADSM should establish an operational roadmap on how to increase the use of quality-management instruments and tools in public institutions, including awareness raising, promotion, knowledge sharing, recognising good practices and capacity building.
- 8) The MPADSM, in co-operation with the Human Resource Management Authority (HRMA), should design a roadmap for improving the digital capacities and skills of both civil servants and the general public to support the modernisation of public services and their wider use.

The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Administrative procedures have been improved as has the operability infrastructure and quality of websites. Public satisfaction with service delivery has deteriorated since 2017.



Analysis

Principle 1: Policy for citizen-oriented state administration is in place and applied.

Overall, the value for the indicator 'Citizen-oriented service delivery' is 2. With a similar value in 2017, but a point lower compared with 2019, the positive trend observed between 2017 and 2019 has not continued through 2020-2021. There are two main reasons for this. First, the validity of the main policies guiding administrative simplification, public service delivery and digital service delivery had expired in 2020 and the new ones had not yet been adopted. The second reason is a decrease in the perceived quality of public service delivery by both citizens and businesses.

Indicator 5.1.1 - Citizen-oriented service delivery						
This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception-based metrics.						
Overall 2021 indicator value	0	1	2	3	4	5
		Points 2021	Change from 2019	Change from 2017		
Policy framework for citizen-oriented service delivery						
1. Existence and extent of application of policy on service delivery	4/8	-4	-2			
2. Existence and extent of application of policy on digital service delivery	4/8	-4	=			
3. Central co-ordination for digital government projects	2/4*	-2	=			
4. Established policy on administrative simplification	6/12	-4	-4			
Performance of citizen-oriented service delivery						
5. Perceived quality of public service delivery by the population (%)	2/6	-2	=			
6. Renewing a personal identification document	0/6*	-1.5	=			
7. Registering a personal vehicle	1.5/6	+1.5	+1.5			
8. Declaring and paying personal income taxes	1/6*	+1	+1			
9. Perceived quality of public service delivery and administrative burdens by businesses (%)	0.5/6	-3	-1			
10. Starting a business	4/6	+1.5	-1			
11. Obtaining a commercial construction permit	4/6	+1	+1			
12. Declaring and paying corporate income taxes	4/6*	-2	-0.5			
13. Declaring and paying value-added taxes	4/6	+0.5	+1.5			
Total	37/86	-17	-3.5			

Note: *Data not available or provided. The point allocation in 2017 for sub-indicators 12 and 13 were revised retrospectively due to errors related to manual data entry. Points for sub-indicator 12 changed from 4.5 to 4 and sub-indicator 13 from 2 to 2.5.

The Public Administration Reform (PAR) Strategy 2016-2020¹⁹¹ and Strategy for the Information Society Development 2020¹⁹² were the two main documents in Montenegro that defined objectives, actions and indicators for administrative simplification, as well the provisioning of public services and digital public services. Additionally, the National Action Plan for Implementing the Open Government Partnership

¹⁹¹ The Public Administration Reform (PAR) Strategy 2016-2020:
<https://www.gov.me/dokumenta/1a107a62-5961-4c9e-b8ce-8c8c652549e2>.

¹⁹² Strategy for the Information Society Development 2020:
<https://www.gov.me/en/documents/68736414-503b-41bb-81b0-753b581fb386>.

2018-2020¹⁹³ set targets for public service delivery. These three main documents had expired and new ones were still under preparation at the end of June 2021, resulting in missing strategic direction on different service delivery areas.

Nevertheless, the Government of Montenegro does recognise digital transformation and service delivery as one of the main pillars in driving innovation, modernisation, competitiveness and socio-economic development in the Montenegro 2021 Government Annual Work Plan¹⁹⁴. Additionally, the Smart Specialisation Strategy of Montenegro 2019-2024¹⁹⁵, with an overall aim to develop the Montenegrin economy, sets priorities, actions and targets for the modernisation and digitalisation of some sectors, such as industry. The Cyber Security Strategy of Montenegro 2018-2021¹⁹⁶, as the name implies, focuses on cyber security and strengthening related capacities.

The MPADSM is responsible for public administration reform in general, but also the co-ordination of different aspects of both physical and digital public services¹⁹⁷. Yet the responsibility for the development and delivery of public services remains within the line ministries. Although progress on the delivery of public services has been regularly monitored through a PAR Strategy monitoring framework¹⁹⁸, it was at a rather general level to assess the actual progress made against the set objectives. The Information Society Development Strategy 2020 progress reports have also been prepared¹⁹⁹.

Pursuant to the Law on Electronic Government²⁰⁰, the Council for Electronic Administration, i.e. the e-Government Council, was established in 2019 to co-ordinate and monitor the development of digital governance and propose measures for improvements. There is no evidence, however, that the Council systematically reviews the implementation of larger government IT projects. Furthermore, there is no publicly available information on the frequency of the Council's meetings, meeting agendas or minutes. Apart from the formally established e-Government Council, there are loose working groups on different aspects of digitalisation such as the development of electronic services, interoperability and open data. No information on the work of these teams is publicly available.

Central management and co-ordination of administrative simplification has been weak, and overall guidance and support scarce. This has resulted in slow progress in improving the user-orientation, and examples of unnecessary bureaucratic procedures in service delivery still exist. For example, payment kiosks have been installed in service centres, yet payments are not integrated into the service process. Therefore, payments need to be conducted separately, even in the same building. The process of obtaining a construction permit, for instance, consists of nine steps, and that is one additional step compared with 2017.

¹⁹³ National Action Plan for Implementing the Open Government Partnership in Montenegro 2018-2020: <https://www.otvorenauprava.me/en/national-action-plan-2018-2020/>.

¹⁹⁴ Montenegro 2021 Government Annual Work Plan, <https://www.gov.me/clanak/kljucni-prioriteti-vlade>.

¹⁹⁵ Smart Specialisation Strategy of Montenegro 2019-2024, <https://www.gov.me/en/documents/ea1d661e-922a-4d42-af8d-ae55bc53988e>.

¹⁹⁶ Cyber Security Strategy of Montenegro 2018-2021, <https://www.gov.me/dokumenta/fa4f3ed4-d059-4958-8847-d6111360a477>.

¹⁹⁷ Decree on the organisation and manner of work of the State Administration, Official Gazette of Montenegro, No. 07/2018. The Rulebook on internal organisation and systematisation of the Ministry of Public Administration, Digital Society and Media (MPADSM) further specifies the obligations over the simplification of administrative procedures at the MPADSM.

¹⁹⁸ For example, the implementation report 2019 of the PAR Strategy 2016-2020.

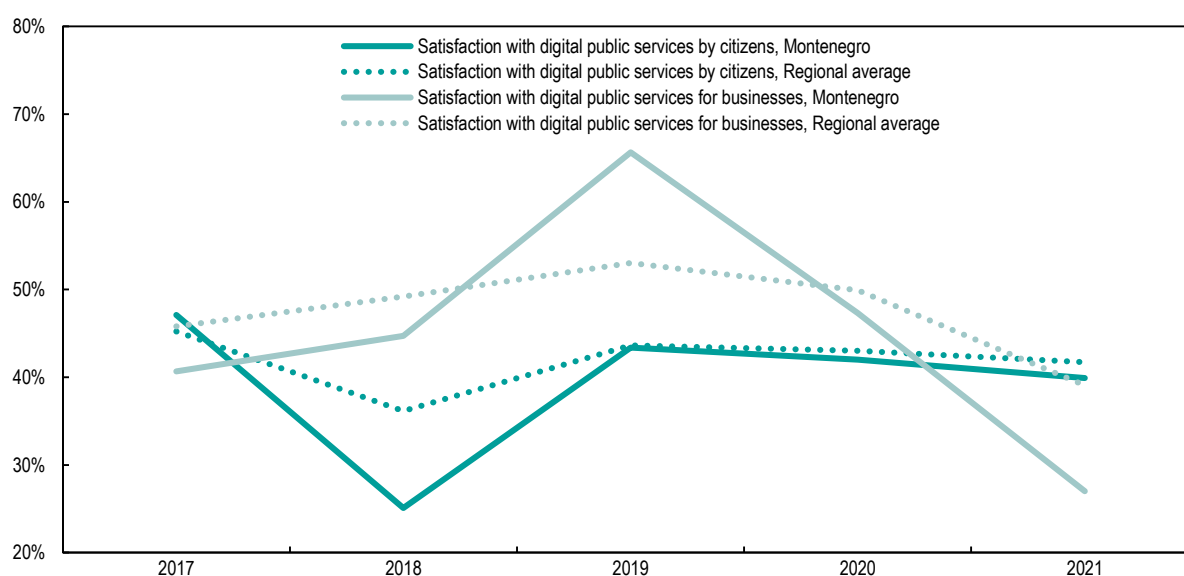
¹⁹⁹ For example, the Information Society Development Strategy 2020 progress report for 2017-2019. The progress report for 2020 was under preparation during the SIGMA assessment.

²⁰⁰ The Law on Electronic Government, adopted on 3 January, 2020, *Official Gazette of Montenegro*, No. 72/19.

There is a little progress in the digitalisation of public services, though more digital services are being offered to businesses than to citizens. Of the three services that SIGMA analysed closely²⁰¹, only one (declaring and paying personal income taxes) was partly digitalised. Unnecessary bureaucratic procedures undermine the user-friendliness of the provided digital services²⁰². Since 2011, the number of digital services made available through the e-Government Portal²⁰³ has steadily increased; however, the offered services are largely informational and their user-friendliness could be significantly improved. According to the audit of electronic services (2021), 1 in 10 persons have used digital services or communicated with the public administration via digital means, but only 23% of them have done so through the e-Government Portal²⁰⁴.

Still, promising examples exist. The process of starting a business, for instance, has been re-engineered and optimised, and for registration of a Limited Liability Company, it is fully digitalised. In 2021, the MPADSM, together with the United Nations Development Programme (UNDP), was implementing the Project Digital Governance Acceleration with an overall aim to increase public trust in institutions through a digital governance transformation.

Figure 1. Satisfaction with digital services, 2017-2021



Note: The average share of citizens and businesses who answered “mostly satisfied” or “completely satisfied” to the statement: “Could you please tell how satisfied you are with each of the following in your place of living?” in relation to: “Accessibility to public services via a digital channel” and “Digital services currently provided by the public administration for businesses”. The share of citizens consider only those respondents who have been in contact with central government services in the past year. Data for 2020 citizens’ satisfaction is not available. Source: Regional Cooperation Council, Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>)

The slow progress in digital service delivery in general is reflected in service users’ perception that it is still rather low and has decreased considerably compared with 2019 and 2017 (see Figure 1). In terms of service delivery in general, according to the Balkan Barometer survey 2021, 37.2% of respondents were mostly or completely satisfied with the provided services compared with 54.1% and 42.3% in 2019 and

²⁰¹ Renewing a personal identification document, registering a personal vehicle, and declaring and paying personal income taxes.

²⁰² For example, the requirement to register at the e-Government Portal before accessing digital services as integrations with online authentication and digital signature are incomplete, uploading of documents to prove the fulfilment of service conditions (e.g. level of education), but also separately conducted payments. Montenegro State Audit Intitution (2021), Audit of Electronic Services, DRI No: 03-035 / 21-12 / 13.

²⁰³ E-Government Portal of Montenegro, <https://www.euprava.me/en>.

²⁰⁴ Montenegro State Audit Intitution (2021), Audit of Electronic Services, DRI No: 03-035 / 21-12 / 13.

2017, respectively. Regarding businesses, 20.5% of the respondents were mostly or completely satisfied with the public services offered to businesses compared with 50% and 34% in 2019 and 2017, respectively.

Conclusion

The policy framework on service delivery was not in place in 2021. Whereas the responsibility for developing digital services has been assigned to the MPADSM, there is no clear ownership for the modernisation of public services in general. The co-ordination mechanisms, if established, are also weak. The progress in both in-person and digital service delivery has been slow, which in turn has resulted in a rather low satisfaction with service quality among citizens and businesses.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Overall, the value for the indicator 'Fairness and efficiency of administrative procedures' is 4, less than in 2019 when the respective value was 5. This means the value has returned again to the level of 2017. The decrease in the overall value is due to a rather sharp decline in the public perception of the efficiency of administrative procedures in public institutions.

Indicator 5.2.1 - Fairness and efficiency of administrative procedures						
The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2019	Change from 2017
Legal framework for administrative procedure						
1. Existence of legislation on administrative procedures of general application				3/3	=	=
2. Adequacy of law(s) on administrative procedures to ensure good administration				7/7	=	=
Fairness and efficiency of administrative procedures						
3. Perceived efficiency of administrative procedures in public institutions by the population (%)				2/4	-2	-1
4. Repeals of, or changes to, decisions of administrative bodies made by the administrative courts (%)				3/4	=	+3
Total				15/18	-2	+2

The LAP²⁰⁵, adopted in 2014 and enacted on 1 July 2017, sets out principles for good and effective public administration and better service delivery. The LAP also supports public-sector modernisation and digitalisation as it introduces the "once-only" principle, according to which public administration bodies, once possessing a certain piece of information, must share and re-use the information instead of requesting it again from a respective counterpart. Additionally, the LAP provides for electronic communications and electronic submission of requests, as well as a one-stop-shop approach to electronic communication and service delivery between the public and the state.

Even though the LAP safeguards good administration principles, their effective implementation across the public sector has not been guaranteed. Firstly, legislation has not been fully harmonised with the LAP, and examples of inconsistencies still exist. By the end of 2020, 12 laws out of 193 were yet to be

²⁰⁵ Law on Administrative Procedure (LAP), Official Gazette No. 056/14.

harmonised²⁰⁶. No institution collects information on the harmonisation of the secondary legislation. Considering that harmonisation of laws is not completed nearly seven years after the adoption of the main law, this shows significant implementation challenges, further highlighted by the lack of focus on harmonisation of the secondary legislation.

Administrative procedures are often not fully aligned with the principles set out in the LAP, being burdensome and lengthy, as well as constraining simpler and more efficient digital service delivery. Some vital principles such as once-only have not yet been applied across the government²⁰⁷. Also, the MPADSM report acknowledges that electronic communication between authorities and users has not yet taken root in public law bodies²⁰⁸.

The MPADSM regularly monitors the implementation of the LAP and publishes²⁰⁹ quite detailed statistics on the main performance figures of the administrative procedures at both the central and local levels. Still, the data is presented only by institutions (i.e. where the statistics of all the administrative procedures is summed up in a single figure) and not by single administrative procedures, which makes analysis of the delivery of individual services impossible. In addition, the HRMA organises LAP-related training courses²¹⁰. Nevertheless, application of the LAP is mostly seen as a legal exercise, and there do not seem to be strong links with re-engineering and simplification needs from a user perspective.

Public satisfaction with the performance of state administration bodies handling administrative cases has been decreasing. Some 46.6% of respondents were mostly or completely satisfied with the efficiency of administrative procedures, compared with 63.7% in 2017 and 73.1% in 2019. (Figure 2).

²⁰⁶ Report on the conduct of administrative matters for the period 1 January 2020 to 31 December 2020, Ministry of Public Administration, June 2021: <https://www.gov.me/dokumenta/4f2a9033-a42e-416f-8830-e6ffe3b49702>. However, according to the SIGMA Paper 62, p. 18, 85 out of 90 primary acts were harmonised in 2017; therefore, the reliability of these figures is questionable. Ligi, T. and A. Kmecl (2021), "Implementation of laws on general administrative procedure in the Western Balkans", *SIGMA Papers*, No. 62, OECD Publishing, Paris, <https://doi.org/10.1787/e5162057-en>.

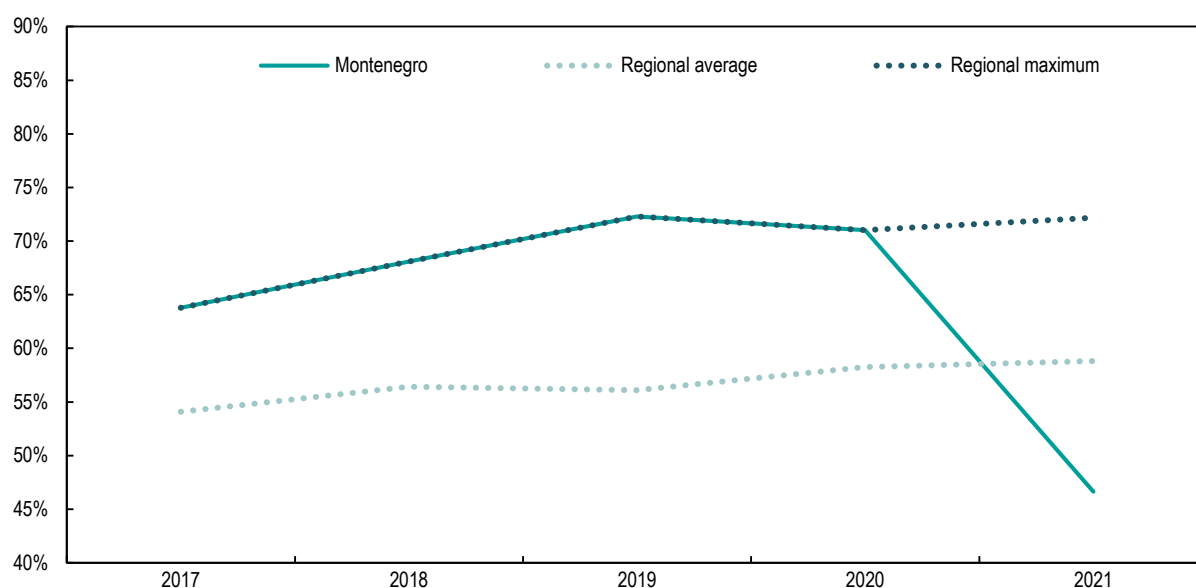
²⁰⁷ SIGMA Paper 62, p. 18. Ligi, T. and A. Kmecl (2021), "Implementation of laws on general administrative procedure in the Western Balkans", *SIGMA Papers*, No. 62, OECD Publishing, Paris, <https://doi.org/10.1787/e5162057-en>.

²⁰⁸ Report on the conduct of administrative matters for the period 01.01.2020-31.12.2020, Ministry of Public Administration, June 2021, p. 35: <https://www.gov.me/dokumenta/4f2a9033-a42e-416f-8830-e6ffe3b49702>.

²⁰⁹ Report on the conduct of administrative matters for the period 01.01.2020-31.12.2020. The Ministry of Public Administration, June 2021: <https://www.gov.me/dokumenta/4f2a9033-a42e-416f-8830-e6ffe3b49702>.

²¹⁰ According to the information received from the Human Resource Management Authority (HRMA), 496 civil servants have passed the course on LAP and 276 on administrative procedure since 2019.

Figure 2. Perceived efficiency of administrative procedures (%) 2017-2021



Note: The percentage of respondents who answer “tend to agree” or “totally agree” to the following question: “Do you agree that the administrative procedures in public institutions in (country) are efficient?” Only respondents who have been in contact with central government services are included.

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).


The percentage of repealed or changed administrative decisions by first-instance administrative courts in response to complaints is 19.4, almost at the same level compared with 2019 (19.7%) but has decreased considerably since 2017, when it was 44.6%.

Conclusion

The legislative base for good administration is in place. However, its application in individual administrative procedures is not fully ensured as not all special legislation is aligned to the LAP, especially at the level of the secondary legislation. Additionally, the administrative procedures can still be lengthy and bureaucratic. Public satisfaction with the performance of state administration bodies handling administrative cases has also decreased the past five years.

Principle 3: Mechanisms for ensuring the quality of public service are in place.

Overall, the value for the indicator 'Existence of enablers for public service delivery' is 2, corresponding to the value in 2019 when it was also 2, but higher than 1 in 2017. Some of the crucial enablers of digital service delivery have improved compared with both 2017 and 2019, such as the interoperability infrastructure and the affordability of electronic signature. Yet, user engagement tools and techniques that were applied in 2019 have not been used in 2021.

Indicator 5.3.1 - Existence of enablers for public service delivery			
This indicator measures the extent to which citizen-oriented service delivery is facilitated by enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using these tools and technologies to improve the design and delivery of public services.			
Overall 2021 indicator value  since 2017 and 2019	0	1	2
		3	4
		5	
	Points 2021	Change from 2019	Change from 2017
Central and shared mechanisms to better enable public service provision are in place			
1. Central monitoring of service delivery performance	0/3	=	=
2. Adequacy of interoperability infrastructure	3/3	+1	+2
3. Existence of common standards for public service delivery	0/3	=	=
4. Legal recognition and affordability of electronic signatures	3/3	+1	+1
Performance of central and shared mechanisms for public service delivery			
5. Use of quality-management tools and techniques	0/4*	=	=
6. Adoption of user engagement tools and techniques	0/4*	-2	=
7. Interoperability of basic registers	2.5/4	-0.5	+0.5
Total	8.5/24	-0.5	+3.5

Note: *Data not available or provided.

Pursuant to the Decree on the Organisation and Manner of Work of the State Administration²¹¹, the MPADSM is responsible for developing digital governance and digital public services, including monitoring. However, the responsibility for the overall modernisation of services (including non-digital services) is not clear, thus ownership for these tasks is missing. No government-wide methodology has been developed to guide public institutions in monitoring their service delivery performance, and there is no system established to regularly collect and analyse data on the delivery of services like volumes, costs or satisfaction rates. No common standards exist for in-person or digital services.

The MPADSM does collect data on the number of digital services provided and of their use²¹². Additionally, several stand-alone studies on the provisioning of digital services have been carried out. In 2021, the State Audit Office of Montenegro carried out a comprehensive audit of the digital services offered by the MPADSM, Ministry of the Interior, Ministry of Justice, Human and Minority Rights and the capital Podgorica.²¹³ The MPADSM, conducted a similar analysis in 2020²¹⁴.

²¹¹ Decree on the Organisation and Manner of Work of the State Administration.

²¹² For example, Analysis of the state of electronic services and measures for their promotion: <https://wapi.gov.me/download/e965f2a4-7eb5-452f-b81d-813d0c56ca43?version=1.0>.

²¹³ Montenegro State Audit Institution (2021), Audit of Electronic Services, DRI No: 03-035 / 21-12 / 13.

²¹⁴ For example, Analyses of the state electronic services in Montenegro with a proposal of measures for their improvement in 2020 (*Analiza stanja elektronskih usluga u Crnoj Gori sa predlogom mjera za njihovo unapređenje*).

Systematic and regular collection of user satisfaction and performance data has not been established, and only a very limited number of public bodies measure citizens' satisfaction with the offered services²¹⁵. Some one-off customer satisfaction surveys have been carried out. In the framework of a larger study on the state of digital services in Montenegro, conducted in co-operation with the UNDP, the MPADSM and the market research and public opinion company Ipsos²¹⁶, the public's perception and satisfaction with the offered e-services was studied as well. The MPADSM also publishes an annual report on the implementation of the LAP²¹⁷ that includes quite detailed statistics on the number of procedures conducted at the central and local levels, together with basic performance data. This review is done mostly from a legal perspective (e.g. number of completed administrative procedures, complaints, decisions appealed), however, and the customer-experience view is missing. Additionally, at the e-Government Portal, users can rate the available digital services, using a scale of "like" and "dislike", and the results are exceedingly positive. As 98.7% of those ranking services considered their experience positive, the practical value of this tool is questionable. No evidence has been found on the application of other conventional user-engagement tools (administrative burden perception, etc.) or more advanced user-engagement tools (focus groups, mystery shoppers, etc.) by the main public service providers. There is also no data on the application of quality-management tools and techniques (European Foundation for Quality Management [EFQM], Common Assessment Framework [CAF] or ISO 9001) in the sample organisations that SIGMA studied²¹⁸, although other sources indicate that some public institutions apply such tools²¹⁹.

A solid interoperability framework has been put into place. Article 13 of the LAP introduced the legal right of supplying information just once, i.e. the once-only principle. The implementation of this principle is supported by the new Interoperability Framework²²⁰, adopted in 2019 to support public administrations in the implementation of interoperability activities and in simplifying administrative procedures to guarantee more efficient and effective service delivery. Article 19 of the Law on Electronic Government²²¹, adopted on 3 January 2020, regulates interoperability; the Law also has a wider function of regulating the development and co-ordination of digitalisation in Montenegro.

The quality of the main registries is good overall. All of them except for the Land Registry are fully digitalised. Pursuant to the Law on Central Registry²²² adopted in 2007, the "registry of registries" has been established. To support the exchange of data between registries, a technical interoperability system, the Government Service Bus (GSB), put into place in 2018 is operational. Over time, the number of data inquiries made through the GSB has increased; for instance, in 2020, 1 809 704 inquiries were made through it²²³. Still, the number of registries and information systems connected to the GSB has not

²¹⁵ According to the Report on the conduct of administrative matters for the period 01.01.2020-31.01.2020 of the MPADSM (2021), for instance, customer satisfaction with the provided services has been carried out by central-government institutions like the Revenue Administration as well as local municipalities (e.g., Municipality of Mojkovac).

²¹⁶ Istraživanje sa građanima i preduzećima u vezi sa korišćenjem i stavovima prema e-uslugama u Crnoj Gori: <https://www.gov.me/dokumenta/49a18f49-c793-4cff-ae70-3f41353f8c5f>.

²¹⁷ <https://www.gov.me/dokumenta/4f2a9033-a42e-416f-8830-e6ffe3b49702>.

²¹⁸ The adoption review is carried out based on five central-government ministries (responsible for health care, education, justice, interior affairs and the economy) plus three central-government agencies (national tax administration, national statistical office and telecommunications regulator).

²¹⁹ According to the caf.eipa.eu (last accessed 14 September 2021), the Police Directorate of Montenegro, Border Police and Maritime Safety Department use CAF.

²²⁰ <https://www.gov.me/dokumenta/daee1e0d-3142-471b-968d-d36d97c45d77>.

²²¹ The Law on Electronic Government, Official Gazette of Montenegro, No. 72/19.

²²² Law on Central Registry, Official Gazette No. 049/07.

²²³ According to the e-mail received from the MPADSM on 26 May 2021.

increased since the previous SIGMA assessment in 2019, and stays at six²²⁴. Two registries assessed by SIGMA, the land and the vehicles registries, were not connected to the GSB by the end of June. The low number of registries connected to the GSB influences the user-friendliness and efficiency of service delivery, and service users still need to submit information that already exists in public-sector records. Overall, the technological enablers for applying the once-only principle are not yet systematically in place in Montenegro.

No comprehensive inventory of user-oriented public services exists at the central level. The register of licenses is available on the eUprava portal, but it contains only information about services that end with a license. The Law on Electronic Government²²⁵ obliges the bodies to publish a catalogue of e-services on their websites and to submit it to the MPADSM for the Ministry to publish the consolidated catalogue on the Government portal²²⁶. The MPADSM has started to establish the catalogue, although it is still in the initial phase: as of 31 May 2021, there were 96 e-services listed.

Article 14 of the Law on Electronic Identification and Electronic Signature²²⁷, adopted in 2017, stipulates that a digital signature is equivalent to a handwritten one. Still, not before 1 June 2020 did the Ministry of Interior (Mol) start to issue digital certificates with national ID cards to citizens for the cost of a national ID card, not charging extra for the activation and use of the digital signature function of the ID. Until then, the cost of obtaining a digital certificate (from the Post Office of Montenegro) was as high as EUR 110, making it inaccessible for many in Montenegro. As of 23 December 2020, the Mol had issued 68 483 certificates. Alternative digital certificates are still in use, such as the ones offered by the Post Office of Montenegro²²⁸, Coreit SA²²⁹, and the MPADSM²³⁰.

²²⁴ Central Population Register (CRS), Register of beneficiaries of material benefits, Register of Education of Montenegro (MEIS), Central Register of Taxpayers and Insured Persons (CROO), information system of capital Podgorica, and Register of insured persons of the health fund.

²²⁵ Article 27, Law on Electronic Government, Official Gazette No. 72/19.

²²⁶ <https://www.gov.me/e-servisi>.

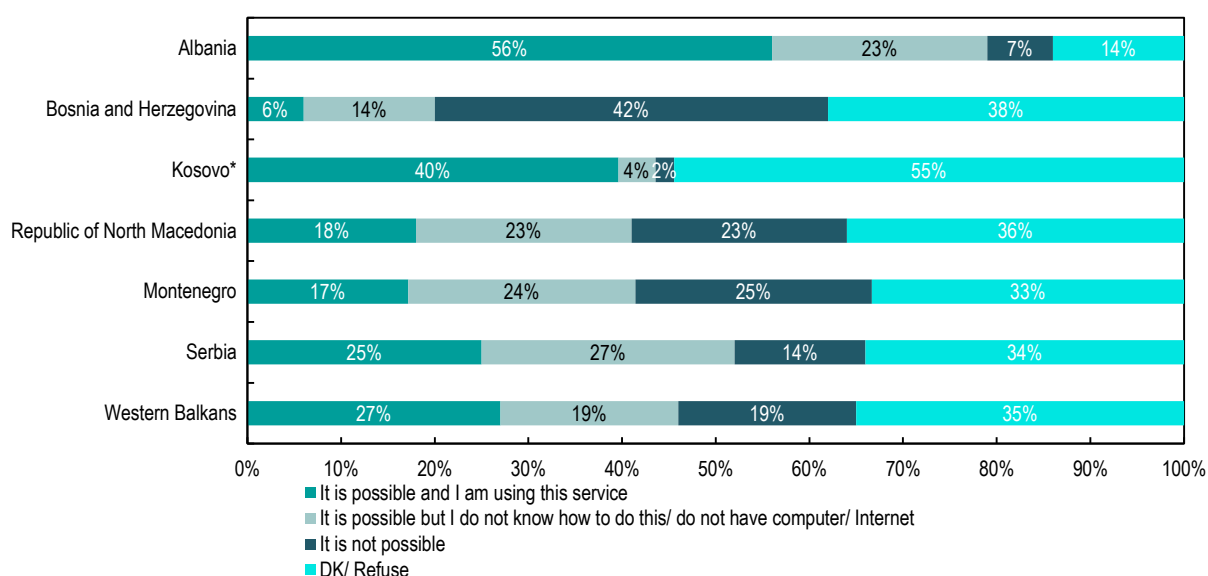
²²⁷ Law on Electronic Identification and Electronic Signature, Official Gazette No. 30/07.

²²⁸ To both citizens and legal entities, at the cost of EUR 110. As of December 2020, 30 000 digital certificates had been issued.

²²⁹ To legal entities only, at the cost of EUR 80. As of December 2020, 98 digital certificates had been issued.

²³⁰ To state administration authorities, free of charge. As of December 2020, 712 digital certificates had been issued.

Figure 3. Availability of personal documents online



Note: Data refer to a question: Is it possible to get your personal documents (birth certificate, citizenship, etc.) or any other personal document - online? *This designation is without prejudice to positions on status and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Source: Regional Cooperation Council (RCC), Balkan Barometer Public Opinion survey 2021 (<https://www.rcc.int/balkanbarometer>).

The slow progress in the digitalisation of services is reflected in the Balkan Barometer data (Figure 3), showing that the public perception of the use and availability of e-services is one of the lowest in the region.

Conclusion

Progress in the enabling environment supporting service delivery has generally been slow. The function for central monitoring of service delivery performance and perception has not been established, and the adoption of quality-management and user-engagement tools and techniques has been modest. The situation is somewhat better for digital services, where some data is collected. Even though the established interoperability framework is solid, in practice the quality of public services is hindered by a limited data exchange between public registries. Although the free option of obtaining a digital certificate has been provided recently, the uptake is still low, further hindering the wider use of electronic services.

Principle 4: The accessibility of public services is ensured.

Overall, the value for the indicator ‘Accessibility of public services’ is 2. The value was also 2 in 2017. The value of a few indicators has slightly improved, such as government websites’ compatibility with Web Content Accessibility Guidelines (WCAG), whereas public perception of the satisfaction and accessibility of services has declined.

Indicator 5.4.1: Accessibility of public services						
This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizens’ perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services.						
Overall 2021 indicator value	0	1	2	3	4	5
			Points 2021		Change from 2017	
Policy framework for accessibility						
1. Existence of policy for the accessibility of public services			1/3		=	
2. Availability of statistical data on accessibility to public services			1.5/3		+0.5	
3. Adequacy of policy framework for public service users with special needs			1/4		=	
4. Existence of common guidelines for government websites			2/2		=	
Government performance on accessibility						
5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)			3/3		+1	
6. Perceived satisfaction with public services across the territory by the population (%)			0/3		-1	
7. Perceived accessibility of digital public services by the population (%)			1/3		=	
8. Perceived time and cost of accessing public services by the population (%)			1.5/3		-1	
Total			11/24		-0.5	

A legal framework has been established to support access to services for people with disabilities, such as the Law on Prohibition of Discrimination²³¹ and the Law on Prohibition of Discrimination of Persons with Disabilities²³². Sign language is not yet officially recognised, however. Article 73 of the Law on Spatial Planning and Construction mandates that construction of public buildings must follow accessibility guidelines. Also, a rulebook on standards of accessibility²³³ has been adopted.

The objectives, actions, and targets to increase the accessibility of services among people are set in the Strategy for the Protection of Persons with Disabilities, Discrimination and Promotion of Equality (2017-2021)²³⁴. However, several policies that established further targets for improving accessibility of public services among people with disabilities – such as the Strategy for Integration of Persons with Disabilities 2016-2020 and Information Society Strategy 2020, which included a chapter on e-inclusion – have not been extended.

²³¹ Law on Prohibition of Discrimination, Official Gazette Nos. 46/2010, 40/2011, 18/2014.

²³² Law on Prohibition of Discrimination of Persons with Disabilities, Official Gazette No. 35/2015.

²³³ Rulebook on the standards of accessibility:
<https://www.gov.me/dokumenta/f9a35589-6531-4b5c-971a-806dc0db1330>

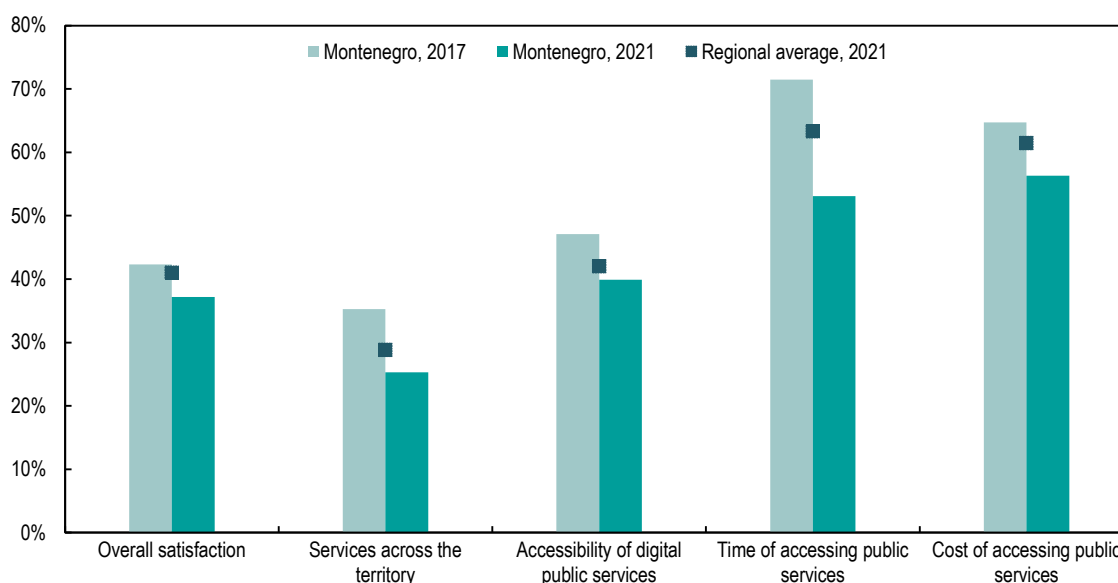
²³⁴ Strategy for the Protection of Persons with Disabilities, Discrimination and Promotion of Equality (2017-2021):
<https://wapi.gov.me/download-preview/e177f258-825a-4acf-beaa-1bc126ff1718?version=1.0>

Statistical data on territorial accessibility is being collected in a few policy areas, such as education and health care, and is publicly available. No data is publicly available on accessibility to public services by people with disabilities.

Common guidelines for government websites have been established²³⁵, and compliance with the WCAG has improved due to the introduction of the new website format across ministries in Spring 2021.

According to the 2021 Balkan Barometer survey, the perceived satisfaction with public services across the territory has decreased from 34% compared with 2017 and is as low as 25.3%. Slightly more of the respondents (39.9%) ranked highly the accessibility to digital public services (down from 45.2% in 2017). A much greater share of the respondents are satisfied with the time (75%) and cost (66%) of accessing public services (72.5% and 65.6%, respectively, in 2017).

Figure 4. Citizen satisfaction with aspects of service delivery



Note: The average share of citizens who answered “mostly satisfied” or “completely satisfied” to the statements: “Could you please tell how satisfied you are with each of the following in your place of living?” in relation to: “Administrative services from central government (such as passports and personal identification [ID])”, “Accessibility to public services” and “Accessibility to public services via a digital channel”. The average share of citizens who answered “good”, “very good” and “excellent” to the following question: “How would you grade the following issues?” in relation to: “Time required to obtain public services” and “Price of public services”. *Only those respondents who have been in contact with central government services in the past year are included.

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

Overall, the legislative framework has been set to increase the accessibility of services to people with disabilities, and some strategic objectives, actions and targets have been set alongside standards for accessibility. Progress has not been evident, however, and a mechanism to centrally monitor the accessibility of services to disadvantaged people has not been established. Public satisfaction with the offered public services and their accessibility is low, whereas people are less critical towards the waiting time and cost of accessing the services.

²³⁵ Guidelines for Developing and Managing Official Websites of Administration Bodies and Local Governments Bodies v3.0, the Ministry of Public Administration, June 2019.

Public Financial Management

The Principles of Public Administration

Public Financial Management

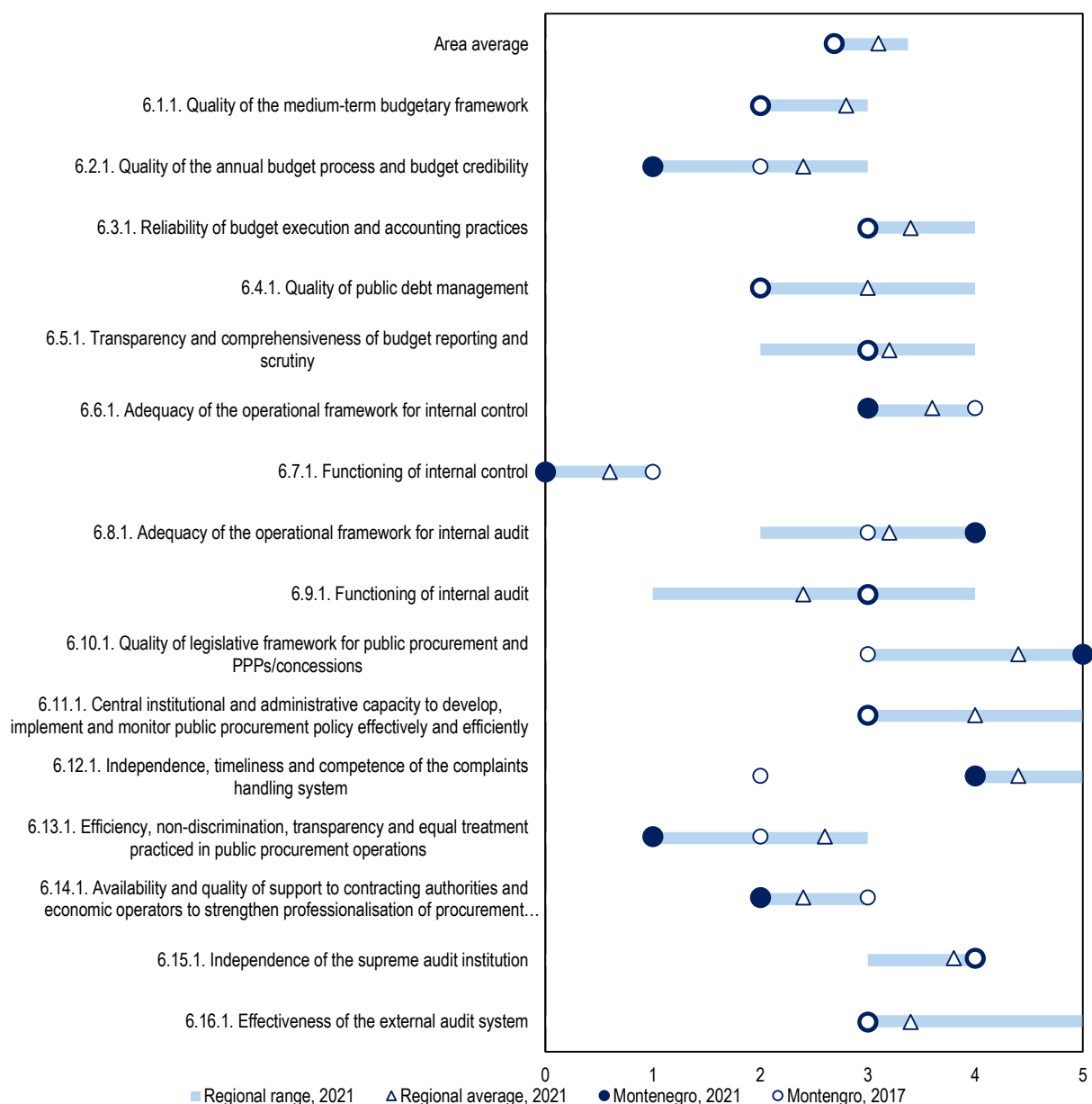
Budget Management	
Principle 1	The government publishes a medium term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.
Principle 2	The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium term budgetary framework and are observed.
Principle 3	The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.
Principle 4	There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.
Principle 5	Transparent budget reporting and scrutiny are ensured.
Internal audit and control	
Principle 6	The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.
Principle 7	Each public organisation implements internal control in line with the overall internal control policy.
Principle 8	The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.
Principle 9	Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.
Public Procurement	
Principle 10	Public procurement regulations (including public private partnerships and concessions) are aligned with the European Union acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and are duly enforced.
Principle 11	There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.
Principle 12	The remedies system is aligned with the European Union acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.
Principle 13	Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.
Principle 14	Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.
External audit	
Principle 15	The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.
Principle 16	The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

Public Financial Management

Summary and recommendations

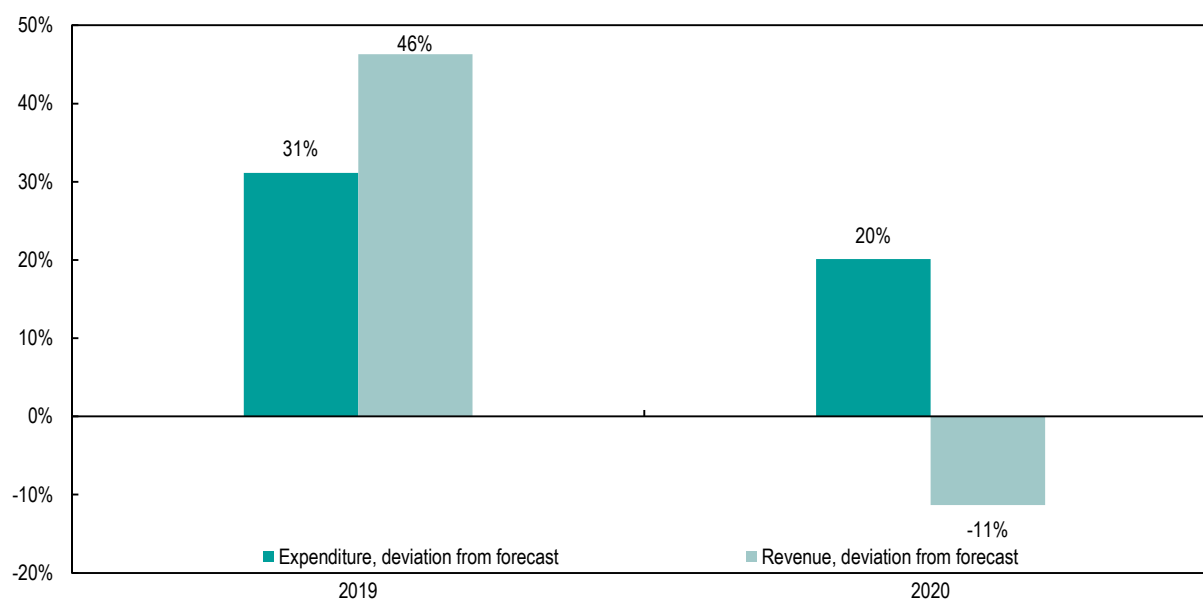
The overall situation for Montenegro in public financial management (PFM) remains the same as in 2017. Montenegro's area average of 2.7 is the lowest compared with its neighbours in the region, with weaker performance for most principles in the PFM domain. Only the principles related to internal (IA) audit and the independence of the State Audit Institution (SAI) are above the regional average, with a notable improvement in the operational and legislative framework for IA in comparison with 2017. The performance is weaker and has deteriorated since 2017 especially in the area of public internal financial control (PIFC) and in the quality and credibility of the budget.

The overall situation in public financial management is the same as in 2017. Montenegro's area average of 2.7 is the lowest compared with its neighbours in the region



Many elements of a strong medium-term budgetary framework have been established in law. However, the effective implementation of these elements is pending. The approach to medium-term budget planning is basically unchanged since 2017 and gaps remain, such as the lack of non-financial information and the limited input of first-level budget organisations to the Fiscal Policy Guidelines (FPG). The credibility of medium-term expenditure and revenue plans remains weak and has worsened since 2017, with an apparent bias towards underestimating medium-term forecasts.

The difference between medium term budgetary forecasts and outturn, 2019 and 2020, which shows the lack of credibility of medium-term expenditure and revenue plans that has had a strong impact in the overall values for the PFM area



There have been improvements in the budgetary framework, such as strengthened transparency through the introduction of programme budgeting in the 2021 budget and the inclusion of information related to capital expenditure, with individual capital projects included for the first time in the 2021 budget law. Programme budgeting would allow for a clearer link between spending and Government policies and strategies, and could facilitate the way to performance-based budgeting. However, the budget information is not yet comprehensively presented, as no information on contingent liabilities or on the elaboration of new and existing policy initiatives is presented.

The Government has established clear quantitative fiscal rules, but there is still no oversight of the budgeting process by an independent institution, such as a fiscal council. The SAI monitors the adherence to these rules only on an *ex post* basis. The reports for 2018 and 2019 show that the fiscal criteria were not adhered to in either year, and preliminary data indicates that they were not met in 2020.

The level of public debt rose from 76.5% of gross domestic product (GDP) in 2019 to 105.2% in 2020, which, in addition to the extent of foreign debt (87%), has increased the risks to the public finances. There are gaps in the reporting to the Ministry of Finance and Social Welfare (MoFSW) of relevant information that can affect the public deficit position; this is the case of the debt of state-owned enterprises (SOEs), which is not directly reported to MoFSW; data from local governments; and information on contingent liabilities. These gaps, too, can create increased risks.

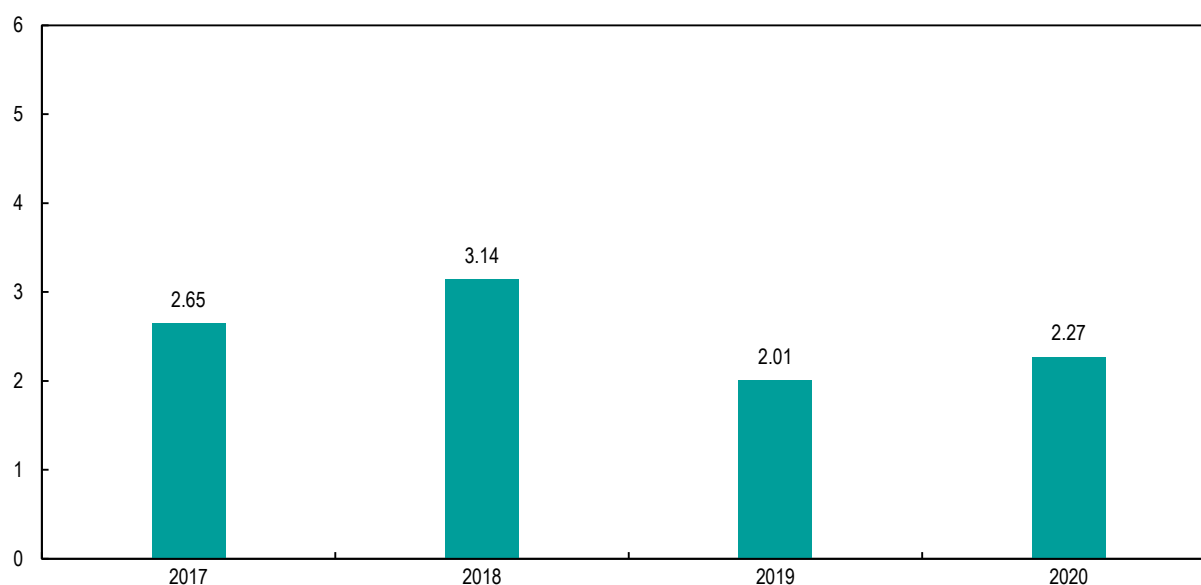
The area of **PIFC has a comprehensive legal basis**. The new PIFC Law is based on a thorough analysis of the situation in the public sector. During the reference period PIFC was guided by the PFM Reform Programme 2016-2020, while the new Programme is still under development; consequently, **there is no current plan to support the further development of internal control**. Furthermore, notwithstanding legislative initiatives and some improvements that the MoFSW introduced in the operational framework, **the implementation of internal control arrangements lags well behind the development of the legal**

framework, with the main weaknesses affecting managerial accountability, risk management and reporting of irregularities.

Positive developments took place with regard to further improvement of the legal and operational framework for IA. However, insufficient staffing of IA units limits the impact of the audit activity. Furthermore, the share of performance audits in the overall IA envelope is very low.

The new Public Procurement Law (PPL)²³⁶, adopted at the end of 2019, has been applicable since 9 July 2020. Almost all of the secondary legislation was adopted on time, though some parts were adopted after 9 July 2020. The new Law on Public-Private Partnership (PPPL)²³⁷ was also adopted at the end of 2019. **The current regulatory framework is largely aligned with the EU *acquis* on public procurement, including concessions and public-private partnerships (PPP). A few minor discrepancies remain, however.** The new PPL's provisions ensure the basic principles of equal treatment, non-discrimination, proportionality and transparency. Also, the use of modern procurement techniques and methods is regulated. Despite the positive impact of the new PPL provisions, there is a widespread perception that public procurement is a cumbersome process that limits contracting authorities' ability to use public funds effectively. The **overall competitiveness of the procedure remains low**, with only 2.3 bids submitted on average.

The average number of tenders submitted



The current institutional set-up, except for central purchasing, is comprehensive and meets the requirements of the *acquis* for public contracts and ensures that relevant functions are accordingly performed. However, the administrative capacity of contracting authorities and economic operators requires significant strengthening. Centralised procurement, as organised by the State Cadastre and Property Administration (“Property Administration”), remains largely dysfunctional and currently represents less than 2% of the total value of contracts.

The new e-procurement system encompasses all relevant functionalities, from the publication of procurement plans, tender documents, the public opening of tenders and tender submission up to the e-complaint system. The new e-procurement system has been used since 1 January 2021. Although both contracting authorities and economic operators are satisfied with its functionalities, the e-system needs improvements to increase its efficiency and to avoid adding more administrative tasks for users.

²³⁶ Official Gazette No. 074/19, 30 December 2019.

²³⁷ Official Gazette No. 073/19, 27 December 2019.

Due to the decreased number of complaints, the average duration of the appeal procedure in the State Commission has been reduced to 18 days. The accessibility of the Commission's decisions is still limited due to non-existent search functions on its website.

The SAI of Montenegro remains a solid performer in the area of external audit. Since 2017, the SAI has made efforts to improve its institutional and methodological framework, adapting it to International Auditing Standards of SAIs (ISSAI). The regulatory framework has been further developed and the independence of the SAI strengthened.

Nevertheless, both indicator values in this area are unchanged compared to 2017, as most outstanding weaknesses remain, mainly the insufficient audit coverage and the limited use of SAI reports by the Parliament to hold the Government accountable, thus limiting the impact of the SAI's audit work. The SAI has also made significant efforts to implement its Communication Strategy 2020-2024, yet citizens' trust in the Institution's work has decreased since 2017.

Short-term recommendations (1-2 years)

- 1) The Government should commit to observing the legal timetable and complying with the obligations established in the Budget and Fiscal Responsibility Law (BFR), particularly on the development of the new Fiscal Strategy and a new debt-management strategy.
- 2) The MoFSW should guarantee transparency in the presentation of the documentation provided in the budget process, accuracy of estimates, delivery of sectoral inputs by line ministries, comparability with Fiscal Guidelines, and comprehensiveness, ensuring that the full cost of capital projects and contingent liabilities are reflected.
- 3) The MoFSW should establish an independent Fiscal Council to assess and advise on short- and medium-term macroeconomic fiscal policy and assess compliance with fiscal rules on an *ex ante* basis, to provide an independent assessment of medium-term budgetary policy that should be considered by the Parliament.
- 4) The MoFSW should ensure that all relevant information affecting the public deficit and debt position, including risks and contingent liabilities, is reported to them, including from SOEs and local governments as required, as well as accurate and complete information on the overall level of general-government arrears.
- 5) The MoFSW should ensure, through close monitoring and reporting, that public entities put into practice arrangements for the delegation of authority, in combination with harmonisation of management and budget structures.
- 6) The MoFSW should improve the oversight and systems for monitoring public expenditure, particularly in relation to public investment projects, as well as the control of commitments to improve the monitoring of arrears.
- 7) The MoFSW should consider enhanced training activities in identifying and reporting on irregularities, and consider developing a guideline including, among other items, an inventory of potential irregularities characteristic of the public sector.
- 8) The MoF should improve the e-procurement system in order to increase its efficiency and to avoid adding administrative tasks for its users.
- 9) The Government should review the functioning of the State Cadastre and Property Administration as the central purchasing body and accordingly improve the system of central purchasing in all aspects, from planning to tender preparation and contract execution.
- 10) The Directorate for Public Procurement Policy (DPP) should prepare guidelines and manuals for both contracting authorities and economic operators covering all stages of the public procurement cycle, containing practical examples.
- 11) The Commission for Protection of Rights in Public Procurement Procedures (CPRPPP) should start using a case management system for processing appeals and improve its website to ensure that its decisions are searchable by date, participants of the procedure and case category.
- 12) The MoFSW and relevant public bodies should ensure appropriate staffing of IA units to increase the coverage of the audits.

- 13) The SAI should take action to increase the impact of its audit work by:
- expanding audit coverage and ensuring selection of audit topics with the highest impact on the functioning of the public sector.
 - pursuing the regular submission of the SAI's individual audit reports to the legislature in the framework of the protocol signed by the SAI and the Parliament in 2018.
 - improving the rate of implementation of recommendations through better monitoring and control.
- 14) The SAI should adopt an ISSAI-compliant performance audit manual to provide practical guidance to auditors, describing in detail how performance audits should be carried out, in application of the SAI's Instruction on performance auditing methodology.
- 15) The SAI should start performing regular audit quality assurance measures. Among other benefits, this would contribute to the development of a user-friendly performance audit manual.

Medium-term recommendations (3-5 years)

- 16) The MoFSW should adopt European System of Accounts (ESA) standards for the annual financial statements and quarterly reports, enhancing the annual financial report by including a statement of the up-to-date position on state assets and liabilities.
- 17) The MoFSW should issue additional guidance on performance auditing and develop IA capacity in this area, as well as undertake regular IA quality-assurance arrangements in accordance with international standards.

Analysis

Budget management

Principle 1: The government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.

Overall, the value for the indicator ‘Quality of the medium-term budgetary framework’ is 2, which is unchanged from 2017. The overall approach to medium-term budget planning is largely the same and gaps remain, particularly on the implementation side. Revenue forecasts are also less accurate than in 2017.

Indicator 6.1.1 - Quality of the medium-term budgetary framework						
This indicator measures how well the medium-term budgetary framework (MTBF) is established as a fiscal plan of the government, focusing on the process of budget preparation and four areas that influence the quality of the budget documents. A good MTBF should increase transparency in budget planning, contribute more credible forecasts and ultimately lead to a better general government budget balance.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Strength of the medium-term budgetary framework				7/12	+2	
2. Strength of the fiscal rules				2/5	=	
3. Credibility of medium term revenue plans (%)				0/4 ²³⁸	-3	
4. Credibility of medium-term expenditure plans (%)				0/4 ²³⁹	=	
Total				9/25	-1	

The BFR Law sets out the legal basis for Montenegro’s medium-term economic planning and budgetary framework. The Parliament, on the basis of a proposal from the Government, is required to adopt a Fiscal Strategy setting out the broad macroeconomic and fiscal plan for the term of the new Government²⁴⁰. The Government formed on 4 December 2020 has yet to produce a Strategy but has indicated its intention to do so by end-2021²⁴¹.

Under the BFR Law, the Government must also produce annually, based on the Fiscal Strategy, Fiscal Policy Guidelines (FPG) document covering the three-year period ahead²⁴². This document must be published by 15 March of the current year, setting out fiscal plans for three years beginning the following fiscal year. However, the Government did not approve the updated FPG 2021-2023 corresponding to 2021 until 12 March 2021²⁴³, and has not yet produced the document corresponding to 2022. The FPG document is not formally submitted to the Parliament and is not discussed by the Parliament or

²³⁸ The sub-indicator was determined on the basis of 2019 data due to the COVID-19 pandemic in 2020.

²³⁹ The sub-indicator was determined on the basis of 2019 data due to the COVID-19 pandemic in 2020.

²⁴⁰ Budget and Fiscal Responsibility (BFR) Law, Article 17, Official Gazette Nos. 20/2014, 56/2014, 70/2017, 4/2018, 55/2018, 66/2019.

²⁴¹ Work programme of the Government of Montenegro for 2021, March 2021, p. 79.

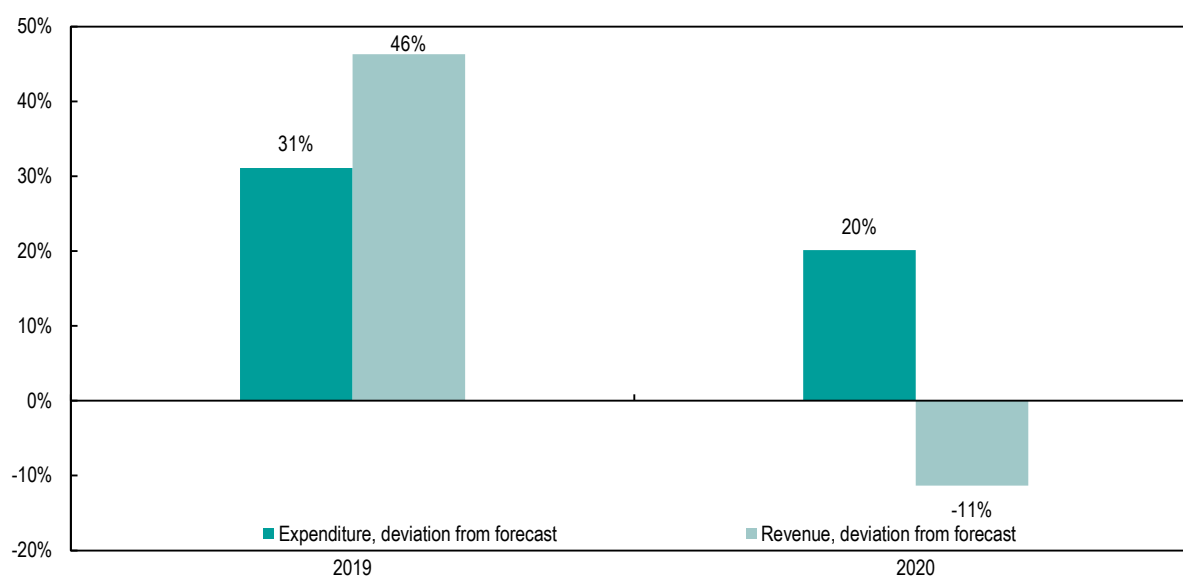
²⁴² The BFR Law, Article 18.

²⁴³ <https://www.gov.me/clanak/saopstenje-o-odlukama-vlade-donijetim-bez-odrzavanja-sjednice-11-i-12-marta-2021-godine>

parliamentary committees. The FPG 2021-2023 include medium-term macroeconomic and fiscal policy objectives and forecasts, as well as spending ceilings for the central government, but do not include non-financial performance information. Sectoral policy plans are not aligned with medium-term planning, and line ministries and other first-level organisations provide no significant input to the FPG. Expenditure ceilings in the FPG form the basis for the budget for the following year but are not binding for the second and third years.

In assessing medium-term fiscal forecasting, 2019 is used as the base year due to the significant COVID-19 shock on the 2020 macroeconomic and fiscal position. Figure 1 shows recent fiscal forecasts published in the FPG and indicates that there appears to be a bias toward underestimating medium-term expenditure and, in 2019, revenues also. The impact of COVID-19 on revenues in 2020 is also evident from this data.

Figure 1. The difference between medium-term budgetary forecasts and outturn, 2019 and 2020



Source: Fiscal Policy Guidelines (planned figures). Law on the Final Account of the Budget of Montenegro for 2019 (outturn data for 2019), and Ministry of Finance and Social Welfare's December 2020 monthly report. (preliminary budget execution data).

The law setting fiscal rules states that the general-government deficit should not exceed 3% of GDP and that public debt as a share of GDP should not exceed 60%²⁴⁴. The SAI monitors adherence to the fiscal rules annually²⁴⁵ on an *ex post* basis, examining both planning and outturn data, but not the fiscal policy set in the budget, the Fiscal Guidelines or the general macroeconomic or fiscal background. The SAI reports for 2018 and 2019 show that the fiscal criteria established in the BFR Law were not adhered to in either year, and preliminary data indicates that the criteria were not met in 2020²⁴⁶. There is no oversight of the Government fiscal plans by an independent institution.

Conclusion

Many of the elements of a strong medium-term budgetary framework have been established in law, but there are gaps, particularly in timely development and publication of fiscal planning documentation,

²⁴⁴ BFR Law, Article 20.

²⁴⁵ BFR Law, Article 26.


²⁴⁶ Report on Evaluation of the Application of the Fiscal Responsibility Criteria in 2018, State Audit Institution (SAI) of Montenegro, October 2018; Report on Evaluation of the Application of the Fiscal Responsibility Criteria in 2019, SAI of Montenegro, October 2019:

http://www.dri.co.me/1/index.php?option=com_content&view=article&id=103&Itemid=134&lang=en

engagement by line ministries and accuracy of medium-term fiscal forecasts. Compliance with the fiscal rules has also been weak, and there is no independent institution monitoring Government fiscal plans.

Principle 2: The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.

Overall, the value for the indicator 'Quality of the annual budget process and budget credibility' is 1, which represents a decrease compared with the 2017 value of 2. This is largely due to a fall in the assessed credibility of annual expenditure and revenue plans but also to reduced operational alignment between the budget and medium-term framework.

Indicator 6.2.1 - Quality of the annual budget process and budget credibility		
This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi-annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in-year budget adjustment.		
Overall 2021 indicator value  since 2017	0	1
	2	3
	4	5
	Points 2021	Change from 2017
1. Operational alignment between the MTBF and the annual budget process	1/4	-1
2. Reliability of the budget calendar	2/4	=
3. Transparency of the budget proposal before its adoption in parliament	4/8	+2
4. Quality in the budgeting of capital investment projects	1/5	=
5. Parliamentary scrutiny of the annual budget	1/5	=
6. Transparency and predictability of procedures for in year budget adjustments	2/4	-1
7. Credibility of revenue plans in the annual budget (%)	0/4 ²⁴⁷	-2
8. Credibility of expenditure plans in the annual budget (%)	0/4 ²⁴⁸	-2
Total	11/38	-4

Note: Overall 2017 indicator value and its sub-indicators were revised retrospectively due to miscalculations. Points for sub-indicator 7 changed from 3 to 2. Due to the change, the 2017 indicator value changed from 2 to 1.

As required in the BFR Law, the MoFSW issues a budget instruction to budget users by May, which includes spending ceilings, and the users must respond by the end of July²⁴⁹. This instruction is based on the budget parameters in the multi-annual FPG, which should be published no later than March. Following these responses, the MoFSW proposes a draft budget to the Government in October and the Government is required to submit a draft budget to the Parliament no later than 15 November.

However, due to the new Government's taking office only in December 2020 after the elections that year, the draft annual budget for 2021 was presented to the Government only on 31 March 2021, after the publication of the updated FPG 2021-2023 on 12 March. The Parliament adopted the budget on 17 June 2021. Prior to this, the MoFSW had approved funds monthly under temporary financing arrangements²⁵⁰. For the 2021 budget, there was more limited input from line ministries than would normally be the case due to the constrained budget timetable following the Government-formation process.

The data presented in the 2021 budget documentation includes capital and current expenditure, as well as all revenues and Instrument for Pre-accession Assistance (IPA) funding, but not on an ESA basis.

²⁴⁷ The sub-indicator was determined on the basis of 2019 data due to the COVID-19 pandemic in 2020.

²⁴⁸ *Ibid.*

²⁴⁹ BFR Law, Articles 29-33.

²⁵⁰ BFR Law, Article 37, allows the MoFSW to approve funds up to the amount of 1/12 of actual spend of the previous year where the State Budget Law has not been adopted by 31 December of that year.

Information on contingent liabilities is not included, and no distinction is made between existing and new policy initiatives. Aggregate expenditure and certain sectoral ceilings for 2021 varied by more than 2% between the FPG and the budget, and there is no clear reconciliation of changes between the two documents.

While capital projects have a different timetable from other expenditure categories within the budget process, capital expenditure is presented in the budget, and the 2021 budget law included public capital projects individually for the first time²⁵¹. In January, budget users are requested by the MoFSW to develop proposals for the capital budget. Since 2018, legislation has been introduced that envisages new procedures for capital projects, including requirements for a feasibility study/cost benefit analysis, and states that capital projects should contain the effect on the current budget, which shows the impact of construction on the change on the current budget and budget revenues²⁵². The threshold for each of these requirements is set at EUR 5 million.

In terms of in-year budget adjustments, the Government may reallocate the appropriations determined by the State Budget Law among the spending units by up to 10% of the total planned funds for the spending unit²⁵³. The Parliament typically passes a very small number of budget amendments each year, with one in each of 2019 and 2020.

The credibility of the revenue and expenditure estimates in the annual budget is low. In 2019, revenue exceeded the estimates by 31.8% while for expenditure the deviation was 8.8%. The average difference between the planned revenue in the original annual budget bill and the actual outturn in 2018 and 2019 was 37.9%. For expenditure, the deviation was 21.3%.

One of the main improvements in this area is the introduction of programme budgeting for the 2021 Budget, following the development of guidance and training for budget users, which should allow for a clearer link between spending and Government policies and strategies²⁵⁴. This reform is a necessary precursor to performance budgeting and is supported by legislation²⁵⁵. The introduction of programme budgeting has led to a significant increase in budgetary materials. However, there has been a reduction in the number of spending units as some of them now appear as programmes within ministries, and there is also a less detailed explanation of spending unit data. The MoFSW has also indicated that the development of a new Budget Planning Information System (BMIS) is underway, which will provide for a more efficient process and better access to data²⁵⁶.

Conclusion

The BFR Law sets out the roles, responsibilities and calendar for the budget process. However, the start of the budget process for 2021 was delayed; consequently, the elements of the process were constrained. The credibility of budget execution against plans is weak. Temporary financing arrangements were in place for 2021 until the budget law was passed. There have been improvements to the budgetary framework, including the introduction of programme budgeting and the strengthening of the capital-investment procedures.

Principle 3: The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.

²⁵¹ BFR Law, Article 29.

²⁵² Decision on Capital Budget Preparation and Determination and Evaluation Criteria for Selection of Capital Projects, Articles 4 and 6 (Section 4), (Official Gazette No. 057/18).

²⁵³ BFR Law, Article 45.

²⁵⁴ Explanatory Statement of the Proposed Laws for the Budget of Montenegro for 2021, pp. 42-44.

²⁵⁵ The Parliament of Montenegro adopted the Law on Amendments to the Law on Budget and Fiscal Responsibility on 17 June 2021.

²⁵⁶ Explanatory Statement of the Proposed Laws for the Budget of Montenegro for 2021, p. 42.

Overall, the value for the indicator 'Reliability of budget execution and accounting practices' is 3, which is unchanged from 2017. While there have been some specific changes, for example harmonisation in the definition of expenditure arrears, the core structures for cash management and budget classification remain broadly the same.

Indicator 6.3.1 - Reliability of budget execution and accounting practices					
This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.					
Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.					
Overall 2021 indicator value	0	1	2	3	4 5
				Points 2021	Change from 2017
1. Presence of a treasury single account (TSA)				2/2	=
2. Frequency of revenue transfer to the TSA				1/1	=
3. Frequency of cash consolidation				1/1	=
4. Credibility of cash flow planning				0/2	=
5. Budget classification and chart of accounts				2/2	=
6. Frequency of bank account reconciliation for all central government bank accounts				2/2	=
7. Availability of data on the stock of expenditure arrears				1/2	=
8. Expenditure arrears (%)				0/3	=
Total				9/15	=

The treasury single account (TSA) for Montenegro is established in law under the responsibility of the Treasury within the MoFSW²⁵⁷. Only the Minister for Finance and Social Welfare can open bank accounts and authorise payments from accounts²⁵⁸.

Government cash deposits are held either in the Central Bank of Montenegro or in a limited number of commercial banks. These accounts are consolidated daily. The relevant revenue-collecting organisations transfer funds to the Central Account of the State Treasury with the simultaneous submission of the Recipient's Statement on the structure of public revenues at least once a day²⁵⁹. Suspense accounts are not used. The TSA is reconciled daily and electronically with statements received from the Central Bank, and the reconciliation is also undertaken with the General Ledger. As instructions are issued electronically, there is no delay in the payment.

Cash-flow plans are prepared on a rolling monthly basis rather than as an annual 12-month forecast. The Treasury produces cash-flow forecasts based on data taken from the Treasury system (SAP) rather than on forecasts received from first-level budget organisations. The cash-flow forecast can be categorised by organisation, but economic and other non-administrative classifications are not available.

The MoFSW publishes the data on the stock of expenditure arrears (outstanding liabilities) in the central government in the end-of-year report. There does not appear to be any published document showing the data on arrears for the general-government level. The SAI audits this data as part of its audit on the annual financial accounts. The MoFSW has harmonised the definition of arrears in the outstanding Liabilities

²⁵⁷ BFR Law, Article 9.

²⁵⁸ BFR Law, Article 10.

²⁵⁹ Order on the manner of payment of Public Revenues, Article 4 (Parts 9 and 10), Official Gazette, No 128/20.

Statement for 2019²⁶⁰. However, a recent assessment of PFM reform in Montenegro identified challenges in the recording of outstanding liabilities in the SAP system, particularly limitations in commitment management²⁶¹. More generally, the Central Bank, in its Economic Policy Recommendations to the Government for 2021, recommends an improvement in the process of budget, planning, execution and assessment of outstanding liabilities in order to prevent their build-up. The balance of consolidated outstanding liabilities for the state budget, as audited in the SAI's Report on the Proposed Law on Final Statement of Accounts of the State Budget of Montenegro for 2019, is EUR 20.6 million²⁶².

In terms of budget classification, central and local government budgets are required to be planned and executed in uniformly across economic, functional, organisational, programme and project classification²⁶³.

Conclusion

Overall, a reasonably comprehensive legal structure is in place for the establishment of TSA and accounts reconciliation, and there have been some improvements since the previous monitoring in 2017. However, there are limitations in both the cash-flow planning and expenditure arrears management areas, including the reporting on outstanding liabilities. Progress has also been made on digital financial systems in this area but notable challenges remain, for example in relation to commitment management, which affects the management of outstanding liabilities.

²⁶⁰ Audit Report of the Proposed Law on the Final Statement of Accounts of the State Budget of Montenegro for 2019, Montenegro SAI, 14 October 2020, p. 29.

²⁶¹ Public Finance Management eligibility assessment for public administration reform (PAR) Sector Budget Support, p. 4, Contract No. IPA/2019/413-997, 26 November 2020, Implemented by Dr. Ilse Schuster.

²⁶² Audit Report of the Proposed Law on the Final Statement of Accounts of the State Budget of Montenegro for 2019, Montenegro SAI, 14 October 2020, p. 30.

²⁶³ Rulebook on the Uniform Classification of Accounts for the Budget of Montenegro and Municipal Budget, Article 2, Official Gazette, No 072/16, 18 November 2016 and 106/20, 2 November 2020.

Principle 4: There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.

Overall, the value for the indicator 'Quality of public debt management' is 2, the same as in 2017. The legal underpinning and structures for borrowing remain the same. There have been some improvements to reporting of past debt data; however, gaps are evident in reporting by SOEs. As the debt level has increased, there is also evidence of less accurate debt planning since 2017.

Indicator 6.4.1 - Quality of public debt management						
This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to gross domestic product (GDP), and the difference between public sector debt outturn and target.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Existence of requirements and limitations for borrowing in the legal framework				2/3	=	
2. Existence and minimum content of a public debt management strategy				2/4	+1	
3. Clarity of reporting on public debt				2/4	=	
4. Risk mitigation in the stock of public debt				2/6	=	
5. Difference between public sector debt outturn from target (%)				1/3 ²⁶⁴	-1	
6. Public debt as a share of GDP (%)				0/2 ²⁶⁵	=	
Total				9/22	=	

Responsibilities for borrowing and debt management are set out in law, with the MoFSW responsible for carrying out foreign borrowing for the central government, subject to the Government's approval.²⁶⁶ The coverage and rationale for borrowing and public debt are also prescribed, though the definition is not in line with the ESA. Guarantees may be issued only for the financing of capital projects; their level in any given year is set in the budget and may not exceed 15% of GDP²⁶⁷. The level of committed/dispensed guarantees in 2020 was 11.3% of GDP, but the nominal level was down slightly on 2019.²⁶⁸ Municipalities are permitted to take on long-term borrowings and issue guaranties with Government approval on the basis of a proposal from the Minister of Finance and Social Welfare. The MoFSW and the Government must give prior approval for any borrowing by SOEs and local governments; however, a comprehensive structure for direct reporting on SOE debt to the MoFSW is not in place.

In 2019, public debt (central and local government) was 76.5% of GDP, rising to 105.2% in 2020, due to both increased nominal debt and the fall in GDP owing to the macroeconomic impact of COVID-19²⁶⁹. This trajectory is significantly different from that set out in the Medium-Term Debt Management Strategy 2018-2020 in 2017, which established a baseline public debt scenario of 65.7% and 59.3% for 2019 and 2020, respectively²⁷⁰.

The Public Debt Report for 2020, published in March 2021, provides information on the existing stock across currencies and origin, but a maturity profile is not set out. Most public debt is at the

²⁶⁴ The sub-indicator was determined on the basis of 2019 data due to the COVID-19 pandemic in 2020.

²⁶⁵ *Ibid.*

²⁶⁶ BFR Law, Articles 50-51.

²⁶⁷ BFR Law, Article 53.

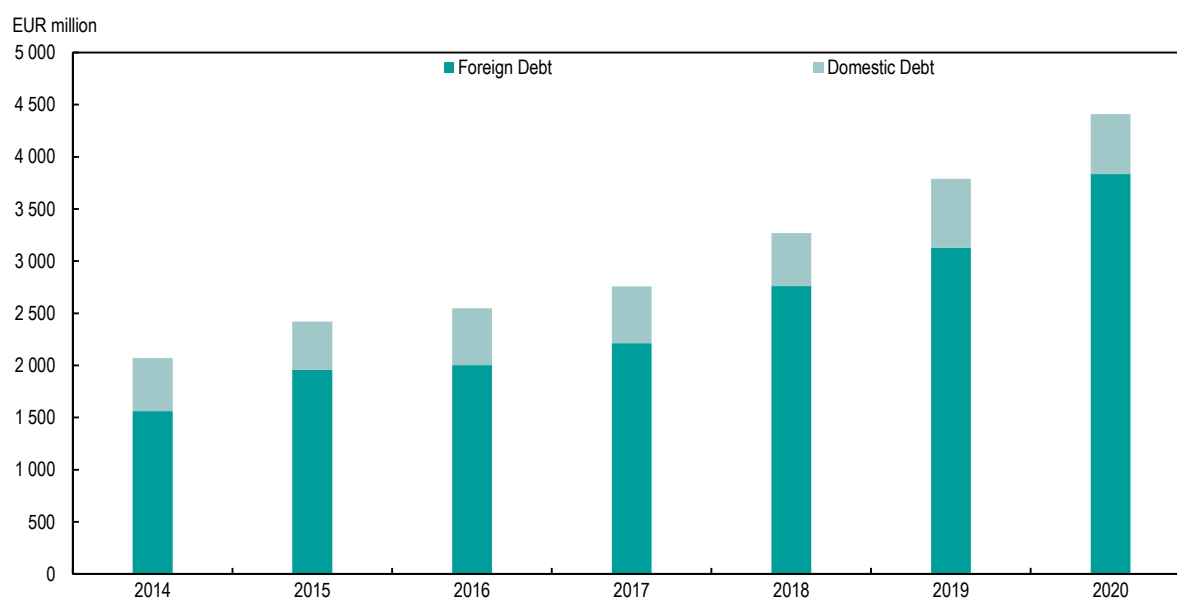
²⁶⁸ Report on the Public Debt of Montenegro 2020, Ministry of Finance and Social Welfare (MoFSW), March 2021.

²⁶⁹ Report on the Public Debt of Montenegro 2020, MoFSW, March 2021

²⁷⁰ Medium-Term Debt Management Strategy 2018-2020, MoFSW, March 2018.

central-government level, with municipalities accounting for 2.7% of this debt in 2020. The latest year-end figures for 2020 show that 87% of general-government debt was foreign in origin and 17.4% denominated in non-EUR currencies. Some 25.3% of stock of debt is variable. Figure 2 shows the share of foreign and domestic debt in recent years as the debt ratio has increased. The IMF specifically highlighted the level of foreign borrowings from the Chinese Exim Bank related to the Bar-Bolijare Highway project, which accounted for EUR 640.5 million of the public debt or 15.3% of GDP at the end of 2020, and the potential risks associated with currency fluctuations²⁷¹.

Figure 2. Breakdown of public debt by foreign and domestic borrowing, 2014-2020



Source: Report on the Public Debt of Montenegro 2020, Ministry of Finance and Social Welfare; Audit Report of the Proposed Law on the Final Statement of Accounts of the State Budget of Montenegro for 2019, State Audit Institution, p. 79.

The Government intends to publish the new Debt Strategy for 2021-2024 by the end of 2021²⁷². The updated FPG for 2021-2023, approved by the Government on 12 March, set out public debt levels for the period 2021 to 2023 and show the planned central-government debt declining to 71.7% of GDP by 2023. It is understood that these forecasts will form the basis of the debt targets to be published in the Debt Strategy.

Conclusion

The roles and responsibilities in relation to debt management and borrowing are set out clearly in law. The debt ratio is expected to remain above the 60% of GDP threshold set in law into the medium term. There are risks to the public finances from both this level of debt and the extent of foreign borrowings. The latest Debt Management Strategy covers only the period to 2020, and an updated strategy has yet to be prepared.

²⁷¹ Article IV Consultation with Montenegro, 2019, IMF Country Report No. 19/293, September 2019, p. 5.

²⁷² Work Programme of the Government of Montenegro for 2021, March 2021, p. 85.

Principle 5: Transparent budget reporting and scrutiny are ensured.

Overall, the value for the indicator 'Transparency and comprehensiveness of budget reporting and scrutiny' is 3, which is the same as the previous monitoring in 2017. This reflects the largely unchanged overarching annual reporting and oversight framework. There have been some changes to in-year reporting, particularly in 2021 due in part to the impact on the budget process of the election and subsequent process of government formation.

Indicator 6.5.1 - Transparency and comprehensiveness of budget reporting and scrutiny					
This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed.					
Overall 2021 indicator value	0	1	2	3	4 5
				Points 2021	Change from 2017
Comprehensiveness of published information					
1. Quality of in year reports of government revenue, expenditure and borrowing				4/7	+1
2. Quality of the annual financial report of the government				4/7	-1
3. Quality of annual reports of state owned enterprises, extra budgetary funds and local government				1/5	-1
4. Clarity of national accounting standards and consistency with international standards				1/4	=
5. Existence of reporting on fiscal risks identified in the budget				0/1	=
6. Quality of the annual financial reporting on the use of public finances				3/3	=
7. Timeliness of submission of the SAI report to parliament				2/2	=
8. Timeliness of parliamentary discussion on the report of the SAI				3/3	=
Total				18/32	-1

The MoFSW publishes budget-execution reports on a monthly and quarterly basis, typically within one month of the relevant month end. The monthly reports, drafted according to the International Monetary Fund's General Data Dissemination System, are based on data from the Treasury SAP system²⁷³.

An analysis of consolidated public expenditure at the general-government level is published quarterly on a modified cash basis, which does not include expenditure commitments. Neither monthly nor quarterly expenditure reports are based on standard format reports completed by ministries and other government bodies, nor do they include a breakdown at a ministry or organisational level. Profiles were not published at the start of the year for 2021, as temporary financing arrangements were in place.

The timetable and content of the year-end financial accounts are set in law²⁷⁴. The MoFSW submits the draft law on the year-end accounts to the Government by 1 June for the previous fiscal year. The Government must adopt the law by the end of June and submit it to the SAI, which submits a report on the audit of the year-end accounts of the budget to the Parliament by 15 October. The annual financial report is reasonably comprehensive at the central-government level; however, it does not include an analysis of state assets and liabilities. The annual financial report is based on, and is fully comparable to, the original budget format. While the annual financial reports for 2019 and 2020 do not contain non-financial information linked with budget envelopes, this may change to reflect the format of the budget for 2021. The BFR Law requires that the report include an overview of discrepancies against the planned

²⁷³ Montenegro Budget Execution Monthly reports: https://www.gov.me/en/news?sort=published_at&tags=2178

²⁷⁴ BFR Law, Articles 66-68.

amounts, but these are presented against amended budget allocations rather than the original budget allocation.

The SAI report on 2019 was submitted to the Parliament in October 2020 in line with this timetable, as was the end-of-year law for 2019, but this process was discontinued. On 31 March 2021 the MoFSW submitted the draft end-of-year law for 2019 to the Parliament again. The SAI confirmed that there was no change to the draft end-of-year law previously submitted and on which the SAI report is based²⁷⁵. The discussion on the year-end report of the budget for 2019 was combined with the presentation of the SAI's annual report, as is usually the case, and was discussed at the plenary of the Parliament on 12 May 2021. Two parliamentary committees discussed the SAI report for 2019.²⁷⁶

No report on consolidated SOE financial performance is published. The end-quarter analysis of the consolidated general-government position presents local government data.

Accounting standards are currently set out under a variety of regulations and laws, and a law to consolidate public accounting standards will apply from 1 January 2022²⁷⁷. Accounting standards applying to the annual financial accounts are not disclosed. An unpublished IMF report identifies a number of deviations between existing standards and cash-based International Public Sector Accounting Standards. ESA-consistent data is available only for certain high-level macroeconomic and fiscal metrics.

Fiscal risks are documented in the Fiscal Guidelines and in the 2021 budget accompanying documentation, but they are not quantified or monitored systematically.

In relation to oversight of capital investment, variations between the planned and outturn amounts for capital investment projects are not explained in the annual financial statement or any other single report. The annual reports of the government agencies (the Public Works and the Traffic Administrations) present details of spending on capital investment projects against planned spend, but the SAI has identified shortcomings in these financial monitoring arrangements²⁷⁸.

Conclusion

There are regularly monthly and quarterly fiscal reports, but these are not fully comprehensive. A law to consolidate public accounting standards will apply from January 2022. Particular issues have been identified in the financial oversight arrangements for public investment projects.

²⁷⁵ Letter from the SAI to the Committee on Economy, Finance and Budget, 14 April: http://www.dri.co.me/1/index.php?option=com_k2&view=item&id=794:saopštenje-sa-sjednice-nadleznog-kolegijuma-povodom-dostavljenog-prijedloga-zakona-o-završnom-računu-budžeta-crne-gore-za-2019-godinu&lang=sr

²⁷⁶ Committee for Economy, Finance and Budget, on 4 of May 2021 (along with the Bill on Final account [year-end report] on the budget for 2019): <https://www.skupstina.me/me/clanci/odrzana-deseta-sjednica-odbora-za-ekonomiju-finansije-i-budzet>, Committee for Security and Defence on 07 May 2021 (required under the Law on Parliamentary Oversight of the Security and Defence Sector): <https://zakoni.skupstina.me/zakoni/web/app.php/sjednicaradnogtijela/2832>

²⁷⁷ Decree on the Promulgation of the Law on Accounting in the Public Sector, Official Gazette, No. 66/2019.

²⁷⁸ The SAI audited public investment project implementation (Audit Report of Proposed Law on Final Statement of Accounts of State Budget of Montenegro for 2019, 14 October 2020). It concluded that the financial monitoring of public investment projects is limited due to problems appropriately accounting for and recording costs.

Internal control and audit

Principle 6: The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.

Overall, the value for the indicator 'Adequacy of the operational framework for internal control' is 3, which is the same as in 2017. Noticeable improvements in updating the regulatory framework have been balanced out by the absence of a policy for developing internal control.

Indicator 6.6.1 - Adequacy of the operational framework for internal control						
This indicator measures the extent to which the operational framework for internal control (financial management and control) is established, in terms of policy and strategic content, the regulatory framework, and adequate review and reporting mechanisms.						
A separate indicator measures the implementation of the operational framework for internal control.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Existence of policy for the development of internal control				0/6	-4	
2. Completeness of the regulatory framework for internal control				5/5	+1	
3. Comprehensiveness and regularity of the annual review and reporting on internal control				5/5	+1	
Total				10/16²⁷⁹	-2	

The PFM Reform Programme (PFMRP) is the policy document addressing PIFC as one of the PFM pillars. This Programme allocates responsibilities for reforms in the PIFC area mainly to the Central Harmonisation Unit (CHU), with the support of the Human Resource Management Authority (HRMA) and the Budget Department, MoFSW.

However, the PFMRP 2016-2020²⁸⁰ is no longer valid and the new Programme has not yet been adopted. Its development is expected to be finalised by the end of 2021²⁸¹ and is ongoing in close co-ordination with the Programme for Public Administration Reform (PAR) since their goals and activities are interlinked. The scope of both programmes has not yet been decided, but the authorities have confirmed that the PFMRP will include the management of risk and of irregularities. Thus, there is currently no policy plan to support further implementation of PIFC, and its operational framework is not complete.

The legislation is generally based on internationally accepted standards on internal control. All public-sector entities are required to implement internal control and submit internal-control reports²⁸². In 2020, 93% of entities (central and local levels) submitted such reports to the CHU.

A number of developments took place during the reference period. The new Law on Management and Internal Controls in the Public Sector (PIFC Law), adopted in 2018²⁸³, and relevant sub-laws were adopted

²⁷⁹ SIGMA has revised the 2019 Methodological Framework and removed the sub-indicator on alignment between national budget management and control systems and those for EU-funded programmes. The total number of points therefore changed from 20 to 16.

²⁸⁰ Adopted in 2015, amended in 2018.

²⁸¹ 18 March 2021 interview with the Head of the Central Harmonisation Unit (CHU).

²⁸² Law on Management and Internal Controls in the Public Sector (PIFC Law), Article 15 (Official Gazette, No. 75/18).

²⁸³ Official Gazette, No. 75/18.

in December 2019²⁸⁴. They address the majority of the deficiencies, including those caused by inconsistency with other horizontal legislation, that were identified in the document 'Analysis of Barriers to Management Responsibility' that the CHU drafted in co-operation with the Ministry of Public Administration and submitted to the Government on 19 March 2018. The percentage of central-government institutions reporting to the MoFSW on the progress and actions taken has increased.

The report on the PFMRP for 2020 was adopted by the Government only on 22 July. The overall reported implementation rate according to the report is 60%, but this percentage includes activities that are only partially implemented, so it is not accurate. Furthermore, the implementation of the PIFC-related activities in the PFMRP is regarded as an ongoing process. Therefore, the four activities included in the PFMRP for 2020 were not fully implemented in 2020, but will continue in 2021, as stated in the report, as part of an extended action plan to cover 2021. Based on reports submitted by public-sector entities, the MoFSW prepares an annual consolidated governance and internal-control report for the previous year and submits it to the Government by the end of June of the current year²⁸⁵, which includes the progress in the development of the internal-control system and the IA framework, applied practices in public sector entities and assessment of the internal control system by the MoFSW.

The report fails, however, to compare the status of implemented activities with the planned ones and is generally based on self-assessment by public entities, which results in a CHU disclaimer on the accuracy and reliability of the data. Therefore, it is not possible to obtain from this report precise and reliable data on the percentage of implementation of the planned activities.

Conclusion

The operational framework for ensuring adequate public internal financial control is not complete. All central public-sector organisations, funds and municipalities are required to implement and report to the Government on internal control, including managerial accountability, IA and performance reporting, although reporting is mainly based on self-assessment and is not quality-assured. The legal framework has been considerably strengthened. However, there is currently no policy plan formally adopted for the development of PIFC, as the updating of the PFMRP is ongoing.

²⁸⁴ Rulebook on establishing and improving management and public sector control, Rulebook on establishing a system for detecting and acting on notifications of suspected fraud in the public sector, Ordinance on the content of the annual report on activities for the implementation and improvement of management and control, and reporting, Rulebook on quality assurance in the public sector, Rulebook on developing and maintaining PIFC registers, and Regulation on delegation of financial management and internal control tasks in the public sector.

²⁸⁵ PIFC Law, Article 51.

Principle 7: Each public organisation implements internal control in line with the overall internal control policy.

Overall, the value for the indicator 'Functioning of internal control' is 0, a deterioration from the value of 1 in 2017, due to the increase in the number of first-level budget organisations different from ministries and constitutional bodies, and the status of risk-management practices. The limited implementation of management accountability is also negatively impacting the value of this indicator.

Indicator 6.7.1 - Functioning of internal control		
This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies.		
Overall 2021 indicator value  since 2017	0	1 2 3 4 5
	Points 2021	Change from 2017
1. Number of first-level budget organisations that are neither ministries nor constitutional bodies	1/3	-1
2. Alignment between management and budget structures (%)	0/3	=
3. Credibility of controls for avoiding commitments above the expenditure ceilings	1/2	+1
4. Availability of reporting of total cost and physical progress of major investment projects	0/2	=
5. Effectiveness of basic managerial accountability mechanisms for central government bodies	0/4	=
6. Delegation of decision-making authority within ministries	0/4	=
7. Regularity and completeness of risk management practices	0/3	-1
8. Existence of reporting on irregularities	1/2	=
Total	3/23	-1

The implementation of PIFC at an institutional level is lagging behind the development of the legal framework. One of the reasons is the fragmented structure of the public sector. The operational practices in subordinated bodies or agencies do not include specific objectives and measurable targets approved by or agreed with the relevant ministry. Consequently, the progress in achieving of objectives is not monitored and the annual reports do not disclose outcomes against pre-defined objectives.

Managerial accountability is still not an integral part of the public-sector governance culture. Delegation of the decision-making authority to heads of organisational units is very limited. We examined the operational practices of five ministries and found the most significant use of delegation, although only in 40% of the cases, in relation to procurement of low-level purchases and replies to public information requests. Salary payments and annual-leave requests are delegated in 20% of the cases, while there is no delegation to levels below the minister in recruitment decisions or signing of employment contracts, and none of the ministries has delegated authority below the permanent secretary regarding business trips and training.

The allocation of individual budgets to senior managers performing delegated tasks is also limited. Data from 2020 reveals that the alignment between management and budget structures is ensured only in 11 first-level public entities out of 42 (26%). This is a slight decrease compared with 2017 (29%).

The commitment control system is in place, which represents an improvement with regard to 2017. However, it is not guaranteed that the MoFSW digital financial systems capture all commitments by spending units and therefore, that commitments above budget ceilings are fully avoided. The MoFSW receives information on current commitments from spending units, but there is doubt about the reliability of their systems to record and report all outstanding commitments. Controls are considered effective for

multi-annual commitments that require *ex ante* approval by the MoFSW before the contracts are signed²⁸⁶. When auditing the Final Budget Accounts (FBA) for 2019, the SAI had identified outstanding liabilities contracted above the ceilings defined by the Law on the Budget of Montenegro in an amount of EUR 1 106 837.

With respect to major investment projects, in 2018, the government adopted a new decision on the planning, selection and monitoring of public investment projects (PIP Decision)²⁸⁷, which are implemented by the Traffic Administration (transport projects) and the Public Works Administration (PIP for other sectors)²⁸⁸. These entities should report to the government and MoFSW quarterly²⁸⁹. However, the system for monitoring and reporting on the total cost and physical progress of major investments is still largely limited to reporting on budget implementation. The execution of the investment budget is shown at the aggregate level as a part of the budget execution (planned versus disbursed) and relevant financial reports that are submitted quarterly to the MoFSW Treasury Directorate. Montenegro's public investment monitoring framework does not have a unit designated for public investment monitoring, nor is there a specialised monitoring software solution to support this process. There is no evidence of annual reporting by national authorities on the physical progress of PIP in 2020.

Challenges remain in relation to risk management at an institutional level. SIGMA examined the completeness of risk-management arrangements in a sample of five budget organisations, including whether an annual risk assessment was conducted against the institution's objectives, risk mitigation measures were in place and responsible persons identified. None of the five had carried out an annual risk assessment against all objectives of the institution. Three of the five were reporting on risk management annually, but only one had defined adequate risk-mitigation measures.

Irregularity management and reporting also constitute one of the weakest parts of the PIFC system, despite the adoption of the Rulebook on detection and reporting on irregularities and suspected fraud in December 2019 and the designation of officers responsible for these tasks in all ministries. Article 4 of the Rulebook requires that all entities in the public sector report annually on the cases detected and dealt with, and 74% of public bodies at the central and local levels submitted a report in 2020. However, this has been considered only a formality as most of the entities have submitted a 'blank' report and only two bodies reported on cases of irregularities²⁹⁰. This means that the detection of and reporting on irregularities is very limited and the information might be inaccurate.

Conclusion

Although the legal framework for PIFC has significantly improved over the years, not all beneficiaries of public funds follow the legal obligations for putting into place internal procedures for risk management, reporting on internal control and irregularities or defining and monitoring performance indicators in their strategic plans. Internal-control requirements are often implemented only formally, and delegation of tasks is still limited. Management and monitoring of commitments and reporting on the total cost and physical progress of major investments remain as challenges in relation to financial discipline.

²⁸⁶ Chapter PI-21 and 25 Internal controls on non-salary expenditure, Public Expenditure and Financial Accountability (PEFA) Performance Assessment Report, World Bank, December 2019.

²⁸⁷ Official Gazette, No. 057/18, 10 August 2018.

²⁸⁸ PEFA Report, 2019.

²⁸⁹ Article 19, Public Investment Projects Decision.

²⁹⁰ Chapter 3.7, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

Principle 8: The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.

Overall, the value for the indicator 'Adequacy of the operational framework for internal audit' is 4, an increase on the value of 3 in 2017. This is mainly due to an improvement in the organisational capacity for IA, the increase in the implementation rate of the planned activities to develop IA and the adaptation of IA manuals.

Indicator 6.8.1 - Adequacy of the operational framework for internal audit							
This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms.							
A separate indicator measures the implementation of the framework and the results achieved.							
Overall 2021 indicator value	↑ since 2017	0	1	2	3	4	5
				Points	Change from		
				2021	2017		
1. Adequacy of the regulatory framework for internal audit				5/5	+1		
2. Organisational capacity for internal audit				4/5	+2		
3. Co-ordination, development and guidance of the internal audit system				4/5	=		
4. Existence of a system for quality assurance for internal audit				2/3	=		
Total				15/18	+3		

The overall legal framework for IA is in place and requires IA to be conducted in accordance with the international professional practice framework (IPPF)²⁹¹. The PIFC Law mandates the MoFSW to develop the IA methodology²⁹². A number of by-laws have also been issued to further specify organisational and operational requirements for IA units²⁹³.

IA in Montenegro is defined as an integral as part of the governance and internal-control system²⁹⁴. The PIFC Law further defines a series of minimum requirements. The IA function is organised on a decentralised basis, either through establishing an IA unit or outsourcing the IA function to another public body²⁹⁵. The legal framework requires 100% coverage of public entities by IA. By the end of 2020, 95.5% of central public bodies and 93.3% of local public bodies had set up their own IA units²⁹⁶. However, only 31% of IA units established at the central and local levels complied with the minimum staffing requirement

²⁹¹ Developed and adopted by the Institute of Internal Auditors.

²⁹² PIFC Law, Article 25.

²⁹³ Decree on establishment of Internal Audit (IA) in public sector, adopted on 23 December 2019; Regulation on establishment of IA in public sector (as an annex having the Rulebook on the methodology of IA audit in the public sector issued by the MoFSW), adopted on 3 February 2020; Rulebook on methodology for reviewing quality of IA work in the public sector, adopted by the MoFSW on 3 January 2020.; Rulebook on content of the annual report on IA work and execution of the annual IA plan, adopted by the MoFSW on 25 December 2019; Rulebook on forming and maintaining registers for governance and internal controls in public sector, adopted by the MoFSW on 11 December 2019; Rulebook on special programme of professional education of internal auditors in public sector, adopted by the MoFSW on 11 December 2019; Rulebook on training programme and examination for acquiring certificate of internal auditor in public sector, adopted by the MoFSW on 25 December 2019.

²⁹⁴ PIFC Law, Article 19.

²⁹⁵ PIFC Law, Article 49.

²⁹⁶ Chapter 4.4, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

of three auditors²⁹⁷, while 21% had only one auditor. Furthermore, in 2020 only 63.3% of the audits originally included in annual audit plans were completed²⁹⁸. The number of audits and recommendations has been affected by the COVID-19 pandemic²⁹⁹ and, as shown in Table 1, decreased in 2020 with regard to previous years since 2016.

Table 1. Number of internal auditors, internal audits and recommendations issued by the internal audit in 2016-2020

Year	Number of auditors	Trend	Number of audits	Trend	Number of recommendations	Trend
2016	77	N/A	160	N/A	710	N/A
2017	78	↗1.3%	140	↘12.5%	703	↘1.0%
2018	84	↗7.7%	133	↘5%	634	↘9.8%
2019	84	=	156	↗17.3%	777	↗22.6%
2020	87	↗3.6%	107	↘31.4%	519	↘33.2%

Source: Consolidated Report on management and internal controls in the public sector of Montenegro for 2020. Ministry of Finance and Social Welfare. 4.3 - Situation in the field of internal audit, Table 5 - Development of internal audit. p. 30.

The legal framework ensures the independence of IA, requiring that an IA unit be functionally independent and structurally separate from other organisational units of the entity. IA units are required to report directly to the head of the entity³⁰⁰. The MoFSW ensures certification of public-sector internal auditors, with candidates undergoing a training programme that includes both theoretical and practical instruction followed by an exam³⁰¹. Within the MoFSW, the CHU is tasked with the harmonisation and co-ordination of IA³⁰².

The IA Manual (2017) developed by the CHU reflects the IPPF requirements and includes references to individual internal auditing standards, further explaining and elaborating on them and embedding them into the national context. On 3 February 2020, the IA Manual was issued as a by-law³⁰³. Audits deal with governance, risk management and internal control systems of the audited entities, and IA is entrusted with assessing both compliance and performance³⁰⁴.

The implementation of the activities to develop IA has substantially improved, with the rate of implementation of planned activities increasing from 45% in 2017 to 100% in 2020³⁰⁵. These activities include, among others, the preparation of the Decree on the establishment of IA in the public sector, as well as training for internal auditors.

²⁹⁷ As required by Article 49 of the PIFC Law.

²⁹⁸ Chapter 4.5, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

²⁹⁹ Chapter 4.3, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

³⁰⁰ PIFC Law, Article 30.

³⁰¹ PIFC Law, Articles 37, 39, 41 and 42.

³⁰² PIFC Law, Article 50.

³⁰³ Rulebook on methodology of work of internal auditors in public sector.

³⁰⁴ PIFC Law, Articles 19-22.

³⁰⁵ Based on additional written information from the CHU.

The MoFSW manages a continuous professional-development programme for internal auditors³⁰⁶. The programme requires attendance at workshops and training, among other things, and is updated annually. During 2020, 21 workshops were held in the framework of the programme.

The MoFSW has defined quality-assurance and improvement measures³⁰⁷ to be followed by Montenegrin IA professionals. The procedure comprises self-assessment of IA³⁰⁸, as well as external quality-assurance interventions. In 2018, the MoFSW started the implementation of the quality-assurance and improvement programme. In 2020, however, external and IPPF-compliant quality-assurance assessments were not performed, mostly because of budget limitations in public-sector entities. Instead, the CHU performs quality-assurance measures over IA units on a sample basis using its own methodology, through quality review of individual audit files or by horizontal quality review of IA reports. In 2020 such a review was conducted in 47 public entities³⁰⁹.

Conclusion

The operational framework for implementing IA in Montenegro is in place, and the Government has recently invested in issuing IA rulebooks and guidelines. The IPPF developed by the Institute of Internal Auditors is endorsed as the applicable framework for performing the IA function in the Montenegrin public sector. IPPF requirements are reflected in IA methodologies. Staffing of the IA function and performing IPPF-compliant IA quality assurance measures are long-term problems that have not yet been resolved.

³⁰⁶ Rulebook on special programme of professional education of internal auditors in public sector (“Službeni list Crne Gore”, No. 067/19 of 11 December 2019).

³⁰⁷ Chapter 11, Rulebook on methodology for reviewing quality of IA work in the public sector, adopted by the MoFSW on 3 January 2020.

³⁰⁸ Annex 6, Rulebook on methodology for reviewing quality of IA work in the public sector, adopted by the MoFSW on 3 January 2020.

³⁰⁹ Report on the horizontal analysis and evaluation of the quality of work of IA units among budget users at the central and local levels in 2020.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

Overall, the value for the indicator ‘Functioning of internal audit’ is 3, which is unchanged from 2017. There has been no significant change in the sub-indicators.

Indicator 6.9.1 - Functioning of internal audit						
This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Strength of planning of internal audit in budget organisations				4/7	=	
2. Quality of audit reports				3/6	=	
3. Follow-up and implementation of audit recommendations (%)				2/3	=	
Total				9/16	=	

IA units are required to prepare strategic (three-year) and annual IA plans, based on a risk assessment, which are approved by the head of the public body. Consolidated data on fulfilment of this legal obligation by public bodies is not available, as some bodies do not report to the CHU but rather directly to the Parliament³¹⁰. For the bodies reporting to the CHU, 90.9% of IA units had prepared strategic plans and 96.8% had prepared annual plans³¹¹.

Further review of the 2020 annual audit plans for a sample of budget organisations³¹² showed that they were generally prepared, in line with the national legal requirements. However, only three out of the five plans reviewed were based on a risk assessment, only one demonstrated a variety of audit types and just two covered a variety of funding sources, including IPA and other donor-funded programmes. There are challenges related to improving the methodology, as well as training for conducting performance audits. The CHU has recognised the challenges, and relevant training is included as part of the programme of continuous professional development of certified public-sector auditors³¹³. However, it should be noted that in 2020 only 1.54% of IA recommendations concerned performance issues, and those were only at the local level³¹⁴.

The review of a sample of 2020 audit reports from budget organisations revealed that four out of five audit reports examined generally included audit objectives and scope, findings and recommendations as required by IPPF.

In 2020, IA units at the central and local levels carried out 107 audits and issued 519 recommendations³¹⁵. Table 2 shows the degree of implementation of IA recommendations in 2018-2020³¹⁶. The number of recommendations decreased by 33.2% compared with 2019, while the number of implemented

³¹⁰ SAI, Parliament, Judicial Council and Agency for National Security.

³¹¹ Chapter 4.5, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

³¹² MoFSW (ensuring IA function also for Tax Administration), Ministry of Transport and Maritime Affairs (ensuring IA function also for Road Administration) and Ministry of Education and Science.

³¹³ Table 7, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

³¹⁴ Table 7, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

³¹⁵ Central level: 59 audits/231 recommendations; local level: 48 audits/288 recommendations.

³¹⁶ Chapter 4.6, Consolidated report on management and internal control in the public sector of Montenegro for 2020.

recommendations decreased by 19.3%. 90.3% of IA units have established a database to monitor implementation of recommendations.

Table 2. Implementation of recommendations issued by the IA in 2018-2020

Recommendations	2018	%	2019	%	2020	%
Implemented	266	66.0	379	77.2	135	57.9
Partially implemented	53	13.2	34	6.9	50	21.5
Not implemented	84	20.8	78	15.9	48	20.6
Total	634 (403 ³¹⁷)	100	777 (491 ³¹⁸)	100	519 (233 ³¹⁹)	100

Source: Consolidated Report on management and internal controls in the public sector of Montenegro for 2020. Ministry of Finance and Social Welfare. 4.6 - Recommendations given and implemented, Table 8 - overview of the implementation of recommendations for the period 2018-2020. p. 40.

Conclusion

Almost all IA units prepare strategic and annual plans. More than 92% of internal auditors have national or international certificates, and audit reports are generally in line with IFPP standards. However, auditing performance is still the exception rather than the rule. Because of this, and of the restricted capacity of IA units, the audit impact is limited.

³¹⁷ Only recommendations with an implementation deadline by end of 2018 (403) were considered in the calculation of the percentage.


³¹⁸ Only recommendations with an implementation deadline by end of 2019 (491) were considered in the calculation of the percentage.

³¹⁹ Only recommendations with an implementation deadline by end of 2020 (233) were considered in the calculation of the percentage.

Public procurement

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the European Union acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and are duly enforced.

Overall, the value for the indicator ‘Quality of the Legislative Framework for Public Procurement and PPPs/Concessions’ is 5. Owing mainly to the scope of the new legislation that regulates public procurement and PPPs/concessions, which is largely aligned with the 2014 procurement directives, the overall value for the indicator has increased since 2017 and 2019, when it was 3.

Indicator 6.10.1 - Quality of legislative framework for public procurement and PPPs/concessions						
This indicator measures the quality of the legislative framework for public procurement and public private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of small and medium-sized enterprises (SMEs) in public procurement are assessed, as well as whether practical measures are taken to allow proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
					Points 2021	Change from 2017
Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds						
1. Level of alignment of public procurement legislation with the EU Directives					4/6	+1
2. Scope of public procurement legislation					4/6	+4
3. Public procurement procedures					4/4	+2
4. Publication and transparency					5/5	=
5. Choice of participants and award of contracts					3/5	-1
6. Availability of procedural options					4/4	+1
Public procurement procedures below EU thresholds						
7. Advertising of public procurement procedures					3/3	=
8. Contract award procedures					7/7	+1
Opportunities for participation of SMEs in public procurement						
9. Opportunities for participation of SMEs in public procurement					5/5	+3
Availability of measures for the practical application of the legislative framework						
10. Availability of measures for the practical application of the legislative framework					3/5	-1
Quality of legislation concerning PPPs/concessions						
11. Coverage of legislation on PPPs/concessions					2/2	+2
12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions					8/8	+8
Total					52/60	+20

The legislative framework for public procurement consists of the PPL, the PPPL³²⁰ and the Law on Concessions (LC)³²¹. The PPL covers procurement in the public and utilities sectors above the national thresholds of EUR 20 000 for supply and service contracts and EUR 40 000 for work contracts. The PPL was adopted at the end of 2019, and the law has been applicable since 9 July 2020. Almost all secondary

³²⁰ Official Gazette No. 073/19, 27 December 2019.

³²¹ Official Gazette, No, 8/09, 4 February 2009 and 073/19, 27 December 2019.

legislation was adopted on time, though a few of them were adopted after 9 July 2020³²². The PPPL covers the requirements and procedure of development, the proposal and approval of PPP projects, the selection of a private partner and other matters of significance for PPPs. All secondary legislation for the PPPL is in force and publicly available³²³. The LC deals with the preconditions, methods and procedures for awarding concessions. All secondary legislation for the LC is in force and publicly available³²⁴.

The current regulatory framework is largely aligned with the *acquis* on public procurement, including concessions and PPPs. A few minor discrepancies remain, and a certain number of exemptions exceed what is permitted under the 2014 EU Directives³²⁵. The defence and security services are regulated in the PPL (Articles 174-178) and the Decree on the List of Military Equipment and Products, the Procedure and Manner of Public Procurement in the Defence and Security Area³²⁶. The legislation on the remedies system broadly complies with the *acquis*, but a few provisions of the 2007/66/EC Directive have not been yet transposed.

Procurement procedures (from tender documents to award decisions) are published in the new e-procurement system. In the new PPL, a version of the EU European Single Procurement Document (ESPD)³²⁷ is regulated, with a similar level of data as in the ESPD. The lowest price is still the predominant contract-award criterion. The mechanisms and institutional set-up for handling complaints in public procurement are in place. All economic operators have the right to file a complaint against a decision of the contracting authorities.

One of the main improvements is that simplified public procurement (below the lowest PPL threshold) now needs to be published in the e-procurement system, which represents a significant improvement in the transparency of the overall public procurement system³²⁸. During 2020, 101 852 simplified public procurement contracts were awarded, for a total value of EUR 74 463 748³²⁹, constituting 13.7% of the total public procurement spending for that period³³⁰. Interviews that SIGMA conducted with stakeholders from institutions, contracting authorities, non-governmental organisations and economic operators consistently confirmed, as in previous years, the concerns that contracting authorities are using contract-splitting to bring public procurement contracts below the threshold for simplified public procurement. Thus, the obligation of the contracting authorities to publish all of the simplified public procurement procedures in the electronic procurement system CEJN will facilitate an increase in competition among the tenderers.

An additional improvement was that the “urgent procurement procedure” was removed from the new PPL. The 2017 PPL amendments had a provision allowing contracts to be awarded without a formal competition in the case of urgent procurements related to unforeseen events when it would not be possible to comply with the timeframe prescribed by the 2017 PPL amendments³³¹ – a provision not harmonised with the EU

³²² The texts are available in the Official Gazette Nos. 55/20, 56/20, 57/20, 61/20, 65/20, 69/20, 71/20, 74/20, 76/20, 90/20, 102/20, 105/20, 106/20, 1/21, 9/21, 14/21.

³²³ The texts are available in the Official Gazette Nos. 58/20 and 59/20.

³²⁴ The texts are available in the Official Gazette Nos. 47/09, 67/09, 32/15, 37/11, 40/16.

³²⁵ For example, “Financial, legal or other services in proceedings related to the privatisation of the economy”, Public Procurement Law (PPL), Article 14 (1)(10); procurement of election material PPL, Article 14 (1)(16) and “Tasks related to the development and adoption of planning documents as stipulated by the law governing spatial planning” PPL, Article 14 (1)(17).

³²⁶ Official Gazette No. 76/20.

³²⁷ European single procurement document, more info available at: https://ec.europa.eu/growth/single-market/public-procurement/digital/espd_en

³²⁸ Article 4 (1) of the Rulebook on the Manner of Implementing Simple Procurement.

³²⁹ Directorate for Public Procurement Policy (DPP) Annual Report for 2020, p. 33.

³³⁰ The total value of the contracted public procurement in Montenegro is EUR 545 150 791.

³³¹ Article 29 of the 2017 PPL, which applied until 8 July 2021.

Directives. Between January and June 2020, 1 491 contracts declared as urgent procedure were signed, for a total value of EUR 54 941 734, constituting 10.1% of the total public procurement spending for that period³³².

As the new PPL introduced a number of novelties for both the public and private sectors, there is a strong need for capacity-building. A large number of employees of contracting authorities have passed online training organised by the DPP. Online training is available, but guidelines are lacking for both contracting authorities and economic operators. Several published rulebooks contain only limited guidance for contracting authorities to fulfil the legal obligations. At the end of May 2021, the Manual on Public Procurement that was delivered from the technical assistance project “Improvement and Strengthening of the Institutional Set-up and Legal Framework in the Area of Public Procurement and State Aid, Montenegro, Contract No. CFCU/MNE/056” was published. It provides useful information but contains only a few practical examples.

The Government adopted a series of measures related to public procurement contracts awarded under circumstances caused by the COVID-19 pandemic. All decisions that have an effect on public procurement were published in 2020 on the official website of the Ministry of Finance, DPP, together with instructions for the contracting authority and economic operators³³³.

Conclusion

A well-established legislative framework for awarding public contracts is in place in Montenegro. The legislative framework is largely aligned with the *acquis* on public procurement, with a few minor discrepancies. The legal framework creates conditions for increasing the overall transparency in public procurement. The new e-system has been designed and is obligatory for all contracting authorities and economic operators as of 1 January 2021 (CEJN)³³⁴.

³³² This procedure was used until 7 July 2020 for all urgent COVID-19-related public procurement contracts.

³³³ Directorate for Public Procurement Policy <http://www.ujn.gov.me/page/5/>.

³³⁴ Montenegrin Electronic Procurement System <https://cejn.gov.me/landingPage>.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

Overall, the value for the indicator 'Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently' is 3. Despite improvements in the institutional and administrative capacities, as the Strategy for the Development of Public Procurement and PPP/concessions system has still not been prepared, the indicator value remains the same as in 2017 and 2019, when it was also 3.

Indicator 6.11.1 - Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently						
This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies is open and transparent.						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
Quality of the policy framework for public procurement						
1. Quality of the strategy for development of public procurement and PPPs/concessions				0/5	-2	
2. Quality of the operational action plan				0/5	-3	
3. Implementation of the strategy and the action plan (%)				0/5*	-3	
4. Monitoring of strategy implementation				0/5	-3	
Capability of central procurement institutions and their performance						
5. Adequacy of the legal framework to ensure capable institutions				10/10	+2	
6. Clarity in definition and distribution of central procurement functions in the legislation				10/10	+2	
7. Performance of the institutions involved, their capacity and resources				10/20	=	
Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement						
8. Presence and quality of monitoring and data collection				8/10	+4	
9. Accessibility of public procurement data				6/10	-2	
Total				44/80	-5	

Note: *Data not available or provided.

The institutional set-up of the public procurement system was established on 31 December 2018 with the transfer of Public Procurement Agency competencies and staff to the DPP, within the Ministry of Finance. The rationale was to ensure that policy-making on public procurement lies within the jurisdiction of the ministry responsible for the area. The DPP comprises five departments/divisions³³⁵ and is in charge of policy development for both public procurement and PPPs/concessions; it is also the competent body for drafting legislation, co-ordinating the implementation of the public procurement system, monitoring the practice of contracting authorities and monitoring the compliance of legislation governing public procurement with the EU legislation and co-operating with international and other organisations. The DPP currently has 18 employees and other resources that allow for the normal functioning of this institution, but there are still a number of possibilities for improvement.

³³⁵ Department for Public Procurement Regulatory-Legal Affairs and Monitoring; Division for Regulatory-Legal Affairs in the Field of Public Procurement; Division for Monitoring in Public Procurement; Department for Training, Professional Development and Professional Examination for Public Procurement; Department for the Improvement of the Public Procurement System and the Management of Electronic Public Procurement.

The Commission for Protection of Rights in Public Procurement Procedures (CPRPPP)³³⁶ is the institution in charge of reviewing complaints from economic operators against decisions of the contracting authorities. It has a sufficient number of members, legal advisors, offices and budget to enable the normal functioning of the institution. The CPRPPP has 24 employees, including Commission members³³⁷.

In addition to the DPP's monitoring of public procurement, the legal compliance of public procurement procedures is verified by the public procurement section of the Administration for Inspection Affairs (AIA). The inspections of contracting authorities are carried out on the basis of monthly and annual inspection plans, in accordance with the Law on Inspection Control³³⁸. The PPL regulates the scope of the AIA's inspection control³³⁹. The AIA currently has eight employees. According to the information collected during interviews, the AIA will focus its inspection in 2021-2022 on simplified public procurement.

The MIA is the Agency established by the PPPL to implement PPPs, investments and the promotion of the investment potential of Montenegro as an investment destination³⁴⁰. According to the systematisation the MIA has 50 job positions and currently has 30 employees, of whom 12 are in charge of PPPs.

The major concern is the functioning of the Property Administration³⁴¹ as an institution in charge of the central purchasing functions. Central purchasing is currently one of the weakest points in the system. The contracting authorities are not satisfied with the organisation of central purchasing, the function of the Property Administration or the end results. In 2020 the total value of procurement awarded through centralised purchasing by the Property Administration was EUR 10 640 144, less than 2% of the total procurement contract value. The Property Administration currently has 18 employees.

The State Audit Institution (SAI) conducts regular audits of procurement procedures, the results of which are published in its annual reports. All SAI reports are publicly available³⁴². The SAI regularly audits procurement plans, procurement procedures and reports of awarded public procurements, publishing the results in its annual reports; however, institutional development regarding the public procurement audit still needs to be improved.

The DPP prepared the new draft Strategy for the Development of the Public Procurement System 2021-2025 during 2020-2021 but, at the time the assessment report was finalised³⁴³ the Strategy was still not approved by the government.

³³⁶ Official website of the Commission for Protection of Rights in Public Procurement Procedures.

<http://www.kontrola-nabavki.me/1/index.php?lang=en>.

³³⁷ As the mandate of the president of Commission for Protection of Rights in Public Procurement Procedures (CPRPPP) expired at the end of April 2021, the procedure for appointing a new president has been launched. Until the new president of the institution is elected, the current president will have the role of acting head of the institution.

³³⁸ According to the Annual Report of the Administration for Inspection Affairs (AIA) for 2020 <https://uip.gov.me/biblioteka/dokument>, the AIA inspected 231 contracting authorities/entities in 251 inspection controls. It issued 17 misdemeanour warrants and 4 requests to initiate misdemeanour proceedings. The AIA has the authority to impose fines, and in 2020 it imposed fines for a total value of EUR 21 250.

³³⁹ PPL, Article 210.

³⁴⁰ <https://mia.gov.me/about-us/>.

³⁴¹ The Property Administration was moved to the State Cadastre, and the new institution State Cadastre and Property Administration ("Property Administration") was established with the Regulation on the Organisation and Manner of Work of the State Administration (Official Gazette, No. 118/20, 7 December 2020; 121/20, 10 December 2020; 1/21, 4 January 2021; 2/21, 5 January 2021; 29/21, 17 March 2021; 34/21, 2 April 2021; and 41/21, 20 April 2021).

³⁴² http://www.dri.co.me/1/index.php?option=com_content&view=article&id=124&Itemid=124&lang=sr.


³⁴³ September 2021.

Conclusion

The current institutional set-up is comprehensive. The DPP is responsible for policy, legislation and the implementation of the public procurement system. An independent review body (the CPRPPP) is in charge of review and remedies, while the public procurement section of the AIA carries out inspection controls. The Property Administration is in charge of central purchasing. All institutions are adequately staffed and resourced. Even though the institutional framework for public procurement is in place, there are a few weaknesses in the performance of the tasks that the PPL requires, especially relating to the central purchasing function.

Principle 12: The remedies system is aligned with the European Union *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

Overall, the value for the indicator 'Independence, Timeliness and Competence of the Complaints Handling System' is 4. Owing mainly to harmonisation with the legislation with the Remedies Directive, introductions of remedies for PPPs/concessions and the shorter time taken to process complaints, the value for the indicator has increased since 2017 and 2019, when it was 2.

Indicator 6.12.1 - Independence, timeliness and competence of the complaints handling system						
This indicator measures the effectiveness of the system for handling complaints on public procurement. First, the quality of the legislative and regulatory framework is assessed, specifically in terms of compliance with EU Directives. Then, the strength of the institutional set-up for handling complaints is analysed. Next, the actual performance of the review system is measured. Finally, the performance of the remedies system for PPPs/concessions is evaluated.						
Overall 2021 indicator value  since 2017	0	1	2	3	4	5
					Points 2021	Change from 2017
Legislative mechanisms for handling complaints in compliance with EU Directives						
1. Right to challenge public procurement decisions					5/5	+3
2. Time limit for challenging decisions taken by contracting authorities/entities					2/2	=
3. Transposition of mechanisms to avoid ineffectiveness of contracts and impose penalties					1/3	=
4. Mechanisms to ensure implementation of the review body's resolutions					2/2	=
5. Right to challenge decisions of the review body					3/3	=
Institutional set-up for handling complaints						
6. Legal provisions ensure the independence of the review body and its members					7/7	+3
7. Adequacy of the organisational set-up and procedures of the review body					2/4	+1
8. Public availability and timeliness of data on the review system					3/4	=
Performance of the review system						
9. Fairness of fee rates for initiating review procedures					0.5/3	=
10. Actual processing time of complaints					2/3*	+1
11. Complaint submission in practice					4/4	+1
12. Quality of decision making by the review body					2/4	-1
13. Cases changed or returned after verification by the court (%)					0/2*	-1
Performance of the remedies system in PPPs/concessions						
14. Right to challenge lawfulness of actions/omissions in PPP/concessions procedures					3/5	+3
15. Legal provisions ensure independence of the review body for PPPs/concessions and its members					5/5	+5
16. Timeliness and effectiveness of complaints handling system for PPPs/concessions					2/5	+2
Total					43.5/61	+17

Note: *Data not available or provided.

The mechanisms and the institutional set-up for handling complaints in public procurement are in place. The PPL defines the roles of the review body. The CPRPPP³⁴⁴ is in charge of reviewing complaints from economic operators against decisions of contracting authorities. It is composed of a President and six

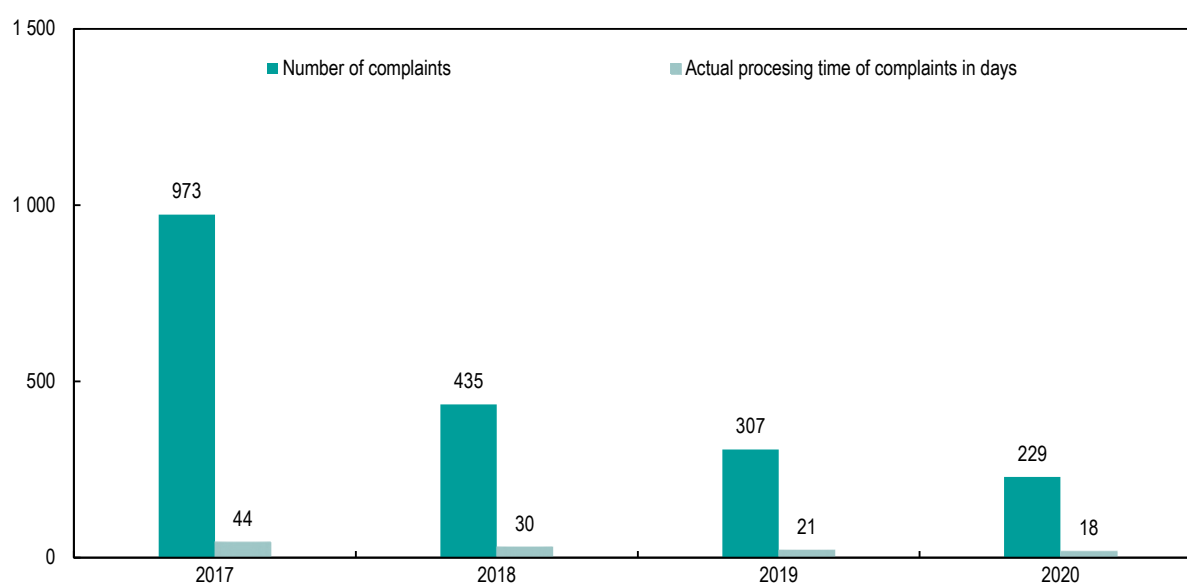
³⁴⁴ Official website of the Commission for Protection of Rights in Public Procurement Procedures (CPRPPP):

<http://www.kontrola-nabavki.me/1/index.php?lang=en>

members, all appointed by the Government. Their term of office is five years, with the possibility of reappointment. The CPRPPP submits annual reports to Parliament in accordance with the PPL, no later than the end of June of the current year for the previous year, and publishes these on its website. The CPRPPP has a sufficient number of legal advisors, offices and budget to enable the normal functioning of the institution.

All economic operators have the right to file a complaint against a decision of the contracting authorities³⁴⁵. An economic operator is defined in the PPL as an undertaking, entrepreneur, institution or other legal or natural person that offers the supply of products, the provision of services and/or the execution of works on the market³⁴⁶. In 2020, 243 complaints were filed to the CPRPPP, and the average period from lodging the complaint until the decision was reached was 18 days (Figure 1).

Figure 3. Number of complaints and actual processing time, 2017-2020



Source: Commission for the Control of Public Procurement Procedures Annual Reports for 2017-2020.

The number of complaints has decreased from 2017 owing to the introduction of higher fees and a new regulation on time limits for submission of the complaints. Before these changes in 2017, it was possible to submit the complaint with the tender documentation until the last day for submission of tenders.

The new PPL provides a clear definition of the decisions of the contracting authorities against which a complaint can be lodged³⁴⁷. Complaints should be submitted during the stages of the procedure when the contracting authorities take the challenged decisions. It is possible to file an e-complaint using the CEJN electronic procurement system.

According to the PPL³⁴⁸, economic operators submitting a complaint must simultaneously pay a fee amounting to 1% of the estimated value of the procurement (but no more than EUR 20 000).

The contracting authority is obliged to send the complaint and its own response to the CPRPPP, together with all documents related to the procedure, within eight days of receipt of the complaint. If the contracting authority determines that the complaint is founded, it may annul the challenged decision, correct the acts performed or terminate the entire procurement procedure. The contracting authority should inform the

³⁴⁵ PPL, Article 186.

³⁴⁶ PPL, Article 4.

³⁴⁷ PPL, Article 185.

³⁴⁸ PPL, Article 188.

CPRPPP of its new decision. Decisions that the contracting authority takes may then be the subject of a new complaint to the CPRPPP.

The submission of a complaint results in the automatic suspension of the entire procurement procedure, until the CPRPPP has made its decision. According to the new PPL, the CPRPPP's rulings must be adopted within a statutory time limit of 30 days from the time of receipt of the complete documentation.

The decisions of the CPRPPP are clear, and the reasons for them are given. The CPRPPP considers all infringements in the procedure that are mentioned in the complaint to be important, without checking whether those infringements have any influence on the rights of the complainant or the legality of the public procurement procedure. Also, the PPL requires the CPRPPP to consider 'serious violations' of the PPL *ex officio*, regardless of whether or not they were indicated in the complaint. One additional problem is that when the CPRPPP finds infringements of the PPL *ex officio*, it cancels the award decision or the tender documentation without checking the demands from the complaints. Under this approach, the contracting authorities do not know whether or not the demands in the complaint are justified, leaving them with the same or similar problems to handle in the following procurement procedures. A positive element is that the new PPL has shortened the list of serious violations, meaning that the CPRPPP *ex officio* jurisdiction will be used less³⁴⁹. However, the CPRPPP still takes a formalistic approach toward the review and remedies procedures, and it accepts complaints due to formal breaches in the procedure that do not have any effect on the procurement procedure or award notice.

Decisions that the CPRPPP takes are published promptly on its website, although only as a non-searchable PDF file. The website does not have any functional search tools. The respective decisions of the Administrative Court are not published in the same database; therefore, the contracting authorities and economic operators cannot easily follow the entire cycle of the review process.

Appeals against the decisions of the CPRPPP can be made to the Administrative Court. The procedure is rather lengthy, requiring more than a year to resolve such cases. Due to the relatively small size of the Administrative Court, there are no judges who specialise in public procurement cases. The CPRPPP's decisions are final and can be implemented immediately after their adoption; therefore, contracting authorities may find themselves able to sign a contract without waiting for the Administrative Court ruling.

Conclusion

During the past two years (2019 and 2020), the number of complaints³⁵⁰ and the average time³⁵¹ for resolving them have decreased. Under the new PPL, the CPRPPP's *ex officio* jurisdiction has decreased and thus the CPRPPP will have to pay more attention to the demands in the complaints. The option to file the complaint using CEJN, from 1 January 2021, will increase the efficiency of the review and remedies system.

The current regulatory framework is largely aligned with the *acquis*; however, the *acquis* mechanisms for addressing the ineffectiveness of the contract and the imposition of alternative penalties have still not been transposed into the national legislation.


³⁴⁹ PPL, Article 195.

³⁵⁰ Number of complaints to the CPRPPP per year: 973 in 2017, 453 in 2018, 341 in 2019 and 243 in 2020.

³⁵¹ The average time was 21 days in 2019 and 18 days in 2020.

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

Overall, the value for the indicator 'Efficiency, Non-Discrimination, Transparency and Equal Treatment Practiced in Public Procurement Operations' is 1. Owing mainly to a lack of statistical information and to insufficient knowledge in procurement planning, market research and contract management, the value for this indicator is the same as it was 2017, when it was 1, while in 2019 it was 2. Although the value for Principle 10 (quality of regulations) is 5, the practice within the public procurement system remains with the low value. The main reason is that the new PPL and the new e-procurement system have only recently been introduced and still have not led to a change in established procurement practice.

Indicator 6.13.1 - Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations		
This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded.		
Overall 2021 indicator value  since 2017	0	1
	2	3
	4	5
	Points 2021	Change from 2017
Planning and preparation of the public procurement procedure		
1. Due attention is given to the planning process	1/5	-2
2. Presence and use of cost estimation methods and budgeting	1/2	-1
3. Perceived quality of tender documentation by contracting authorities and economic operators (%)	1/4	-1
Competitiveness and transparency of conducted procedures		
4. Perceived fairness of procedures by businesses (%)	3/4	-1
5. Contracts awarded by competitive procedures (%)	2/5	-3
6. Contracts awarded based on acquisition price only (%)	1/5	+1
7. Average number of tenders submitted per competitive procedure	1/3	=
8. Contracts awarded when one tenderer submitted a tender (%)	0/2*	=
Use of modern procurement methods		
9. Adequacy of regulatory framework for and use of framework agreements	1/5*	+1
10. Adequacy of regulatory and institutional framework and use of centralised purchasing	2/5	+2
11. Penetration of e procurement within the procurement system	3/5	=
Contract management and performance monitoring		
12. Presence of mechanisms requiring and enabling contract management	2/6	+2
13. Contracts amended after award (%)	0/4*	=
14. Use of <i>ex post</i> evaluation of the procurement process and of contract performance	0/6	=
Risk management for preserving the integrity of the public procurement system		
15. Existence of basic integrity tools	2/4	-2
Total	20/65	-4

Note: *Data not available or provided. Overall 2017 indicator value and its sub-indicators were revised retrospectively due to miscalculations. Points for sub-indicator 3 changed from 1 to 2, sub-indicator 4 from 1 to 4 and sub-indicator 6 from 1 to 0. Due to the change the 2017 indicator value changed from 1 to 2.

Two major changes that have had a positive effect on the Montenegrin public procurement system are the introduction of the new PPL, applicable from 9 July 2020, and the new e-procurement system, which became obligatory for all contracting authorities on 1 January 2021.

The new PPL has provisions that ensure the basic principles of equal treatment, non-discrimination, proportionality and transparency, as well as ensuring that modern procurement techniques and methods are regulated. Despite these provisions, which are based on 2014 EU Directives, the widespread perception of public procurement procedures as a mechanistic process prevents the contracting authorities from effectively and efficiently using public funds. Procurement planning by contracting authorities remains limited, aside from the identification of available funds in annual procurement plans that are often amended after their initial publication. There is a lack of the knowledge and skills needed for preliminary market research, the approach towards the evaluation of tenders is overly formalistic, and knowledge and understanding of contract management are lacking.

Certain articles of the PPL, such as Article 84, further illustrate the formalistic approach towards planning and operations. According to this Article, all contracting authorities that are budgetary users must obtain prior approval for their procurement plans from the Ministry of Finance. Prior approval is also needed for any amendment to a procurement plan. Without such approval, they cannot start the tender procedure. This is causing unnecessary delays for all contracting authorities that are budgetary users.

The new e-procurement system encompasses functionalities from the publication of procurement plans, tender documents, the public opening of tenders, tender submission and the e-complaint system. Both contracting authorities and economic operators are satisfied with these functionalities, but the e-system will need improvements to increase its efficiency and to avoid adding administrative tasks for users. Guidelines for contracting authorities and economic operators on the use of the e-system are available online and provide enough information with practical examples³⁵².

As in previous years, the contracting authorities take an overly formalistic approach to evaluating tenders (with excessive focus on formal errors or omissions), which causes frequent cancellations or rejections of tenders³⁵³. The contracting authorities have justified this approach by citing the practice of the CPRPPP, claiming that if they were to declare any kind of minor error in the tender as unimportant, economic operators would lodge a complaint and the CPRPPP would always accept such a complaint as valid.

The new PPL provides that the most economically advantageous tender³⁵⁴ is the obligatory award criterion for all procurement items. Taking into consideration that the lowest price was the predominant award criterion in previous years³⁵⁵, the capacity of contracting authorities for this new task is limited. According to information collected during the interviews, contracting authorities (especially small and medium-sized ones) do not have experience in preparing the most economically advantageous tenders, and this represents an additional burden for items where the lowest price is the ideal criterion. Even though the most economically advantageous tender became the obligatory criterion from 9 July 2020 for all procurement items, the lowest price was already the dominant criterion in 2020 and was used in 72.4% of all published competitive procedures (see Figure 2).

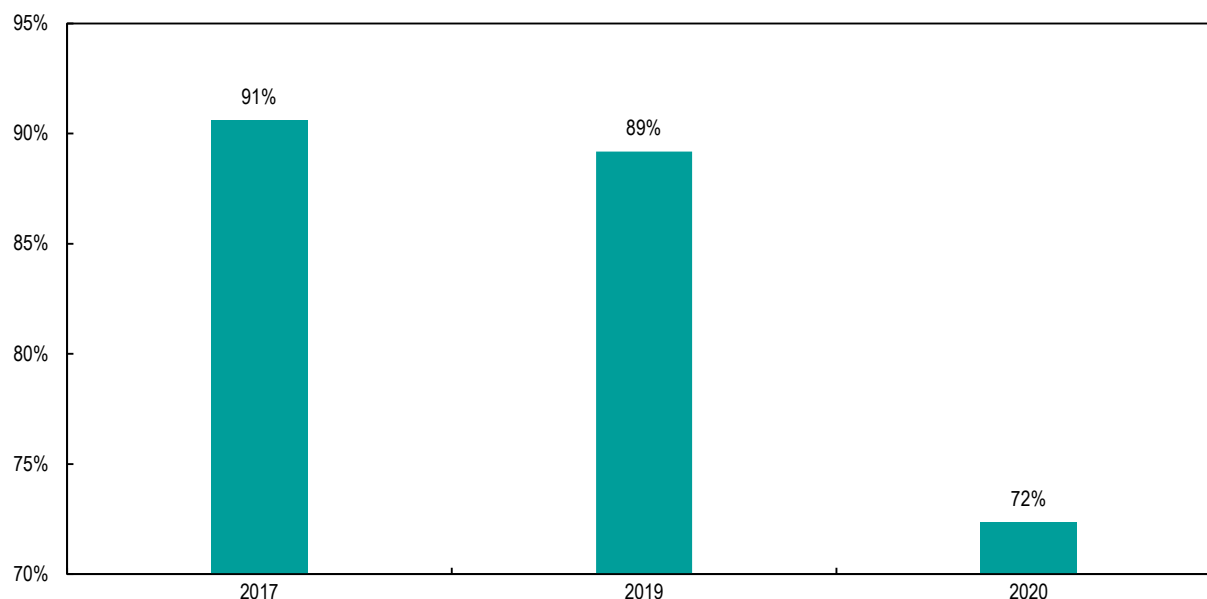
³⁵² <http://www.ujn.gov.me/2021/01/uputstva-cejn/>

³⁵³ Information collected during interviews (12-16 April 2021).

³⁵⁴ PPL, Article 117-119.

³⁵⁵ The figures were 90.6% in 2017 and 89.2% in 2019.

Figure 4. Percentage of awards based on lowest price



Note: No data for 2018.

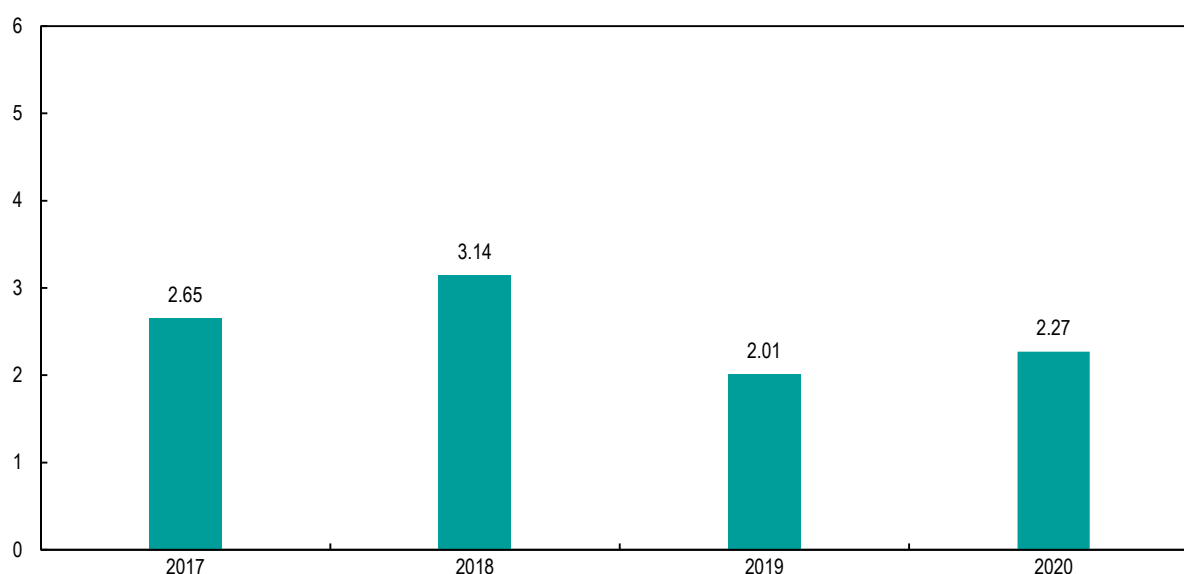
Source: Directorate for Public Procurement Policy Annual Reports for 2017-2020.

The open procedure was the most common in Montenegro, used for 54% of all contracts covered by the PPL in 2020³⁵⁶. The share of the value of the contracts awarded in the least competitive procedures, i.e. negotiated procedures without the prior publication of a notice and direct agreement, was 2.6% in 2020. In terms of contract value, as much as 73%³⁵⁷ of public funds were spent following transparent and competitive procedures. In Montenegro there are no available statistics on the tender procedures where only one tender was received.³⁵⁸ The average number of tenders submitted per procedure is 2.3 (Figure 3).

³⁵⁶ According to the DPP Annual Report, in 2020 there were 1 863 open procedures, 98 negotiation procedures without publication of a contract notice, 1 restricted procedure, 1 design procedure and 1 491 urgent procedures according to Article 29 of the previous PPL – a total of 3 453 procedures.

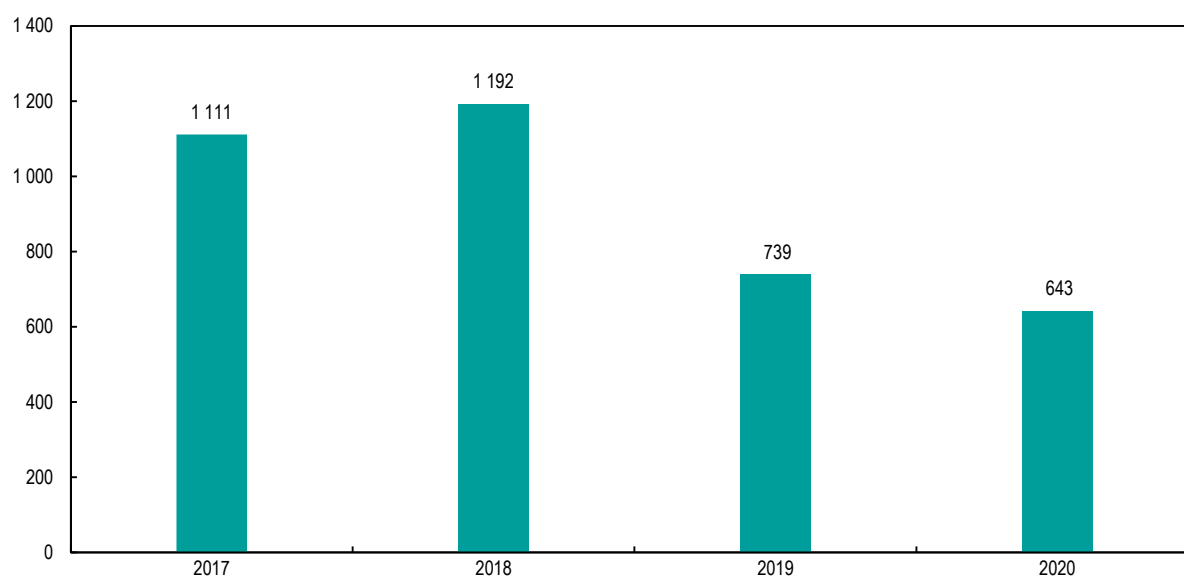
³⁵⁷ According to the DPP Annual Report, the total contract value in 2020 was EUR 545 150 791, of which EUR 400 818 101 was contracted through the open tendering procedure.

³⁵⁸ Montenegro has available information about the number of contracts where only one tenderer submitted a tender. According to the information from the Data Collection Sheet in 2020, there were 1 566 such contracts, with a total value of EUR 121 965 940.

Figure 5. Average number of tenders submitted

Source: Directorate for Public Procurement Policy Annual Reports for 2017-2020.

The number of cancelled and annulled public procurement procedures decreased in 2020 in comparison with the previous years (Figure 4).

Figure 6. Cancelled and annulled procurement procedures

Source: Directorate for Public Procurement Policy DPP Annual Report for 2020.

Framework agreements are regulated in the in the new PPL³⁵⁹, but there are no clear and comprehensive guidelines for their use. Knowledge of the contracting authorities about frameworks agreements ranges from decent to low. The total value of procurement awarded in framework contracts in 2020 was EUR 36 569 893, which was 6.7% of the total value of the contracts, while in 2019 it was EUR 41 426 163, 6.8% of the total value for that year.

³⁵⁹ PPL, Article 68.

In comparison with previous years, there is a greater possibility for the contracting authorities to use joint and centralised procurement tools, which are now better regulated in the new PPL. Unfortunately, central purchasing is currently one of the most problematic areas in the public procurement system³⁶⁰.

The goods and services subject to this centralised procurement are office supplies, computer materials and equipment, communication equipment, cars, fuel and engine oils, office furniture, electronic communications services (mobile and fixed telephony), electronic communications services (Internet), sanitary and other services (disinfection, insect and animal pest control), the insurance of civil servants and state employees, and the insurance of assets held by the state of Montenegro (moveable and immoveable property). The Property Administration is responsible for procurement procedures for the designated goods and services, and it receives payment from the relevant contracting authority for the cost of running the procedures³⁶¹. The contracting authority then pays the Property Administration for the goods and services. Contracting authorities are not satisfied with the organisation of central purchasing, the function of the Property Administration or the end results. The SAI has declared that the Property Administration is not handling its own function properly, causing a number of problems for state bodies. Central purchasing done by the Property Administration currently represents close to 2% of the total value of the contracts.

The SAI did not audit the Property Administration directly, but through auditing other state bodies that are users of the central purchasing system, they noticed a number of discrepancies related to decreased administrative efficiency³⁶² and a lack of transparent functioning of the Property Administration³⁶³.

Conclusion

The new e-procurement system, which is available and obligatory for all contracting authorities from 1 January 2021, has a number of positive elements but also needs improvements to increase the efficiency of its system and avoid adding administrative tasks for users. Despite the improvements, there are still weaknesses in planning, preliminary market research, tender preparation and contract management. One major concern is the functioning of the Property Administration as an institution in charge of central purchasing functions. The new PPL will increase the efficiency of the system and decrease the formalistic approach.

³⁶⁰ PPL, Articles 73-74.


³⁶¹ Regulation on the Manner of Planning and Implementing Centralised Public Procurement, Article 3.

³⁶² Information collected during an interview with SAI (26 March 2021).

³⁶³ During the interviews for the Assessment, representatives of the Property Administration did not participate in the meetings.

Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

Overall, the value for the indicator 'Availability and Quality of Support to Contracting Authorities and Economic Operators to Strengthen Professionalisation of Procurement Operations' is 2. Owing mainly to the lack of availability and quality of the guidelines, general statistical information and lack of training for economic operators, the value for the indicator has decreased in comparison with 2017, when it was 3.

Indicator 6.14.1 - Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations		
This indicator measures the availability and quality of support given to contracting authorities and economic operators to develop and improve the knowledge and professional skills of procurement officers and to advise them in preparing, conducting and managing public procurement operations. This support is usually provided by a central procurement institution.		
This indicator does not directly measure the capacity of contracting authorities and entities. The assessment is of the scope of the support (whether all important stages of the procurement cycle are covered), its extent, and its quality and relevance for practitioners (whether it provides useful, practical guidance and examples). Surveys of contracting authorities and economic operators are used to gauge the relevance and practical applicability of the support.		
Overall 2021 indicator value	 since 2017	0 1 2 3 4 5
	Points 2021	Trends (2017)
Availability and quality of manuals, guidelines, standard tender documents and other operational tools		
1. Availability and quality of manuals and guidelines	2/5	=
2. Availability and quality of standard tender documents, standard forms and standard contract models	2/5	-2
Availability and quality of training and advisory support		
3. Access to quality training for procurement staff	4/5	=
4. Availability of advice and support for contracting authorities and economic operators	2/5	-1
Procurement procedures cancelled		
5. Procurement procedures cancelled (%)	2/5	=
Total	12/25	-3

Note: The point allocation in 2017 for sub-indicator 2 was revised retrospectively from 3 to 4 due to miscalculation.

Contracting authorities³⁶⁴ in general have a sufficient number of employees to carry out public procurement procedures. On other hand, most of the smaller authorities are short of resources for handling more elaborate procurement approaches and procedures, and their officials often have to carry out procurement as a part-time task in addition to their normal duties. The introduction of the new PPL and the new e-system has presented the procurement officials with new tasks. There is an obvious lack of knowledge and skills among the employees of the contracting authorities needed for the planning of public procurement, preliminary market research, the most economically advantageous tender (MEAT) criteria, new methods of tender evaluation and contract management. Contract management remains one of the weakest parts of the public procurement cycle. Employees of the contracting authorities, even those who have a public procurement certificate, still do not have enough knowledge to govern contract management matters. Only employees of the largest contracting authorities have the skills to fulfil the obligations linked with contract management. The widespread perception of public procurement procedures as a mechanistic process detracts from the contracting authorities' effective and efficient use of public funds.

As the new PPL introduced several novelties for both the public and private sectors, there is a strong need for capacity-building. Many employees of contracting authorities have passed online training organised by the DPP. Although online training is available, guidelines are lacking for both contracting authorities and

³⁶⁴ There are 660 contracting authorities in Montenegro and 734 certified procurement officials.

economic operators. Several published rulebooks contain only minimal guidance for contracting authorities to fulfil the legal obligations without additional value.

In previous years, the Public Procurement Agency had issued a quite comprehensive set of guidelines, manuals, models of tender documentation for different types of procedure and other tools to help contracting authorities carry out proceedings in line with the prescribed procedures³⁶⁵. Currently updated guidelines on a number of relevant topics do not exist, however. Available manuals are short on practical examples dealing with topics from the new PPL, such as planning the procurement, market consultation, tender preparations, the most economically advantageous tenders, framework agreements and contract management. A need for more practical guidance was clearly identified during the interviews with the contract authorities and economic operators.

A positive element is that the DPP Help Desk is in place. Both contracting authorities and economic operators stated that they are receiving quick answers about the practical application of the procurement rules from the Help Desk³⁶⁶. They are satisfied with the responsiveness of the DPP, but less so with the quality of the answers³⁶⁷.

During 2020, the DPP organised training on various topics for 586 procurement officials. Due to the COVID-19 restrictions, all training as of March 2020 was done online. No training was specifically organised for the economic operators. Taking into consideration the quarantine regulations, the DPP has done a sufficient amount of online training, but further capacity building is needed³⁶⁸.

With the new PPL in force from July 2020, contracting authorities highlighted that there were contradictory opinions of the DPP with the decisions of the CPRPPP. The contracting authorities argued that state bodies still do not have consensus on several important novelties that the PPL introduced. Currently, there is no mechanism to co-ordinate the interpretation of public procurement legislation between the key institutions involved, though the proper level of co-operation between the DPP and CPRPPP exists.

The SAI emphasised that the contracting authorities lack skills in procurement planning and needs assessment, as well as in drafting technical specifications and tender evaluation. This is especially true when it comes to defining the required quality based on the MEAT criteria, rather than just the price, and applying it during the evaluation³⁶⁹.

Conclusion

Guidelines and manuals containing practical examples for contracting authorities and economic operators are not available. Transparency has improved significantly as the new e-procurement system has been implemented, but there is a strong need for further capacity-building of contracting authorities and economic operators.

³⁶⁵ SIGMA public procurement survey of contracting authorities and Balkan Business Barometer, conducted February-March 2021. Some 51% of contracting authorities found the guidelines “useful” or “very useful”, and 38.3% of businesses found the guidelines “useful” or “very useful”. The arithmetic mean is 44.6%. A total of 179 contracting authorities and 200 businesses answered the survey.

³⁶⁶ SIGMA procurement survey of contracting authorities and Balkan Business Barometer, conducted February-March 2021. Some 76.9% of contracting authorities answered “Yes” that the answers provided were generally helpful, and 41.4% of businesses answered “Yes”. The arithmetic mean is 59.1%. A total of 179 contracting authorities and 200 businesses answered the survey.

³⁶⁷ Based on the information collected during the interviews with contracting authorities and economic operators, 12-16 April 2021.

³⁶⁸ SIGMA procurement survey of contracting authorities and Balkan Business Barometer, conducted February-March 2021. Some 67.7% of contracting authorities found the training “useful” or “very useful”, and 66.7% of businesses found the training “useful” or “very useful”. The arithmetic mean is 67.2%. A total of 179 contracting authorities and 200 businesses answered the survey.

³⁶⁹ Information collected during interview with the SAI (26 March 2021).

External audit

Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.

Overall, the value for the indicator ‘Independence of the supreme audit institution’ is 4. There has been no change compared with 2017. The independence of the SAI was further strengthened during the reference period, while perception of SAI’s independence by the population decreased.

Indicator 6.15.1 - Independence of the supreme audit institution						
This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently, and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice.						
Overall 2021 indicator value	0	1	2	3	4	5
					Points 2021	Change from 2017
1. Constitutional and legal independence of the SAI					4/4	=
2. Organisational and managerial independence of the SAI					5/5	=
3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs)					3/3	=
4. Access to information and premises					1/1	=
5. Perceived independence of the SAI by the population (%)					0/3	-1
Total					13/16	-1

The Constitution defines the SAI of Montenegro as an independent and supreme body of state audit³⁷⁰. The organisation of the SAI is set out in the Law on the State Audit Institution (SAI Law)³⁷¹. The SAI is organised along a collegiate model, managed by a Senate of five members appointed by the Parliament. The President is selected among Senate members for a single nine-year term. The President and members of the Senate enjoy functional immunity and cannot be held accountable for an opinion issued or a decision made in exercising their functions, except in the case of a criminal offense³⁷². The SAI Law³⁷³ and the SAI internal rules³⁷⁴ further elaborate on independence requirements.

During the reference period, the SAI further strengthened its independence and autonomy. Formerly, it was obliged³⁷⁵ to audit the annual consolidated financial statements of political entities with a total income exceeding EUR 10 000. The Parliament modified this obligation in 2020³⁷⁶, enabling the SAI to audit the financial statements of political entities based on its own criteria and risk assessment³⁷⁷. This has

³⁷⁰ Art. 144, Constitution of Montenegro.

³⁷¹ SAI Law, Articles 29, 30 and 31, Official Gazette, No. 028/04, 29 April 2004; No. 027/06, 27 April 2006; No. 78/06 of 22 December 2006, Official Gazette; No. 17/07, 31 December 2007; 73/10, 10 December 2010; 40/11 8 August 2011; No. 31/14, 24 July 2014; 70/17, 27 October 2017.

³⁷² Article 82, Constitution of Montenegro.

³⁷³ SAI Law, Articles 2 and 9.

³⁷⁴ Chapter II, “Guidelines on Quality Control”, adopted by the Senate on SAI, 26 January 2015.

³⁷⁵ Article 43, Law on Financing of Political Entities and Election Campaigns, Official Gazette, No. 52/2014, 16 December 2014.

³⁷⁶ Article 55, Modifications to the Law on Financing of Political Entities and Election Campaigns, Official Gazette, No. 3/2020 and 38/2020.

³⁷⁷ Instruction on the Methodology of Performing Financial Audit and Regularity Audit.

increased the SAI's independence and allows it to allocate additional resources to auditing high-risk public entities.

The executive has no direct control over the SAI's budget formulation and approval. The SAI's budget request is sent directly to the Parliament's Committee on Economy, Finance and Budget. The Government must provide a written explanation to the Parliament if the SAI's budget is modified³⁷⁸. The executive has no direct control on how the SAI executes its budget. The SAI is also free from interference by the Parliament and the executive in the organisation and management of its office.

The SAI Law ensures that the SAI's mandate is exhaustive³⁷⁹. The Law mandates the SAI to perform financial, compliance and performance audits, to be executed in accordance with ISSAI and the professional code of ethics³⁸⁰.

The SAI reports to the Parliament and Government by submitting an annual report and special reports and by giving advice based on the audit findings³⁸¹. Submission of individual audit reports to the Parliament is an exception and is not required by the SAI Law. This could limit opportunities to increase the impact of the SAI's report by obtaining timely support from the legislature. The SAI makes its annual reports available to the public³⁸².

Audited entities are obliged to make available all documents, including confidential ones, to the SAI or the authorised person who is carrying out the audit³⁸³. The SAI independently decides on requests for information, and penalties are prescribed for a failure to comply with the SAI's requests³⁸⁴.

The proportion of citizens who consider the SAI to be independent of political influence has significantly decreased, from 37% in 2017 to only 25.2% in 2020³⁸⁵.

Conclusion

The constitutional and legal independence of the SAI is well-established, while organisational and managerial independence are in place. In 2019, the Law on financing political entities and election campaigns was modified to enable the SAI to audit the financial statements of political parties based on a risk assessment and the criteria defined by the SAI itself. This has strengthened the SAI's independence with regard to the selection of audits and enables increasing audit coverage. The SAI's mandate is adequate and broadly aligned with the ISSAI. However, the proportion of citizens who consider the SAI to be free of political influence has decreased.

³⁷⁸ SAI Law, Article 51.

³⁷⁹ State and self-government. SAI Law, Articles 4 and 5.

³⁸⁰ SAI Law, Articles 4 and 5.

³⁸¹ SAI Law, Article 18.

³⁸² SAI Law, Article 50.

³⁸³ SAI Law, Article 10; Article 40, Rules of Procedure of the SAI.

³⁸⁴ SAI Law, Articles 24, 52 and 53.

³⁸⁵ Balkan Barometer 2021 Public Opinion Survey, Regional Cooperation Council, <https://www.rcc.int/balkanbarometer>.

Principle 16: The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

Overall, the value for the indicator ‘Effective functioning of the supreme audit institution’ is 3, the same as in 2017. Although the SAI has significantly improved the methodological framework for auditing and the implementation rate of audit recommendations has improved, the audit coverage is still insufficient and the interest of the Parliament in the SAI’s work results is limited.

Indicator 6.16.1 – Effectiveness of the external audit system						
This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits (e.g. through its manuals and quality assurance system).						
Overall 2021 indicator value	0	1	2	3	4	5
				Points 2021	Change from 2017	
1. Coverage of mandate by external audit				6/6	+2	
2. Compliance of audit methodology with ISSAIs				3/6	=	
3. Quality control and quality assurance of audits				5/6	=	
4. Implementation of SAI recommendations (%)				4/6	+1	
5. Use of SAI reports by the legislature				0/6	-3	
Total				18/30	=	

The SAI Law prescribes the financial audit on final budget accounts (FBA audit) as mandatory. The Law on Financing of Political Entities and Election Campaigns also prescribes that over a four-year period, the SAI should audit the annual financial statements of all political entities with parliamentary status at the national and local levels, leaving the annual sample decision up to the SAI. In 2020, mandatory financial audits³⁸⁶ were carried out as planned: one audit of the final budget account for 2019 and nine of the annual financial statements of political entities. Eighteen audits of financial statements of individual budget users³⁸⁷ were carried out based on the SAI’s risk assessment. The SAI has improved the audit-planning process by adopting guidelines for selecting financial/regularity audits for the SAI’s annual audit plan³⁸⁸. However, the SAI’s actual coverage of local governments and public enterprises remains limited.

In 2020, three performance audits were completed, which covered a fairly wide range of entities responsible for the formulation and implementation of sectoral policies (defence, justice and police, health, public administration, infrastructure, foreign affairs). The scope of most of these audits is still rather narrow, focusing on administrative issues rather than assessing the economy, efficiency and effectiveness of sectoral policies and/or reforms, which could have more impact in terms of Government policy implementation and structural reforms.

The SAI has adopted a Financial and Regularity Audit (FRA) Manual³⁸⁹ that is generally in accordance³⁹⁰ with ISSAI³⁹¹; despite some weaknesses, such as its focusing mainly on financial audit, it can be

³⁸⁶ Combined financial and regulatory audit.

³⁸⁷ *Ibid.*

³⁸⁸ Semi-annual report on implementing Action Plan for implementation of PFM Reform Programme 2016-2020, January-July 2020.

³⁸⁹ PRIRUČNIK ZA VRŠENJE FINANSIJSKE REVIZIJE I REVIZIJE PRAVILNOSTI, adopted in July 2020.

³⁹⁰ Deviations are not material.

³⁹¹ International Standards of Supreme Audit Institutions (ISSAI) 200 ‘Fundamental Principles of Financial Auditing’. ISSAI 2000 ‘Application of the financial audit standards’; 2200-2810 ‘Financial Auditing Standards’.

considered as a detailed methodology for auditors to perform financial/compliance audits. For performance auditing, however, the SAI has not developed a manual in line with the ISSAI. It has approved only the instruction on performance audit methodology³⁹², defining mainly the tasks and subsequent steps chronologically. The development of explanatory guidance describing in detail how performance audits should be carried out is pending.

The SAI has established policies and procedures for quality control and quality assurance covering all types of audits: financial, compliance and performance³⁹³. The quality-control procedures are regularly performed, covering all phases in all of the reports, and identified weaknesses are reported to the management.

However, the quality-assurance measures have not been undertaken. This limits the SAI's opportunities for a continuous improvement of audit methodologies and techniques. The SAI has taken a gradual approach; it adopted quality-control measures that are still being embedded, while the quality-assurance measures are planned for the fourth quarter of 2021.

Audit impact is measured by the level of the SAI's recommendations implemented by audit entities. In June 2020 the SAI adopted Guidelines for development, monitoring and control of implementation of its recommendations. The SAI issued 541 audit recommendations in 2019 and checked the implementation progress for all of them. Some 334 recommendations out of 541 were implemented by the end of 2020 (61.7%). This shows a positive trend compared with 2017, when auditees implemented only 50% of the recommendations.

There is no formal mechanism established in the law for handling the SAI's reports in the Parliament. The SAI has influenced the Parliament's use of its audit reports by initiating a protocol defining measures to improve mutual co-operation, which was signed by both institutions in 2018. The SAI also prepared an Action Plan to implement the Protocol, detailing all the obligations with practical measures and actions. However during 2020, the Committee on Economy, Finance and Budget (CEFB) –the main counterpart of the SAI- and the plenary did not hold any sessions on the SAI's reports even though the SAI submitted the FBA audit report and its annual report³⁹⁴ on time. No independent decisions (other than on the SAI's recommendations) were made in 2020 by the Committee or the plenary.

Conclusion

The SAI has developed and significantly improved the operational framework to ensure pre-conditions for high-quality audits and ISSAI-compliant audit reports, although there is room to improve the guidance and methodology in line with the ISSAI in the area of performance auditing. While the mandatory audit on the final budget accounts is undertaken annually, the overall financial audit coverage of public bodies is still limited. The implementation rate for audit recommendations has increased, although the Parliament does not use the audit reports to their full extent to hold the Government accountable.

³⁹² Instruction on performance audit methodology (UPUTSTVO O METODOLOGIJI VRŠENJA REVIZIJE USPJEHA), adopted by SAI's Senate on 10 October 2019.

³⁹³ Guidelines on Quality Control (SMJERNICE ZA KONTROLU KVALITETA VRŠENJA REVIZIJA), adopted on 26 January 2015.

³⁹⁴ SAI Annual Report, October 2019-October 2020.

For more information:

OECD/SIGMA

2 rue André Pascal
75775 Paris Cedex 16
France

mail to: sigmaweb@oecd.org
Tel: +33 (0) 1 45 24 82 00

www.sigmaweb.org