



Baseline Measurement Report:

The
Principles
of Public
Administration

MONTENEGRO

April
2015

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS	2
OVERVIEW	4
STRATEGIC FRAMEWORK OF PUBLIC ADMINISTRATION REFORM	6
1. State of play and main developments: 2014-April 2015	6
2. Analysis	7
POLICY DEVELOPMENT AND CO-ORDINATION.....	16
1. State of play and main developments: 2014-April 2015	16
2. Analysis	17
PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT	38
1. State of play and main developments: 2014-April 2015	38
2. Analysis	39
ACCOUNTABILITY	57
1. State of play and main developments: 2014-April 2015	57
2. Analysis	58
SERVICE DELIVERY	68
1. State of play and main developments: 2014-April 2015	68
2. Analysis	69
PUBLIC FINANCIAL MANAGEMENT	77
1. State of play and main developments: 2014-April 2015	77
2. Analysis	79

LIST OF ABBREVIATIONS AND ACRONYMS

CAF	Common Assessment Framework
CHU	Central Harmonisation Unit
CoG	centre of government
COSO	Committee of Sponsoring Organisations
CSL	Civil Service Law
DACI	Directorate for Anti-Corruption Initiative
DPS	leading coalition party in Montenegro
EC	European Commission
EI	European integration
ESA	European System of Accounts
EU	European Union
FMC	financial management and control
GAWP	Government Annual Work Plan
GDP	gross domestic product
GSG	General Secretariat of the Government
HR	human resource
HRM	human resource management
HRMA	Human Resource Management Authority
HRMIS	Human Resource Management Information System
IA	internal audit
INTOSAI	International Organisation of Supreme Audit Institutions
IPA	Instrument for Pre-accession Assistance
ISO	International Organization for Standardization
IT	information technology
LAP	Law on Administrative Procedure
LGAP	Law on General Administrative Procedures
MoF	Ministry of Finance
MTBF	medium-term budgetary framework
NGO	non-governmental organisation
OCSE	Organization for Security and Co-operation in Europe
OECD	Organisation for Economic Co-operation and Development
PAR	public administration reform
PFM	public financial management
PFMC	public financial management and control

Montenegro
List of Abbreviations and Acronyms

PIFC	Public Internal Financial Control
PPA	Public Procurement Administration
PPL	Public Procurement Law
PPP	public-private partnership(s)
RIA	Regulatory Impact Assessment
RoP	rules of procedure
SAI	Supreme Audit Institutions
SC	State Commission for the Control of Public Procurement Procedures
TAIEX	Technical Assistance and Information Exchange instrument
UNDP	United Nations Development Programme

OVERVIEW

The European Commission (EC) has strengthened its focus on public administration reform (PAR) in the “Enlargement Strategy and Main Challenges 2014-2015” by outlining six key issues of reform. Based on the Enlargement Strategy, the Principles of Public Administration were developed by SIGMA in co-operation with the EC¹. The Principles cover six areas: strategic framework for public administration reform, policy development and co-ordination, public service and human resource development, accountability, service delivery and public financial management (including public procurement); they define what good governance entails in practice and outline the main requirements to be followed by countries during the European Union (EU) integration process. The Principles also feature a monitoring framework enabling regular analysis of the progress made in applying the Principles and setting benchmarks.

This Report sets the baseline values for the indicators included in the monitoring framework and provides analysis on where Montenegro stands against the Principles. It covers the period from January 2014 to April 2015, which is shortened to April 2014 to April 2015 in areas where a SIGMA assessment was conducted in 2014. The analytical report is complemented by the Methodological Annex, which defines the indicators included in the monitoring framework.

General state of play in Montenegro

Montenegro is in an active stage of the EU accession process. In June 2012, formal accession negotiations began with the screening process, which was concluded in early 2014. Since then significant progress has been made in starting with the negotiations of individual negotiation chapters. In May 2015, 18 chapters had been opened, of which two are provisionally closed.

The most demanding part of the accession process is still ahead. To achieve further progress, a well-functioning public administration is key. There has been progress in reforming the public administration but challenges still remain. Most of the essential legal framework for a functioning public administration is in place in Montenegro, but the lack of effective institutional structures and critical capacities in the key policy areas hinders policy development and analytical attention to implementation.

Montenegro, as a small country, cannot develop institutions and procedures that can make use of large-scale economies. Pragmatic and innovative administrative solutions therefore tend to proliferate in all spheres of the public administration. The reform agenda needs to be delivered within the limited fiscal space. Although the Government has managed to reduce the budget deficit, the spending pressures for future years still persist. Therefore PAR needs to focus on structural changes within the public administration rather than adding new functions and capacities on top of the current organisation.

The Government has decided to prepare a new PAR Strategy for the period 2016-2020. The work planned under the current PAR Strategy, which was approved in 2011, has been carried out to a large extent but progress against the objectives has varied. The new Strategy will need to build on the foundations put in place in recent years and to ensure that the work results in actual progress in the performance of the public administration. Throughout public administration more attention to value for money is required. This includes continuous focus on merit based recruitment in the public sector, rationalisation and reorganisation of the public sector organisation and capacities for systematic analyses of implementation of key legislation.

¹ See *The Principles of Public Administration* and relevant background information www.sigmaweb.org/publications/principles-public-administration-november-2014.htm.

1

Strategic Framework of Public Administration Reform

STRATEGIC FRAMEWORK OF PUBLIC ADMINISTRATION REFORM

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

Most of the Government's central planning documents² identify public administration reform (PAR) as a priority. However, the objectives for PAR are not well aligned in these various documents. In general, the national planning documents³ provide good coverage of the scope of PAR policy. The Strategy of Public Administration Reform⁴ will expire in 2016 and the lead ministry, the Ministry of Interior, has begun preparations for the subsequent version.

There is no provision for the financial sustainability of the PAR policy. Neither the relevant policy planning documents nor financial planning documents⁵ provide clear appropriations for implementation of the PAR policy.

The management and co-ordination structures for PAR have been established both at political and administrative levels⁶. The Ministry of Interior has been formally identified as the lead institution for PAR co-ordination⁷, and it performs its functions both by ensuring monitoring and reporting on progress achieved, and through providing secretarial support for the administrative-level co-ordination structures.

1.2. Main developments

The Ministry of Interior prepared two semi-annual implementation reports on the implementation of the PAR Action Plan⁸. In the Work Plan of the Government of Montenegro for 2015, the Government envisages adoption of a new PAR Strategy in advance of the end date of the current Strategy⁹.

The Ministry of Interior has recently made improvements to the PAR co-ordination system, including merging the PAR Co-ordination Body with the Group on monitoring implementation of the Re-organisation Plan.

² Programme of the Government of Montenegro – Exposé of the Prime Minister of Montenegro, Milo Djukanović, at the Assembly of Montenegro, Podgorica, 4 December 2012; Montenegro Development Directions 2013-2016; Montenegro's Programme of Accession to the European Union 2014-2018; Work Plan of the Government of Montenegro for 2015; Guidelines for Macroeconomic and Fiscal Policy for the Period 2014-2017.

³ Strategy of Public Administration Reform in Montenegro 2011-2016; 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan; Plan for Internal Restructuring of the Public Sector; Strategy for the Development of Information Society 2012-2016; Strategy for Public Procurement Development 2011-2015; Strategy of Further Development of the Public Internal Financial Control (PIFC) in Montenegro for the Period 2013-2017.

⁴ Strategy of Public Administration Reform in Montenegro 2011-2016.

⁵ Guidelines for Macroeconomic and Fiscal Policy for the Period 2015-2017; Rationale, Proposed Law on the Budget of Montenegro for 2015.

⁶ Political level: Council for Business Environment, Regulatory and Structural Reform. Administrative level: PAR Co-ordination Body, Co-ordination Committee for Local Self-Government Reform, Special Group for monitoring implementation of the Re-organisation Plan.

⁷ Article 5, Decree on Organisation and Operation of the Public Administration, Official Gazette No. 05/12.

⁸ Report on the Implementation of Activities under the Action Plan for the Implementation of 2014-2015 Public Administration Reform Strategy (Q1 and Q2 2014) and Report on the Implementation of Activities under the Action Plan for the Implementation of 2014-2015 Public Administration Reform Strategy (Q3 and Q4 2014).

⁹ Work Plan of the Government of Montenegro for 2015, point 45, p.15.

2. ANALYSIS

This analysis covers the five Principles for the area of the strategic framework of public administration reform, grouped under two key requirements¹⁰. Under each key requirement, a baseline value for each indicator on the monitoring framework of the Principles is provided. The Principles cover analysis of government central planning, as well as specific PAR planning document(s), including their links to government financial planning documents. The Principles also consider the set-up and organisation of PAR management and co-ordination mechanisms, both at political and administrative levels.

2.1. Key requirement: The leadership of public administration reform is established and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the Government's financial circumstances.

Baseline values

The leadership and strategic framework of PAR is examined through eight different indicators that aim to describe: the country's general approach to defining reform objectives and actions; the comprehensiveness of the scope of PAR; links to financial planning; and the rate of implementation. The PAR reporting and monitoring system has also been assessed. Two out of the eight indicators are qualitative, while the rest are quantitative, based on the analysis of data and documents provided by the institutions responsible.

In Montenegro's central planning documents, PAR is regarded as an important reform for the Government¹¹. However, it is not approached in a fully coherent manner, taking into account the need to prioritise the re-organisation and downsizing of the public administration over general development of public administration. A well-developed framework of planning documents is in place in the field of PAR, but the implementation of planned objectives and actions is limited. There is no evidence of any provision for the financial sustainability of the reform programme in the Government's financial planning documents.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	Extent to which the scope of PAR central planning document(s) is complete.	2014	4
	2	Extent to which a comprehensive PAR reporting and monitoring system is in place.	2014	3
Quantitative	1	Ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently.	2014	50%
	1	Share of public administration development activities and reforms from all activities in PAR planning documents.	2014	77%

¹⁰ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, pp. 9-17.

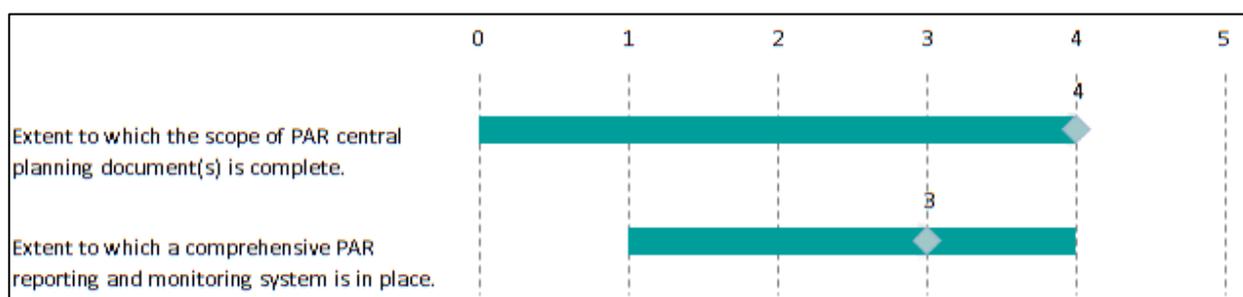
¹¹ Programme of the Government of Montenegro – Exposé of the Prime Minister of Montenegro, Milo Djukanović, at the Assembly of Montenegro; Montenegro Development Directions 2013-2016; Montenegro's Programme of Accession to the European Union 2014-2018; Work Plan of the Government of Montenegro for 2015; Guidelines for Macroeconomic and Fiscal Policy for the Period 2015-2017.

Montenegro
Strategic Framework and Public Administration Reform

	2	Annual implementation backlog of public administration development activities and reforms.	2014	46% ¹²
	2	Percentage of fulfilled PAR objectives.	2014	Not available ¹³
	3	Share of resourced and costed PAR measures.	2014	0%
	3	Ratio between planned PAR Instrument for Pre-accession Assistance (IPA) funding in the IPA sectoral programme and the national planning documents.	2014	0%

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

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

Most of the central planning documents of the Government of Montenegro – the Exposé of the Prime Minister, the Montenegro Development Directions, the Programme of Accession to the European Union 2014-2018, the Government Work Plan 2015 and the Guidelines for Macroeconomic and Fiscal Policy – recognise PAR as an important reform. However, the issue is not addressed coherently across these documents. This is particularly true for the Programme of Accession to the European Union 2014-2018 and Guidelines of Macroeconomic and Fiscal Policy 2014-2017, which only marginally touch on PAR. The value for the ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently is set, therefore, at 50%.

There are a number of national planning documents in the field of PAR, the central ones being the Strategy of Public Administration Reform in Montenegro 2011-2016, along with the Action Plan for its implementation (as revised at the end of 2013)¹⁴. Other relevant documents include the Plan for

¹² This value represents the implementation ratio of activities planned for 2014, and has been calculated based on the two Implementation Reports prepared by the Ministry of Interior on all quarters of 2014.

¹³ The value of the indicator cannot be set because the planning documents in the field of PAR do not feature performance indicator targets for the PAR objectives, thus making it impossible to assess whether these objectives have been achieved.

¹⁴ Progress Report on the 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan.

Montenegro
Strategic Framework and Public Administration Reform

Internal Restructuring of the Public Sector, the Strategy for the Development of Information Society 2012-2016, the Strategy for Public Procurement Development for the period 2011-2015 (with Action Plan) and the Strategy of Further Development of the Public Internal Financial Control (PIFC) in Montenegro for the Period 2013-2017 (with Action Plan 2013-2014). In total, 77% of the actions identified in these documents can be regarded as directly applicable to public administration development activities and reforms, while the rest are more process oriented.

While these documents provide almost full coverage of all PAR areas, analytical depth in some areas could be improved during the preparation of the new strategic framework. Therefore, the value of the indicator dealing with the extent to which the scope of PAR central planning document(s) is complete is set at 4 out of 5.

In view of the fact that 2016 is the last year for implementation of the current Strategy of Public Administration Reform, the Ministry of Interior has started to prepare for the development of the new PAR planning document. The work has begun with the preparation of an implementation report, which will review the period covered by the Strategy and assess the impact of its implementation. According to the Government Work Plan 2015, the work on the new PAR Strategy should be complete by the end of 2015¹⁵.

The central planning documents of the Government of Montenegro acknowledge PAR as a key reform, but not in a fully coherent manner. Several planning documents are related to PAR, and they cover almost the full scope of the PAR area.

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

The Strategy of Public Administration Reform in Montenegro 2011-2016 is being implemented via the 2014-2015 Action Plan for Implementing the Public Administration Reform Strategy¹⁶, with clearly defined measures and actions. The implementation rate for public administration development activities and reforms during 2014 is set at a value of 46%¹⁷.

No analysis has been undertaken on whether the policy objectives set in the Strategy of Public Administration Reform in Montenegro 2011-2016 have been fully achieved. The reports¹⁸ on implementation of the current Action Plan of the PAR Strategy do not indicate that all actions under particular objectives had been fully accomplished. Taking this into account, and the fact that the PAR objectives are not linked with performance targets, it is not possible to set a value for the indicator that assesses the percentage of fulfilled PAR objectives.

While the key planning documents in the PAR area have output-based indicators and are time-specific, no outcome or impact level indicators or targets have been set, and therefore no baseline values exist. Based on these factors, the value for the indicator dealing with the extent to which a comprehensive PAR reporting and monitoring system is in place is set to 3.

The Ministry of Interior monitors the implementation of the Action Plan of the Public Administration Reform Strategy, and information on the progress achieved is provided to the designated co-ordination structures. The approach to monitoring in 2014, compared with the practice in previous years, has significantly improved. However, since the indicators are not outcome oriented, it is hard to evaluate the impact of the PAR efforts that have been carried out. Also, there is no evidence that civil society is engaged in monitoring the activities of the PAR policy.

¹⁵ Work Plan of the Government of Montenegro for 2015, point 45, p. 15.

¹⁶ 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan.

¹⁷ This value represents implementation ratio of activities planned for 2014, and has been calculated based on the two Implementation Reports prepared by the Ministry of Interior for all quarters of 2014.

¹⁸ Report on the Implementation of Activities under the Action Plan for the Implementation of 2014-2015 Public Administration Reform Strategy (Q1 and Q2 2014) and Report on the Implementation of Activities under the Action Plan for the Implementation of 2014-2015 Public Administration Reform Strategy (Q3 and Q4 2014).

The monitoring and reporting system for PAR in Montenegro has been established. The Action Plan for Implementing the Public Administration Reform Strategy, which has defined measures and activities, serves as a basis for monitoring PAR implementation. However, it focuses only on output-level indicators, which makes it impossible to evaluate the *impact* of outcomes achieved. Implementation of the Action Plan is carried out by the Ministry of Interior and results are submitted to both the designated co-ordination bodies and the Government.

Principle 3: Financial sustainability of public administration reform is ensured.

The financial sustainability of PAR is not ensured. The planning documents in the field of PAR are not costed or resourced, nor are there clearly identified funds, either in the Guidelines for Macroeconomic and Fiscal Policy or in the annual budget, allocated for the implementation of PAR-related measures. There are some indications that funding sources have been found for supporting PAR implementation, but it is difficult to assess whether or not funds have actually been allocated.

It should be noted that the situation has deteriorated, given that the original Action Plan for Public Administration Reform in Montenegro 2010-2015¹⁹ did include a cost appraisal for most actions. However, the revised Action Plan for Implementing the Public Administration Reform Strategy adopted at the end of 2013²⁰ and the implementation report, only make reference to sources of funding, without any fiscal assessment of the costs associated with proposed actions. Thus, the value for the indicator, looking at the percentage of resourced and costed activities related to PAR measures in the planning documents, is currently set at 0%.

General information is provided both on the envisaged IPA I and II support in the Guidelines of Macroeconomic and Fiscal Policy 2014-2017, and on the total amount of this support. However, no detailed account has been provided as to how this support is divided between sectors. The co-financing for IPA support is allocated by the Law on Budget of Montenegro for 2015 under the expenditure planned for a special Government reserve fund to ensure the flexibility of this funding. There is no indication of the amount of IPA support in the national PAR planning documents. In light of this, the value for the indicator regarding IPA support is 0%.

Overall, the financial sustainability of PAR in Montenegro is not proven. The planning documents in the field of PAR do not include costing, nor is there any identification of the amount allocated for the implementation of PAR-related actions. While co-financing for IPA support is allocated in the Annual Budget, there is no information on the total amount of IPA support planned for PAR.

Key recommendations

Short-term (1-2 years)

- 1) The Ministry of Interior should finalise the new planning document in the field of PAR by the end of 2015, as foreseen by the Work Plan of the Government of Montenegro for 2015²¹. This new planning document needs to set clear objectives, supported by specific targets that are expected to be achieved in the medium term, as well as clear costs and indicators, along with sources of funding for implementation of the reform envisaged.

Medium-term (3-5 years)

- 2) The Ministry of Finance (MoF) should include clearer references in the Guidelines for Macroeconomic and Fiscal Policy and Annual Budget for the implementation of PAR. Information on the amount of foreign financial assistance available for this policy area should be included in both the PAR planning documents and financial planning documents.

¹⁹ Action Plan for Public Administration Reform in Montenegro 2010-2015.

²⁰ 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan.

²¹ Work Plan of the Government of Montenegro for 2015.

Montenegro
Strategic Framework and Public Administration Reform

- 3) The Ministry of Interior should undertake a thorough analysis of its monitoring, reporting and evaluation system for PAR and involve civil society in these activities.

2.2. Key requirement: Public administration reform management enables guiding and steering reforms, determines the accountability for implementation and ensures the professional administration needed for reform implementation.

Baseline values

The functioning of PAR management and co-ordination mechanisms is examined through five indicators, one of which is qualitative. These provide information on the operation of the mechanisms. They also review the capacity of the leading PAR unit to support the functioning of the public administration reform management and co-ordination mechanisms.

In Montenegro, the PAR management and co-ordination structures²² are established at both political and administrative levels, and meetings are held regularly to discuss PAR-related issues. The Ministry of Interior is clearly designated in legislation as the key institution responsible for PAR²³, and the other institutions involved are aware of the functions and actions required of them in implementing the PAR agenda.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	5	Extent to which accountability over PAR functions is established.	2014	4
Quantitative	4	Frequency of PAR-related political discussions.	2014	7 ²⁴
	4	Implementation rate of decisions made by political and administrative-level PAR co-ordination forums.	2014	Not available ²⁵
	5	Annual staff turnover in leading PAR unit.	2014	20%
	5	Proportion of leading PAR unit staff that has undertaken at least two PAR-related trainings during the last year.	2014	60%

²² Political level: Council for Business Environment, Regulatory and Structural Reform; Administrative level: PAR Co-ordination Body, Co-ordination Committee for Local Self-Government Reform, Special Group for monitoring implementation of the Re-organisation Plan.

²³ Article 5, Decree on Organisation and Operation of the Public Administration, Official Gazette No. 05/12.

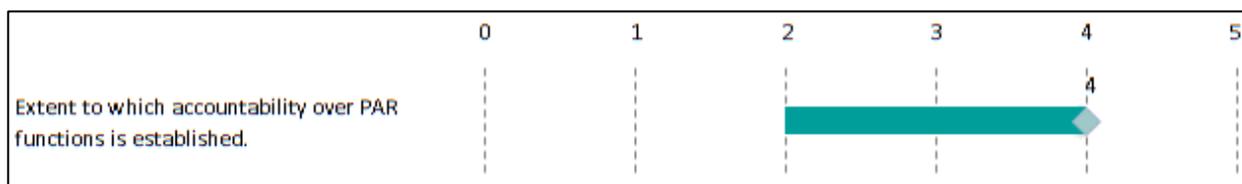
²⁴ This value shows the total number of the PAR-related discussions held during year 2014. It is a quantitative and not qualitative indicator and therefore should not be regarded as an indicator for scale.

²⁵ The indicator value for the implementation rate of decisions made by political and administrative-level PAR co-ordination forums cannot be established, as no evidence has been provided on decisions made by these bodies.

Montenegro Strategic Framework and Public Administration Reform

The value of the qualitative indicator of the country is displayed below in comparison with the range of values for the same indicator in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range



Analysis of Principles

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

Co-ordination structures are functioning effectively at both the political and administrative level. At the political level, in addition to the Government, the Council for Business Environment, Regulatory and Structural Reform²⁶, is designated to co-ordinate PAR-related issues. The MoF is in charge of providing secretarial support to this Council. In total, seven meetings of different political level co-ordination forums were held in 2014, according to information provided by the Ministry of Interior.

In addition to political-level co-ordination, several bodies co-ordinate PAR activities at an administrative level. The first is the PAR Co-ordination Body, which deals with overall PAR co-ordination²⁷. The second is the Co-ordination Committee for Local Self-Government Reform, which deals with the decentralisation and local governance elements of the PAR agenda²⁸. Finally, the Special Group for monitoring the implementation of the Plan for Internal Restructuring of the Public Sector²⁹ was established shortly after the adoption of the Government Reorganisation Plan. Secretarial support for all of these groups is provided by the Ministry of Interior.

The Ministry of Interior has recently made further improvements to the co-ordination system. This involved the merging of the PAR Co-ordination Body with the Group on monitoring implementation of the Reorganisation Plan³⁰. Also, as of 6 March 2015, the Co-ordination Team for Local Self-Government Reform now includes an extended mandate that had been performed by three different bodies³¹.

The indicator value for the implementation rate of decisions made by political and administrative level PAR co-ordination forums cannot be established, as no evidence has been provided on decisions made by these bodies.

²⁶ "Part V. Institutional Support, Monitoring and Evaluation of the Reform", Strategy of Public Administration Reform in Montenegro 2011-2016 "AURUM".

²⁷ Decision on creation of the Co-ordinating Body for monitoring implementation of the Strategy of Public Administration Reform in the area of state administration.

²⁸ Decision on establishment of the Co-ordination Committee for Local Self-Government Reform, Podgorica.

²⁹ Decision on establishment of the Special Group for monitoring implementation of the Plan for Internal Restructuring of the Public Sector.

³⁰ According to the information provided by the Ministry of Finance, the Council for Business Environment, and Regulatory and Structural Reform through the silent consent procedure has agreed to merge the Co-ordinating Body for monitoring implementation of the Strategy of Public Administration Reform in the area of state administration and the Special Group for monitoring implementation of the Plan for Internal Restructuring of the Public Sector.

³¹ Decision of the Minister of Interior "On Establishment of Co-ordination Team for Local Self-Government Reform", 06.03.2015. With this decision, three previous co-ordination bodies – the Co-ordination Body for Local Self-Government Reform, Commission for monitoring implementation of the Action Plan to fight corruption at the local self-government level and Co-ordination Council for Local Self-Government – were dismantled.

Overall, the PAR co-ordination structures are well developed and functional in Montenegro. Structures have been established and responsibilities assigned for PAR management and co-ordination at both the political and administrative levels. These bodies meet regularly throughout the year to discuss recent developments in the PAR implementation.

Principle 5: One leading institution has responsibility and capacity to manage the reform process; involved institutions have clear accountability and reform implementation capacity.

The Ministry of Interior is clearly identified as the lead institution for public administration reform management and co-ordination in legislation³². It has established a designated unit for PAR co-ordination and monitoring³³, which is staffed by five employees. The turnover rate in this unit was at 20% in 2014³⁴. The employees of the General Directorate for Public Administration at the Ministry of Interior received some PAR-related training during 2014 – 60% of the staff involved in the lead unit received at least two relevant training sessions.

In 2014, the Ministry of Interior improved the monitoring system for the implementation of the Strategy of Public Administration Reform and its Action Plan, which confirms that it has adequate capacity to fulfil this function. However, the same staff of the Ministry of Interior has other responsibilities, such as covering civil service and public sector human resource management, general administrative procedures and public administration organisation³⁵. The total workload of the staff designated to carry out all tasks related to PAR co-ordination is therefore quite extensive.

Under Government-approved planning documents³⁶ in this area, other institutions involved in the implementation of the PAR agenda are responsible for particular actions indicated in these planning documents. The overall evaluation of the extent to which accountability over PAR functions is currently established is evaluated as 4. This reflects some fragmentation of responsibility within the overall PAR co-ordination structure between the MoF and the Ministry of Interior.

Overall, there is a clear division of responsibilities between various public institutions governing the implementation of PAR policy in Montenegro. The Ministry of Interior is the lead institution, and has specially designated staff to carry out functions related to PAR management and co-ordination. Other institutions are made accountable through the Government-adopted planning documents in the PAR area and through involvement in the specialised PAR management and co-ordination structure.

Key recommendations

Short-term (1-2 years)

- 1) The capacity of the Ministry of Interior to undertake the management and co-ordination of PAR should be reviewed in terms of the other responsibilities expected of these same staff members. In addition, an analysis of training needs should be undertaken to clearly identify the capacity-building measures, including specific PAR-related training, that are required for the relevant staff.

³² Article 5, Decree on Organisation and Operation of the Public Administration, Official Gazette No. 05/12.

³³ Article 33, Rules on Internal Organisation and Systematisation of the Ministry of Interior.

³⁴ According to information provided by the Ministry of Interior.

³⁵ Article 8, Rules on Internal Organisation and Systematisation of the Ministry of Interior.

³⁶ Strategy of Public Administration Reform in Montenegro 2011-2016; 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan; Plan for Internal Restructuring of the Public Sector; Strategy for the Development of Information Society 2012-2016; Strategy for Public Procurement Development 2011-2015; Strategy of Further Development of the Public Internal Financial Control (PIFC) in Montenegro for the Period 2013-2017.

Montenegro
Strategic Framework and Public Administration Reform

Medium-term (3-5 years)

- 2) To increase its ability to co-ordinate implementation of PAR, the Ministry of Interior should develop more capacity to follow and analyse the policy content of PAR sub-areas that fall outside its direct responsibility.



POLICY DEVELOPMENT AND CO-ORDINATION

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

The legal framework for policy development and co-ordination, and for European integration (EI), is in place. Key laws and the Government Rules of Procedure (RoP) set clear procedures for both the functioning of the centre of government (CoG) and policy development in ministries. However, some challenges remain in their implementation, both at the level of the CoG and in ministries, in converting the output of the structures and procedures into high quality policy and legislative proposals.

Steering of the content of policies is not fully ensured and the medium-term planning system is not fully developed. Sectoral strategies are not formulated under uniform rules (including costing of activities), and the monitoring of horizontal planning documents does not provide clear information about how much progress has been made toward the defined policy objectives. New policy proposals often emerge outside plans. The quality of evidence-based policy development through Regulatory Impact Assessments (RIAs) is not fully consistent, as the analysis is still weak and practices of public consultation do not fully adhere to requirements.

1.2. Main developments

The Government amended the Programme of Accession of Montenegro 2014-2018 to adjust the activities and deadlines relevant for EI. Compared to the original Programme of Accession, a total of 239 new legal acts were included and 168 were deleted. In 418 cases, the deadline for action was prolonged to ensure a more realistic plan.

The Parliament enacted the Law on Budget and Fiscal Responsibility³⁷, which created specific requirements for medium-term financial planning.

³⁷ Official Gazette No. 56/14.

2. ANALYSIS

The analysis covers the 12 Principles of the policy development and co-ordination area, grouped under four key requirements³⁸. Under each key requirement, baseline values for the indicators of the monitoring framework of the Principles are provided. The Principles cover a whole policy cycle and address: the functioning of the centre of government; policy planning, co-ordination and monitoring; Government decision making; and policy and legislation development. The Principles also cover the necessary arrangements for EI throughout the policy cycle.

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

Baseline values

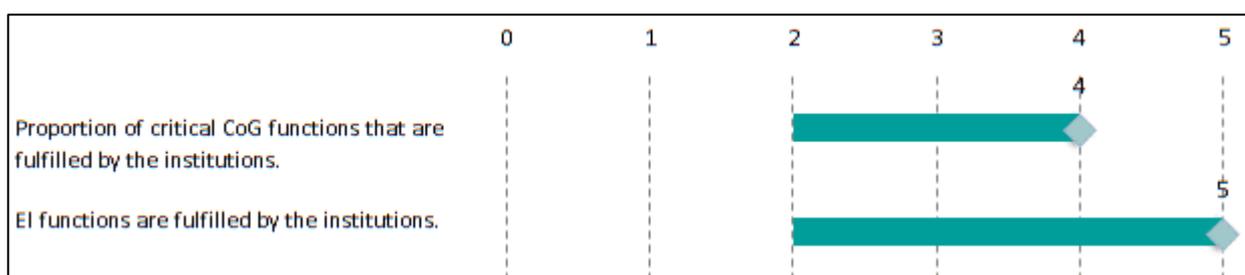
Two qualitative indicators evaluate the functioning of the CoG, one covering all nine critical functions as defined in the Principles of Public Administration. The other is a specific indicator that analyses how the key EI functions are implemented by the administration. Both analyse what functions have been established, but also how they are implemented. The precise methodology and scales can be found in the Methodological Annex.

In Montenegro, all nine key functions critical for the functioning of the CoG have been established, and the expected level of fulfilment has been reached in all areas except the assessment of policy coherence of proposals for Government adoption. However, some shortcomings in relation to the outcomes of certain functions can be observed, as the analysis will show in greater detail for other Principles. EI-related functions are all established and functioning.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	Proportion of critical CoG functions that are fulfilled by the institutions.	2014	4
	2	EI functions are fulfilled by the institutions.	2014	5

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



³⁸ SIGMA (2014), [The Principles of Public Administration](#), SIGMA, OECD Publishing, Paris, pp. 18-40.

Analysis of Principles

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

The key legal grounds for the work of the ministries for policy planning and co-ordination are: i) the RoP of the Government³⁹; ii) the Decree on Government⁴⁰; iii) the Law on State Administration⁴¹; and iv) the Law on Budget and Fiscal Responsibility⁴². Regulations specify the responsibilities, provide the authority to assume these responsibilities, and create a framework for co-ordinating activities among key institutions in the CoG. The General Secretariat of the Government (GSG) is responsible for co-ordination of the preparation of Government sessions, planning and monitoring of the Government's work through developing the Government Annual Work Plan (GAWP) and regular reports on its fulfilment. It is also in charge of co-ordination of the communication activities of the Government⁴³, as well as handling relations with other state bodies⁴⁴. The Ministry of Foreign Affairs and European Integration (MFAEI) is responsible for EI. The Ministry of Finance (MoF) is responsible for ensuring affordability of policy proposals (mainly through quality control of RIAs), but also takes part in medium-term policy planning. The Secretariat for Legislation (SL) ensures that Government decisions conform to legal requirements⁴⁵.

The CoG does not have a dedicated unit that deals with Government strategic planning and reviews draft policies for coherence with previous commitments and priorities. These roles are partially fulfilled by the advisers of the Prime Minister and some Deputy Prime Ministers, and by the MFAEI⁴⁶ and MoF⁴⁷ in some instances.

The roles among the four key organisations in the CoG are well established. There is sufficient clarity in responsibilities, and staffing is above the required minimum limits of this assessment.

Apart from the fulfilment of key CoG functions, it is worth noting that the co-operation of CoG bodies in relation to consultation is limited and carried out mainly on a bilateral basis, without any formalised administrative-level consultation forums.

All CoG functions critical to a well-organised, consistent and competent policy-making system are established. Challenges in implementation remain, in co-ordinating the policy content of proposals and strategic planning. Co-ordination amongst CoG institutions is mainly bilateral and not formalised.

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

The MFAEI is set up to fulfil, and does accomplish, all six key functions related to EI, that is: i) overall daily co-ordination of EI; ii) planning of EI, including costing of reforms; iii) monitoring the country's preparations for the EI process; iv) co-ordinating transposition of the *acquis communautaire*⁴⁸; v) co-

³⁹ Official Gazette No. 03/12.

⁴⁰ Official Gazette No. 80/08.

⁴¹ Official Gazette No. 38/03 and 22/08.

⁴² Official Gazette No. 20/14.

⁴³ The communication co-ordination is particularly impressive. The communication staff of the Government lead thematic meetings for key priority areas (such as potential NATO membership or EI matters). The most important issues from a communication perspective are also discussed with ministries before the Government is in session.

⁴⁴ The GSG also has some informal authority to resolve conflicts of competences when responsibility is not clear, although formal responsibility lies with the Government.

⁴⁵ For a more detailed analysis of the functioning of the CoG, see: (2014) SIGMA Paper No. 51, "[Policy Making Review Montenegro](#)", OECD Publishing, Paris.

⁴⁶ Programming of Instrument for Pre-accession Assistance (IPA) funds.

⁴⁷ Co-ordination of Montenegro Development Directions and the National Economic Reform Programme.

⁴⁸ Horizontal legal oversight is currently carried out both from within the Secretariat for Legislation and by the MFAEI, respecting their expertise. This may lead to rare situations where opinions are seen by the ministries to conflict either

ordinating European Union (EU) assistance; and vi) co-ordinating EI-related negotiations⁴⁹. The baseline value for the indicator “EI functions are fulfilled by the institutions” is therefore 5.

Legislation comprehensively addresses EI matters. Roles and responsibilities of the main co-ordinating body (MFAEI), as well as of the ministries handling EI, are clearly defined. Regarding overall EI co-ordination, Montenegro has developed a decentralised framework, where the MFAEI provides political and administrative leadership on all EI-related processes, and line ministries are responsible for analytical and preparatory tasks related to their specific policy areas.

The organisational structure and human capacities in the MFAEI enable it to carry out all necessary tasks, although potential shortcomings have been acknowledged as regards capacity for the transposition of the *acquis*, primarily in the line ministries.

Interministerial co-ordination (through the Collegium, the European Integration Commission and the administrative-level Negotiation Group), as well as mid-term planning (with costing of activities), monitoring and reporting on EI matters and EU funds are all established and functional.

Within the Government of Montenegro, the EI co-ordination system is fully established and functioning at the expected level although capacity in the line ministries for transposition of the *acquis* should be strengthened.

Key recommendations

Short-term (1-2 years)

- 1) The role of the GSG in steering the process of policy development should be enhanced, as should its role in reviewing whether policy content aligns with Government priorities, strategic documents and existing policies.
- 2) The Government should develop a formalised, regular co-ordination mechanism between the CoG institutions at an administrative level.
- 3) Clarification of the roles and full harmonisation of practices between the SL and MFAEI on matters related to the transposition of the *acquis* should be pursued, as should the scrutiny of proposals on this basis. The capacities of the MFAEI’s Directorate for Legal Harmonisation should be assured, in alignment with the increasing speed of transposition.
- 4) Capacities and competences of line ministries with respect to transposition of the *acquis* should be continuously reviewed and developed.

Medium-term (3-5 years)

- 5) Medium-term strategic planning should be improved under the guidance of the GSG.

2.2. Key requirement: Policy planning is harmonised, aligned with the Government’s financial circumstances and ensures the Government is able to achieve its objectives.

Baseline values

The co-ordination of policy planning is measured by six indicators, which cover: the annual implementation backlog of planned commitments; the annual backlog in developing sector strategies; the link between funds estimated in sector strategies and those taken up in the medium-term budgetary framework (MTBF); the completeness of financial estimates; the annual backlog of EI-related commitments; and the extent to which the outcomes achieved are reported.

wholly or in part. Furthermore, in practice, no single authority is in charge of supporting capacity building within ministries in this respect.

⁴⁹ The State Secretary for European Integration is the focus of the EU accession process, being the Chief Negotiator and the National IPA Co-ordinator.

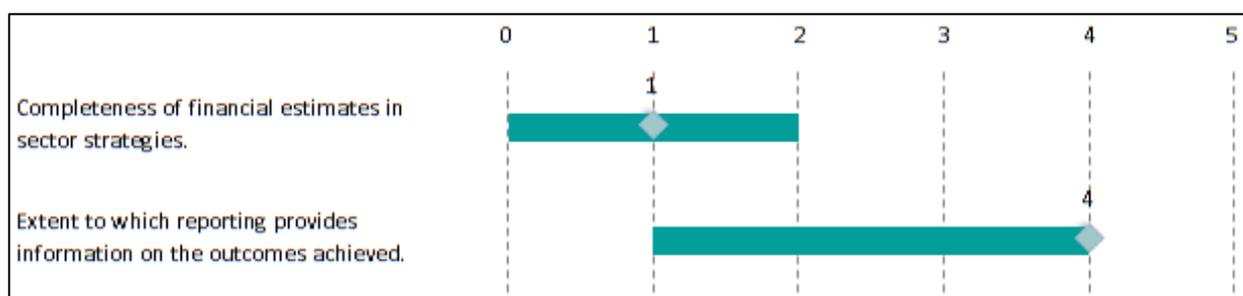
Montenegro
Policy Development and Co-ordination

The values of indicators indicate that some difficulties have arisen in ensuring an overview of the policies' financial sustainability and monitoring the outcomes of policy actions.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	3	Completeness of financial estimates in sector strategies ⁵⁰ .	2014	1
	5	Extent to which reporting provides information on the outcomes achieved.	2014	4
Quantitative	3	Annual implementation backlog of planned commitments in the central planning document(s).	2014	26%
	3	Annual backlog in developing sectoral strategies.	2014	21%
	3	Ratio between total funds estimated in the sector strategies and total funding identified for the corresponding sectors within the MTBF ⁵¹ .	2014	0%
	4	Annual implementation backlog of EI-related commitments.	2014	25%

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range



⁵⁰ A sample of the five most recently adopted sector strategies is used.

⁵¹ The ratio is calculated as a percentage (with 0% for minimum concurrence and 100% maximum), indicating the difference between planned funding in the last five strategies adopted and the MTBF. The outcome value of the indicator is the average of five cases. In the event that this cannot be calculated because of a lack of financial data in the MTEF and/or in all or some sector strategies, the ratio is set at 0%.

Analysis of Principles

Principle 3: Harmonised medium-term policy planning, with clear whole-of-government objectives, exists 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 (MTBF).

The following central planning documents guide the work of the Government of Montenegro: the GAWP⁵², the Programme of Accession of Montenegro 2014-2018⁵³, the Montenegro Development Directions 2013-2016 (MDD) and the annual budget⁵⁴. Except for the Programme of Accession and the MDD, the documents are annual in scope, although some supporting documents⁵⁵ in the budget process are multi-annual.

The GAWP is prepared in accordance with guidelines and instructions issued by the GSG, and is considered the Government's principal planning document. The GSG's role includes clarifying the Government's priorities in preparing the Programme of Accession. In the GAWP, the priorities are listed in a separate section. Activities in the GAWP are not costed, but if a detailed RIA is deemed necessary to assess the financial implications of an activity, this is specified for all the activities in question.

The RoP has set the procedural and content requirements for the development of new policy proposals but no specific requirements have been developed for formulating medium-term policy documents, such as sectoral strategies.

The Law on Budget and Fiscal Responsibility⁵⁶ does not provide for consideration of the existing strategic planning framework in the formulation and drafting of the annual budget proposal, except in a very abstract way. It states that the basis of budget planning should consider, among other things, adopted laws and other regulations⁵⁷. Although formal requirements for financial estimates (costing) also apply to sector strategies (through RIAs), none of the sector strategies analysed⁵⁸ included any systematic information about expenditure needs. Based on this, the value of the indicator regarding the completeness of financial estimates in sector strategies is set at 1 and the ratio of total funds estimated in the medium-term fiscal plan and the sector strategies is 0%.

The annual implementation backlog of planned commitments in the GAWP is 26%, while the backlog in developing sector strategies is 21%. This represents satisfactory, but not total, efficiency in planning the Government's work. It is, however, important to note that for 2014, according to the report on the legislative work of the Parliament⁵⁹, while the Government submitted a planned 71 draft bills for adoption, it also submitted 37 additional drafts that had not been planned in advance. This shows substantial legislative activity outside the plans.

⁵² The development of the GAWP is stipulated by RoP Article 28-31.

⁵³ The medium-term strategic plan is the result of the conclusion of the first 1.5 years of accession negotiations.

⁵⁴ As stipulated by the Law on Budget and Fiscal Responsibility (Official Gazette of Montenegro No. 20/14, 25 April 2014).

⁵⁵ Guidelines for Macroeconomic and Fiscal Policy.

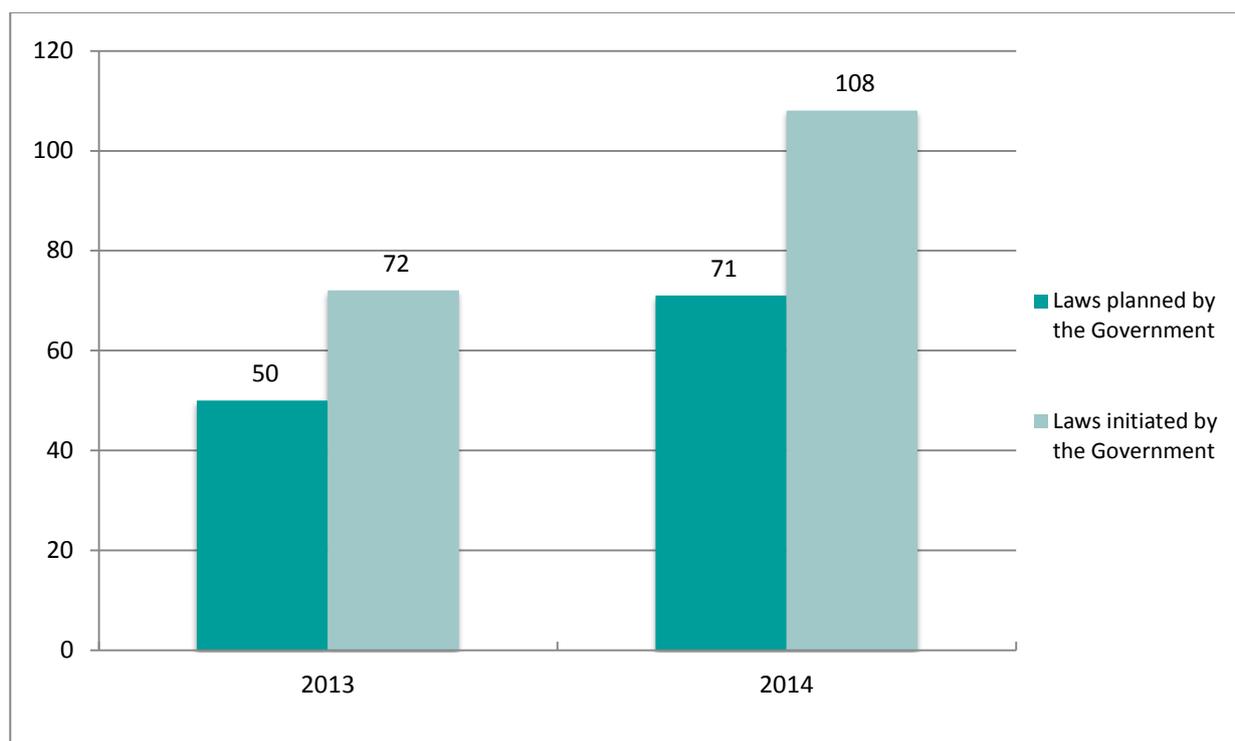
⁵⁶ Official Gazette No. 20/14.

⁵⁷ Article 19 of the Law on Budget.

⁵⁸ The analysis was based on the five most recent sector strategies. These are: Strategy of Public Private Partnership in the Health Sector 2014-2017; Strategy of Adult Education 2015-2020; Regional Development Strategy 2014-2020; The Strategy for Lifelong Entrepreneurial Learning 2015-2019; Professional Development Strategy for Local Officials 2015-2018.

⁵⁹ Information on the Implementation of the Legislative Work Plan of the Parliament of Montenegro for 2014 (January 2015).

Figure 3. Number of planned and number of all initiated laws by the Government



Source: Annual Parliamentary reports 2013, 2014

Although elements of medium-term planning exist, the framework is not comprehensive. No unified rules have been drawn up for the development of sector strategies, existing strategies do not include costing of activities and the MTBF does not include sector envelopes or links to sector policies.

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

Until the end of 2013, no single framework document existed to plan and co-ordinate the EU accession process over the medium term. The Programme of Accession of Montenegro 2014-2018 is a rolling planning document setting out a detailed plan of activities by negotiation chapters. It provides data about existing strategies in the sector and the legislative framework. It also gives some indication of EU Directives which have already been transposed, and some insight into administrative capacities that will be needed. However, it does not guide priorities across ministries, or provide detailed information about the financial resources needed for the implementation of plans. Plans governing administrative capacity focus chiefly on the need to recruit more staff. The GAWP and the Programme of Accession are aligned.

The indicator representing the annual implementation backlog of EI-related commitments has been given a value of 25%, representing satisfactory, but not total, efficiency of the planning system.

An EI medium-term planning system is in place. The medium-term plan provides detailed insight into the country's work ahead on alignment with the *acquis*. However, activities in the plan are not clearly prioritised and the information on budgetary requirements is not sufficient to guarantee that they are viable.

Principle 5: Regular monitoring of the Government's performance enables public scrutiny and ensures that the Government is able to achieve its objectives.

The Law on State Administration places the responsibility for monitoring the implementation of laws and other regulations with line ministries, but is not specific enough to trigger systematic attention to

policy implementation. The RoP also fails to specify what ministries are required to review in analysing the implementation of policies.

As provided for by the RoP⁶⁰, the GSG monitors implementation of the GAWP and delivers quarterly, as well as annual, reports on implementation to the Government. However, these reports do not cover the progress achieved toward the set policy objectives, apart from the delivery of outputs.

With respect to EI, the implementation of EI plans is monitored on a quarterly, as well as on an annual, basis. Reporting on the budget is also regular, but the reports do not include information on progress toward the objectives. In relation to reports on the implementation of sector strategies⁶¹, based on the five reports analysed, the majority also contained information on the outcomes achieved. This is partially due to the fact that many of these strategies and their implementation are supported by donors.

Montenegro is commendably transparent from the perspective of reports. The annual report on the implementation of the GAWP and the budget, the quarterly and annual reports on EI matters and the reports on sector strategies are all publicly available. Given that all reports are published, and that for most of the strategies the public can find information about progress toward set policy objectives, a value of 4 is set for the indicator “Extent to which reporting provides information on the outcomes achieved.”

The system of monitoring progress against plans is well developed and reports are made public, but the reports on horizontal Government affairs (the GAWP and the budget) do not provide sufficient information about progress toward outcomes.

Key recommendations

Short-term (1-2 years)

- 1) The Government should establish a unified methodology for developing sector strategies that includes costing of activities for the implementation of strategies.
- 2) The medium-term financial plan and other central planning documents (both the GAWP and the Programme of Accession) should be better aligned. Costing of activities should be included in all planning documents.
- 3) The Government should further strengthen its planning to increase efficiency. Any backlogs, as well as unplanned activities, should be reduced to a minimum.

Medium-term (3-5 years)

- 4) The Government should include outcome indicators in the GAWP and budget and should start to develop reports that cover progress toward these indicators and set policy objectives.

⁶⁰ RoP, Article 31.

⁶¹ Analysis is based on the five most recent sector strategy reports: Report on the Implementation of the National Air Quality Management Strategy (December 2014); Report on the Implementation of the Annual Action Plan of the National Consumer Protection Programme (NPZP) 2012-2015 for the period July 2013-June 2014 (December 2014); Report on the Implementation of the Action Plan of the National Housing Strategy for the period from 2011 until the end of 2014 (December 2014); report on Implementation of the Action Plan for the Implementation of the Development Strategy of Social and Child Protection in Montenegro 2013-2017 for the year of 2013 (October 2014); Report on the Implementation of the Action Plan for the Implementation of the Strategy for Development of Social Protection for the Elderly in Montenegro, 2013-2017 for the period 2013 (September 2014).

2.3. Key requirement: Government decisions and legislation are transparent, legally compliant and accessible to the public; the work of the Government is scrutinised by the Parliament.

Baseline values

Assessment of whether government decisions and legislation are transparent, legally compliant, accessible to the public and scrutinised by the Parliament is measured based on six indicators that are distributed over two Principles. The indicators cover: the ratio of regular agenda items submitted on time for Government sessions; the transparency of Government policy making; the number of laws with court rulings against the Government in a given year; the ratio of laws initiated by the Government and approved by the Parliament within a given year; the extent to which a forward planning mechanism exists between the Government and the Parliament; and the number of law or sectoral policy implementation reports discussed in the Parliament.

The Government decision-making process follows the required procedure, but comprehensive scrutiny of the content of policy proposals is not guaranteed. RIAs are primarily checked as a source of information on fiscal impact⁶² but not for all other aspects, such as the impacts of different policy options on those being regulated. In addition, the GSG is limited in its capacity to guide the co-ordination of policy content. Co-operation between the Government and the Parliament is generally ensured, but work plans do not fully cover the reality of planned legislative activity. Nevertheless, the Parliament plays a role in reviewing the work of the Government and the effects of legislation and policy making.

	Principle no.	Indicator	Baseline year	Baseline value
Quantitative	6	Ratio of regular agenda items submitted on time ⁶³ by ministries to the Government session.	2014	90.1%
	6	Transparency of Government policy making ⁶⁴ .	2014	4.36
	6	Number of laws with court rulings ⁶⁵ against the Government during the year.	2014	4
	7	Ratio of laws initiated by the Government and approved by the Parliament no later than one year after submission.	2014	97.4%
	7	Extent to which forward planning mechanisms between the Government and the Parliament exist ⁶⁶ .	2014	3.5
	7	Number of law implementation reports discussed in the Parliament.	2014	3

⁶² According to the MoF, an additional focus of scrutiny is the impact on businesses in the case of more comprehensive drafts, especially strategies.

⁶³ On time is understood as being within the procedural criteria set by regulation(s).

⁶⁴ The World Economic Forum Competitiveness Index, minimum score of 1, maximum of 7.

⁶⁵ By the Constitutional Court.

⁶⁶ Its value is based on the SEE2020 indicator on “forward-planning mechanisms between Government and national as well as sub-national parliaments”.

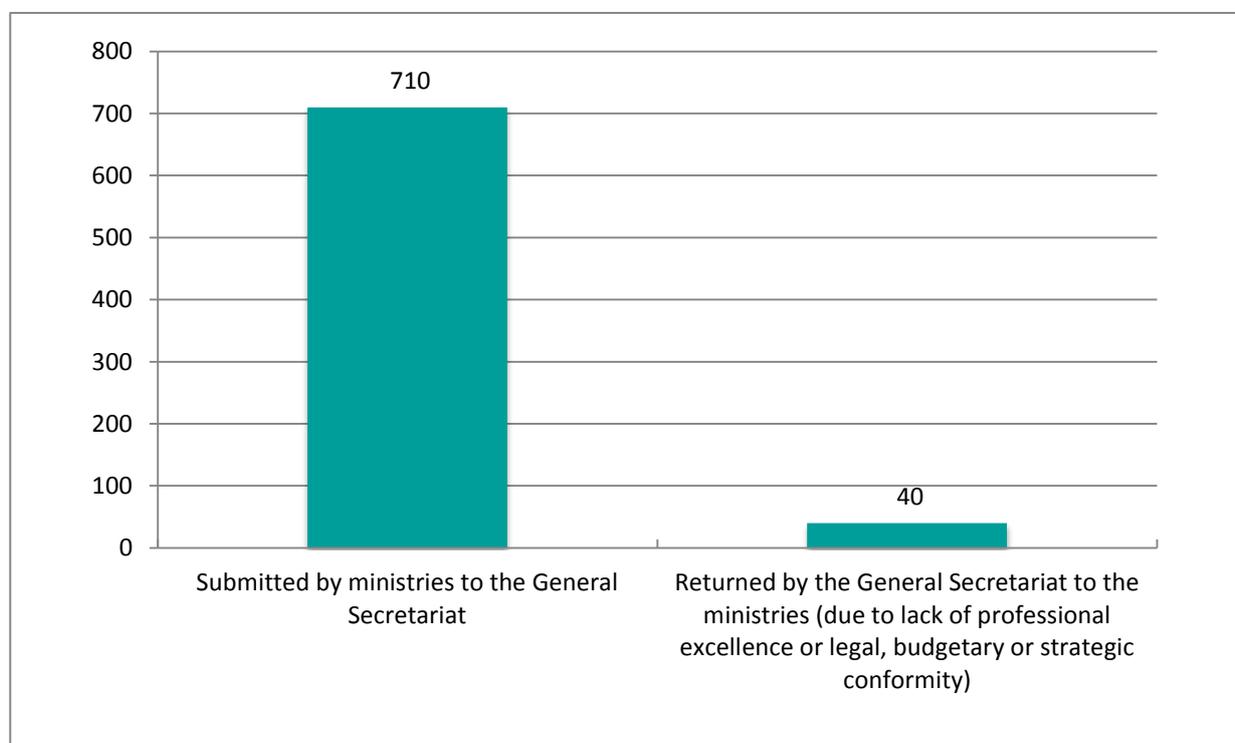
Analysis of Principles

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

The RoP clearly define the procedure of, and the roles in, the preparation of Government decisions and specifies the documents that must be presented to support items on which the Government must make a decision at its sessions⁶⁷. According to the RoP, draft laws and proposals for strategic plans are to be submitted at least 15 days before the Government session. In 2014, 90.1% of all the items discussed by the Government were delivered within the specified timeframe.

The main body responsible for supporting and managing the decision-making system is the GSG. The GSG can return items to the ministries if their substance presents problems or if they do not fulfil formal requirements. In the last quarter of 2014, the GSG received 710 items for Government deliberation and rejected 40 out of them, which demonstrates that scrutiny by the CoG is operational.

Figure 4. Number of submitted and returned items by the General Secretariat in the last quarter of 2014



Source: General Secretariat of the Government

The SL has a legal oversight role, which includes ensuring conformity with the Constitution and other legal acts, as well as legal linguistic coherence⁶⁸. In 2014, the SL scrutinised 767 legal acts, including 138 laws and 629 by-laws. This was carried out by a staff of 17, one more than in the previous year, and work is organised by subject matter amongst the legal professionals. The MoF is involved in the preparation of decisions mainly in the analysis of RIAs. The MoF analysed 329 drafts in 2014 (100 fewer than in 2013), and gave 9 negative opinions. However, the scrutiny of proposals from the perspective of the quality of the analysis, apart from fiscal impacts, is not always ensured.

The MFAEI is involved in the scrutiny of draft legal acts that are proposed for the Government decisions (laws, decrees, decisions) from the perspective of aligning them with the *acquis* and verifying

⁶⁷ RoP of the Government, Article 32-49.

⁶⁸ The SL has the right to modify the draft legal text in order to enhance its quality. According to interviews with staff of both the SL and line ministries, the SL often exercises this right.

the Tables of Concordance, but the proposing ministries are only required to ask opinions from the SL regarding the legislative issues, including the question of harmonisation.

The majority of materials considered at the Government sessions are published on the Government’s website, including the proposed agenda for the session; the materials the Government is to discuss that are not subject to confidentiality rules, and the verified conclusions of the Government. The “transparency of Government policy making” indicator of the Competitiveness Index of the World Economic Forum reflects the ease with which businesses can obtain information about changes in government policies and regulations that affect their activities. On a scale of 7, Montenegro obtained 4.36 and was ranked 46th out of 144 countries.

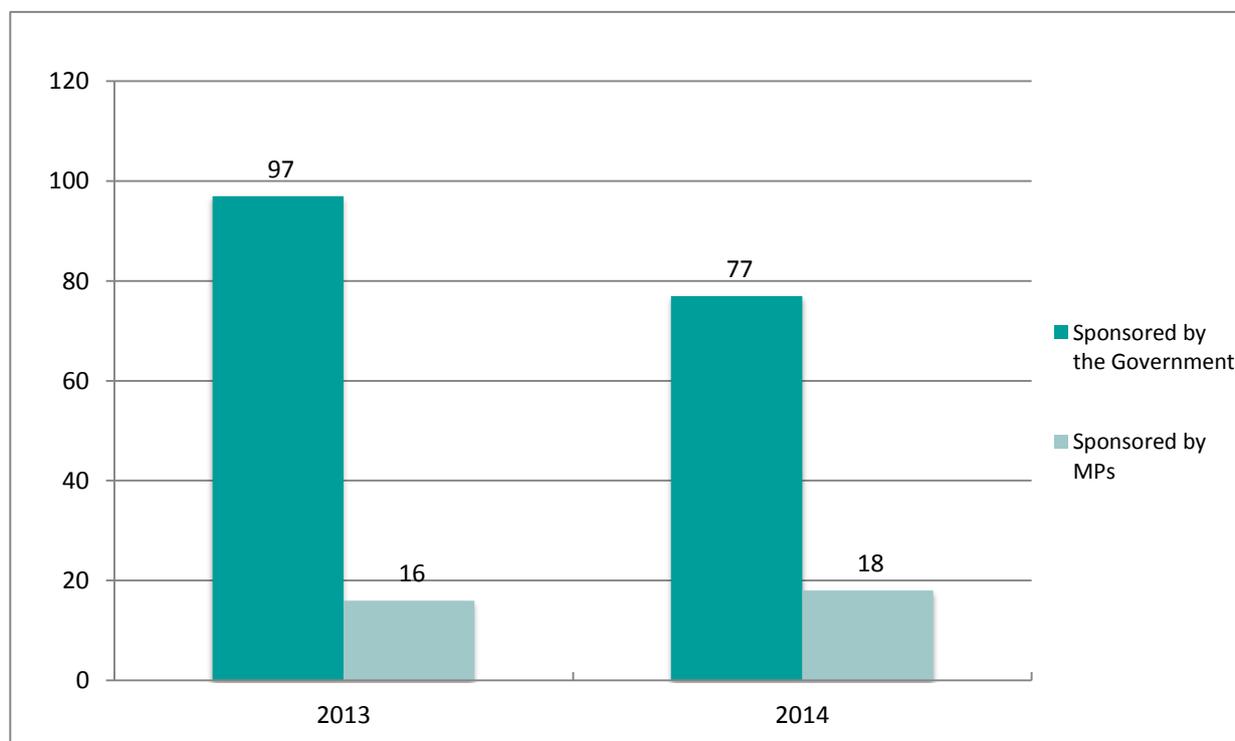
The requirements for the preparation of Government decisions are clear and mainly adhered to. While legal scrutiny has historically been robust, financial scrutiny through the analysis of RIAs is not as developed. The transparency of the Government’s work is ensured with published agendas and regular updates on the decisions made.

Principle 7: The Parliament scrutinises government policy making.

Co-operation between the Government and the Parliament is stipulated by the Decree on the Government of Montenegro⁶⁹ and the RoP of the Parliament⁷⁰, as well as the RoP of the Government⁷¹.

In 2014, 168 bills were submitted to the Parliament for consideration, of which 109 were sent by the Government. Of these 109 drafts, however, only 71 were initially listed in the legislative work plan, and the rest were not included in either the GAWP or the Programme of Accession. The Parliament adopted 95 laws in 2014, 77 of them laws sponsored by the Government (16 had been carried over from previous years). There are no systematic delays in the Parliamentary procedures, and almost all laws proposed by the Government are adopted within a year of their submission.

Figure 5. Adopted laws by sponsor in 2013 and 2014



Source: Annual Parliamentary Reports 2013, 2014.

⁶⁹ Official Gazette No. 80/08, Articles 25-29.

⁷⁰ Official Gazette No. 51/06, especially from Article 187.

⁷¹ RoP of the Government, Articles 9, 34 and 37.

The task of legislative scrutiny falls primarily to committees during the first reading of a draft law. It always involves the Legislative Committee, which, among other things, reviews compliance of bills with the Constitution and the legal system of Montenegro, as well as with the legislative methodology. The sectoral committee responsible is also involved. All bills with budgetary implications are also considered by the Committee for Economy, Finance and Budget. Where necessary, other sectoral committees are involved.

Discussion of the (usually) annual reports from public sector bodies, including independent regulatory bodies, constitutes an important part of Committee oversight and control. However, in 2014 three law implementation reports were also discussed by the Parliament, which demonstrates that the Parliament has an additional role in reviewing the effects of legislation and policy making.

The duty of ministers is to participate in the work of the Parliament and its working bodies on issues that fall under their responsibility. This commitment is fulfilled by the ministers or general directors, but information is not available on exact attendance figures.

Co-operation on legislative work planning is provided for, but new Government drafts are often submitted to the Parliament on an unscheduled basis. Scrutiny of legal drafts in the Parliament is carried out and the Parliament plays some role in overseeing implementation activities of the Government.

Key recommendations

Short-term (1-2 years)

- 1) The Government should enforce adherence to plans and only allow deliberation on new, unplanned proposals if they are of the utmost urgency. This applies both to its internal work and to the submission of new, unplanned proposals to the Parliament. As a precondition, planning should be realistic and should take into consideration all priority work that needs to be done in the given period.
- 2) The GSG should put additional emphasis on checking that proposals align with the priorities and plans of the Government, as well as with other policies.

Medium-term (3-5 years)

- 3) The Parliament should have more oversight over the implementation of laws, by establishing a system of reporting on major legislation.

2.4. Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives.

Baseline values

Assessing whether policy and legislative development are inclusive and evidence-based, and thus achieve the intended goals, involves ten indicators. These cover: the extent to which ministries are oriented towards policy development; the backlog of transposition; the number of directives transposed annually; the extent to which policy development makes the best use of analytical tools; the extent to which public consultation is solicited; the extent to which the interministerial consultation process occurs; the ratio of staff participating in legal drafting trainings; the number of laws annulled due to legal inconsistency or unconstitutionality; the number of laws sent back to the Government by the Parliament; and the extent to which legislation is made publicly available. The precise methodology and scales for these indicators can be found in the Methodological Annex.

In Montenegro, the basic foundations for evidence-based and inclusive policy development are in place. However, clear procedures have not yet been fully established within the ministries. This also applies to relations between the administration and stakeholders, and interministerial consultation.

Montenegro
Policy Development and Co-ordination

Translating policy development structures and procedures into policy and legislative proposals is thus not as effective as it could be.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	8	Extent to which ministries are oriented towards policy development.	2014	3
	10	Extent to which policy development process makes the best use of analytical tools.	2014	3
	11	Extent to which public consultation is used in developing policies and legislation.	2014	3
	11	Extent to which the interministerial consultation process occurs.	2014	4
	12	Extent to which primary and secondary legislation is made publicly available in a centralised manner.	2014	5
Quantitative	9	Backlog of transposition ⁷² .	2014	Not available ⁷³
	9	Number of annually transposed directives.	2014	42
	12	Ratio ⁷⁴ of staff participating in legal drafting training or mentoring over the past year.	2014	Not available ⁷⁵
	12	Number of laws annulled on the basis of legal inconsistency or unconstitutionality in a given year.	2014	0
	12	Number of laws sent back to the Government by the Parliament.	2014	2

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

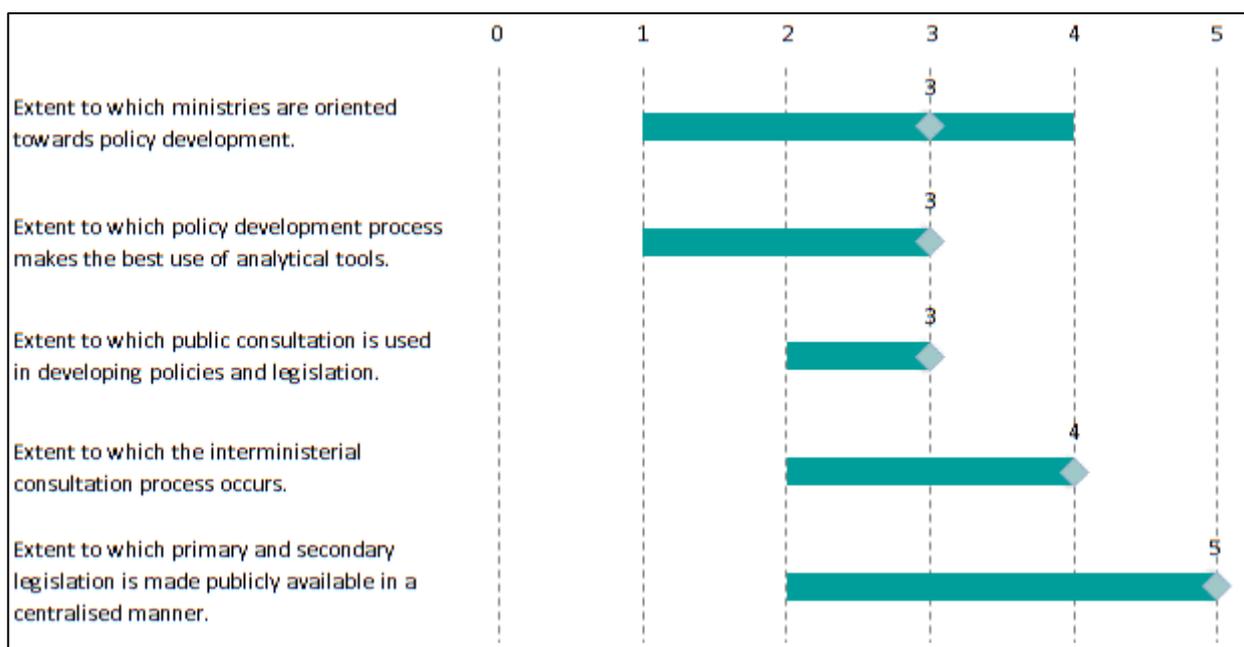
⁷² Backlog is analysed as a comparison of documents consisting of commitments (Government Annual Work Plan (GAWP) and EI plan) of two consecutive years, taking into account items carried forward from one year to the other. The ratio of transposition against planned commitments is calculated based on this analysis.

⁷³ As the nature of the plan that could serve to calculate the backlog changed in 2014, it is not possible to compare it with previous plans and to calculate a backlog value.

⁷⁴ The ratio is calculated as the number of staff trained as a proportion of the total number of ministerial staff dealing with legislative drafting.

⁷⁵ No information was provided for analysis by the country and there is no unified Human Resource Management Information System providing the numbers of ministerial policy development staff.

Figure 6. Country baseline value in comparison with the regional range



Analysis of Principles

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

Montenegro has 16 ministries and one minister without portfolio. The structures and tasks of the ministries were established under the Decree on Organisation and Operation of the Public Administration⁷⁶. Acts on internal organisation and systematisation respectively outline ministerial structures and the responsibilities of management positions and departments. Policy responsibilities of the ministries are defined. The responsibility for policy development is not transferred to subordinate bodies but, in practice, some subordinate bodies (e.g. the Public Procurement Administration) lead the work of preparing legislation.

The ministries do not have internal rules that clearly describe the policy development and legislative process within their institution. In addition, the proportion of staff working on policy development in some ministries is less than 30%⁷⁷, due to the fact that large departments dealing with enforcement of policies are a part of the internal organisation⁷⁸. It is also noteworthy that professional legal drafters in the ministries are scarce and the technical quality of drafts often suffers because of this⁷⁹. Based on this analysis, the value of the indicator that measures the extent to which ministries are oriented towards policy development is set at 3.

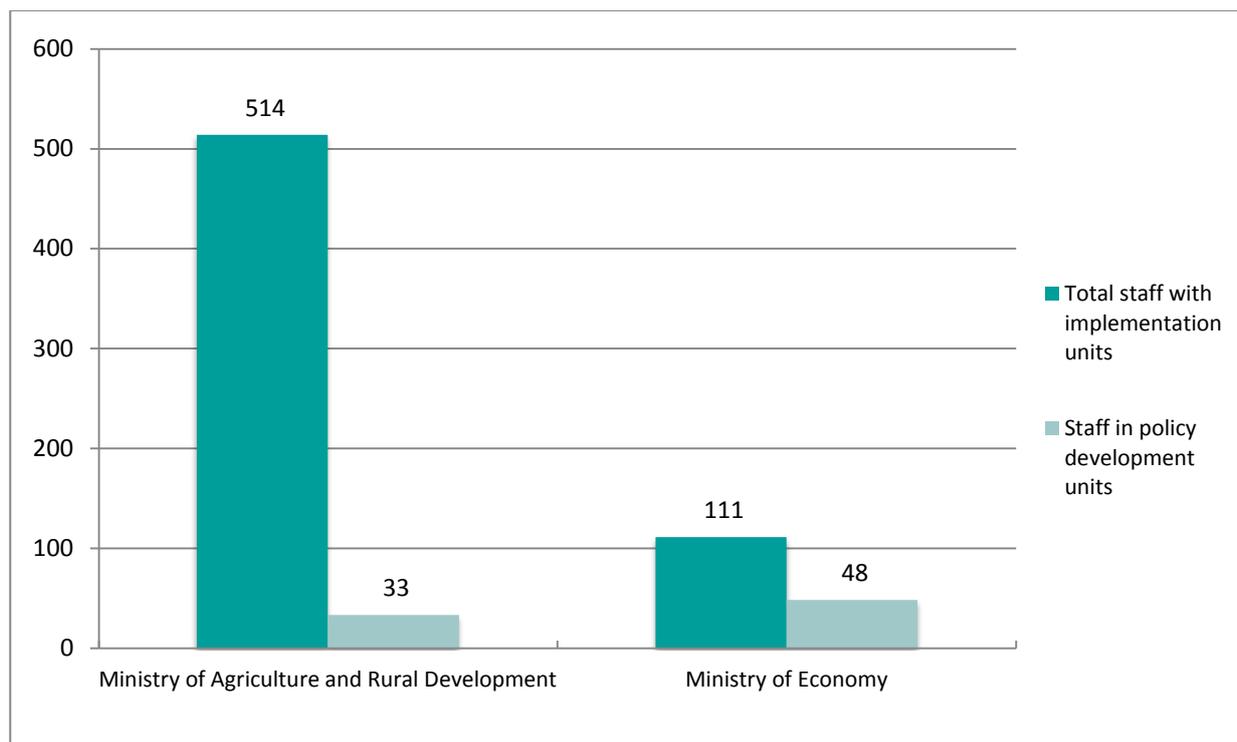
⁷⁶ Official Gazette Nos. 05/12, 25/12 and 61/12.

⁷⁷ Based on staff numbers of the Ministry of Agriculture and Rural Development and the Ministry of Economy.

⁷⁸ In the case of the Ministry of Economy, the percentage of staff working on policy matters is 43%, but in the Ministry of Agriculture and Rural Development only 6% of staff work in departments involved in the policy development. This is due to the fact that agencies that deal with the implementation and enforcement of policies have staff that number in the hundreds (and account for more than two-thirds of the total staff). These are considered departments of the ministry (e.g. the Forest Administration of the Ministry of Agriculture). Following the methodology of the analysis, the worst case was taken into consideration for setting the value of the indicator.

⁷⁹ As highlighted by both the SL and by sample ministerial staff.

Figure 7. Staff allocated to policy development in sample ministries



Source: Ministry of Agriculture and Rural Development and Ministry of Economy

Regulations clearly allocate policy making responsibility for different fields between ministries and at the top-level of management in each ministry. Ministries have clear organisational structures and policy responsibilities, but there are no rules for the policy development process within ministries.

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

EI issues and development of legislation for transposing the *acquis* follow the same procedure as all other national matters. The MFAEI is in charge of checking the Tables of Concordances, and the SL is responsible for overall legislative scrutiny, including harmonisation with the Constitution and the legal framework of the country.

The policy officials responsible for a particular policy area are also typically responsible for the transposition of the *acquis* in that area. Specialised EI-related capacity within the ministries is limited, and not all ministries have a unit that is dedicated specifically to EI issues.

The number of directives transposed annually into laws and directives in Montenegro was 42 in 2014. This is less than half the transpositions completed in 2013⁸⁰. Montenegro introduced new medium-term transposition planning in 2014⁸¹. It was thus not possible to assess the indicator regarding the backlog of planned transpositions over two consecutive years.

For interministerial consultation and conflict resolution, the country has a functioning structure, with the European Integration Commission at the political level, and the Negotiation Group structure at the administrative level. Both met eight times during 2014. The highest-level political decision preparation body is the Negotiation Collegium⁸², which met four times in 2014. At an operational level, working

⁸⁰ Based on the information provided by the MFAEI. This data does not include rulebooks, which are prepared by the relevant ministry and directly published in the Official Gazette.

⁸¹ Programme of Accession of Montenegro.

⁸² The Collegium is led by the Prime Minister and includes the Deputy Prime Ministers, the Minister for Foreign Affairs and also the Chief Negotiator. This body considers the proposed negotiating positions during the phase that follows the working groups' preparation of the drafts and before adoption by the Government.

groups have been established for all negotiation chapters. Most working groups also include representatives of non-governmental organisations (NGOs).

The procedural framework and the institutional set-up for EI are well defined. Tables of Concordance are regularly used. The interministerial co-ordination and conflict resolution structure is robust. Challenges remain with regards to the capacity of staff involved in the EI process.

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

The RoP define the requirements that must be followed when proposals are submitted for approval by the Government. The process for conducting RIA is established and set out in guidelines⁸³. Draft decisions submitted by a ministry to the Government need to be accompanied by a RIA or state why such an assessment was not deemed necessary. Each proposal has to be supported by a report on the public debate that was organised for the preparation of the proposal. Alternatively, an explanation must be provided if no such a debate took place⁸⁴. However, policy development requirements are treated more like procedural requirements and are less focused on the content of proposals⁸⁵.

The SL, MoF and MFAEI are entrusted with a horizontal role for guidance and quality assurance respectively on the issues of legality, fiscal impacts (and RIA in general) and compliance with the *acquis*. Though clear guidelines are laid out for all these matters, the personnel of ministries dealing with them are not assured regular training or mentoring⁸⁶. The MoF is also responsible for assessing the overall quality of RIAs.

The value of the indicator that measures whether the policy development process makes the best use of analytical tools is 3⁸⁷. *Ex ante* analysis exists and is procedurally established, as the table below shows. Given the high number of RIAs, in most cases the MoF can only focus on the formal aspects of its oversight function, and cannot properly provide quality assurance⁸⁸. In order to prioritise, the MoF focuses on reviewing the impacts on the business environment and on the Budget.

⁸³ See also the Guidance for Preparation of the Regulatory Impact Assessment Report.

⁸⁴ See Articles 32, 33, 34 and 35 of the Government RoP.

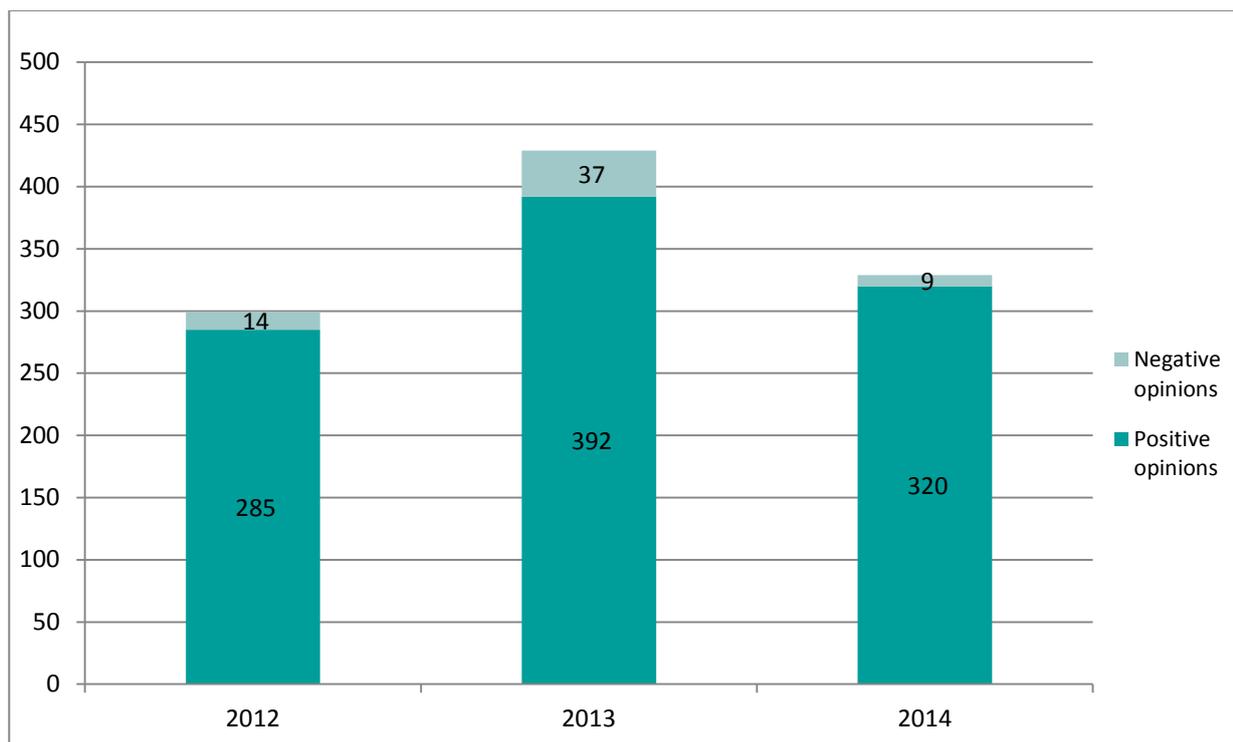
⁸⁵ Findings based on interviews with the administration of the GS and the analysis of the six most recent legislative proposals in 2014: 1) Draft Law on Co-operatives; 2) Draft Law on Amendments to the Law on Regional Development; 3) Proposal for the Law on Coffee; 4) Draft Law on Amendments to the Law on Tax Administration; 5) Draft Law on Amendments to the Law on Value Added Tax; and 6) Draft Law on Law on Amendments to the Law on Property Tax.

⁸⁶ Information provided by the staff of the SL, MoF and MFAEI.

⁸⁷ Findings based on the analysis of the following proposals: 1) Draft Law on Co-operatives; 2) Draft Law on Amendments to the Law on Regional Development; 3) Proposal for the Law on Coffee; 4) Draft Law on Amendments to the Law on Tax Administration; 5) Draft Law on Amendments to the Law on Value Added Tax; and 6) Draft Law on Amendments to the Law on Property Tax.

⁸⁸ Shortcoming acknowledged by the staff of the MoF.

Figure 8. Distribution of positive and negative opinions on RIAs by the Ministry of Finance



Source: Ministry of Finance.

Based on the analysed sample proposals, the quality of RIAs is minimal. They do not always show a comparison of several policy options⁸⁹ and details on implementation of policy measures are lacking⁹⁰. The analysis does not clearly describe the impacts on the most affected stakeholders, and the quality of costing estimates varies greatly⁹¹. Overall, the use of RIA during public consultation is not fully exploited. It is also not used sufficiently for properly informing Government decisions and for informing the Parliament⁹².

Montenegro has a well-developed procedure for RIA but, in practice, the analysis and evidence supporting draft proposals is incomplete. The use of RIA is also limited in scope, since it is primarily used to assess financial impacts. Regular training on legislative issues and on the development of RIAs is not sufficiently provided for.

⁸⁹ Comparison of viable options are, for example, not presented in the analysis for the Draft Law on Amendments to the Law on Value Added Tax or the Draft Law on Law on Amendments to the Law on Property Tax.

⁹⁰ The relevant aspects of implementation are, for example, not covered in the analysis for the Draft Law on Co-operatives. However, the law proposes the overhaul of the existing legal structure for co-operatives, and the analysis for the Draft Law on Amendments to the Law on Regional Development does not cover such issues as the imposition of fines and the approach expected for encouraging the development of local government units.

⁹¹ Moreover, sometimes there is no cost identification at all, even if the adoption of the proposed measure would entail substantial costs, e.g. in the case of the draft Law Amending the Law on Tax Administration, where the draft suggests a substantial extension of the duties of the Tax Authority but does not give any indication of additional costs.

⁹² Findings based on interviews with the administration of the Parliament and the [Policy Making Review Montenegro](#), SIGMA Paper No. 51, 16 July 2014.

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

The need for consultation of external stakeholders is embedded in the RoP and expressed in various guidelines⁹³. Each proposal must be supported by a report on the accompanying public debate, unless reasons can be presented for not holding such a debate.

In recent years, the Government has established several consultative bodies, such as the Council for Privatisation and Capital Projects, the Council for Co-operation with NGOs, and the Council for Improvement of Business Environment, Regulatory and Structural Reforms (Regulatory Council). The Council for Co-operation with NGOs is intended to improve consultation practices, but in reality, its influence has not been visible.

Consultations involve key actors from the public and private sectors and take place in a regulated manner when new proposals are being developed. On the one hand, the regular use of working groups serves both interministerial as well as public consultation purposes. However, often the representatives of ministries participating in the work of these working groups do not have either the legislative knowledge or the authority to represent their institutions. Thus, the product of their work may still provoke negative opinions during the regular interministerial consultation with their delegating ministry⁹⁴. A public debate report on public consultations conducted is supposed to be published by the line ministry on the ministry's website and e-Government portal. However, this was not the case for the sample drafts that were analysed. Business stakeholders recognise that they have adequate opportunities to engage with the Government and influence policy development, but this was not fully confirmed by other NGOs. At the same time, interested and competent NGOs are not always included in policy development. Consultation mostly takes place at the end of the policy development process and is not always conducted for proposals for which consultation should be necessary⁹⁵. The indicator value for the extent to which public consultation is used in developing policies and legislation is thus 3⁹⁶.

At the political level, the nucleus of co-ordination and Government decision making is the inner Cabinet, which meets, as a rule, once a week. It is comprised of the Prime Minister, Deputy Prime Ministers and Secretary General. Among other things, it is tasked with co-ordinating and considering key issues on the Government's agenda.

The Government has established four thematic commissions for filtering proposals, of which the Commission for Political System, Internal and Foreign Policy⁹⁷ and the Commission for Economic Policy and Financial System⁹⁸ form the more relevant parts of the decision-making system for new policy proposals⁹⁹. All matters relating to EI negotiations are discussed, in principle, in the Collegium, as the primary working body of the Government for EI affairs.

A clear procedure exists to resolve any disagreement before proposals reach the Government, but conflict resolution is institutionalised only at the level of politicians. No forum of high-level civil servants has been set up. The final content of a proposal that has failed to comply with the opinions of the SL and competent ministries cannot be incorporated into the agenda of a Government session until

⁹³ See Article 35 of the Government RoP, the Decree on the Procedure and Manner of Public Debate in Preparation of Law and the Decree on the Manner and Procedure of Co-operation Between State Administration Authorities and Non-Governmental Organisations.

⁹⁴ This is a shortcoming the SL also highlighted as a factor leading to inadequate drafts.

⁹⁵ Based on interviews with NGOs and on the finding that not all the analysed sample draft legislation made reference to consultation.

⁹⁶ Finding based on the analysis of the legislative proposals presented under Principle 10, and interviews.

⁹⁷ Article 15 of the RoP of the Government.

⁹⁸ Article 16 of the RoP of the Government.

⁹⁹ The two other working bodies are the Commission for Human Resources and Administrative Issues and the Commission for Distributing a Part of Budget Reserve.

the disputed issues are resolved with the competent Deputy Prime Minister. In practice, this is also done during the meetings of the relevant Commissions.

Interministerial consultation procedures are established; consultation happens routinely and is used for decision making. However, the final steps of decision making do not include regular forums that consist of high-level civil servants of ministries and are left almost exclusively in the hands of political leaders, in particular, the Deputy Prime Ministers. Therefore, the indicator showing the extent to which the interministerial consultation process occurs has a value of 4.

Consultation of stakeholders is regulated, but does not always include the relevant stakeholders. Interministerial consultation with regards to policy and legislative proposals is developed but lacks conflict resolution mechanisms at a high administrative level.

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

Montenegro works with detailed guidance on how to structure and formulate legislation¹⁰⁰. Despite several years of implementation of legal and technical rules for law drafting, the SL overseeing their implementation still finds frequent problems in the accuracy and coherence of draft legal texts¹⁰¹.

Montenegro has a clear procedure for checking the quality of legislation by the SL. The Secretariat scrutinises all draft laws before they are placed for adoption on the agenda of the Government¹⁰². The process for quality scrutiny regarding the legal conformity of draft laws is well embedded within the policy development process.

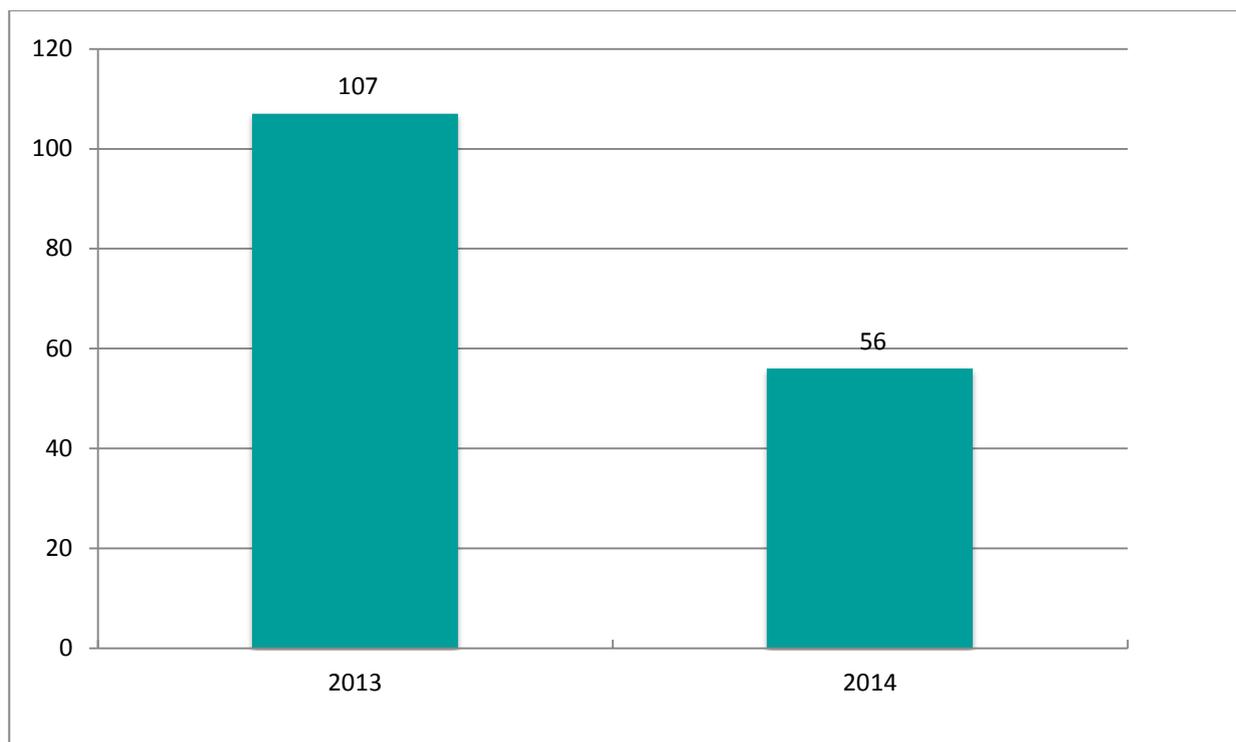
The indicator measuring the ratio of staff participating in legal drafting training or mentoring over the past year could not be assessed, since staffing levels for the administration dealing with policy development and legal drafting in all the ministries were not available. The number of staff trained on legal drafting was 56 in 2014, half the number of trained staff compared to the previous year. The SL is not institutionally involved in providing training on legislative techniques, and training is not regularly organised.

¹⁰⁰ See Legal and Technical Rules for Legal Drafting, January 2010.

¹⁰¹ According to officials of the SL, the main problems involve imprecise drafts of by-laws and compatibility issues with other legislation.

¹⁰² See also Article 40 of the Government RoP.

Figure 9. Number of staff trained on legislative drafting in 2013 and 2014



Source: General Secretariat of the Government

The indicator showing the number of laws annulled on the basis of legal inconsistency or unconstitutionality in a given year has a value of 0. This indicates that the quality of adopted laws is high as far as their constitutionality is concerned.

The indicator covering the number of laws sent back to the Government by the Parliament in 2014 has a value of 2. The figures for 2012 and 2013 were two and one respectively. This shows a high level of consistency.

The indicator measuring the extent to which primary and secondary legislation are made publicly available in a centralised manner has a value of 5. All legal texts are available through a central registry¹⁰³. The Official Gazette of Montenegro publishes the consolidated versions of legislation, i.e. updated texts in which amendments have been integrated¹⁰⁴.

The administration is intent on guarding the quality of legislative proposals, but some challenges with regards to legislative drafting remain, and regular training on legislative drafting is not ensured. All legislation is available in a central registry and legislative texts are consolidated.

Key recommendations

Short-term (1-2 years)

- 1) The MoF should increase its capacity for reviewing RIAs and assess the full quality of the RIAs that are developed.
- 2) The Government should change existing rules regarding RIA preparation to ensure that i) initial RIA documents are prepared before public consultation, and ii) updated versions are prepared before Government decision.

¹⁰³ This conclusion is based on data provided by the GS and SL.

¹⁰⁴ The basis for this practice can be found in the Decree on Legal-Information System (Official Gazette No. 21/11).

Montenegro
Policy Development and Co-ordination

- 3) The SL and the MoF should develop and implement dedicated training and capacity-building programmes for key ministry staff. This would professionalise policy analysis and legislative drafting work.
- 4) The CoG institutions should ensure that consultation practices are regularly carried out and that all relevant stakeholders are involved in the consultation process.
- 5) The MFAEI should develop a programme to improve the EI-related capacities in line ministries, in accordance with progress made in the accession process.

Medium-term (3-5 years)

- 6) The Government should develop the means for high-level civil servants to resolve conflicts before the political level is involved.
- 7) The MoF should evaluate the RIA system and assess how the system should operate in future, e.g. for which proposals a RIA should be made, how the budget impact should be covered, how it is used to assess all of the impacts on those being regulated and how RIA relates to the overall explanation provided for a draft proposal.

3

Public Service and Human Resource Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

The new Law on Civil Servants and State Employees (CSL), in force since 1 January 2013, is largely in line with European Union (EU) standards and the secondary legislation is in place. However, some gaps remain in implementing the provisions for human resource planning, which was introduced to the public service system for the first time, and in performance appraisal by some administrative bodies.

The competences and capacity of the Human Resource Management Authority (HRMA) provide for consistent human resource management practices across the public service and increase the professionalisation of public servants.

The Strategy of Public Administration Reform in Montenegro 2011-2016 (PAR Strategy) and its Action Plan¹⁰⁵ focuses on improvement of the public service system and continuing development and management of human capacity. This is one of the seven topics under the first pillar of the PAR Strategy.

The CSL establishes merit-based recruitment as a principle. However, legal deficiencies in the CSL allow for the use of non-objective criteria in the selection process. The implementation of recruitment provisions therefore raises some concerns about how meritocratic the process is. Dismissals have provoked a considerable number of appeals, which suggests that the termination criteria might not be wholly objective.

More political and institutional attention is required before the Central Personnel Records, or Human Resource Management Information System (HRMIS), can be a satisfactory management tool for the public service.

Up to 80% of the salaries of public servants on average are now discretionary. The draft Law on Public Sector Salaries, whose objective is to establish better control over salaries, correct inequalities and increase transparency and fiscal accountability, is awaiting Government approval.

1.2. Main developments

The new Law on Prevention of Corruption was adopted in December 2014, providing for the establishment of a new Anti-Corruption Agency as of 1 January 2016. Its role includes monitoring conflicts of interest and asset declarations as well as providing for whistle-blower protection, for example. The Law, when adopted and implemented, will complement the existing measures for promoting integrity, preventing corruption and ensuring discipline in the public service.

The draft Law on Public Sector Salaries, intended to establish better control over salaries, correct inequalities and increase transparency and fiscal accountability, is currently in the final interministerial consultation process.

¹⁰⁵ Strategy of Public Administration Reform in Montenegro 2011-2016; 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan.

2. ANALYSIS

The analysis covers the seven Principles of the public service and human resource management area, grouped under two key requirements¹⁰⁶. Under each key requirement, baseline values for the indicators of the monitoring framework of the Principles are provided. The Principles cover all relevant elements related to the public service: scope of the public service and legal framework; professionalism of public service in recruitment, training, performance appraisal; a fair and transparent salary system, and promotion of integrity as well as prevention of corruption.

2.1. Key requirement: The scope of public service is clearly defined and applied in practice so that the policy and legal framework and institutional set-up for professional public service is in place.

Baseline values

The scope of the public service is examined using three qualitative indicators that refer to public service legislation, the coherence and professionalism of the policy and legal framework, and the institutional set-up enabling consistent human resource management (HRM) practices cross-organisationally.

The baseline value for the scope of the public service acknowledges that there are main elements regarding vertical and material scope¹⁰⁷ already consolidated in the legislation. However, it still requires improvement in the horizontal scope¹⁰⁸ and in the separation of political and public service positions. The baseline values for the policy, legal framework and institutional set-up reflect that these are in place. However, some challenges in implementation must be worked through if a professional public service is to be ensured.

¹⁰⁶ SIGMA (2014), *The Principles of Public Administration*, SIGMA, OECD Publishing, Paris, pp. 40-56.

¹⁰⁷ In *The Principles of Public Administration*, the **vertical scope of public service** means that the law on public/civil service clearly determines the upper and lower division between political appointees, public servants and support staff.

The **material scope of public service** means that the law on the public/civil service establishes all general provisions relevant to the employment relations of public servants and the management of public service. These include the scope and principles of the civil service; classification; and recruitment and selection, including of civil servants in senior managerial positions. They also govern the rights and obligations of civil servants, including the integrity system; remuneration (main principles and components of the salary system); and professional development, including performance appraisal, training, mobility and promotion. Lastly, it deals with disciplinary procedures, including suspension of the civil service relationship; termination of employment, including demotion and redundancy; and management and central co-ordination of the civil service.

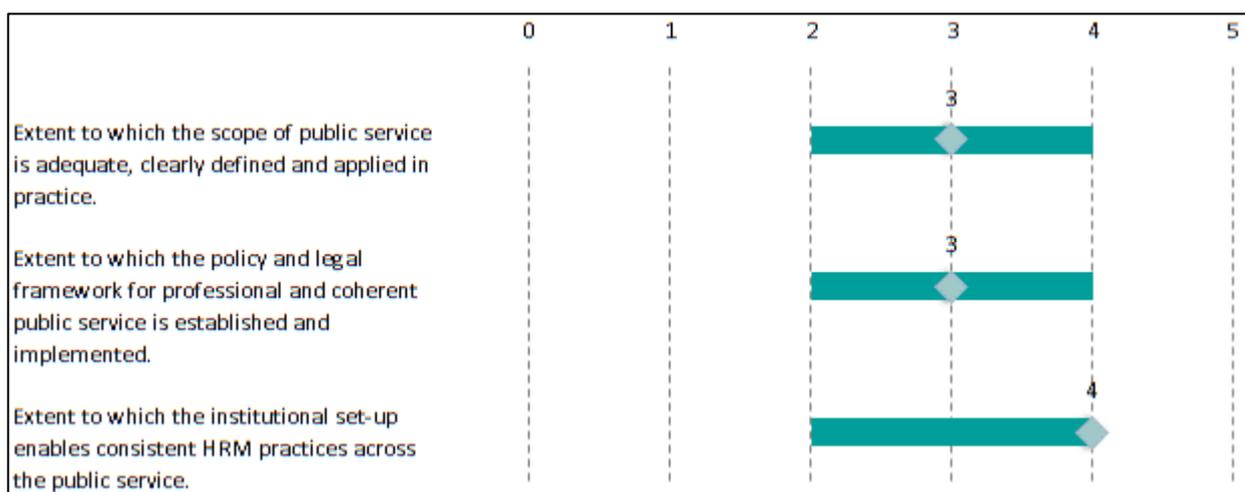
¹⁰⁸ In *The Principles of Public Administration*, the narrow **horizontal scope of public service** is applied, covering: i) ministries and administrative bodies reporting directly to the Government, Prime Minister or ministers, i.e. the civil service strictly speaking; ii) administrations of the Parliament, the President and the Prime Minister; iii) other administrative bodies at the level of the central administration (if they are included in the scope of the public service in terms of the public/civil service law, exercise public authority conferred by public law and are responsible for safeguarding the general interests of the state or other public bodies); iv) independent constitutional bodies reporting directly to the Parliament.

Montenegro
Public Service and Human Resource Management

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	Extent to which the scope of public service is adequate, clearly defined and applied in practice.	2014	3
	2	Extent to which the policy and legal framework for professional and coherent public service is established and implemented.	2014	3
	2	Extent to which the institutional set-up enables consistent HRM practices across the public service.	2014	4

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer¹⁰⁹ for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

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

The CSL, which was adopted by the Parliament in July 2011, then amended several times¹⁰⁹, and which has been in effect since January 2013, is the most important legal basis for regulating the public service. Other legislation (Law on Wages and Law on State Organisation) also deals with the public service. These laws are complemented by secondary legislation, which was approved after the enforcement of the CSL in 2013¹¹⁰. Primary and secondary legislation cover the most important aspects of the material scope of the public service.

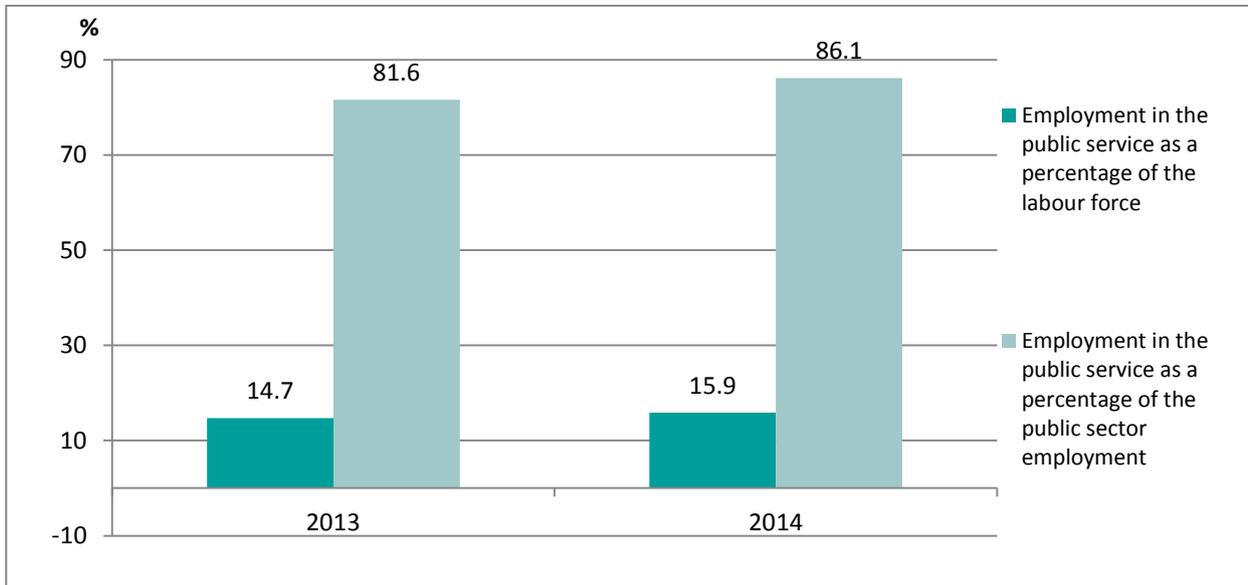
¹⁰⁹ CSL, 39/2011; 50/2011; 66/2012; 34/2014.

¹¹⁰ Before the enforcement of the CSL (1 January 2013), 4 by-laws were adopted; 12 additional by-laws were adopted during 2013.

Montenegro
Public Service and Human Resource Management

The public service reached a total of 39 708 employees (civil servants and state employees) in 2014. There is no official data available for the size of the civil service separately. The public service represents 86.1% of general public sector employment¹¹¹ (46 100 in 2014) and 15.9% of the total labour force¹¹² (263 700 in 2014). Public sector employment in relation to the labour force has increased from 16.9% in 2012 to 18.4% in 2014¹¹³.

Figure 2. Employment in the public service as a percentage of the labour force and of public sector employment, 2013-2014



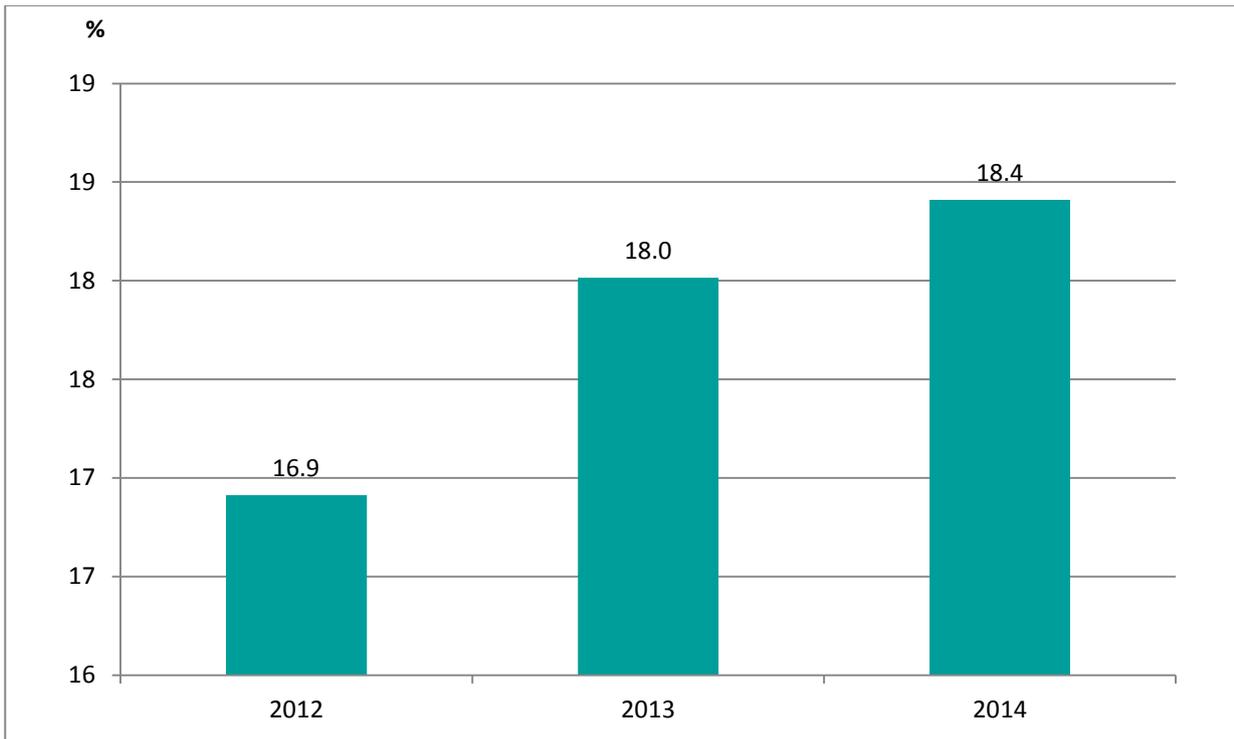
Source: Statistical Office of Montenegro, Human Resource Management Authority.

¹¹¹ Public sector employment includes employed persons in the following sectors or activities: public administration, defence, compulsory social security, education, human health and social work activities.

¹¹² The labour force includes the country's working-age population engaged actively in the labour market, whether employed or unemployed.

¹¹³ Statistical Office of Montenegro, www.monstat.org.

Figure 3. Public sector employment as a percentage of the labour force, 2012-2014



Source: Statistical Office of Montenegro, Human Resource Management Authority.

The legal definition of a civil servant¹¹⁴ is in line with the Principles¹¹⁵. This should have helped to establish the horizontal scope of the public service, but the horizontal scope refers rather to institutions that are covered by the CSL. According to the legislation, the public service includes ministries, administration authorities reporting to ministers and independent authorities, as well as the service of the President, the Parliament, the Government, the Courts and the State Prosecutor's Office. Some regulatory agencies that exert public authority are outside the scope of the public service, since they have their own separate laws¹¹⁶.

The vertical scope of the public service is defined in the CSL¹¹⁷ by dividing civil servants into four categories: senior management, expert-management, expert and operational staff. The main concern related to the vertical scope is that heads of administrative authorities are excluded from the civil service. Their posts are considered political positions in terms of their recruitment, though most are supposed to have professional and not political functions. Some basic requirements for appointment to these positions are regulated in the CSL¹¹⁸.

Considering the factors above, the value of the indicator for the extent to which the scope of public service is adequate, clearly defined and applied in practice in 2014 is 3.

The scope of the public service as regards its horizontal and material coverage is in line with the Principles, although the exact number of civil servants covered by the CSL is still unknown. The vertical scope, especially the demarcation of the upper division line between political appointees and public servants, is not fully clear.

¹¹⁴ CSL, 39/2011, Article 2.

¹¹⁵ SIGMA (2014), [The Principles of Public Administration](#), SIGMA, OECD Publishing, Paris, p. 44.

¹¹⁶ CSL, 39/2011, Article 3.

¹¹⁷ CSL, 39/2011, Article 18.

¹¹⁸ CSL, 39/2011, Article 57; Law on State Administration, Article 44.

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

The PAR Strategy refers to the public service as one of the seven topics under its first pillar¹¹⁹. The strategic objectives for 2011-2016 are the following: i) an improved and unified civil service system; ii) strengthening accountability at all levels of the public administration; iii) raising the level of ethics of civil servants; and iv) strengthening institutional capacity in the area of human resources (HR).

The CSL does not include the European administrative law principles¹²⁰ explicitly. Furthermore, the Law is long (169 articles) and detailed, which makes the degree of regulation in the primary and secondary legislation (13 pieces of secondary legislation in total) slightly unbalanced.

The CSL imposes different obligations on the HRMA¹²¹. One of the most important is assessing candidates for internally and externally advertised vacancies. This process acts as a first filter in ensuring merit-based recruitment. According to a recent report¹²², 10 staff members from the HRMA are allocated to selection procedures. However, since the testing procedure requires one HRMA staff member to be present, and each testing procedure lasts an average of 10 days, the 600-plus competitions in 2014¹²³ represented a considerable burden on the system. In total, filling a vacancy may take three months, and considering that the resources of the HRMA are overstretched, it would be difficult for the process to proceed any more rapidly with the current rules and procedures.

In October 2013, the HRMA established a network of 60 authorities represented by the heads of their human resource (HR) units or HR managers. They worked together with different authorities and held five meetings on topics related to the implementation of the CSL, including: training; recruitment; the methodology of HR plans; and strategic planning. They are planning to expand the network, with the HRMA as facilitator.

The Central Personnel Records, or the HRMIS, regulated by a by-law¹²⁴, is an essential element of the management and monitoring of public administration. It is also expected to help achieve one of the avowed goals, to reduce the number of public sector employees¹²⁵. The HRMA manages the HRMIS, and state authorities are required to update information. By mid-2014, the system was still not up to date (only 4 043 employees had been included in January 2014 and 9 239 out of 12 078 by June 2014¹²⁶). In June 2014, 19 state authorities had still not begun to enter data in the HRMIS. Certain authorities, however, had entered most of the required data, except for the new rulebooks on internal organisation and job descriptions¹²⁷.

The Ministry of Finance (MoF), in co-operation with the HRMA, sent a letter to all administrative bodies in November 2014 to remind them of their obligation to complete the data in the HRMIS and keep it up to date. The latest report to the Government (15 March 2015) shows that the HRMIS consists of data

¹¹⁹ Strategy of Public Administration Reform in Montenegro (AURUM) 2011-2016, Podgorica, March 2011; 2011-2013 Action Plan for Implementing the Public Administration Reform Strategy with the 2014-2015 Action Plan, Podgorica, December 2013.

¹²⁰ "Openness and transparency, accountability, efficiency and effectiveness", from [The Principles of Public Administration](#), SIGMA, OECD Publishing, p. 45.

¹²¹ CSL, 39/2011, Article 151.

¹²² Institut Alternativa, "Recruitment and Promotion in State Authorities. Annual Monitoring Report" (1 January 2013-1 January 2014), May 2014, p. 7.

¹²³ Ministry of Interior.

¹²⁴ Rulebook on the content and manner of keeping the Central Human Resources Records and internal labour market records, 27/2013.

¹²⁵ Montenegro Economic Reform Programme – 2015-2017, p. 65; 30 June 2014 Appendix for the second meeting of the Special Group on PAR, p. 7.

¹²⁶ 30 June 2014 Annex Table Input status of Central Personnel Registry as of 12 June 2014.

¹²⁷ 30 June 2014 Appendix for the second meeting of the Special Group on PAR, p. 8.

for 8 641 civil servants, almost 10% more than on 15 October 2014¹²⁸. Until the HRMIS and payroll registry are effectively linked, efforts to keep the HRMIS updated are not sustainable.

The HRMIS software has limitations. For example, it cannot be used to extract categories to analyse the aggregate of working positions¹²⁹. Moreover, most basic information, such as the number of senior civil servants or the results of performance appraisal, cannot be obtained at the aggregate level. In general, the HRMIS lacks crucial information¹³⁰.

The Administrative Inspectorate is responsible for the oversight of the civil service. It is in charge of monitoring the update of the data of each state authority in the HRMIS and also the implementation of the CSL, especially in the areas of: recruitment; performance appraisal; promotion; reorganisations; and other rights and obligations of civil servants¹³¹. However, the number of inspectors (seven) is not able to cope with the workload, especially in electoral years¹³². In the first half of 2014, the Inspectorate worked on 65 applications filed by third parties. Almost two-thirds of these (40) were related to selection or termination of employment. The Inspectorate has also initiated *ex officio* procedures related to the HRMIS and the procedure of performance appraisal in 11 units of the Ministry of Interior and in 21 municipalities¹³³. These *ex officio* investigations are small compared to the number of processes that would require closer scrutiny for a recently launched law. The instrument for enforcing the results of their investigation is the inspectors' power to sanction individual civil servants, e.g. by a reduction of their salary by a certain percent. So far, they have submitted three fines, in 2014, to the head of the Property Office and two deputy ministers.

The baseline value of the qualitative indicator on the policy and legal framework for 2014 is 3, based on the analysis of the factors above. Considering that the institutional set-up has a clear distribution of responsibilities between authorities for decision making and co-ordination, despite the challenges in implementation, the baseline value of the qualitative indicator for 2014 is 4.

The policy, legal framework and institutional set-up are in place, but some challenges remain in ensuring the basic elements of a professional public service. The Ministry of Interior could do more to support the HRMA to carry out the tasks entrusted to it, including the coherent and consistent implementation of the legislation. Further support is also required to make sure the HRMIS can adequately support the civil service.

Key recommendations

Short-term (1-2 years)

- 1) The HRMA, in co-ordination with the MoF, should ensure that the HRMIS is integrated with the salary registry, and enforce all administrative bodies to ensure the accuracy of data and the full functionality of these registries.
- 2) The Ministry of Interior should finalise the mid-term assessment of the implementation of the Law on Civil Servants and State Employees and improve the legislation, institutional set-up and implementation practices accordingly.

¹²⁸ Report of the Working Group Tasked with the Inclusion of Records on Salaries of Public Sector Employees and on Central Personnel Records.

¹²⁹ Institut Alternativa, "Recruitment and Promotion in State Authorities. Annual Monitoring Report (1 January 2013-1 January 2014)", May 2014, p. 6.

¹³⁰ Montenegro Economic Reform Programme – 2015-2017, p. 65.

¹³¹ CSL, 39/2011, Article 155.

¹³² Institut Alternativa, "Recruitment and Promotion in State Authorities. Annual Monitoring Report (1 January 2013-1 January 2014)", May 2014, p. 7.

¹³³ 30 June 2014 Appendix for the second meeting of the Special Group on PAR, p. 10.

Medium-term (3-5 years)

- 3) The HRMA needs to regularly monitor, evaluate and report to the Ministry of Interior and to the public on the state of affairs in the public service, in order to ensure the transparency, efficiency and effectiveness of the administration.

2.2. Key requirement: Professionalism of public service is ensured by good managerial standards and practices of human resource management practices.

Baseline values

Professionalism is examined through 8 qualitative and 16 quantitative indicators. These evaluate merit-based recruitment and termination of employment in the public service, including that of senior public servants. They also assess whether the salary system is fair and transparent, as well as the professional development and appraisal of public servants, and evaluate measures for promoting integrity and preventing corruption in the public service.

The baseline values for 2014 reflect that the recruitment regulations, and especially their implementation for mid-level civil servants, show a clear commitment to meritocracy, but there have been many appeals against dismissals, which calls into question the objectivity of the process. Political influence in the recruitment and dismissal of those in senior managerial positions is not prevented in practice. The remuneration system is neither transparent nor fair. Training strategies and plans exist, but not all civil servants have access to training. Performance appraisal still needs to be expanded and implemented in all public authorities where performance is graded and the results are taken into account for HRM policies. Many anti-corruption measures are in place, but a high perception of corruption prevails in the country. Disciplinary procedures are well regulated, but no data is available on how they are applied.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	3	Extent to which the recruitment of public servants is based on the merit principle in all its phases.	2014	4
	3	Extent to which the termination of employment of public servants is based on merit.	2014	3
	4	Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.	2014	2
	5	Extent to which the remuneration system of public servants is fair and transparent and applied in practice.	2014	2
	6	Extent to which the training system of public servants is in place and applied in practice.	2014	4
	6	Extent to which the performance appraisal system of public servants is in place and applied in practice.	2014	3
	7	Extent to which the integrity and anti-corruption system of the public service is in place and applied in practice.	2014	3

Montenegro
Public Service and Human Resource Management

	Principle no.	Indicator	Baseline year	Baseline value
	7	Extent to which the disciplinary procedures against public servants are established to promote individual accountability and avoid arbitrary decisions.	2014	3
Quantitative	3	Annual turnover of civil servants at the level of central administration.	2014	Not available ¹³⁴
	3	Turnover of civil servants at the level of central administration within six months of a change of Government.	2014	Not available
	3	Percentage of vacant positions filled by external competition in the civil service at the level of central administration.	2014	10.4%
	3	Percentage of vacant positions filled by internal competition in the civil service at the level of central administration.	2014	89.6%
	3	Percentage of women in the civil service at the level of central administration.	2014	65.8%
	3	Percentage of women in senior managerial positions in the civil service at the level of central administration.	2013	Not available
	3	Percentage of civil servants at the level of central administration by different ethnic origin in relation to the general ethnic division in the country based on the latest census.	2014	Not available
	4	Annual turnover of senior managerial civil servants at the level of central administration.	2014	Not available
	4	Turnover of senior managerial civil servants at the level of central administration within six months of a change of government.	2014	Not available
	4	Percentage of vacant senior managerial positions at the level of central administration filled by external competition.	2014	100%
	4	Percentage of vacant senior managerial positions at the level of central administration filled by internal competition.	2014	0%
	5	Ratio of average annual compensation of central government senior and junior professionals to compensation of tertiary-educated workers.	2014	Not available

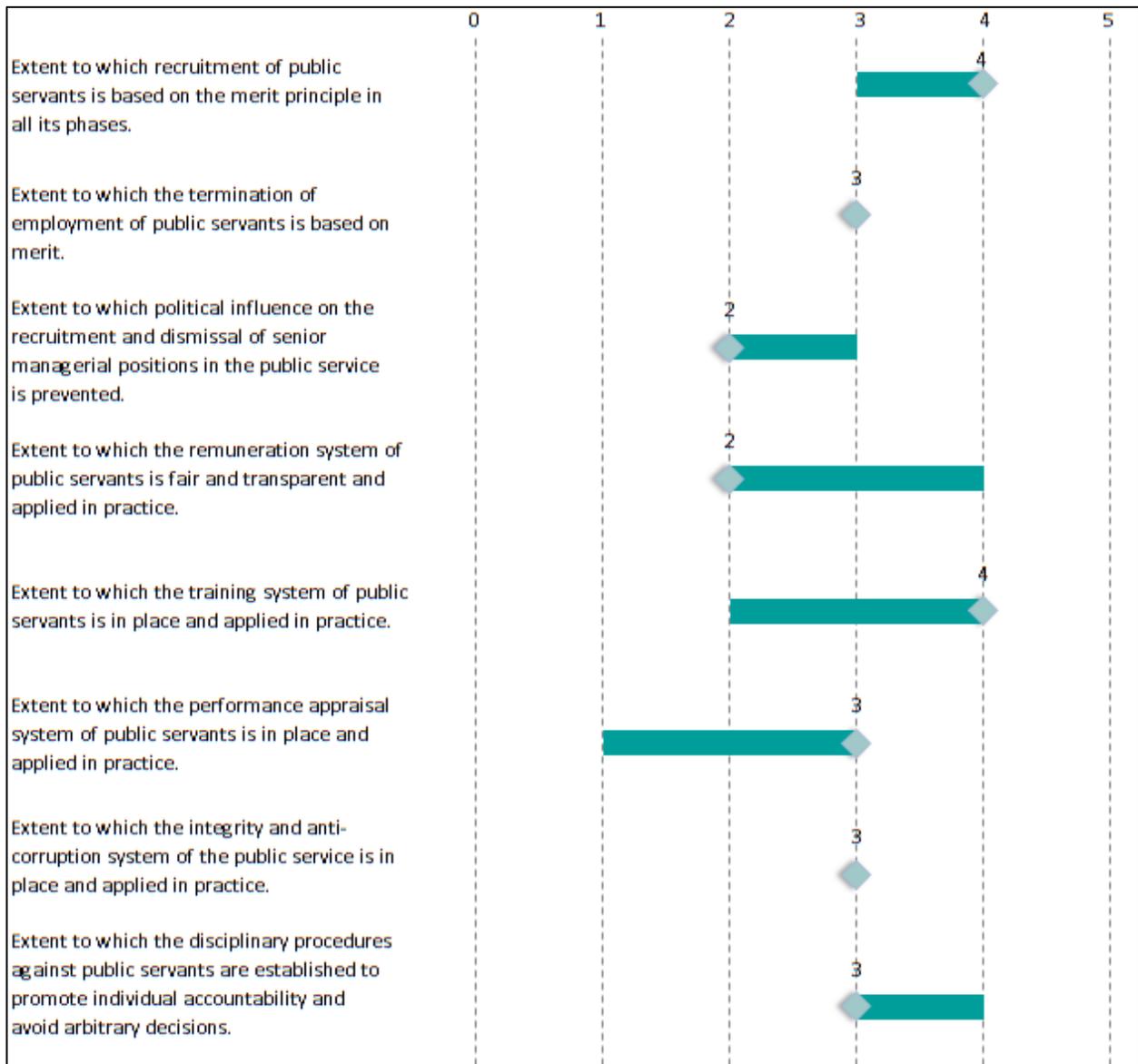
¹³⁴ "Not available" means, and hereafter, that the respective data was not provided to SIGMA for the 2015 Baseline Measurement assessment.

Montenegro
Public Service and Human Resource Management

	Principle no.	Indicator	Baseline year	Baseline value
	5	Ratio of average annual compensation of central government senior public servants to compensation of tertiary-educated workers.	2014	Not available
	7	Transparency International Corruption Perception Index – the country score.	2014	42
	7	Citizens' perception of the integrity and trustworthiness of the public service.	2014	Not available
	7	Number of public servants who have been criminally convicted of corruption crimes.	2014	Not available

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 4. Country baseline value in comparison with the regional range



Analysis of Principles

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.

The CSL stipulates that public competitions for senior management positions should be held, and that announcements for initial positions of expert and operational staff should be made public. The CSL also prioritises internal over external competition in the expert-management category (within a state authority or among state authorities)¹³⁵. The competition is governed by a selection committee, which

¹³⁵ CSL, 39/2011, Article 38.

Montenegro
Public Service and Human Resource Management

is formed by an unspecified number of members. The composition should include at a minimum representatives of the HRMA, the appointing authority and experts in the field of the vacancy¹³⁶.

The legislation, however, provides a loophole for overriding the principle of merit. The HRMA submits a shortlist of five candidates (or more if they have equal values) to the appointing authority, who may choose any of them, stating the reason for the choice¹³⁷. Considering that the average number of candidates is very low (see below), this leaves too much leeway for the appointing authority to use its discretion as to whether to choose the first ranked candidate.

The implementation of the recruitment process is inconsistent. First, the decision of the appointing authority does not always state clearly whether the first ranked candidate was selected or not¹³⁸. Second, the average number of candidates per vacancy is very low. In external competitions for initial-level expert and operational positions, the average is 1.68 and, in internal competitions, the average is less than one¹³⁹. It is not only lack of trust in the merit system that explains these low numbers. Preparation time may be insufficient for candidates to complete the test or, in the case of internal promotions, the size of the unit may be too small to present enough people to compete for a vacancy. This reduces the efficacy of internal competitions within a unit. Finally, 14.4% of recruitment decisions were appealed in 2014¹⁴⁰, which raises concerns about the process.

Discrimination for reasons of gender, ethnic community or disability in the selection process is also prohibited under the statute¹⁴¹, but no specific measures are in place to guarantee that this is respected. The percentage of women in the public service is 65.7%. There is no data on gender representation in the senior public service¹⁴².

Candidates have the right to appeal¹⁴³ to the Appeals Commission which assumed its responsibilities on 1 March 2013. In 2014, 14.4% of the recruitment decisions were appealed¹⁴⁴. In 2013, 527 appeals in total were made to the Commission; in 2014, there were twice as many, 1 076.

In 2014, 479 cases (44.5%) were decided in favour of the appellant. In 33 cases, the appeal was granted because it was not contested by the administration. In 468 cases (43.5%), the Commission rejected the appeal. Very few cases from 2014 remained unresolved in 2015¹⁴⁵. The Appeals Commission has only one full-time staff member (the President), and technical support is provided by two staff members from the HRMA.

Termination of employment is regulated under the CSL, which establishes an exhaustive list of grounds for termination¹⁴⁶. If an administrative body is abolished or reorganised, the law provides for the civil servants who lose their posts to apply for positions in the internal labour market¹⁴⁷. Two unsatisfactory results in performance appraisals may lead to dismissal¹⁴⁸. In practice, however, the number of appeals against dismissal is relatively high: 19.8% of the decisions on termination of employment were

¹³⁶ CSL, 39/2011, Article 42.

¹³⁷ CSL, 39/2011, Articles 44, 45.

¹³⁸ Study on 476 reviewed decisions on selection from Institut Alternativa, "Recruitment and Promotion in State Authorities. Annual Monitoring Report (1 January 2013-1 January 2014)", May 2014, p. 13.

¹³⁹ Ministry of Interior. This figure coincides with the average number of 1.6 calculated by Institut Alternativa from a sample of 476 vacancies in state administration in 2013. Institut Alternativa, "Recruitment and Promotion in State Authorities. Annual Monitoring Report (1 January 2013-1 January 2014)", May 2014, p. 9.

¹⁴⁰ Ministry of Interior.

¹⁴¹ CSL, 39/2011, Article 45.

¹⁴² Ministry of Interior.

¹⁴³ CSL, 39/2011, Article 135.

¹⁴⁴ Ministry of Interior.

¹⁴⁵ Interview with the President of the Appeals Commission, 27 February 2015.

¹⁴⁶ The main provisions for termination: CSL, 39/2011, Chapter IX.

¹⁴⁷ CSL, 39/2011, Articles 128, 129.

¹⁴⁸ CSL, 39/2011, Article 123.

appealed in 2014. This is indicative of a systematic problem in implementation. According to the Appeals Commission, the majority of cases decided in favour of the appellant can be attributed to procedural reasons.

Taking into account all the factors above, the values for the qualitative indicators on recruitment and termination of employment of civil servants for 2014 are, respectively, 4 and 3.

The CSL establishes merit-based recruitment as a principle, but some legal deficiencies in the Law allow for the use of non-objective criteria in the selection process. The number of appeals against recruitment and termination of employment decisions confirms that implementation of the legislation has presented problems in practice.

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

Open competition is stipulated as a principle in the legislation for filling vacancies in senior managerial positions¹⁴⁹. Internal promotion is prioritised over external competition. In external competitions, the current employer of the candidate must provide a letter of reference to the HRMA.

The senior public service includes secretaries and managing directors of ministries, deputy heads of state authorities and deputy heads of services¹⁵⁰. No official number of senior public servants is recorded, although it is estimated that the top positions number approximately 170¹⁵¹. The senior management staff is appointed for periods of five years, with the possibility of reappointment¹⁵², which partly overlaps with the four-year period of the Government's mandate.

The legislation governing the selection process allows for certain inconsistencies that may undermine the principle of merit. First, the selection process is based solely on a structured interview with the selection committee. This is made up of one representative of the HRMA, one representative of the appointing authority and at least one expert¹⁵³. Second, the head of the appointing authority has an even greater discretionary power over the appointment of senior public servants than in the case of expert-level public servants. The only requirement for candidates is to demonstrate three years of work experience in a management position or other posts requiring a degree of autonomy in their work. For these positions, the selection is based solely on an interview with the minister of the appointing authority¹⁵⁴, which is equivalent to a political appointment. Third, as is the case for other public servants, the appointing authority is not required to appoint the top-ranked candidate in the shortlist.

The implementation of recruitment arrangements for senior public servants presents certain issues that subvert the principle of merit-based appointment. More than half of the senior management staff (at least 90) have been members of the bodies of political parties (management or advisory bodies) from 2011 onwards, according to a 2014 non-governmental organisation (NGO) report. Most of them, (more than 70) were members of the advisory body of the leading coalition party (DPS)¹⁵⁵.

Different rules also apply to terminating the employment of senior public servants and heads of authorities. Detailed regulation establishes the reasons for which a senior public servant may be

¹⁴⁹ CSL, 39/2011, Article 38.

¹⁵⁰ CSL, 39/2011, Article 21.

¹⁵¹ Institut Alternativa, "Professionalisation of Senior Civil Service in Montenegro: Between State and Politics", December 2014, p. 8.

¹⁵² CSL, 39/2011, Article 55.

¹⁵³ CSL, 39/2011, Article 53.

¹⁵⁴ CSL, 39/2011, Article 57.

¹⁵⁵ Institut Alternativa, "Professionalisation of Senior Civil Service in Montenegro: Between State and Politics", December 2014, p. 5.

dismissed¹⁵⁶. The regulation governing the dismissal of heads of authorities is less objective because the appointing minister can propose that the head of an authority be dismissed at any time¹⁵⁷.

Considering the factors presented above, the baseline value of the indicator on the senior public service for 2014 is 2.

Direct or indirect political influence on senior managerial positions in the public service is not precluded at present.

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

The Law on Wages of Civil Servants and State Employees (Salary Law) provides minimal regulation for the basic and variable portion of salaries of public servants¹⁵⁸. The Salary Law grants the Ministry of Finance the authority under the Budget Law to establish additional allowances. This is less transparent in the legislation¹⁵⁹, and the clarification of secondary legislation is not sufficient¹⁶⁰, because it grants authority to allocate the variable portion to the head of the state administration, the head of administration and the minister. This amount can be as much as 80% of the average salary¹⁶¹, and the procedure for granting it is not transparent.

There is no clear and transparent process for the payment of bonuses. Some, but not all, authorities pay them.

The current system is also not fair in that it does not guarantee similar salaries for similar positions in the public service.

The draft Law on Public Sector Salaries, whose objectives are to establish better control over salaries, correct inequalities and increase transparency and fiscal accountability, is currently in the final inter-ministerial consultation process.

According to the data provided by Montenegro's Statistical Office, the average monthly gross salary in the state administration was approximately EUR 755 for public servants in 2014, which is a little higher than the national average¹⁶².

Senior public servants are able to earn more. The average gross salary of the senior management staff was EUR 960 in 2014. In addition, senior managers are also remunerated for their participation in permanent or interim working bodies (no more than one)¹⁶³. Their salary is thus usually higher than the reported average. For instance, for the period 2013-2014, 51 of the 64 general directors in these positions who submitted asset declarations to the Commission for Prevention of the Conflict of Interest received additional remuneration for these functions from the executive boards of state companies. The average monthly remuneration for this task was EUR 285.98 in 2014¹⁶⁴.

Considering the factors above, the baseline value of the qualitative indicator on remuneration for 2014 is 2.

¹⁵⁶ CSL, 39/2011, Article 56.

¹⁵⁷ Law on State Administration, 38/2003 (last amendment 42/2011), Article 44.

¹⁵⁸ Law on Wages of Civil Servants and State Employees 86/2009, Article 14.

¹⁵⁹ Law on Wages of Civil Servants and State Employees 86/2009, Articles 16, 19, 21.

¹⁶⁰ Decision 25/2011 on criteria and method of determination variable portion of salaries of civil servants, Article 1.

¹⁶¹ Decision 25/2011 on criteria and method of determination variable portion of salaries of civil servants, Article 4.

¹⁶² Statistical Yearbook 2014, p.59. National average for 2013.

¹⁶³ Law on Prevention of Conflict of Interest, 1/2009, amended by 41/2011, art. 6; Decision 26/2012 on Criteria for Determining the Amount of Fees for Work in Commissions, Article 6.

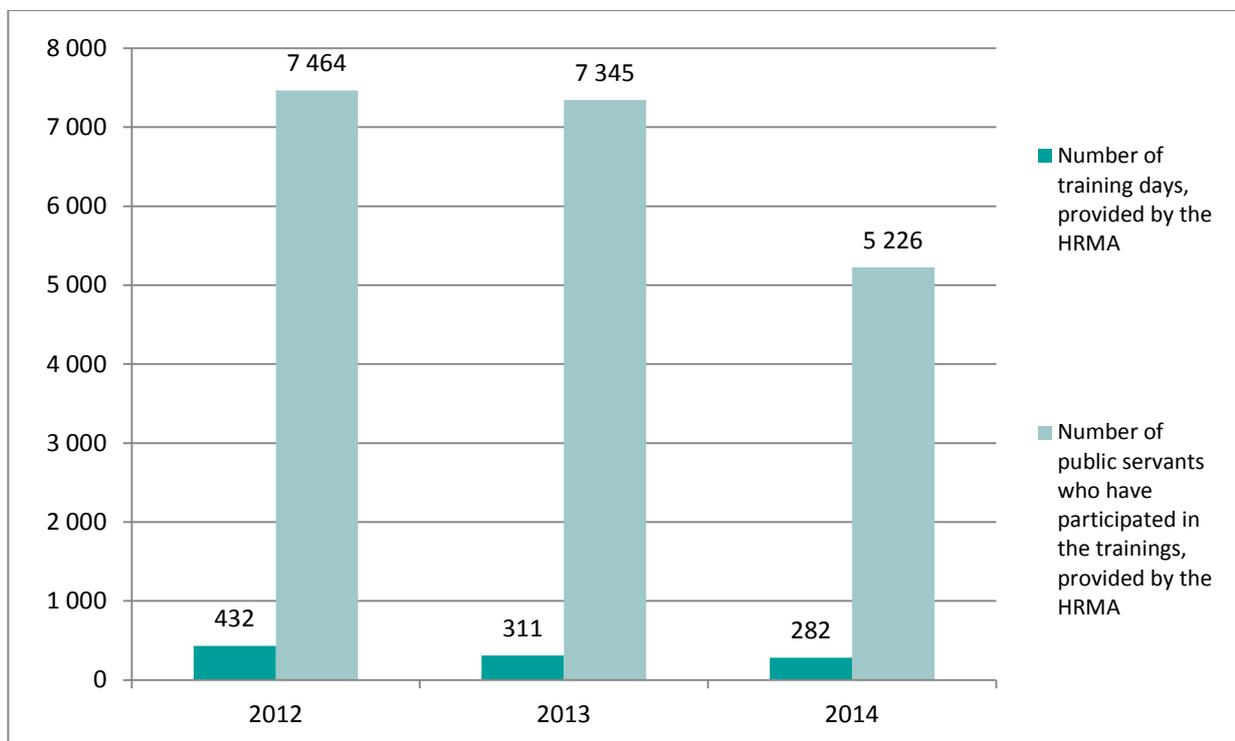
¹⁶⁴ Institut Alternativa, "Professionalisation of Senior Civil Service in Montenegro: Between State and Politics, December 2014", p. 22.

The salary system is not transparent because the variable portion can be unreasonably high. It also lacks fairness, given that two public servants in comparable positions may have different salaries in different administrative bodies. A new Law on Public Sector Salaries is awaiting Government and legislative approval to remedy this problem.

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.

Legislation establishes training and professional development as both a right and a duty of public servants¹⁶⁵. However, both the number of training days available by the HRMA and number of public servants participating in training have been declining: from 432 training days and 7 464 participants in 2012 down to 282 training days and 5 226 participants in 2014.

Figure 5. Training of public servants, 2012-2014



Source: Human Resource Management Authority.

In addition to its budget of EUR 180 000, the HRMA receives the support of international organisations such as the Organization for Security and Co-operation in Europe (OCSE) and EU Technical Assistance and Information Exchange instrument (TAIEX). The programme of professional training is regulated by a by-law¹⁶⁶. The HRMA is responsible for developing the annual development and training plan. It also carries out a training needs analysis, using a random sample that covers up to a quarter of public servants. Supervisors can include training needs of employees on their performance appraisal forms; this has been tested in 16 state authorities. The training needs are reflected in the HR development plans of these authorities. However, in general, analysis of the requests from state authorities is the most commonly employed method for identifying their training needs. Finally, participants who have undertaken training complete satisfaction surveys to give feedback. The HRMA does not evaluate the impact of training programmes.

¹⁶⁵ CSL, 39/2011, Article 115.

¹⁶⁶ Adoption and Drafting Methodology for the Programme of Professional Training and Development of Civil Servants and State Employees, 58/2013.

Montenegro
Public Service and Human Resource Management

Given the above analysis, the baseline value of this indicator for 2014 is 4.

Performance appraisal does not yet work as intended and it is not widespread in the public service. Performance appraisal, together with employee promotion, is regulated in Chapter VII of the CSL. Some differences apply to senior public servants and expert-level staff in the grading structure¹⁶⁷. The launch of the appraisal system was co-ordinated by the HRMA between June 2013 and June 2014. According to the report adopted by the Government in September 2014¹⁶⁸, a third of ministries and a further 25 state authorities had not carried out performance appraisals in 2013. In a small sample of ministries that conduct appraisals, most senior public servants received a grade of “excellent”, even though the regulations provide only for a rating of either “satisfactory” or “non-satisfactory” for senior management staff¹⁶⁹.

This is also the case for lower categories of public servants, most of whom, according to a sample of state authorities, are graded as “excellent”¹⁷⁰. Performance appraisal is not without problems, since the Administrative Inspectorate investigated three cases of performance appraisal at the request of third parties¹⁷¹.

The use of performance appraisal in central co-ordination and management decisions in the public service is unclear, since no data is available. The CSL offers no positive incentives for senior public servants if they are appraised as satisfactory; yet they can be dismissed after one “unsatisfactory” grade¹⁷². Public servants face dismissal after two consecutive “unsatisfactory” grades. They can receive an additional salary step after two consecutive “excellent” grades¹⁷³. The majority of public servants classified as excellent at the beginning of 2014 received an additional pay step. Public servants have the right to appeal unfair performance appraisal decisions¹⁷⁴.

Performance appraisal, while regulated, is only partially implemented, so the baseline value is 3.

The HRMA is responsible for the design and delivery of training, and it has an annual training plan based on the needs of different state authorities. The number of trainees and courses has declined in recent years, and the right of public servants to undertake training is not respected. Performance appraisal is practiced only in a certain number of institutions.

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

The CSL regulates the area of ethics, providing for adopting and implementing a code of ethics and the establishment of an Ethics Committee. The Ethics Committee is required to oversee the implementation of the Code of Ethics and to develop integrity plans¹⁷⁵.

Integrity plans are slowly being implemented in central state authorities. In February 2015, 61 out of 102 institutions had adopted integrity plans (of which 23 are courts), and 15 institutions were engaged

¹⁶⁷ CSL, 39/2011. Article 111 provides for either satisfactory or unsatisfactory grades for senior civil servants and Article 109 mandates four grades (excellent, good, satisfactory and unsatisfactory) for all other civil servants.

¹⁶⁸ Report on the Implementation of the Action Plan for Implementing the Plan for Internal Reorganisation of the Public Sector, quoted in Institut Alternativa, “Professionalisation of Senior Civil Service in Montenegro: Between State and Politics, December 2014”, p. 16.

¹⁶⁹ Ibid.

¹⁷⁰ Institut Alternativa, “Recruitment and Promotion in State Authorities. Annual Monitoring Report (1 January 2013-1 January 2014)”, May 2014, p. 14. The HRMA did not provide further data on the number of authorities that carried out performance appraisal in 2014 nor what percentage of civil servants received rankings of “excellent” or “good”, since certain larger institutions had not updated their information on performance appraisal.

¹⁷¹ 30 June 2014 Appendix for the second meeting of the Special Group on PAR, p.10.

¹⁷² CSL, 39/2011, Article 111.

¹⁷³ CSL, 39/2011, Articles 110 and 112 respectively.

¹⁷⁴ CSL, 39/2011, Article 135.

¹⁷⁵ CSL, 39/2011, Article 6; Code of Ethics for Civil Servants and State employees, 20/2012; Decision Establishing the Ethics Committee 11/2013.

in developing such plans. Integrity managers have been appointed in 77 institutions. The Directorate for Anti-Corruption Initiative (DACI) has not performed any analysis of the contents of the integrity plans. Likewise, there is no information available regarding the level of implementation. Integrity plans are compulsory, but there are no sanctions if they are not implemented.

At present, anti-corruption affairs are the responsibility of the DACI, with 12 job positions in the rulebook. This will increase to 50 positions once the DACI becomes the new Anti-Corruption Agency. The new Law on Prevention of Corruption was adopted in December 2014, providing for the establishment of this new Agency as of 1 January 2016. It will have the authority, for example, to monitor conflicts of interest and asset declarations, as well as provide for whistle-blower protection. The Law, when implemented, will complement the existing measures for promoting integrity, preventing corruption and ensuring discipline in the public service.

The current system of checks for conflicts of interest and asset declarations is not fully effective, and sanctions are not a deterrent. In 2014, the Commission for the Prevention of Conflict of Interest checked 1 957 asset declarations out of the 3 793 submitted by public officials, comparing the declared data with data from the tax, real estate and public procurement administrations and from the Securities and Exchange Commission. The fundamental problem is that the verification of the asset declaration is not based on a risk-assessment methodology. With regard to conflicts of interest, the main concern is that the Law on the Prevention of Conflicts of Interest does not apply if other laws (e.g. the Law on Public Procurement) set their own rules¹⁷⁶.

Corruption is a criminal offence in the Criminal Code of Montenegro, but no information is available on how many public servants have been convicted of it.

Despite these efforts, the level of corruption in Montenegro remains high. In 2014, the Corruption Perception Index of Transparency International was 42/100 and Montenegro's ranking was 76/175¹⁷⁷.

The disciplinary sanctions and Commission are regulated by several pieces of legislation¹⁷⁸ that comply with the criteria established in the Principles¹⁷⁹. However, information on their implementation is lacking.

Although the legal framework for promoting integrity, preventing corruption and ensuring discipline are in place, further challenges remain. The lack of information concerning implementation results in a value of 3 for both of the respective qualitative indicators for 2014.

Several components of the ethical legal framework are in place. The next step will be the conversion of the DACI into an autonomous Anti-Corruption Agency, with authority to further develop the ethical infrastructure and monitor the implementation of integrity measures in the public service, among its other responsibilities.

Key recommendations

Short-term (1-2 years)

- 1) The Parliament should adopt the draft Law on Public Sector Salaries, with the aim of establishing better control over salaries, correcting inequalities, and increasing transparency and fiscal accountability.

¹⁷⁶ European Commission (8 October 2014), *Montenegro 2014 Progress Report*, p. 8, pp. 40-42.

¹⁷⁷ <http://www.transparency.org/cpi2014/> 2014.

¹⁷⁸ CSL, 39/2011, Chapter V, Rulebook on the criteria and method of composing the list of members of the Disciplinary Commission, 62/2012 and Guidelines for the preparation of the integrity plan adopted by the Ministry of Justice of 31 January 2013.

¹⁷⁹ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, p. 48.

Montenegro
Public Service and Human Resource Management

- 2) The Ministry of Interior and the HRMA should continue to support and supervise the HR capacities in the state authorities and strengthen them through guidelines, regular networking and training programmes.
- 3) The Appeals Commission should closely monitor the appointments and dismissals of public servants, including senior public servants, in order to strengthen merit-based recruitment and termination of employment in the public service, and report any irregularities in the system.
- 4) The HRMA should gather and report full information of public service trainings provided by all state authorities in order to better plan, monitor and evaluate the impact of professional training and development of the public servants.
- 5) The DACI should monitor the use of integrity plans by the state authorities through field missions and provide a comprehensive report, before its conversion to the new Anti-Corruption Agency.

Medium-term (3-5 years)

- 6) The HRMA should strengthen the level of information management and analysis of public service on the basis of the fully functioning HRMIS.
- 7) The HRMA should develop a competency framework for senior public servants, to serve as a foundation for merit-based recruitment, training, appraisal and mobility of the professional senior public service.



ACCOUNTABILITY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

The organisation and responsibilities of ministries and their subordinate bodies are clearly defined in the Decree on the Organisation and Operation of the State Administration¹⁸⁰. The number of central government organisations has been reduced in recent years. However, to ensure a fully transparent and efficient administration, this reform will need to be fully enacted. The existing legislation does not provide harmonised rules for agencies, which were created by different laws and with different accountability mechanisms, and this hampers effective oversight by the ministries.

The administration usually implements the Ombudsman's recommendations. The number of recommendations issued has increased recently but remains at a low level.

The Law on Access to Public Information is in line with the Principles of Public Administration¹⁸¹. The Agency on Data Protection and Access to Public Information, however, does not have enough resources to handle its current responsibilities assigned by the Law on Access to Public Information. This issue has become even more acute since the number of complaints has increased.

The backlog of administrative cases is moderate, and the average duration of court proceedings is short. The courts, however, rarely use their power to investigate cases fully before making a final judgement. Instead, it is common to annul illegal administrative acts or decisions and require the administration to reconsider the case. This practice has led to a number of cases going back and forth between the administration and the courts.

Public liability is regulated by different laws, including the Civil Service Law and the Law on Obligations. In principle, this is in line with general European practice but, in reality, provisions on public liability are neither clear nor easy to find in the legislation.

1.1. Main developments

The Law on General Administrative Procedures (LGAP) was adopted by the Parliament of Montenegro on 16 December 2014. The number of unresolved cases of the Administrative Court of Montenegro increased in 2014.

¹⁸⁰ Official Gazette, No. 61/12, 7 December 2012.

¹⁸¹ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 60.

2. ANALYSIS

2.1. Key requirement: Proper mechanisms are in place to ensure accountability of state administration bodies, including liability and transparency.

This analysis covers the five Principles of accountability, which fall under one key requirement¹⁸². For this key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles refer to various dimensions of public accountability, including the overall organisation of the government; arrangements regarding internal administrative appeal and administrative justice; and the functioning of independent oversight bodies. The Principles also cover the legislative framework and access to public information.

Baseline values

The system of accountability for state administration is examined through both quantitative and qualitative indicators. They cover all areas of accountability, including the internal organisation of state administration; oversight of administrative appeals and access to public information; status and activities of independent oversight institutions and administrative courts; parliamentary scrutiny; and public liability. The indicators developed for each Principle relating to accountability aim to assess not only the legislative framework, but also its implementation in practice.

Although the responsibilities of ministries and the overall organisation of the public administration are clearly regulated, a number of central government organisations have been created by individual laws with varying lines of accountability, making it difficult for ministries to efficiently fulfil their guidance and oversight tasks. The system of access to public information was only established in 2013. It is proactive, but requires additional capacity to meet the rapidly increasing demands placed upon it. The Administrative Court does not use its full remit for making decisions, which results in cases returning to the Court. The institution of the Ombudsman has been established, and a high percentage of the recommendations it has made have been put into effect, but the number of recommendations it has issued is quite low. The system of public liability is in place and funds have been budgeted for, but because of the lack of data, it is not possible to comment on its functioning in practice.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent.	2014	2
	2	Extent to which the right to access public information is enacted in legislation and applied in practice.	2014	3
	3	Extent to which the mechanisms are in place to provide effective checks and balances, and controls over public organisations.	2014	4
	5	Extent to which public authorities assume liabilities and guarantee redress.	2014	2

¹⁸² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 58-66.

Montenegro
Accountability

Quantitative	1	Number of bodies reporting to the Council of Ministers, to the Prime Minister or to the Parliament.	2014	5 ¹⁸³
	1	Average number of hierarchical layers in a typical ministry.	2014	4 ¹⁸⁴
	2	Share of public information requests refused in a given year by the public authorities.	2014	24% ¹⁸⁵
	2	Share of public information requests refused in a given year by the supervisory authority.	2014	9.6% ¹⁸⁶
	2	Share of public information requests upheld by the courts.	2014	61% ¹⁸⁷
	2	Share of public authorities maintaining websites in line with regulatory requirements.	2014	Not available ¹⁸⁸
	2	Share of public authorities maintaining a document registry and database.	2014	Not available ¹⁸⁹
	3	Percentage of citizens who have trust in the ombudsman institution(s).	2014	Not available ¹⁹⁰
	3	Share of oversight institutions' recommendations to state administration bodies implemented within two years ¹⁹¹ .	2014	73% ¹⁹²
	4	Number of administrative court cases ruled per year per judge.	2014	490 ¹⁹³
	4	Number of complaints submitted to the administrative court in a given year.	2014	3 668 ¹⁹⁴

¹⁸³ Two bodies report to the Government and three bodies report to the Parliament.

¹⁸⁴ Minister, secretary of a ministry, directorates and divisions, according to organigrams of the Ministry of the Interior, Ministry of Transport and Ministry of Economy.

¹⁸⁵ Data provided by the Agency for Personal Data Protection and Access to Information sets the number at 1 007 out of 4 058.

¹⁸⁶ Data provided by the Agency for Personal Data Protection and Access to Information sets the number at 165 out of 1 753.

¹⁸⁷ Out of 123 decisions, 79 have been annulled, according to data provided by the Agency for Personal Data Protection and Access to Information.

¹⁸⁸ No monitoring was conducted by the administration.

¹⁸⁹ Data was not provided by the administration.

¹⁹⁰ No reliable survey has been found.

¹⁹¹ Relates only to the Ombudsman.

¹⁹² In 2014, the Ombudsman issued 60 recommendations, 16 of which are still pending; 32 were implemented and 12 were not, according to the Report of the Ombudsman for 2014.

¹⁹³ Data provided by the Judicial Council.

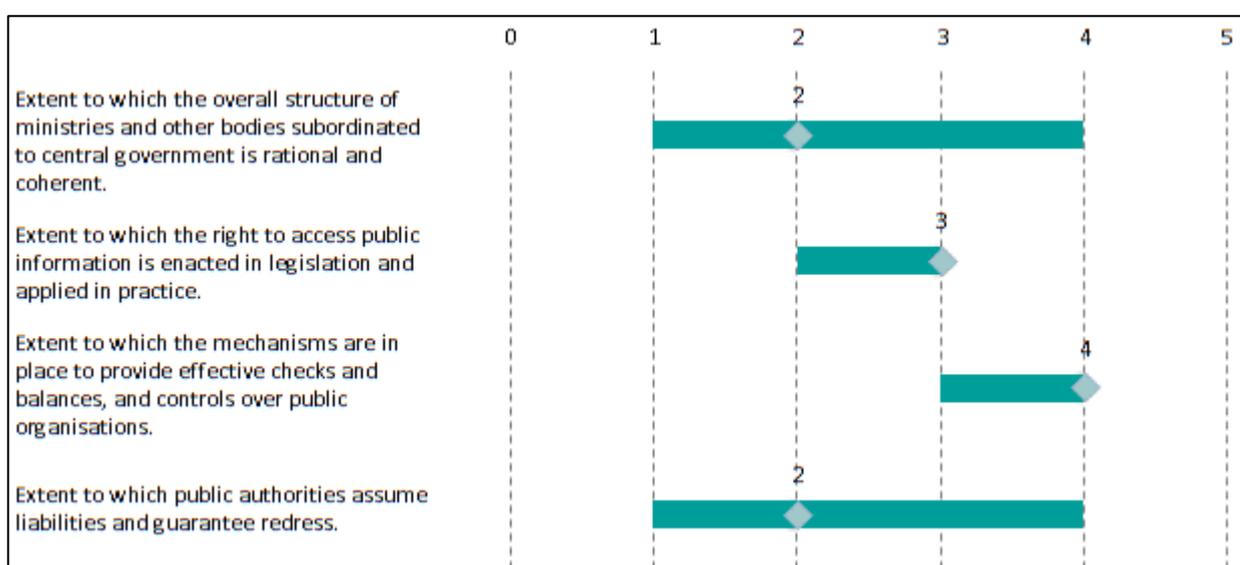
¹⁹⁴ Data provided by the Judicial Council.

Montenegro
Accountability

	4	Percentage of cases changed or returned for verification by the higher court ¹⁹⁵ .	2014	11,9% ¹⁹⁶
	4	Percentage of citizens who have trust in the court system.	2014	Not available ¹⁹⁷
	4	Backlog of administrative cases.	2014	1 815 ¹⁹⁸
	5	Share of complaints resulting in payment of compensation.	2014	Not available ¹⁹⁹

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

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.

The number of bodies reporting directly to the Government, the Prime Minister and the Parliament is low. Ministries are thus mainly in charge of their policy areas and supervision of the institutions, which ensures that adequate guidance and monitoring is feasible.

¹⁹⁵ This only includes those cases that were returned. Change is not allowed under the current legal provisions. Administrative Court's Work Report for 2014, <http://sudovi.me/uscg/izviestaji-o-radu/>.

¹⁹⁶ Out of 361 cases, 43 were returned. Administrative Court's Work Report for 2014 <http://sudovi.me/uscg/izviestaji-o-radu/>.

¹⁹⁷ No reliable survey has been found.

¹⁹⁸ Data provided by the Judicial Council.

¹⁹⁹ No data was provided by the administration.

Montenegro Accountability

The organisation and responsibilities of ministries and subordinate bodies (bodies within ministries) are clearly defined in the Decree on Organisation and Operation of the Public Administration²⁰⁰. Their structure is rational, transparent and provides for clear reporting lines and accountability, meeting the key requirements set in the Principles of Public Administration²⁰¹. Ministries are in charge of policy making and also guidance and monitoring of administrative bodies within their sphere of responsibility; this includes legality and effectiveness. Rules for co-ordination among administrative bodies are also set by this Decree.

Agencies are created by separate laws on an individual basis, without clear central guidance. Financial and substantive reporting obligations differ considerably, which hampers efficient monitoring. An inventory and analysis of agencies have been drawn up, but no concrete steps have been undertaken to improve the situation²⁰².

The Administrative Inspection²⁰³ has a broad mandate and adds to the accountability structure.

Since the status of autonomous bodies is not coherently regulated and performance management over subordinate bodies is not systematically applied, the value of the indicator on the organisation of state administration is 2.

The Decree on Government Organisation clearly defines the organisation of ministries and subordinated bodies, but ministries are not able to conduct efficient oversight because these were established under separate laws and the accountability rules differ.

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

The law on free access to public information²⁰⁴ is in place, but the administration is not yet very responsive or pro-active in practice. According to the 2012 Venice Commission (Council of Europe) assessment of the draft Law on Free Access to information, the law complies in many points with the Convention on access to official documents and international standards²⁰⁵. It defines information broadly and provides clear guidance for exceptions. Furthermore, private individuals holding public information are included in the remit of the law. No reason has to be given when requesting information and the administration is required to present the information in the format requested by the citizen. Administrative fees are regulated by law and relatively low; the cost of copying one page is EUR 0.10. Archives may have special, higher, prices depending on the work involved. Filing a complaint costs EUR 5, which is unjustified particularly in cases of administrative silence.

The Agency for Personal Data Protection and Access to Information started its work in February 2013. It is independent and has the legal powers to monitor implementation, make prescriptions and issue guidelines. The capacity of the institution is limited, however, given that only three staff cover the area of access to information and the number of complaints has increased sharply. In 2014, a conflict of competences between the Agency and the Administrative Inspection developed over the obligation to check whether or not information that had been denied was really available in a given institution. This meant that both of the institutions considered it to be the responsibility of the other institution to inspect regarding available data. As a direct result of this conflict of competences between the Agency and the Administrative Inspection, no inspection in the area of access to public information was carried out in 2014. In March 2015, the responsibilities were clarified, determining that the Agency is required

²⁰⁰ Official Gazette, No 61/12, 7 December 2012.

²⁰¹ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, pp. 58-66.

²⁰² SIGMA Report "Analysis of present situation of public entities in Montenegro", 2013.

²⁰³ Report on the Work of the Ministry of Internal Affairs, 2013, p.3.

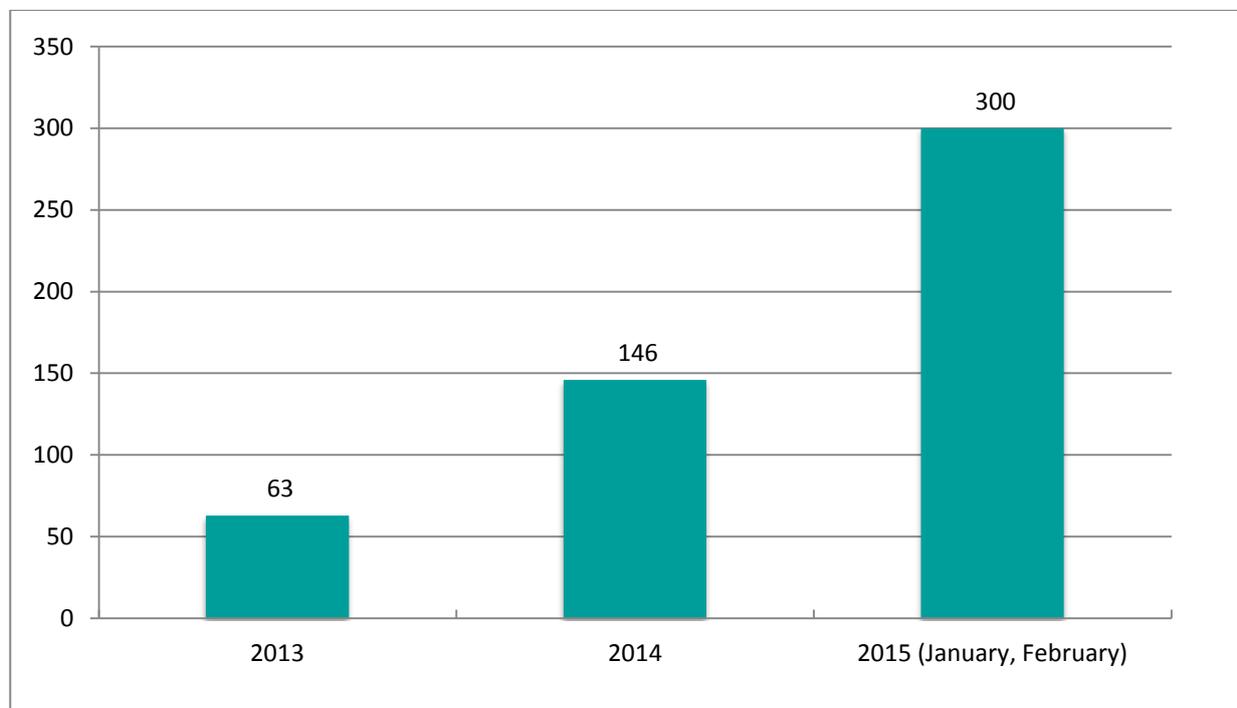
²⁰⁴ Law on Free Access to Public Information, adopted July 2012.

²⁰⁵ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)017-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)017-e)

to carry out the inspections by itself. It remains to be seen how this can be achieved, given the Agency's very limited staffing.

The administration received 1 683 information requests in 2013 and 4 058 in 2014, which illustrates growing awareness of the right to public information. About 24% were rejected in both years.

Figure 2. Complaints received by the Agency for Personal Data Protection and Access to Public Information



Source: Calculation on the basis of the data received from the Agency for Personal Data Protection and Access to Public Information.

Around 50% of all complaints relate to administrative silence²⁰⁶, followed by alleged confidentiality of documents.

The law on electronic governance was adopted in July 2014; the guidelines for the websites of administrative bodies were last updated in in October 2014²⁰⁷. A thorough inspection on the status of government websites has not yet taken place. The Agency only checked seven websites of institutions in 2014 and found a number of irregularities. There is no monitoring mechanism in place to assess if databases and registries are up to date.

The legislation and institution in charge of access to public information are in place. However, insufficient pro-active provision of public information results in a value of 3 for the indicator on public information.

The Law on Access to Public Information is in line with the Principles of Public Administration. A supervisory authority is in place, although it does not have the capacity to monitor all public institutions with the current rules and procedures. Administrative silence on individual requests for information remains high. Public institutions have started to disclose more systematic information on their websites. The existence and required updating of databases and registries is not monitored.

²⁰⁶ According to information obtained from the Agency during the field visit, this accounted for 360 complaints out of 752 received in 2014.

²⁰⁷ Rulebook on web portals and subportals of the Government of Montenegro, Official Gazette www.mid.gov.me/biblioteka/pravilnici?alphabet=lat No. 051-01-2636 / 1-14, Podgorica, 14 October 2014.

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

The scope of this Principle is broad. The analysis of some other important oversight institutions is performed under other areas, e.g. the Supreme Audit Institution under public financial management. Hence, the analysis below will focus mainly on the institution of the Protector of Human Rights and Freedoms of Montenegro.

The Institution of the Ombudsman is established by the Constitution. Its independence is weakened by the fact that the Ombudsman is appointed by a simple majority in Parliament and does not have full independence over budget management, given that the office's budget execution involves decisions by the Ministry of Finance even after the budget has been allocated by the Parliament²⁰⁸. According to the Law on the Protector of Human Rights and Freedoms of Montenegro²⁰⁹, the institution has a wide remit and reports annually to the Parliament. Reports by the Ombudsman are discussed by different parliamentary committees.

In 2013, a total of 17 recommendations were issued and all but 1 implemented. In 2014, 60 recommendations were issued and 32 implemented. Grounds must be given if recommendations are not implemented. The Ombudsperson does not pro-actively follow up on the recommendations issued, but expects the administration to report to its office.

The low number of recommendations issued (17 in 2013, and 60 in 2014), as well as the negative opinions expressed by several non-governmental organisations (NGOs), indicates that the activity of the Ombudsman towards the state administration is limited²¹⁰.

As shown in Table1, the number of complaints regarding maladministration has been similar over the years. Complaints predominantly concern the administration's failure to respond, the length of procedures and the failure to keep to legally set time limits.

Table 1. Complaints received by the Ombudsman 2012, 2013 and 2014

	2012	2013	2014 ²¹¹
Total completed	636	594	649
Completed on state bodies	286	277	239
On police	24	24	21
On public services	59	93	128
On local authorities	42	35	71

Source: Reports from the Ombudsman.

Analysis of the position and the activity of the Ombudsman results in a value of 4 for the indicator on checks and balances.

The control of the Parliament over the executive is established. The Parliament uses its rights to question the Government, ask for reports, hold hearings and issue conclusions.

²⁰⁸ According to the Report of the Ombudsman 2014, the dynamics of the spending of the Ombudsman institution is determined by the Ministry of Finance.

²⁰⁹ www.ombudsman.co.me/propisi/eng/Law_on_Protector.pdf

²¹⁰ This was also raised in the SIGMA Assessment of Montenegro from April 2013.

²¹¹ Data for 2014 is needed.

The control of the Parliament over the executive is established. The Institution of the Ombudsman is established by the Constitution of Montenegro as an independent and autonomous body, but its independence is limited in the areas of appointment and financial management. The implementation rate of its recommendations is high.

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

Internal administrative appeal is regulated under the current LGAP. Since a number of special laws are in force, it is not always clear what the applicable procedure is, which detracts from administrative transparency. An ongoing assistance project²¹² is working on how to adequately implement the new administrative procedures law. This project includes helping to review the approximately 150 special administrative procedures in order either to abolish or adapt them to the general administrative procedures.

The Administrative Court of Montenegro was established in 2005. It consists of nine judges and the President. Judges do not specialise in specific fields of administrative law. Training for administrative judges is rare, and no specific training was offered in 2014. Judges have experienced legal assistants (jurists) supporting them. Judgements are published on the Internet. A case management system has been set up.

Legislation on administrative fees²¹³ and court fees²¹⁴ is in place. Court fees depend on the value of the judicial disputes. Legal aid is provided for under the Constitution; a law on legal aid²¹⁵ has been in force since January 2012 and every court can disburse funds for legal aid. Allocation of legal aid depends solely on the financial situation of the plaintiff. The European Union (EU) Progress Report 2014 states²¹⁶ that legal aid is not dispensed fully equitably.

The administrative judges rarely use their right and obligation to fully apply the principle of inquiry and make a full judgement. Instead, it is common for the courts to annul illegal administrative acts or decisions and require the administration to reconsider the case. This practice has resulted in a number of cases' being shuttled back and forth between administration and court. One reason for the high number of cases is that the same cases keep returning. The rulebook²¹⁷ suggests that administrative judges should be adjudicating 300 cases per year. In practice, they adjudicate nearly 500 cases per year.

Montenegro does not have a higher administrative court, but the Senate of the Supreme Court deals with appeals against decisions of the Administrative Court. This brings the administrative court system in line with good European practice.

In 2014, 361 cases were submitted to the Supreme Court, of which 43 were returned²¹⁸, which illustrates the high quality of judgements of the court of first instance.

²¹² EU technical assistance project: Strengthening the Management of EU Funds and General Administrative Procedures.

²¹³ Law on Administrative Fees, 2011.

²¹⁴ Court fees act, 2010.

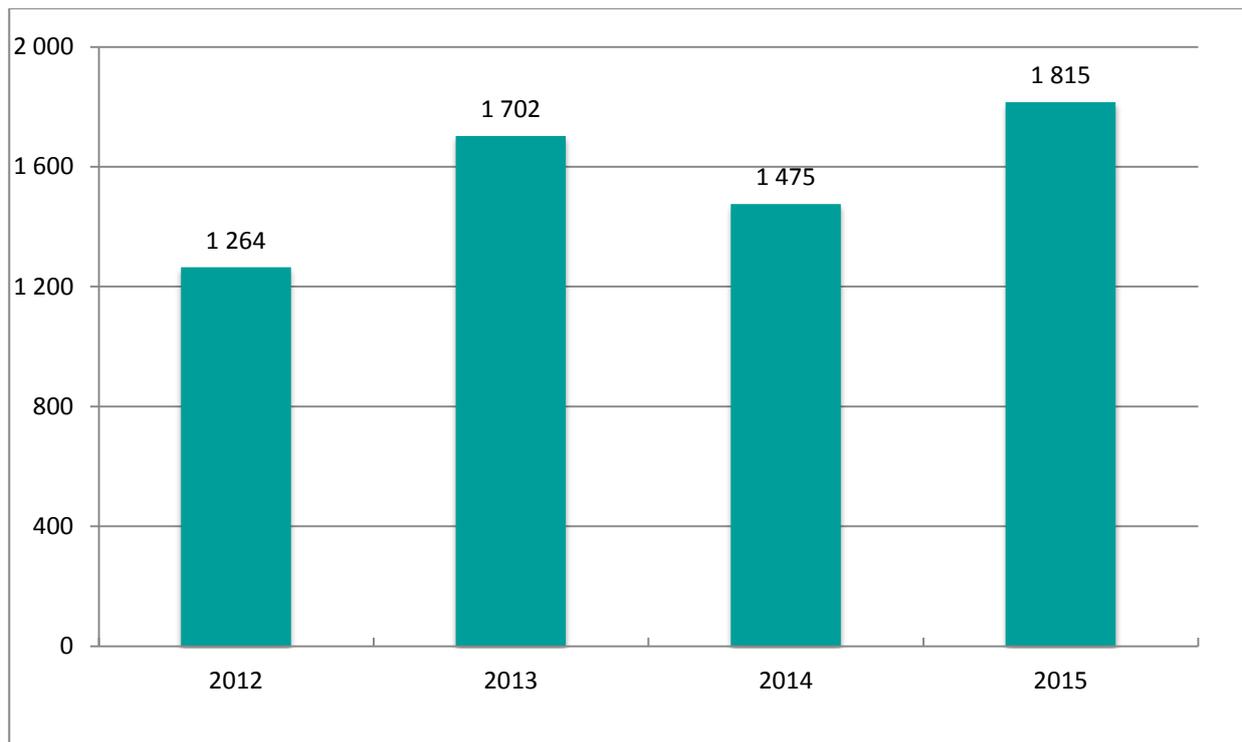
²¹⁵ Law on Free Legal Aid, 2011.

²¹⁶ October 2014, p. 39.

²¹⁷ Rules set by the Judicial Council. Information obtained during the meetings.

²¹⁸ The Supreme Court has no mandate to change judgements.

Figure 3. Unresolved cases in the court of first instance at the beginning of the year



Source: Reports of the Judicial Council, for 2015 information provided by the Judicial Council.

The number of new cases is constantly increasing, as is the backlog, but the average duration of the case is short – between 3 and 6 months.

The Administrative Court of Montenegro is operational and accessible to citizens. Court procedures are short, but the number of unresolved cases at the beginning of each year is increasing. The Court does not use its full remit, nor its inquiry capacity, which results in a considerable number of cases returning to the Court.

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

Administrative liability is regulated by the Law on State Administration²¹⁹, by the Law on Obligations²²⁰ and by the Law on Civil Servants²²¹. In addition, specific regulations on state liability exist, for example regarding the restitution of property or expropriation of assets for public purposes. No specific law on public liability exists, as is the case in a number of EU countries. The Law on Obligations, which is basically targeted to the private sector, but can be applicable to liability cases against the administration, according to the Ministry of Justice, is not common as a legal source for public liability.

Liability cases are usually decided by civil courts. This means that two lawsuits are necessary: one to determine the wrongdoing before the administrative court, and a second one to determine the level and the method of compensation of the damages, either through restitution or monetary compensation. In Montenegro, experts are hired to assist in determining the level of compensation. The court of first instance usually decides on the level of compensation. As a result, the level of compensation may differ across the country for identical cases, as no clear rules are in place to calculate it. This is counterbalanced to some degree by the fact that all judgements of the higher courts are published and can be used as guidance.

²¹⁹ Article 5.

²²⁰ Article 148 et seq.

²²¹ Article 96.

Montenegro Accountability

A unified procedure exists for when court procedures are extended for an excessively long time. In such cases, the Supreme Court may decide concurrently on the inadmissibility of the length of the procedure and determine the compensation.

Statistics on liability cases are not available, neither on the number of cases nor the compensation paid.

Existing legal provisions on public liability and the lack of data about their implementation result in a value of 2 for the indicator on public liability.

State liability is regulated by several laws, which are not always easily accessible and understandable to citizens. The funds for potential compensation awards are earmarked in the budget.

Key recommendations

Short-term (1-2 years)

- 1) The Government should amend the legal framework to establish clear horizontal criteria for the establishment and accountability schemes for public agencies.
- 2) The Government should increase the capacity of the Agency for Personal Data Protection and Access to Information, so it can monitor the implementation of the Law on Free Access to Public Information and decide more quickly on individual complaints or adjust the responsibilities of the agency to a manageable level.
- 3) The capacities of the Administrative Court should be increased (by employing new judges or providing the support staff necessary to boost its inquiry capacity). This could reduce backlogs and ensure that the court has the means to investigate cases fully and to decide them on merit.
- 4) A new administrative disputes law should be adopted. This should clearly oblige the administrative court(s) to use their full jurisdiction, fully applying the inquiry principle and taking final decisions except in cases where this clearly interferes with the discretionary powers of the administration.

Medium-term (3-5 years)

- 5) The Government should complete the analysis of existing agencies and other bodies performing public duties with an aim to identify inefficiencies and potential benefits from mergers, as well as adjusting accountability schemes to a single model established in legislation.
- 6) The Government should review the existing regulations on public liability to ensure that they:
 - a. Are clear and easily accessible;
 - b. Define a broad scope of public liability;
 - c. Do not jeopardise the effective exercise of the right of action for compensation.
- 7) The Government should introduce mechanisms to monitor court cases that result in the liability of the State. The goal would be to improve administrative procedures and decisions and thus reduce public liability cases in the future.



SERVICE DELIVERY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

Montenegro's policy on public services is laid out not only in the Public Administration Reform (PAR) Strategy, but also in other, more detailed strategies and laws²²².

A Law on General Administrative Procedure (LGAP) is in place, but it has considerable flaws. Its excessive number (around 150) of special administrative procedures detracts from the transparency of the administration. Furthermore, the Law on Administrative Disputes is not yet harmonised with the LGAP. The new Law on Administrative Procedure (LAP), which is scheduled to take effect in July 2016, is in line with EU standards, and the key principles of good administration are defined in the law.

No whole-of-government approach is employed to govern quality management in public administration. The quality insurance mechanisms are not used broadly, and no customer opinion surveys are conducted.

E-services are more developed for businesses than for citizens. One-stop-shops and complete e-services currently exist only for business registrations and for obtaining building permits. Other e-services usually only offer general information and some forms that can be downloaded. The documents National Interoperability Framework and the Innovated National Operability Framework are in place, and the Law on E-government specifies clear deadlines for introducing the unique information system for the exchange of information between state registries.

1.2. Main developments

A new LGAP was adopted in December 2014. Implementation of the new law will start from July 2016.

Further efforts were undertaken to introduce a "social card"²²³, gathering all social data, which was introduced in 2014. First phase of the project Social Card Project - Social Welfare Information System (SWIS) was completed, that resulted in, for example: making the IT system operational in all 22 Social Work Centres and in one line ministry; full revision and digitalization of over 34 000 active cases of social benefits/transfers, calculation an payment and ensuring interoperability between 9 national information systems.

A Law on E-government was adopted in July 2014. The Law sets concrete deadlines related to the development of e-services and interoperability.

²²² For example: Law on E-government; Strategy for the Development of Information Society 2012–2016; National Framework of Interoperability; Action Plan for the Implementation of the Recommendations from the "Guillotine of Regulations"; Action Plan for Improving the Business Environment; Strategy for Integration of Persons with Disabilities in Montenegro, plus the Action Plan for the Period of 2014 and 2015.

²²³ This card is intended to generate time and cost savings for social services and benefits users.

2. ANALYSIS

This analysis covers the four Principles for the area of service delivery under one key requirement²²⁴. These cover the policy and practice of service delivery. Particular emphasis is placed on the strategic and legal framework for service delivery and on the quality of services and the standards for access to them. The Principles also refer to the procedural guarantees of good administrative behaviour, applicable to the service provision.

2.1. Key requirement: Administration is citizen-oriented; the quality and accessibility of public services is ensured.

Baseline values

The policy and practice of service provision is examined through a set of 14 quantitative indicators, complemented by three qualitative indicators. The qualitative indicators primarily analyse the implementation of policies and legislation in the area of service delivery. Most of the quantitative indicators are based on data provided by the country and subsequently verified for the purposes of this report. Selected quantitative indicators are based on the international comparative studies “Doing Business” and “Global Competitiveness Report”.

In Montenegro, a policy on service delivery, including e-services, does exist, but the majority of e-services do not yet permit transactions or submission of requests to be completed online. Measures for reducing red tape are undertaken both *ex ante*, for example using Regulatory Impact Assessment (RIA), and *ex post*, for example using regulatory guillotine for simplification measures. No country-wide policy on quality management or customer satisfaction is in place, but indicators show that public services are provided rapidly (ID, passport, business registration). The new LAP, in line with the Principles, has been adopted, and preparations for putting it into effect are under way. The main challenge is to reduce the number of special procedures.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	Extent to which citizen-oriented policy for service delivery is in place and applied.	2014	5
	1	Extent to which policy and administrative preconditions for e-service delivery are applied.	2014	3
	2	Extent to which the legal framework for good administration is in place and applied.	2014	3
Quantitative	1	Expenditure on general public services as a share of gross domestic product.	2014	10.6% ²²⁵
	2	Favouritism in decisions of government officials.	2013	3.5 ²²⁶
	3	Percentage of users satisfied with public services.	2014	Not available ²²⁷

²²⁴ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 67-73.

²²⁵ Economic Reform Programme, 2015.

²²⁶ According to the World Economic Forum Competitiveness Index (on a scale from a minimum of 1 to a maximum of 7).

²²⁷ No data was received from the administration.

Montenegro
Service Delivery

3	Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards).	2014	Not available ²²⁸
3	Share of public servants directly engaged in service delivery who received training in the last two years.	2014	Not available ²²⁹
3	Average time needed to acquire a personal identification document (passport or ID card) after submitting the application.	2014	5-10 ²³⁰
3	Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years).	2014	Not available ²³¹
3	Average number of days needed to set up a business.	2014	10 ²³²
3	Average cost of setting up a business.	2014	1.6% ²³³
4	Number of one-stop-shops that provide the services for more than three different public institutions.	2014	1 ²³⁴
4	Number of services provided through one-stop-shops.	2014	77 ²³⁵
4	Percentage of wheelchair-accessible institutions.	2014	85% ²³⁶
4	Share of citizens who submitted paperless/electronic/digital income tax statements last year.	2014	Not available ²³⁷
4	Share of companies that sent their tax declarations using the Internet.	2013	4.6% ²³⁸

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ In days. Information provided by the Ministry of Interior.

²³¹ No data was received from the administration.

²³² According to World Bank "Doing Business Report".

²³³ Percentage of income per capita, according to World Bank "Doing Business" Report.

²³⁴ E-government portal. No other data was available for the state-level administration.

²³⁵ Ministry for Information Society Annual Report, 2014.

²³⁶ Data from the Ministry of Health and Social Welfare only.

²³⁷ No data was received from the country on annual personal income tax declarations.

²³⁸ Ministry of Finance data shows that of 20 557 annual corporate income tax declarations, 946 were sent electronically in 2014 (for 2013).

Montenegro Service Delivery

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

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

In 2011, the Government of Montenegro adopted a PAR Strategy for the period 2011-2016, including an action plan. The main objective of this strategy is the development of an effective, professional and service-oriented public administration. This includes accessibility, improving the business environment and increasing the transparency and ethical level of the public administration. Specific action plans exist for e-government, administrative simplification, etc. The implementation of these action plans is regularly monitored and assessed.

The Ministry of Finance (MoF) is in charge of monitoring the use of RIAs for new legislation and the regulatory guillotine exercise, which aims to reduce red tape in existing legislation, particularly for businesses. To carry out the regulatory guillotine exercise, an inventory was taken of the entire body of legislative material, after which the legislation was analysed and recommendations for the next steps were developed in close co-operation with the respective lead ministries. The first action plan²³⁹ of 2012 was only partly implemented. A revised action plan was adopted in September 2013²⁴⁰, stating that 1 446 out of a total of 1 887 recommendations should be implemented. In February 2015, nearly 70% of the recommendations had been implemented. The deadline to complete the implementation has been delayed to the end of 2017.

As part of the requirements to conduct Regulatory Impact Assessment (RIA), the ministries are required to assess also the impact to administrative burden. In all of the samples of RIAs reviewed for this report²⁴¹ a brief statement of the effects on administrative burdens was provided for but the analyses did not provide sufficient detail.

No central responsibility for standards of service delivery has been assigned. However, the responsibility for e-government is clearly assigned to the Ministry for Information Society and

²³⁹ Action Plan for Implementing Recommendations from the “Guillotine Regulations”.

²⁴⁰ Government communication on the implementation of the project Regulatory Guillotine.

²⁴¹ Draft Law on Cooperatives from 9.06.2014; Proposal of the Law on Coffee Tax from 17.12.2014; Draft Law on Amendments to the Law on VAT from 17.12.2014, Draft Law on Amendments to the Law on Property Tax from 11.12.2014, The draft Law on Amendments to the Law on Regional Development from 17.09.2014.

Montenegro Service Delivery

Telecommunications. Some standards, e.g. regarding social services, access for those with disabilities²⁴² and time limits for delivering permits for the provision of services, have been set by legislation or bylaws, so that citizens or business may appeal or file a court suit if they are not observed. This is reflected in the value of 5 for the indicator on the policy on service delivery.

The Law on E-government, including a single access point, was adopted in July 2014. It includes rules on monitoring and oversight, as well as fines (Law on E-government, Article 22). Its implementation is under way but not well advanced. E-services are required to be completed within 18 months and interoperability achieved within 24 months after the adoption of the Law²⁴³. The government portal was created in 2011, but was not used by most ministries. Only since the Law has been adopted have all 16 ministries and a large number of administrative institutions (through the ministries) have been linked to the portal. The efforts in the area of e-services rate a value of 3 for the indicator on policy and preconditions for e-service delivery.

A service delivery policy exists in the form of different laws and strategies; services to be delivered at the state level are set by law. Mechanisms to reduce red tape and to analyse draft legislation are in place and applied, as is a systematic process to simplify administrative procedures. Action plans²⁴⁴ to improve service delivery, e.g. by improving the business environment and reducing red tape, are in place and being implemented. A strategy for e-service delivery is in place, and the legal framework was set up to a great extent in 2014.

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

A LAP is in place, but it has considerable flaws. A new Law was adopted in December 2014 that is to take effect in July 2016. The new Law is in line with European Union (EU) standards, despite a few minor flaws, and the key principles of good administration are defined in the Law²⁴⁵.

The *vacatio legis* is long enough to ensure appropriate implementation. Training courses have been organised, and further training is programmed for 2015.

An excessive (around 150) number of special administrative procedures detract from the accessibility and transparency of the administration. The action plan for the PAR Strategy foresees to review these procedures in 2015 and either adapt or abolish them; an EU-funded project is in place to assist Montenegro in this task.

Administrative silence, that is a failure to respond to citizens' requests within the time prescribed, remains a serious problem. This is reported by the Administrative Inspection, but is also evident in the number of court cases and complaints to the Ombudsman and the Agency for Personal Data Protection and Access to Public Information as a result of administrative silence. Considerable improvements were reported by the Court with respect to the administration's co-operation with the administrative

²⁴² For example, access to public electronic communications services for persons with reduced mobility and persons with disabilities. Information on the implementation of the Strategy for Integration of Persons with Disabilities.

²⁴³ Law on Electronic Governance, Article 25, Official Gazette, No. 32, 30 July 2014.

²⁴⁴ Action Plan for Improvement of Business Environment; revised Action on the Implementation of the Regulatory Guillotine; Ordinance on Access to Public Electronic Services for Persons with Reduced Mobility.

²⁴⁵ Such shortcomings, as specified in the SIGMA evaluation of the adopted law, include: an absence of provisions legally defining services of general interest (in line with EU law), and determining possible service providers and principles of providing services of general interest. The shortcomings also include separate regulation of electronic communication, which increases enforcement costs for citizens and decreases the level of legal predictability and certainty. At present, it is not possible to delegate decision-making in administrative proceedings to appropriately trained civil servants to enforce the new law. The draft law retains the rule that the heads of authorities retain final say over administrative matters (Article 46). This will constrain the implementation of the principle of delegation and will not promote the depoliticisation and professionalisation of decision-making within administrative proceedings.

courts. The files are now submitted promptly, as is evident in the average duration of administrative court cases (three to six months)²⁴⁶.

The Administrative Inspection reports²⁴⁷ that public administration staff lack appropriate knowledge of administrative procedures. This has led to an increase in complaints, particularly about recruitment without jobs being advertised, the central civil service registry and the internal labour market.

Citizens' involvement in administrative decisions with a general impact is provided for in the new LAP (Articles 8 and 14).

An excess of special regulations on administrative procedures explains the value of 3 for the indicator on the extent to which the legal framework for good administration is in place and applied.

A new Law on Administrative Procedures, that meets EU standards, was adopted in December 2014 and will take effect in July 2016. The problem at present is the large number of special administrative procedures.

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

Citizens' satisfaction with government services is not monitored on a regular basis. In 2010, the United Nations Development Programme (UNDP) published a survey of the capacity and integrity of Montenegro's state administration sector. Two-thirds of the population expressed general trust in the administration. The non-governmental organisation Institut Alternativa carried out surveys in 2010 and 2012²⁴⁸. The issues targeted were: citizens' perception of the quality of the state administration's work, and of management of institutions of the state administration. The results of the two surveys were then compared. Overall, the score for trust in 2012 was significantly lower than the score for 2010.

In 2010, a majority of those polled said they believed the institutions operated in a professional, planned, autonomous and legal manner. However, in 2012, a majority of citizens had a negative view of the work of public authorities. In 2012, almost two-thirds of Montenegrin citizens (65%) said that they thought state administration institutions were guided by partisan influence; and more than half thought that management was guided by particular interests rather than the public interest (56%). The majority of citizens (53%) said they thought the staff of state administration authorities did not observe the prescribed rules of conduct.

An accreditation body for Common Assessment Framework (CAF) exists, but quality assurance schemes (CAF, EFQM, ISO)²⁴⁹ are not applied systematically at the central level. No citizens' charter or other such instrument is in place. However, the existing strategies for improving the business environment and integrating persons with disabilities put a high priority on improving the capacity and professionalism of the civil service in order to achieve the goal of improving service delivery.

Efforts have been made to simplify service delivery, e.g. instituting a "social card", which includes all the necessary data for using social services. E-services have been improved for the time being, mainly through the provision of information and the necessary forms. Appointments can be made where personal attendance is required. For businesses, e-government and the reduction of red tape have already had a positive impact, as demonstrated by the ranking of the World Bank "Doing Business" report (between 2013 and 2015, Montenegro's ranking improved by six places).

Time limits for specific services relating to business, and also passports and IDs, are set by law. Public services are provided rapidly. The period for registering companies and obtaining passports or IDs is relatively short.

²⁴⁶ Judicial Council, information obtained during the mission.

²⁴⁷ Administrative Inspection, information obtained during the mission.

²⁴⁸ Institut Alternativa, "State Administration Reform in Montenegro: Between Ambitious Plans and Real Possibilities".

²⁴⁹ European Foundation for Quality Management (EFQM) and International Organization for Standardization (ISO)

Customer satisfaction is not being analysed comprehensively and no policy is in place on the quality of public services. However, Montenegro scores well in the “Doing Business” report, and the average time for obtaining selected services is short.

Principle 4: The accessibility of public services is ensured.

The territorial service delivery network is partly in place. Services are delivered in the larger cities, which may be sufficient, given the size of the country.

One-stop-shops and complete e-services only exist for business registration and obtaining building permits.

The government portal provides access to 77 services, and covers 25 administrative bodies²⁵⁰. Services for citizens include IDs and passports (as of March 2015), and, for businesses, construction permits and registration of businesses. According to the 2014 report of the Ministry for Information Society and Telecommunications, four services have reached a level of complete availability online. However, due to the current law on administrative fees, full transactions are not yet possible. Online submission of tax declarations is limited, but the percentage of tax declarations submitted online is rising. The percentage of monthly income declarations of physical persons sent online rose from 33% in 2014 to 40% in 2015)²⁵¹.

Obtaining an electronic signature is costly, which limits citizens' access to e-services.

As the social card project has progressed, to determine eligibility for means-tested transfers, interoperability (automated data exchange) has been established with nine national information systems²⁵².

Since 2009, Montenegro has put into effect strategies and action plans to ease public life for those with disabilities. The latest action plan covers the years 2014 to 2016. New guidelines for e-accessibility, to make e-services available to persons with various disabilities, were published in December 2014 by the Ministry for Information Society and Telecommunications. The guidelines foresee that all state bodies, public services and portals will have to meet these standards. No statistics are centrally available on the accessibility of services for persons with disabilities. In the remit of the Ministry of Social Affairs, 85% of all buildings are accessible.

Accessibility of public services is in general ensured. The central government portal provides access to almost 80 e-services from 25 public institutions. Detailed action plans²⁵³ are in place to make e-services more readily accessible to the needs of special groups of consumers, and their implementation is under way.

Key recommendations

Short-term (1-2 years)

- 1) The Government should continue implementing the recommendations resulting from the regulatory guillotine exercise.
- 2) The Government should ensure that special administrative procedures are reviewed with a view to reducing their number. It should also support implementation of the new LAP with training and awareness raising activities.

²⁵⁰ The goal to provide 100 services by the end of 2014, as specified in the Strategy for the Development of Information Society 2012-2016 – Montenegro Digital Society has not been reached.

²⁵¹ MoF.

²⁵² UNDP.

²⁵³ Action Plan for Integration of Persons with Disabilities; Ordinance on the Types of Benefits and Special Measures for Access to Electronic Communication Services for Persons with Reduced Mobility and Persons with Disabilities, 2014.

Montenegro
Service Delivery

- 3) The Ministry for Information Society and Telecommunications should continue its efforts to ensure interoperability between the registries, under deadlines set in the Law on Electronic Governance.

Medium-term (3-5 years)

- 4) The Government should consider designating clear horizontal responsibilities for co-ordinating and developing the quality of public services across the public administration.
- 5) The Government should promote the use of customer satisfaction surveys in state administration institutions and encourage the use of quality techniques, especially in the areas that will provide the greatest added value for customers.
- 6) The Ministry for Information Society and Telecommunications should further increase the number of e-services available through the e-government portal, and enhance their level of sophistication so that transactions are also possible.

6

Public Financial Management

PUBLIC FINANCIAL MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

The Government has established a robust annual budget process. The timetable set in the legislation is respected, and budget information at aggregate levels is regularly available to the public. However, the existing public expenditure management practices are characterised by a lack of medium-term financial planning, and, in most cases, the focus of the administration is on compliance with rules and procedures rather than on value for money. Developments in public internal financial control (PIFC) are in the early stages, with systems and rules in place but implementation not yet ensured in a consistent manner. The system for internal audit (IA) is established in accordance with the requirements of Chapter 32 of the European Union (EU) accession negotiations, but capacities for good-quality audit work need further development.

Public contracts in Montenegro are awarded within a well-established legislative and institutional framework, but further alignment with the EU *acquis communautaire* is required to bring the public procurement law and its implementation fully in line with the 2014 EU Public Procurement Directives²⁵⁴. Concessions are not regulated in line with the EU Concessions Directive²⁵⁵, although a new draft law on public-private partnerships (PPP) and concessions has been issued for public consultation²⁵⁶.

The remedies system formally complies with the *acquis*, but it is significantly hampered by the discrepancies between public procurement regulations and the rules of administrative law. The formalistic approach taken by those who administer the remedies system leads to frequent rejection of tenders due to minor clerical errors. Moreover, the almost exclusive use of price (acquisition cost) as the only award criterion detracts from the quality of the items procured.

The constitutional and legal framework of the State Audit Institution (SAI) fulfils international requirements that guarantee its independence, mandate and organisation. The SAI has established methodological guidance for audit work and its quality control, enabling quality audits. The SAI publishes all its audit reports, and the Parliament now discusses the annual audit report of the SAI, as well as audit reports that express a negative (adverse) opinion.

1.2. Main developments

The situation in public finances was positive in 2014. Revenue collection exceeded expectations by nearly 6% and was more than 8% higher than in 2013. As a result, the budget deficit fell temporarily to 0.7% of gross domestic product (GDP) (2014), with a primary surplus of 1.5% of GDP. The decision made to finance extensive highway construction will, however, increase the budget deficit again, to between 4% and 5% of GDP in the coming years.

In April 2014, the Parliament adopted the Law on Budget and Fiscal Responsibility²⁵⁷. This, among other changes, introduced legally binding fiscal rules, strengthened requirements for medium-term financial planning and established the function of financial inspection in the Ministry of Finance (MoF). It also extended the time frame for the Parliament to discuss the annual budget bill before its adoption. The

²⁵⁴ Directive 2014/24/EU, Directive 2014/25 EU.

²⁵⁵ Directive 2014/23/EU.

²⁵⁶ http://www.mif.gov.me/rubrike/javne_rasprave/.

²⁵⁷ Official Gazette No. 20/2014 (Montenegro's Organic Budget Law).

Montenegro
Public Financial Management

medium-term financial planning document of the Government, the Guidelines of Macroeconomic and Fiscal Policy 2015-2017, included, for the first time, sectoral spending ceilings.

The Law on Public Internal Financial Control²⁵⁸ was amended in July 2014. The most significant change was the easing of formal staffing requirements for IA units in the public sector. In the area of the management of Instrument of Pre-accession Assistance (IPA) funds, Montenegro received positive decisions from the European Commission²⁵⁹, granting it management authority of the regional development and human resource development programmes financed from IPA.

The amendments to the Public Procurement Law (PPL), adopted in December 2014²⁶⁰, ensured further alignment with the requirements of the EU Directives: provisions on utilities were replaced with a new Chapter III, "Public procurement in the water management, energy, transport and postal traffic sectors", and a new Chapter IVa, "Procurement in the field of defence and security", was added.

In July 2014, the Law on State Audit Institution was amended²⁶¹ to strengthen the financial and managerial independence of the SAI. This clarifies its audit rights and strengthens the follow-up of audit recommendations. In December 2014, the Senate of the SAI adopted new rules of procedure. The SAI adapted the internal procedures to the changes in the SAI law²⁶². In January 2015, the Senate of the SAI adopted guidelines for audit quality control²⁶³, instructions on the methodology on financial and regularity audits²⁶⁴ and instructions on the methodology on performance audits²⁶⁵, thus preparing to align its audit practice with the requirements of international standards.

The Law on Financing Political Subjects and Electoral Campaigns²⁶⁶, adopted in December 2014, relieves the SAI of the mandatory audit of the financing of election campaigns and limits the mandatory annual financial audits of political parties to those with an income of above EUR 10 000. On the other hand, the new Organic Budget Law, adopted in April 2014, attributes a new task to the SAI. This is to assess the application of the fiscal responsibility criteria as part of the annual report submitted to the Parliament²⁶⁷.

²⁵⁸ Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

²⁵⁹ The decision regarding Operational Programme Regional Development was made in April 2014, and the decision regarding Operational Programme Human Resource Development in July 2014.

²⁶⁰ Official Gazette No. 57/14.

²⁶¹ Official Gazette No. 31/2014.

²⁶² "Rules of Procedures of the State Audit Institution", Official Gazette No. 03/2015.

²⁶³ Guidelines for quality control of the audits.

²⁶⁴ Instruction on Methodology on performing financial audits and regularity audits.

²⁶⁵ Instructions on methodology on performance audit of the State Audit Institution of Montenegro.

²⁶⁶ Official Gazette No. 52/14.

²⁶⁷ Article 26.

2. ANALYSIS

The analysis covers the 16 Principles of the public financial management area, grouped under 8 key requirements²⁶⁸. For each key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles.

2.1. Key requirement: The Budget is formulated in compliance with transparent legal provisions and within an overall multi-annual framework, ensuring that the general government budget balance and debt-to-gross domestic product ratio are on a sustainable path.

Baseline values

The functioning of medium-term and annual resource planning is analysed using three qualitative indicators and five quantitative indicators, as defined in the Principles of Public Administration.

Both annual and medium-term planning have been based on conservative estimates, and the actual revenue outcomes have exceeded the amounts forecast in the plans. Nevertheless, expenditure has been increased without taking advantage of the opportunity to improve the budget balance to the greatest possible extent. A number of decisions were taken to reduce spending, including freezing retirement benefits and cutting the Government's discretionary spending. Both the medium-term budgetary framework (MTBF) and the fiscal rules have the necessary backing in the legislation, but implementation does not yet meet the required standards.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	1	MTBF strength index.	2014	2
	1	Fiscal rules strength index.	2014	3
	2	Extent to which the annual budget proposal includes full information at the time of presentation to the Parliament.	2014	3
Quantitative	1	Percentage differences between the planned budget revenues in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	2014	+0.2%
	1	Percentage differences between the planned budget expenditure in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	2014	+9.4%
	2	General government budget balance.	2014	-0.7%
	2	Percentage differences between the planned budget revenues (as approved in the Budget) compared to the outturn of the latest available year.	2014	+7.5%

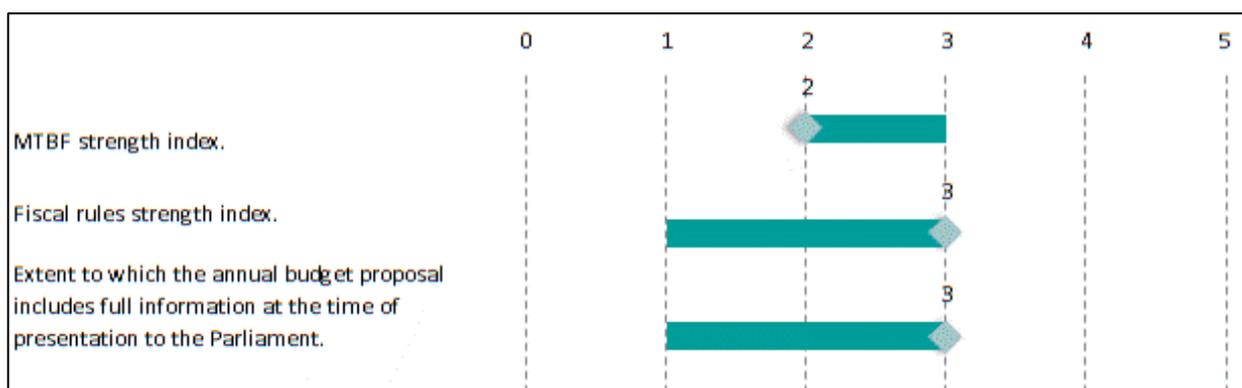
²⁶⁸ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 75-109.

Montenegro
Public Financial Management

	2	Percentage differences between the planned budget expenditures (as approved in the Budget) compared to the outturn of the latest available year.	2014	+9.6%
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The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

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 time horizon of three years; all budget organisations operate within it.

Montenegro does not have a well-established integrated system of medium-term planning linked to the strategic plans of the Government. While multi-annual data is published in the annual budget and in the 2015 Economic Reform Programme, the main medium-term forecast document for budgetary purposes published each year, the Guidelines of the Macroeconomic and Fiscal Policy, lacks key elements for linking sector policy plans with the medium-term financial planning. The link with structural economic reforms is presented in the 2015 Economic Reform Programme, which is consistent with the fiscal policy described in the budget.

Starting in 2014, the Guidelines of the Macroeconomic and Fiscal Policy 2015-2017 includes spending ceilings for ministries and independent organisations such as the Judiciary, the Prosecutor’s Office, the Parliament and the SAI, although only for current expenditure (excluding capital spending²⁶⁹). In addition, the Guidelines include for the first time a detailed assessment of the plans in relation to the legally binding fiscal rules (see following paragraph). Since the Guidelines are not presented to the Parliament, and include only flexible spending ceilings, and since there is no co-ordination mechanism for the preparation of the Guidelines, the value of the MTBF strength indicator is 2.

Macroeconomic and fiscal estimations have been conservative in recent years, as shown by the indicators on both three-year and annual forward-looking estimates. The 2014 actual revenues were at the level of estimations made in 2012, but the expenditure was 9% higher than planned in 2012.

²⁶⁹ There are only two state authorities planning and implementing the capital budget: the Directorate for Public Works and Directorate for Roads.

Fiscal policy is guided by the fiscal rules that provide for a maximum of a 3% GDP budget deficit and limit public debt to 60% of GDP²⁷⁰. This is supported by the objective of reaching a primary surplus²⁷¹. In 2014, the Government met the rules, but the recent policy decisions to finance extensive highway construction will bring both budget deficit and public debt levels above the limits allowed by the fiscal rules. The Law on Budget and Fiscal Responsibility²⁷² provides the Government with some flexibility in case the debt level is exceeded because of capital projects, where borrowing for such projects is decided by the Parliament. The function to monitor compliance with fiscal rules²⁷³ has been assigned to the SAI²⁷⁴, but the SAI has not yet assumed the role in practice. Taking this into consideration, the value of the fiscal rule indicator is 3.

A SIGMA review of published strategies and action plans showed that only 26 of 59 documents included financial estimations, some only at a broad level. Furthermore, some of the costings are obsolete, given the time elapsed since the publication of the individual strategy. In some cases where financing needs are outlined, they are not in line with the actual budgetary resource plans.

The Guidelines of the Macroeconomic and Fiscal Policy 2015-2017 present many of the elements of a classical MTBF document, although the link between it and the annual budget is partial. The document does not include sectoral spending plans, nor is it used to make the principal revenue and expenditure decisions ahead of the budget process.

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.

The legislation clearly specifies the role of the Parliament, the Government and the MoF. It also defines public money and requires that income be paid into a single Treasury account controlled by the MoF. The coverage of the 2015 budget is complete, with the exception of those Instrument for Pre-accession Assistance (IPA) funds that are managed directly by the European Commission. National co-financing for IPA funded programmes is ensured.

The Parliament has the power to amend the budget without specific legally defined limits. In practice, the changes included by the Parliament have not been significant by comparison with the total budget figures. The time available for the Parliament to consider the Budget was extended from two weeks to six weeks with the recent adoption of the Law on Budget and Fiscal Responsibility²⁷⁵. However, although an improvement, this does not reflect current good practice as recommended by the Organisation for Economic Co-operation and Development (OECD)²⁷⁶.

The Parliament and the public are provided with a detailed breakdown of the proposed annual budget each year, with basic macroeconomic and fiscal analyses. However, some weaknesses persist. The programme structure of budget users does not reflect the administrative set-up, given that it has not been adapted to the organisational restructuring of the state administration. Also the budget documents do not present non-financial performance information, linkages between budget and Government policies and information on multi-annual commitments. There is also no separation of the costs of ongoing public services and new services. For these reasons, the value of the indicator for annual budget documentation is 3.

Although capital expenditure is part of the budget, annual procedures for capital investment planning are separate from budget planning by the ministries and are less transparent. The long list of project

²⁷⁰ Law on Budget and Fiscal Responsibility, Articles 17–27.

²⁷¹ Primary balance is calculated as public balance minus interest payments of public debt.

²⁷² Article 21.

²⁷³ The role corresponds to the role of an independent fiscal council.

²⁷⁴ Law on Budget and Fiscal Responsibility, Article 26.

²⁷⁵ The annual budget bill has to be submitted to the Parliament by 15 November.

²⁷⁶ OECD (2002), [Best Practices for Budget Transparency](#), OECD Publishing, Paris.

proposals or the justifications for project selection are not publicly available. The February 2015 decision of the Government to establish the National Investment Commission²⁷⁷ to plan infrastructure investment projects and ensure the co-ordination of different sources of funding is intended to create conditions for more transparent planning of investment projects.

Montenegro observes a well-defined annual budget timetable. The existing legislation also covers aspects of good budgeting practice, including the definition of public money, the use of a single Treasury account and the Parliament's role. The annual budget is comprehensive, with the exception of IPA funds that are managed directly by the European Commission.

Key recommendations

Short-term (1-2 years)

- 1) In co-operation with the General Secretariat, the MoF should develop a system for sectoral inputs from line ministries for the MTBF, including the preparation of the necessary secondary legislation and of the other underlying rules and guidelines for sectoral (at ministry level) medium-term financial plans.
- 2) The MoF needs to prepare training programmes for budget and policy staff in ministries and independent state authorities. These should examine the elaboration of medium-term expenditure plans within the system of strategic planning.
- 3) In co-operation with the Ministry of Foreign Affairs and European Integration, and the Secretariat for Development Projects, the MoF needs to align the current procedures for annual capital budgeting with the procedures to be developed for the work of the National Investment Commission. The list of potential investment projects considered for financing should be published prior to formal decisions for financing.

Medium-term (3-5 years)

- 4) The MoF should improve performance information provided in the MTBF and other budget planning documents.
- 5) The Government needs to strengthen ex-ante review of the appraisal of capital investment projects. Central quality-control responsibilities should be allocated to a suitable and capable state authority, such as the MoF or the Secretariat for Development Projects.

2.2. Key requirement: Accounting and reporting practices ensure transparency and public scrutiny over public finances; both cash and debt are managed centrally, in line with legal provisions.

Baseline values

The functioning of medium-term and annual resource planning is analysed using three qualitative indicators and five quantitative indicators, as defined in the Principles of Public Administration.

Both in-year and annual financial reporting is carried out on a regular basis, although these do not provide some of the key information to the public. Cash planning is not strictly applied and the level of payment arrears has been constantly at the level of 3% of total central Government spending.

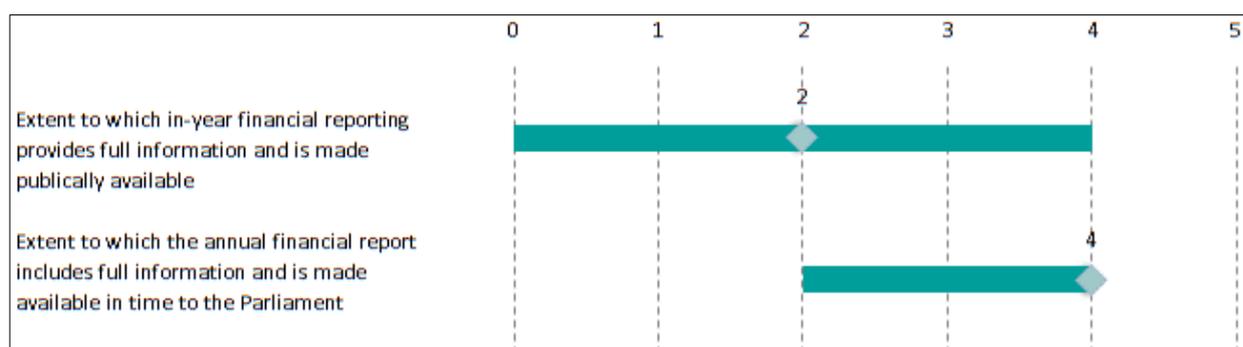
²⁷⁷ Government session, 19 February 2015.

Montenegro
Public Financial Management

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	5	Extent to which in-year financial reporting provides full information and is made publicly available.	2014	2
	5	Extent to which the annual financial report includes full information and is made available in time to the Parliament.	2014	4
Quantitative	3	Average percentage differences between cash flow projections and actual cash balance on a monthly basis.	2014	7.5%
	3	Accumulated arrears for central government measured as a percentage of total expenditure at the end of the latest available calendar year.	2013	2.8%
	4	Public-sector debt servicing costs as a share of gross domestic product.	2014	2.2%
	4	Difference of public-sector debt level outturn from target.	2014	+1.4%

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range



Analysis of Principles

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.

All public revenue is collected through a Treasury Single Account. The Minister of Finance is the only person authorised to open government bank accounts, which are reconciled daily.

While the MoF compiles cash-flow projections, these are used mostly as a spending control mechanism, where a spending unit's annual allocation is simply divided by 12. Spending units do not undertake an analysis at the beginning of the year to project their real spending needs, which they should negotiate

with the MoF and manage accordingly. Despite these weaknesses, the variations in monthly spending compared to estimates made in the beginning of the year are moderate at 7.5% on average.

The Treasury information system enables detailed analysis of expenditure and income, although only aggregate information is published on a monthly basis. In 2014, the MoF amended the information system for the management and monitoring of budget execution to enable the recording of commitments at the moment of receiving an invoice. At the time of contracting, commitments are centrally captured. In 2013, the level of arrears was 2.8% of total central government spending. The problem of arrears is greater at the local level, where the outstanding liabilities amount to EUR 111 million, more than half of their independent revenues in 2014²⁷⁸.

All public funds are channelled through the Treasury Single Account that is controlled by the MoF. Cash management is basic and focuses on too many detailed budget lines rather than analysing broader expenditure needs. The Treasury system provides central controls and the MoF has been able to limit public spending, but payment arrears still exist.

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.

The overall public debt level was 59.6% of GDP at the end of 2014²⁷⁹. In order to finance the national highway construction, this level is forecast to rise to 68.6% of GDP by 2017²⁸⁰. The debt servicing costs are slightly above the average for Western Balkan EU enlargement countries²⁸¹, at 2.2% of GDP in 2014. A significant amount of borrowing for refinancing of existing debt was successfully completed in March 2015²⁸². This means that debt management forms a critical part of overall public financial management (PFM) operations.

The responsibilities for debt management are clearly spelled out in the Law on Budget and Fiscal Responsibility. Only the MoF carries out central government borrowing. Both debt management and cash management are part of the Treasury, and there is regular co-operation to ensure liquidity. The Law on Budget and Fiscal Responsibility sets borrowing powers, and the annual budget sets an annual borrowing limit.

The level of guarantees in any one year is set within the context of the annual budget, and the total level of guarantees may not exceed 15% of GDP²⁸³. The level of issued guarantees is currently 9% of GDP²⁸⁴. Under the Law on Budget and Fiscal Responsibility, any new state guarantees may only be given for capital projects.

Currently no strategy for debt management has been adopted or published. Estimates are provided in the Guidelines of the Macroeconomic and Fiscal Policy and in the Economic Reform Programme. The MoF reports on debt management quarterly and these reports are made public.

In 2014, the Government issued EUR 323 million in bonds and was able to reduce the average interest rate, since the loans that were refinanced had been more expensive. The actual level of public debt in 2014 slightly exceeded (by 1.4%) the estimates made in 2013. The challenge for the Government is even greater in 2015 since, in addition to the need to refinance loan agreements of EUR 350 million, additional borrowing of EUR 250 million is planned to finance the Government's capital investment plans.

²⁷⁸ 2014 Annual Report of the Ministry of Finance.

²⁷⁹ 2014 Annual Report on Public Debt in Montenegro.

²⁸⁰ 2015 Economic Reform Programme of Montenegro.

²⁸¹ The average cost of public debt servicing of the 6 Western Balkan EU enlargement countries is 2% of GDP.

²⁸² A total of EUR 500 million was borrowed by issuing bonds with more favourable interest rates than in previous loans.

²⁸³ Article 53 of the Law on Budget and Fiscal Responsibility.

²⁸⁴ 2014 Annual Report on Public Debt in Montenegro.

Most of the public debt is Government debt. Municipalities account for 6.2% of total public debt. Foreign debt accounts for 75% of total public debt. Most public debt is in euros, so the currency risk is low.

In Montenegro, the risk of excessive public debt is high in the medium-term, although debt management is well structured and planned and has demonstrated positive results in 2014. The Government does not have a published public debt management strategy.

Principle 5: Budget transparency and scrutiny are ensured.

The annual budget is presented in a detailed and transparent manner and is made available to the public at the time of its submission to the Parliament. Monthly reports of government revenues, expenditure and borrowing are published regularly, although only at an aggregate level. Progress made in spending at individual budget organisation level is not provided. Spending bodies are only required to submit quarterly reports to the MoF in a common format. A more detailed analysis is published by the MoF on a quarterly basis, including data on local government and general government finances. The in-year reporting does not provide explanations of variations. Taking all this into account, the value of the indicator for in-year reporting is 2.

The annual financial statement mirrors the budget structure and is prepared by the end of June, after the end of the relevant calendar year. It is discussed in the Parliament before the next annual budget is received from the Government. The Parliament, however, only receives the annual audit report of the SAI on 15 October, which does not allow sufficient time for analysis and scrutiny of the end-of-year accounts before the next year's budget discussions begin. Since the annual financial report does not include information on non-financial performance²⁸⁵, the value of the indicator for annual financial reporting is 4.

The accounting standards are defined, although these do not enable provision of data compliant with the European Union's ESA2010 regulations²⁸⁶. The existing Chart of Accounts does not provide adequate details of budget revenues and expenditures to make it possible to generate data that translates the budget lines from the national classification into the European System of Accounts (ESA) classification. Public sector accounting is currently on a cash basis. A conceptual plan to adjust financial reporting procedures to meet ESA standards has been prepared by the MoF, as well as a strategy to develop accrual accounting in the public sector.

In addition, no comprehensive planning document for PFM-related reforms has been established in Montenegro. Co-ordination is provided for in the form of a MoF working group, and a draft reform programme for public financial management (PFM) is being prepared.

The basic conditions for budget transparency are in place. Scrutiny of public finances is largely ensured by the operations of the SAI, whose reports are regularly published. The annual financial report is discussed in the Parliament very late in the following calendar year since the SAI report, to support the annual financial report, is made available only in October. Important supplementary information (such as explanations for changes in spending) is available only in the explanatory material, that is not made public.

Key recommendations

Short-term (1-2 years)

- 1) The MoF needs to finalise the draft Public Finance Management (PFM) reform programme, ensure proper consultation with stakeholders and the European Commission and adopt it at the level of

²⁸⁵ Detailed information on the implementation of budget programmes is presented in the non-published explanatory material to the annual financial report.

²⁸⁶ Regulation (EU) 549/2013 on the European System of National and Regional Accounts in the EU.

the Government. The MoF needs to dedicate capacity for the co-ordination and monitoring of the implementation of the PFM reform programme.

- 2) The MoF needs to prepare a medium-term plan for public debt management.
- 3) The MoF should start publishing the explanatory documents accompanying the Government's annual financial report.

Medium-term (3-5 years)

- 4) The MoF needs to plan funding for information technology (IT) development to ensure that the Treasury accounting systems can provide data on an accrual basis.
- 5) The SAI should find ways to adjust its annual work plan and procedures to ensure earlier delivery of its annual audit report to the Parliament.

2.3. Key requirement: National financial management and control policy is in line with the requirements of Chapter 32 of European Union accession negotiations and is systematically implemented throughout the public sector.

Baseline values

The functioning of financial management and control is examined through one qualitative indicator, covering ten critical elements of an effective framework as defined in the Principles of Public Administration. In addition, three numerical indicators analyse how key aspects of financial management and control are developing.

The legal and operational framework is in place, but since all budget organisations do not follow up on implementation, and the PIFC Strategy covers focuses on activities of the MoF, the value of the indicator regarding operational framework for financial management and control (FMC) is 4. The perception of the wastefulness of government spending according to the competitiveness index of the World Economic Forum is at the third-highest level among EU enlargement countries; in 2014 Montenegro was ranked 66 out of 144 countries.

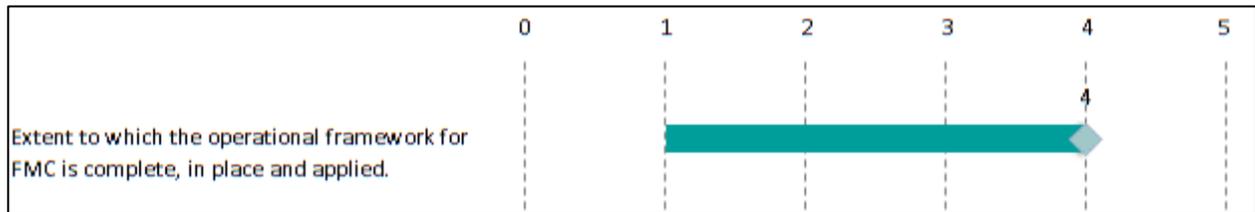
	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	6	Extent to which the operational framework for FMC is complete, in place and applied.	2014	4
Quantitative	7	Share of first-level budget organisations where budget structure is aligned with the organisational structure.	2014	78%
	7	Share of first-level budget organisations where delegated budget holders below minister or secretary-general level receive at least monthly information on financial commitments and spending against the Budget within their part of the Budget.	2014	Not available ²⁸⁷
	7	Wastefulness of Government spending (The World Economic Forum).	2014	3.4 ²⁸⁸

²⁸⁷ Information collected by the MoF. The rate of replies does not provide for sufficient data.

²⁸⁸ Global Competitiveness Report 2014-2015, p. 277.

The value of the qualitative indicator of the country is displayed below in comparison with the range of values for the same indicator in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 3. Country baseline value in comparison with the regional range



Analysis of Principles

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

Both the Law on Public Internal Financial Control²⁸⁹ and the Financial Management and Control Manual refer to the five elements of the Committee of Sponsoring Organisations (COSO) framework²⁹⁰. Other legislation does not specifically support FMC, e.g. the Law on Budget and Fiscal Responsibility makes no specific reference to delegation. The FMC Manual was developed in 2011 and has not been updated since.

The PIFC Law permits the delegation of decision making authority based on the internal systematisation and organisation acts²⁹¹. In practice, the systematisation acts are not used to delegate specific decision making authority to other managerial positions in the ministries.

A comprehensive PIFC Strategy for 2013-2017, approved by the Government, embraces FMC developments. The current strategy deals with each element of the tasks foreseen in the PIFC implementation and sets out the necessary actions. It is supported by a two-year action plan outlining detailed implementation.

The Central Harmonisation Unit (CHU) reviews progress of implementation each year through a questionnaire about FMC implementation, which all institutions are required to return. In 2014, the CHU started carrying out separate quality control in individual budget organisations. Five ministries were reviewed, following the overall COSO framework. Aspects such as planning and setting objectives, risk management and information systems were covered. The coverage of the quality review is complete. However, in the first year, the findings and recommendations have remained at a general level and focus on detecting missing elements in internal control procedures, as opposed to assessing the completeness and quality of internal control procedures.

The CHU makes an annual report to the Government on the progress with the introduction of FMC, which is largely based on a survey of all budget organisations required to implement FMC. This report is considered by the Government, but was not made public in 2014.

A Budget Inspection Department has been established within the Planning and Budget Directorate of the MoF. Its work is regulated by the Law on Budget and Fiscal Responsibility and the Law on Inspection. In 2014, the first inspection procedures were carried out, thereby fulfilling a compliance

²⁸⁹ Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

²⁹⁰ Committee of Sponsoring Organisations of the Treadway Commission. These principles were originally drafted for application to private sector companies.

²⁹¹ Article 13 states that based on the internal systematisation and organisation acts, the heads of the entities may delegate individual duties and responsibilities or authorisations to other employees. These systematisation acts define the role and staffing of structural units within organisations and are formally approved by the Government.

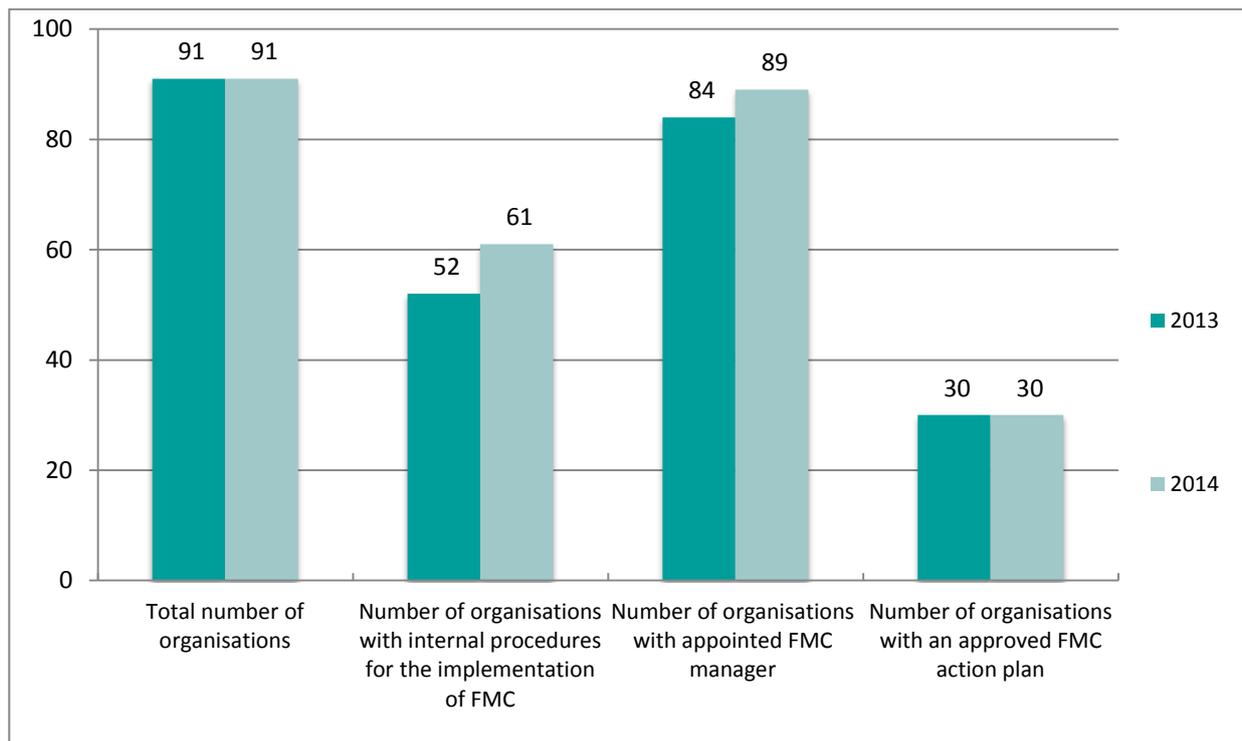
role in dealing with suspicion of mismanagement of public funds. The first practice does not conflict with the work of internal audit, although the Law on Inspection includes provisions, such as planning of inspection work, which may cause a conflict with the pure nature of this reactive type of inspection service.

Regulations covering the operational framework required for FMC implementation are in place. The Government has approved a strategy and action plan for FMC and the action plan is largely implemented. The Central Harmonisation Unit has started carrying out quality control reviews to complement its information on actual levels of implementation of the FMC procedures in the ministries.

Principle 7: Each public organisation implements financial management and control in line with the overall financial management and control policy documents.

Implementation of FMC at an institutional level is lagging behind the development of the policy framework. A common weakness in ensuring internal control is that most FMC action plans, where they exist, have not been updated since 2011. Meanwhile, written procedures for the key internal control procedures do not exist in many organisations. Objectives are not established in a systematic manner in many public organisations, including ministries; risk management procedures are not implemented; and there is a lack of delegation of decision making authority in financial management beyond the level of the secretary of ministry.

Figure 4. Basic data on implementation of FMC in budget organisations



Source: Ministry of Finance.

The FMC manager role is normally assigned to the secretary of a ministry or equivalent with the appropriate status to drive through FMC developments. The minister normally delegates financial and human resource issues to the secretary of the ministry and they are also assigned co-ordination functions by the Law on State Administration²⁹². This means that the secretary of the ministry is well placed to perform the role of FMC manager.

²⁹² Article 42 of the Law on State Administration.

Throughout the central government administration, a gap can be seen between the responsibilities for policies and finances. Operational managers (directors general in the ministries) are responsible for the substance of the policy, but they have no direct responsibility for financial management. Individual payments are subject to control by relatively high levels of management. Every transaction requires authorisation by a secretary of the ministry or even a minister.

The Treasury information system does not provide information on a sub-programme or organisational unit basis that would enable managers to monitor budgets and take responsibility for finances²⁹³. Currently, regular financial information is available only according to the budget structure, although just 78% of organisations have basic alignment between the budget structure and the management structure within the organisation.

Implementation of FMC at the level of each public organisation has not received the full support of all organisations. An annual review of progress shows significant disparities among different organisations. While most now have FMC managers, only a third have FMC action plans, and risk management procedures are carried out only in exceptional cases. While senior managers generally have policy responsibility, there is little financial delegation below the level of secretary of ministry.

Key recommendations

Short-term (1-2 years)

- 1) The MoF should gather practical lessons from the pilot FMC rollouts, to provide guidance for wider implementation of FMC.
- 2) The MoF needs to review the existing FMC Manual and update it by linking it closely with other legislation in the area of PFM.
- 3) The MoF should develop separate written procedures of work for the Budget Inspection service in the MoF. This would ensure that it is carrying out its work based on actual complaints, with a clear indication of irregularities. It would also make sure that it focuses on the risks of fraud and major financial abuse and does not duplicate the objectives of internal audit.

Medium-term (3-5 years)

- 4) The MoF should take steps to adjust the FMC quality control activities towards focusing analysis on the completeness and quality (as opposed to the existence) of internal control procedures and practices in the budget organisations.
- 5) The MoF needs to prepare a financial management training programme for the relevant public sector employees and start implementing this programme.
- 6) The MoF should detect and expand good practices of IPA management and control systems to the wider management rules for budget execution. The rules for IPA programmes should be adjusted to meet the needs of the overall framework for FMC in Montenegro.

2.4. Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.

Baseline values

The functioning of internal audit (IA) is examined through two qualitative indicators, one covering ten critical elements for an effective IA framework as defined in the Principles of Public Administration²⁹⁴ and the other covering the quality of IA reports prepared by Montenegrin public organisations. These are complemented by three numerical indicators to deal with levels of staffing and training as well as

²⁹³ The Treasury system has the technical ability to keep records on the level of the sub-programmes or organisational units. These detailed records, however, are not kept in the Treasury system.

²⁹⁴ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 87-89.

Montenegro
Public Financial Management

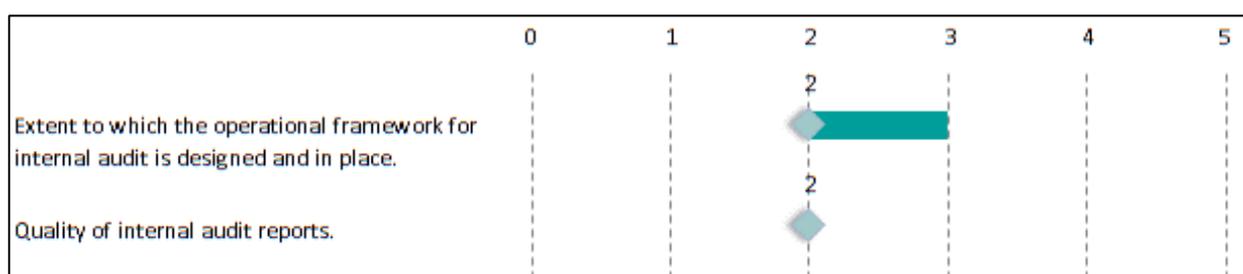
compliance with national planning requirements. Precise methodology and scales are listed in the Methodological Annex.

The legal basis for the operational framework for IA is in place but persistent weaknesses exist in the application of the regulation.

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	8	Extent to which the operational framework for internal audit is designed and in place.	2014	2
	9	Quality of internal audit reports.	2014	2
Quantitative	8	Share of public administration organisations meeting national legal requirements for establishing and minimum staffing of internal audit units.	2014	21%
	8	Share of internal auditors with a national or international internal audit certificate.	2014	73%
	9	Share of organisations with annual internal audit plans conforming to national legal requirements.	2014	25%

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 5. Country baseline value in comparison with the regional range



Analysis of Principles

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.

The requirements of the PIFC Law apply to the users of the state budget, budgets of municipalities, state funds, independent regulatory bodies, shareholder companies and other legal entities in which the Government or municipalities have a controlling stake. The Law further requires entities to establish internal audit (IA), either by setting up an independent unit or arranging for coverage by another organisation. The PIFC Law goes on to say that internal audit should be carried out in

accordance with the International Standards of the Institute of Internal Auditors²⁹⁵. The PIFC Law is supported by decrees consistent with the Law. IA activities are broadly defined to support operational performance²⁹⁶, which is consistent with FMC, in contrast with the more limited traditional focus on regulatory compliance.

Extensive guidance material is available for internal auditors, including manuals and templates. As of December 2014, a clear procedure also exists for incorporating IPA-funded programmes into the coverage of IA work²⁹⁷.

The PIFC Strategy includes plans to strengthen IA in the public sector, and its two-year action plan has been largely implemented.

Basic quality assurance work is undertaken by the CHU and covered five ministries in 2014. This analysis has focused both on the quality of organisational arrangements for IA and the analysis of the quality of individual audit files. The international standards envisage more rigorous programmes, including independent reviews every five years.

Since many internal audit units are not established and staffed according to the legal requirements, less than 85% of internal auditors have an internal audit certificate and the annual report on PIFC does not demonstrate progress in the quality of internal audit, the value of the indicator on operational framework for IA is 2.

In terms of the operational framework required to implement internal audit, laws and regulations are consistent with international standards and specify the operational arrangements for internal audit. The PIFC Law requires internal audit coverage for all public sector organisations. Basic quality assurance arrangements exist.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents as appropriate to the organisation.

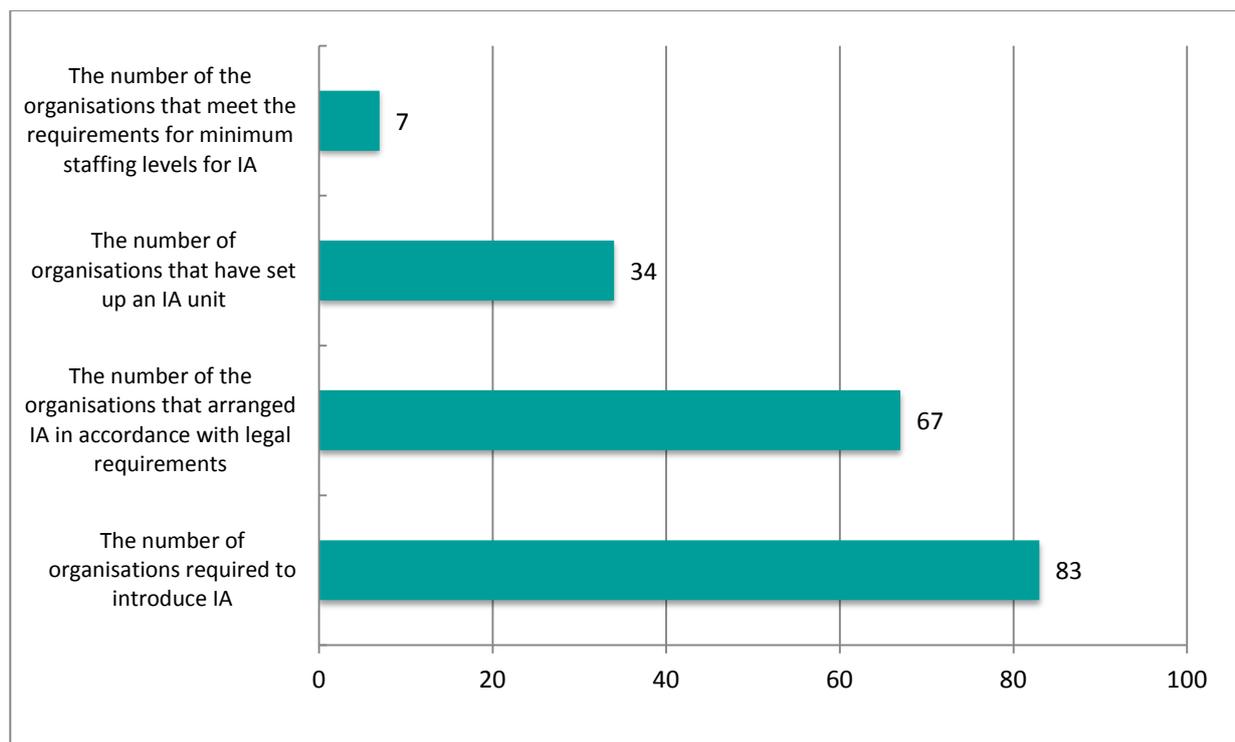
Overall, 81% (67 out of 83) of organisations required to establish an IA function have done so. Thirty-three organisations have signed agreements with other public sector organisations for this service and 34 have established IA units. However, only 7 of them (21%) meet minimum staffing levels, through lack of funding for the necessary posts and/or a lack of suitably qualified staff for appointment, which shows a lack of commitment to IA. Taken together, these show that the overall framework for IA is not yet fully implemented.

²⁹⁵ The International Standards for the Professional Practice of Internal Auditing (ISPPA) laid down by the Institute of Internal Auditors. The standards are widely used in other countries and meet EU requirements.

²⁹⁶ Article 16, PIFC Law.

²⁹⁷ The fourth edition of the Internal Audit Manual was issued In December 2014.

Figure 6. 2014 data on the set-up of the internal audit function in the budget organisations



Source: Ministry of Finance.

The average number of internal auditors in place is less than two, which further underlines weaknesses in staffing. Only 60 auditors are employed in the 34 IA units. It is difficult to recruit and retain staff of suitable ability and provide appropriate experience and training within these small units. In particular, international standards indicate the level of review and supervision within the IA structure²⁹⁸, which is not possible within these units.

The provision of training has been arranged by the CHU. This has included two rounds of training provided in co-operation with the Centre of Excellence in Finance²⁹⁹ and the Chartered Institute of Public Finance and Accountancy³⁰⁰. At present, 44 (73% of the total) internal auditors have passed this international certificate training. Many of the current internal auditors have trained together and have started regular meetings and experience sharing. They have established their own informal networks. More formal networking arrangements guided by the CHU do not yet exist.

A sample of ten IA reports issued in 2014 showed that the IA manual has not been consistently followed, but most audit reports meet the minimum requirements established by the national regulation³⁰¹. This leads to the value of 2 in the indicator for quality of internal audit reports. The most common weaknesses compared to the IA manual were a lack of presentation of evidence in supporting recommendations and a lack of details presented in the annexes. Most of the analysed audit reports focused on compliance, while only three had a clear focus on improving internal controls and just one included considerations of value for money.

The number of internal auditors in place compared to the number of internal audit units is low. In addition, many small organisations have not made arrangements for internal audit. Audit reports are routinely prepared but most of them focus on compliance with existing rules of procedures.

²⁹⁸ International Standards for the Professional Practice of Internal Auditing – Attribute Standard 2340 Engagement Supervision.

²⁹⁹ Centre for Excellence in Finance is a regional development institute based in Ljubljana, Slovenia.

³⁰⁰ The Chartered Institute of Public Finance and Accountancy is a UK-based professional accountancy body specialising in the public sector.

³⁰¹ The national legal requirements are more flexible, with fewer legally binding requirements.

Key recommendations

Short-term (1-2 years)

- 1) The MoF needs to develop sustainable long-term arrangements for training internal auditors for the public sector that can be implemented without external support.

Medium-term (3-5 years)

- 2) The MoF should take steps to develop IT audit capacity in the key IA units.
- 3) The MoF should develop the capacities of IA further, as an advisory service to management with a clear focus on ensuring that FMC systems are operational and effective.
- 4) Building on the current IA quality assurance exercise carried out by the CHU, the MoF needs to establish quality assurance arrangements in accordance with international standards.

2.5. Key requirement: Public procurement is regulated by duly enforced policies and procedures that reflect the principles of the Treaty on the functioning of the European Union and the European Union *acquis*, and are supported by suitably competent and adequately resourced institutions.

Baseline values

The key requirement for harmonisation of public procurement regulations with the EU *acquis*, as well as the establishment of corresponding institutional structures and arrangements, is examined through six qualitative indicators. The first two describe the extent to which the legislation is complete and enforced, covering the eight main goals defined in Principle 10, and the openness of policy making and monitoring. The next two indicators concern the development and implementation of the policy framework and the existence and performance of a dedicated institution for central procurement functions. The last two indicators cover the effective monitoring of the public procurement system and the extent to which information about its workings is readily available to all interested parties.

The indicator values reflect a relatively high level of regulation of public contracts, although with some gaps relative to the EU Directives, and an incomplete legal and institutional framework for concessions.

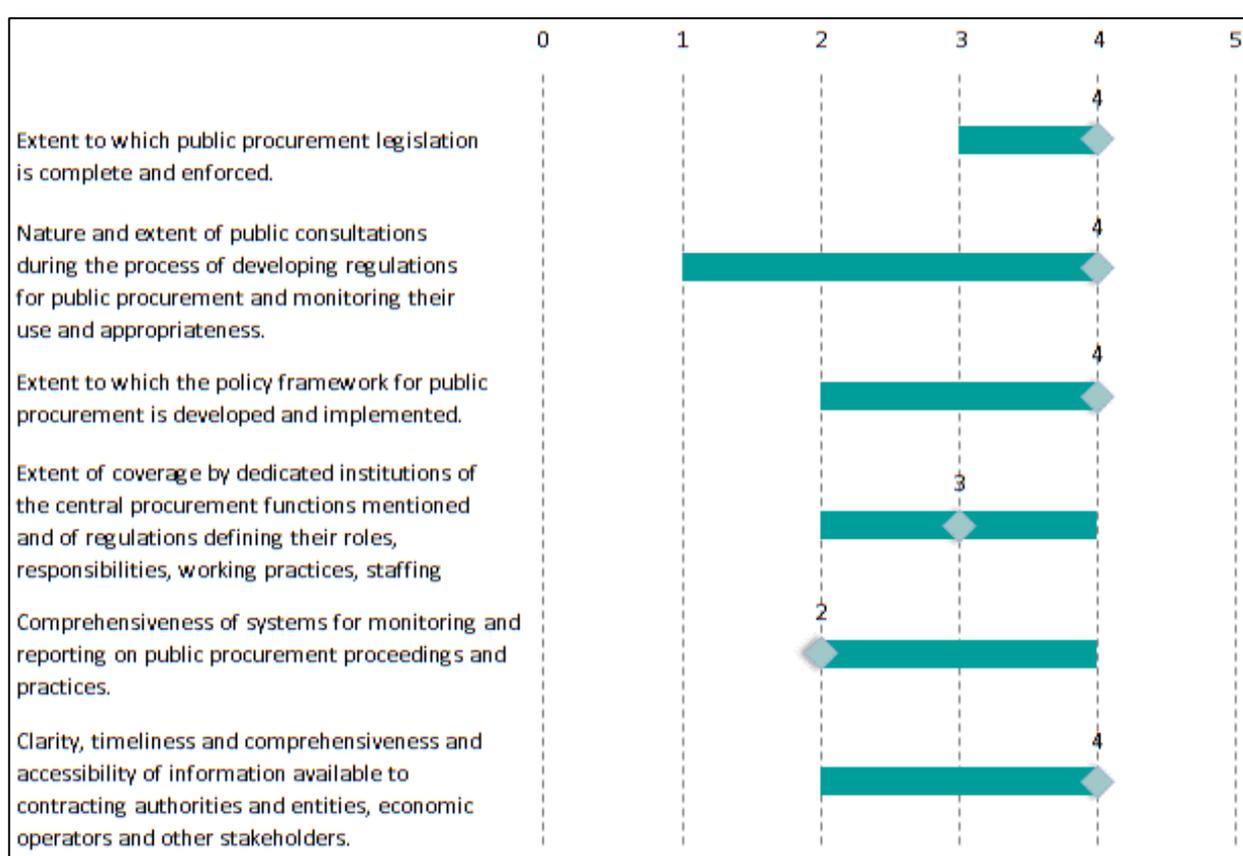
	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	10	Extent to which public procurement legislation is complete and enforced.	2014	4
	10	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	2014	4
	11	Extent to which the policy framework for public procurement is developed and implemented.	2014	4
	11	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	2014	3
	11	Comprehensiveness of systems for monitoring and reporting on public procurement	2014	2

Montenegro
Public Financial Management

		proceedings and practices.		
	11	Clarity, timeliness and comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	2014	4

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 7. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and duly enforced.

The PPL³⁰² was adopted in 2012. While the original version did not transpose some of the essential elements of the EU public procurement legislation (e.g. with regard to the regulation of utilities³⁰³ and defence³⁰⁴ procurement), recent amendments to the PPL adopted in December 2014 have rectified

³⁰² Official Gazette No. 42/11.

³⁰³ Directive 2014/25/EU.

³⁰⁴ Directive 2009/81/EC.

these shortcomings to a large extent, even if a number of award procedures have not yet been transposed.

Utilities procurement is subject to a set of new rules (Chapter III) providing for more flexibility to contracting entities, which is a significant step forward in aligning the PPL with the requirements of EU Directive 2014/25.

New rules on defence procurement were introduced in Chapter IVa (Articles 116a-i) when the PPL was amended in late 2014. This ensures the transposition of the basic concepts and procedures provided for in EU Directive 2009/81. However, applying these new provisions has proved initially challenging. The rules in question require detailed implementing legislation, which is due to be in place by 4 May 2015.

In the field of PPPs, the relevant legislation is laid out in approximately 30 sector laws regulating co-operation between the public and private sectors in the provision of public services. One problem has been the selection of award procedures, since the ones predominantly recommended for the award of concessions – competitive dialogue and negotiated procedure – are not fully covered by the PPL. The new PPP Law³⁰⁵, which is in the process of being finalised, provides comprehensive coverage of the field, but the other laws mentioned have not yet been harmonised with it. Public consultations are being held both when new legislation is developed and for assessing existing regulations, though only by invitation in the early phases and with short deadlines for formal comments.

Public finance regulations allow³⁰⁶ for a medium- or even long-term perspective in public procurement, as appropriate for larger works contracts and for framework agreements.

The set-up and functioning of the remedies system corresponds with the formal requirements of the EU Remedies Directives³⁰⁷, except that there are no provisions for ineffectiveness. However, the functioning of the public procurement system has been hampered by the lack of harmonisation between the provisions of the PPL and the Law Administrative Procedures³⁰⁸ and the Law on Administrative Disputes, although these are now being amended. As a consequence, the decisions of the review body, the State Commission for the Control of Public Procurement Procedures (SC), have frequently been quashed by the Administrative Court acting on appeal, because the two laws leave room for conflicting interpretations. These include, for instance, the interpretation of legal standing in review procedures and the formal requirements for registering tenders and motivating decisions.

Despite the lack of legislation on concessions (in the sense of the EU Concessions Directive) and of full harmonisation with other laws, the indicator for the “extent to which legislation is complete and enforced” receives a value of 4, while the one for public consultation is 3, pending improvements to early stage consultations and to the time limits for comments.

A well-established legislative framework for awarding public contracts in Montenegro is in place. However, further alignment with the EU *acquis* is required to bring the PPL and its implementation fully in line with the new EU Directives. Concessions are not yet regulated in line with the EU Directives. The remedies system formally complies with the *acquis*, but is significantly hampered by the lack of harmonisation between public procurement regulations and rules of administrative law.

Principle 11: There is a central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

The MoF and the Public Procurement Administration (PPA) remain at the core of the institutional framework in the field of public procurement. The MoF has a general strategic and policy co-ordinating

³⁰⁵ www.mif.gov.me/rubrike/javne_rasprave/146377/Javna-rasprava-o-Nacrtu-zakona-o-javno-privatnom-partnerstvu.html.

³⁰⁶ PPL, Article 39.

³⁰⁷ Directive 89/665/EEC ; Directive 92/13/EEC ; Directive 2007/66/EC.

³⁰⁸ www.kontrola-nabavki.me/1/index.php?option=com_content&view=article&id=71&Itemid=68&lang=en.

role, formally submitting relevant draft legislation to the Government and overseeing its implementation. The main tasks of the PPA lie in the preparation and implementation of the legislation and the management of e-procurement, as well as monitoring, advisory and training activities.

The key institutional actors, the PPA and SC, face some bottlenecks in their operations, especially regarding IT capacity.

A current strategy³⁰⁹ for the development of the public procurement system exists, but in the short- and medium-term perspective, it is only reflected in the annual work plans of the PPA. A working group for developing the next Strategy, covering the period 2016-2020, is already in place³¹⁰. As a result, the indicator "Extent to which policy framework is developed and implemented" obtains a value of 4, while the lack of a framework for concessions returns a value of 3 for the indicator of the extent of the coverage by dedicated institutions of central procurement functions.

The MoF is introducing policies and procedures for enhanced contract monitoring in budget entities. However, no unified approach to contract monitoring has been adopted in other contracting authorities. The PPA collects some data on procurement operations, but the system is not comprehensive and not easily accessible for external users unfamiliar with the system.

No single authority has assumed the task of monitoring and supervising the implementation of PPPs. A Concessions Commission, established under the Law on Concessions³¹¹, exists but, in practice, its role is limited to the supervision of "concessions", such as licenses for the exploitation of natural resources and tourist sites. The current draft of the new PPP Law³¹² provides for the establishment of a new body to be in charge of analysing PPP project proposals, keeping a registry of potential and implemented PPP projects, and monitoring their implementation.

For monitoring and reporting, the values are therefore 2 for the indicator regarding the comprehensiveness of monitoring and reporting, and 4 for the clarity and accessibility of information.

The current institutional set-up for the management of public procurement policy meets the needs of the *acquis* in the field of public contracts and performs the tasks required of it, although resources remain limited in the SC, by comparison with the number of complaints they handle. However, the field of concessions and public-private partnerships does not yet have the legal and institutional framework that is required to ensure its conformity with the *acquis*.

Key recommendations

Short-term (1-2 years)

- 1) The PPA and the working group appointed for the purpose should pursue the preparation of the 2016-2020 strategy for the development of the public procurement system, so that it can be adopted by the Government by the end of 2015.
- 2) The PPA and the MoF should prepare further amendments of the public procurement legislation to ensure that the PPL is harmonised with the new EU Directives, as well as the new Law on Administrative Procedures and the Law on Administrative Disputes.
- 3) The Government should strengthen the financial and administrative capacity of the PPA and SC, especially by improving its IT capacity and skills. This will allow them to take full advantage of EU support for the development of e-procurement software.

³⁰⁹ Strategy for Development of the Public Procurement System in Montenegro for the period 2011-2015, <http://www.ujn.gov.me/en/2013/12/strategije-razvoja-sistema-javnih-nabavki-u-crnoj-gori-za-period-2011-2015/>

³¹⁰ www.ujn.gov.me/2012/01/predlog-strategije-razvoja-sistema-javnih-nabavki-u-crnoj-gori-za-period-2011-2015-s-predlogom-akcionog-plana-i-predlogom-odluke-o-obrazovanju-koordinacionog-tijela-za-pracenje-i-sprovođenje-strategij/

³¹¹ Official Gazette No. 08/09.

³¹² www.mif.gov.me/rubrike/javne_rasprave/146377/Javna-rasprava-o-Nacrtu-zakona-o-javno-privatnom-partnerstvu.html

Medium-term (3-5 years)

- 4) The PPA and other authorities concerned should implement the new strategy so that the public procurement system is fully aligned with the EU *acquis* and capacities are strengthened and concentrated for effective public procurement operations.

2.6. Key requirement: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

Baseline values

The key requirement for establishment of an independent, transparent, effective and efficient remedies system is examined through six indicators. They describe the timeliness of the review procedure, the accessibility of the review system for economic operators and the performance of the review body.

The values given reflect the presence of a working remedies system for public contracts but gaps concerning concessions and shortcomings in the publication of notices.

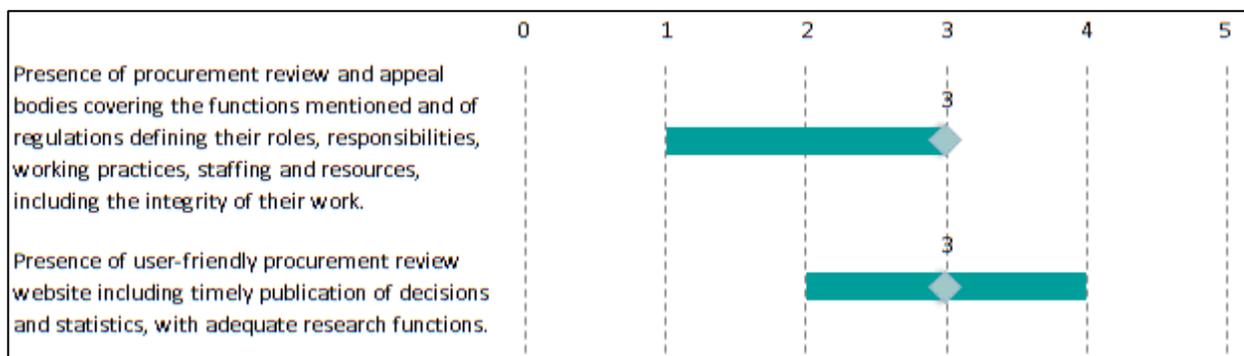
	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	12	Presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work.	2014	3
	12	Presence of user-friendly procurement review website including timely publication of decisions and statistics, with adequate research functions.	2014	3
Quantitative ³¹³	12	Actual processing time of complaints related to procurement compared with the maximum legal requirement.	2014	22 days vs.15 days
	12	Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.	2014	41%
	12	Number of complaints in relation to the number of tender notices published.	2014	Not available ³¹⁴
	12	Share of complaints in procurement that are challenged to the next judicial level.	2014	7.6%

³¹³ Data are preliminary. Article 142 of the PPL requires submission of the official report for the previous year no later than by 30 June.

³¹⁴ In 2014, 805 complaints were received; however, data on the total number of notices was not available.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 8. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 12: The remedies system is aligned with the *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

Mechanisms and institutional set-up for handling complaints are in place. Furthermore, the roles and functions of the review and appeal bodies are defined by law in alignment with *acquis* standards of independence, probity and transparency. However, the *acquis* mechanisms for ineffectiveness of the contract and imposition of penalties are not in place. Moreover, the provisions for remedies regarding concessions³¹⁵ do not meet the requirements of the Directives. For these reasons, the indicator for the presence of review and appeal bodies has a value of 3.

The SC is the main body in charge of the administrative review of complaints falling within the scope of the PPL. While its caseload is rather high (805 complaints received in 2014), it is currently operating at reduced decision-making capacity (one Chair and three members, instead of four). It has only six professional staff rather than the approved staffing complement of ten.

The SC's capacity problems compromise its ability to use even elementary tools for information management. Its decisions are clear and complete, but they are published on the PPA website only as PDF files. No searchable database exists to allow either SC staff or other interested parties to browse through past decisions. Publication on the website has not always been prompt. The contracting authorities are not able to check the established jurisprudence and the trends of the SC's previous decisions. The same also applies to the case law of the Administrative Court. Therefore, contracting authority officials must rely on their "collective memory" and share information between themselves rather than using any official source. As a consequence, the indicator for the presence of a user-friendly website receives a value of 3.

When reviewing SC decisions, the Administrative Court seldom decides a case on its merits. Instead, it typically quashes the SC's ruling, often for formal reasons related to the provisions of the LGAP rather than those of the PPL. It has then been sending the case back to get a different SC ruling. This, together with the occasional annulment of decisions of the SC on appeal, represents an obstacle to the efficiency of the remedies system. It also means that the obligation to ensure a system of effective review of the decisions taken by contracting authorities (as laid down in Article 1 of the Remedies Directive 89/665) is not fully met.

³¹⁵ Law on Concessions, SG 08/09, Article 42.

The operation of the remedies system is dysfunctional, given that the public procurement regulations and rules of administrative law have not been harmonised. This has resulted in a conflict between the decisions adopted by the SC and the judgements of administrative courts acting on appeal. The absence of a comprehensive, searchable database of past SC decisions and the judgements of administrative courts also represents a significant shortcoming. This seriously compromises the legal certainty of actual and potential litigants.

Key recommendations

Short-term (1-2 years)

- 1) The MoF, the Ministry of Justice and other parties concerned should harmonise the respective provisions of the PPL and the Law on Administrative Disputes to avoid the application of conflicting provisions and divergent interpretations adopted by the SC and the administrative courts acting on appeal;
- 2) The authorities concerned should continue to build capacity among members of the SC and the Administrative Court on EU practices in the field of public procurement, including ways to address minor administrative errors;
- 3) The SC and the Administrative Court should establish a proper database, with a web-enabled search engine, for recording past SC rulings and Administrative Court decisions on public procurement, so as to increase transparency and make it easier to establish sound case law.

Medium-term (3-5 years)

- 4) The Government should examine the potential for making the remedies system more effective and efficient, so as to facilitate access to justice, while reducing costs and delays in the public procurement process.

2.7. Key requirement: Contracting authorities are adequately staffed and resourced and carry out their work in accordance with applicable regulations and recognised good practice, interacting with an open and competitive supply market.

Baseline values

The key requirement for an efficient public procurement system based on the availability of a professional, value-driven and integrity-conscious management function in contracting authorities is examined through a set of quantitative indicators describing the performance of the public procurement market. However, the absence of data for 2014 has made it impossible to award any rating.

Three more indicators describe the presence and performance of modern procurement tools, the existence and availability of guidelines and the professionalism of procurement officials. The values reflect a low level of centralised purchasing and modest development of e-procurement, while contracting authorities are better provided with guidelines and procurement training opportunities.

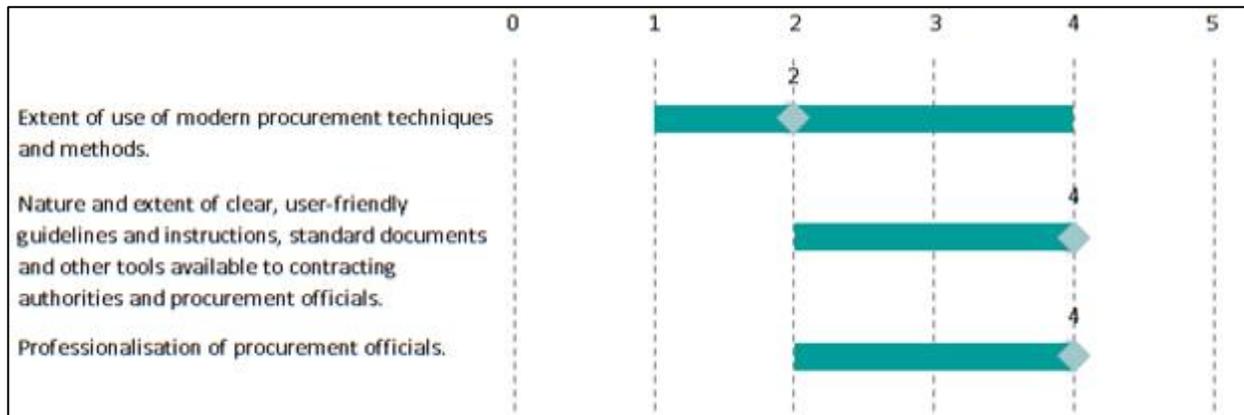
Montenegro
Public Financial Management

	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	13	Extent of use of modern procurement techniques and methods.	2014	2
	14	Nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials	2014	4
	14	Professionalisation of procurement officials.	2014	4
Quantitative ³¹⁶	13	Share of contracts already announced in published procurement plans or indicative notices.	2014	Not available
	13	Share of contracts awarded by competitive procedures.	2014	Not available
	13	Share of contracts awarded based on acquisition price only.	2014	Not available
	13	Share of contracts amended after award.	2014	Not available
	13	Share of contracts subject to formal post-evaluation.	2014	Not available
	13	Average number of tenders submitted per goods contract to be procured.	2014	Not available
	13	Average number of tenders submitted per works contract to be procured.	2014	Not available
	13	Average number of tenders submitted per services contract to be procured.	2014	Not available

³¹⁶ The annual report of the PPA for 2014 had not been published by the end of April 2015 and no preliminary data had been provided.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 9. Country baseline value in comparison with the regional range



Analysis of Principles

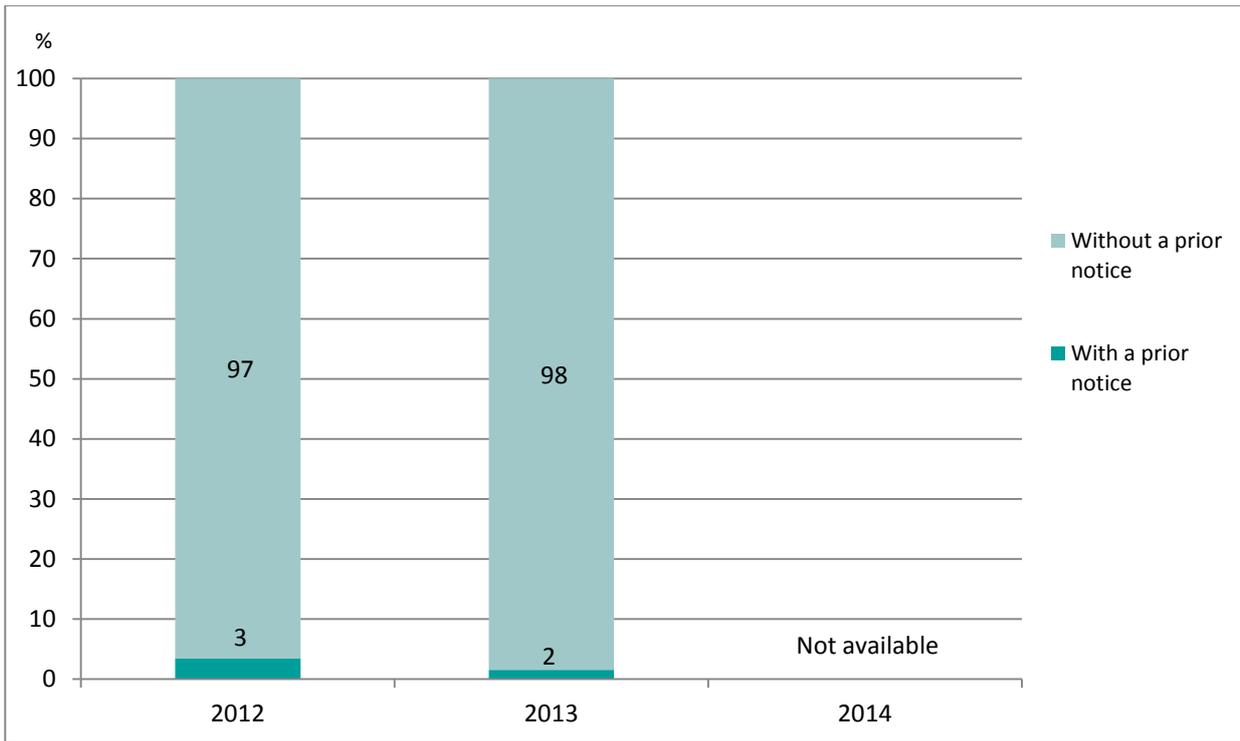
Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

Even though budget regulations and the PPL allow for contracting authorities to plan and carry out public procurement with a medium-term perspective, few contracting authorities use this flexibility. Delaying planning of procurement until after the budget is approved, and a subsequent scramble to spend the budget before the end of the year, is a recurring practice³¹⁷.

³¹⁷ SIGMA interviews with contracting authorities, the PPA and the MoF.

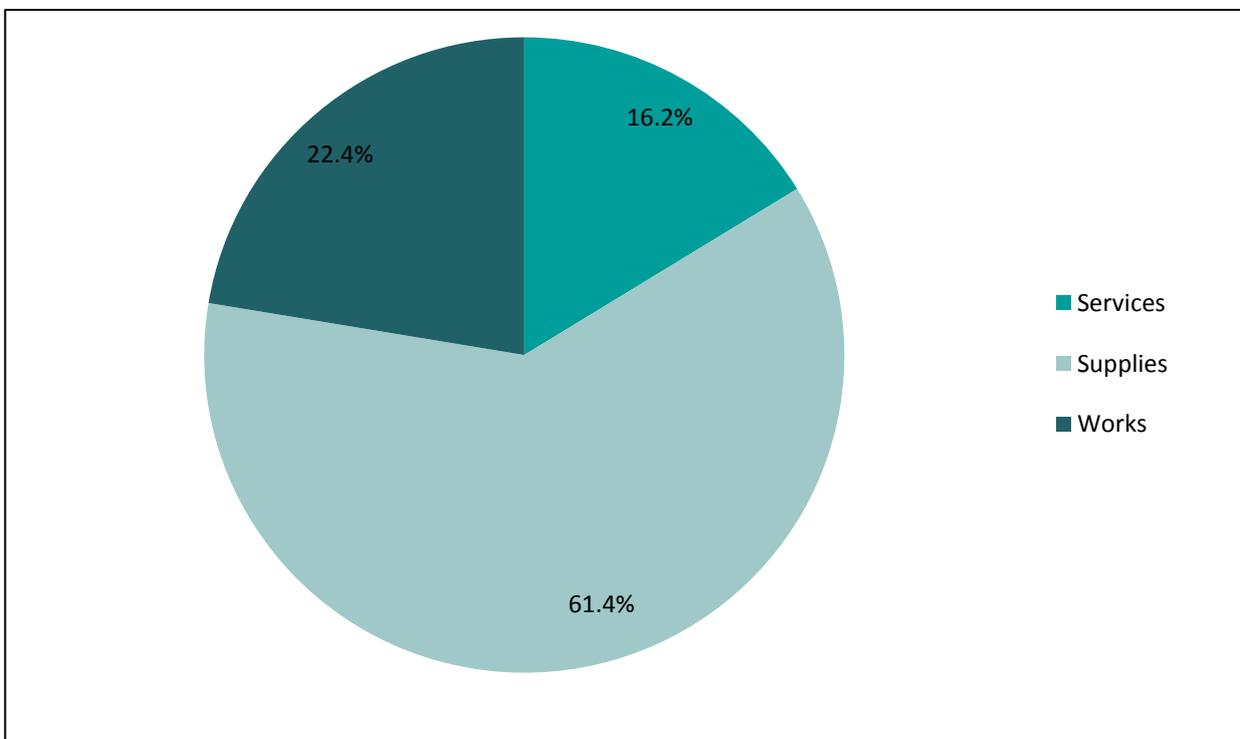
Montenegro
Public Financial Management

Figure 10. Total value of contracts awarded with and without prior publication



Source: Public Procurement Administration.

Figure 11. Types of contracts (contract value)



Source: Public Procurement Administration.

The provisions of the 2014 Directives³¹⁸ concerning preliminary market research by contracting authorities are not reflected in current practices and have not been transposed into the PPL. However, the PPL regulates the determination of estimated value.

Besides weak planning skills, contracting authorities demonstrate an overly formalistic approach to evaluating tenders (with excessive focus placed on formal errors or omissions, such as failure to meet a requirement to use a particular font size in relevant documentation), which causes frequent cancellation or rejection of tenders. Perceiving public procurement procedures as a mechanistic process detracts from the efficient use of public funds that it seeks to achieve.

Whereas the PPL provides for two possible award criteria, i.e. the lowest price and the economically most advantageous bid (Article 93 of the PPL), the lowest price was the dominant criterion in 2014.

Very little use is made of centralised procurement, which is not specifically provided for in the legislation. Such procurement is limited mainly to the health sector. Framework agreements are increasingly used, despite starting from a low level (71 in 2013) and the need for prior approval by the PPA.

Part of public procurement is done electronically, with contracting authorities obliged to publish certain details on the Public Procurement Portal. Such documents include their public procurement plans, invitations for open, restricted and negotiated procedures, and framework agreements.

The very low level of centralised procurement, the increasing use of framework agreements and the basic e-procurement functions available result in a combined value of 2 for the “extent of usage of modern procurement techniques and methods”.

Contracting authorities demonstrate weak planning and an overly formalistic approach to evaluating tenders. The use of price (acquisition cost) as the only award criterion is dominant. The potential of centralised procurement is not fully explored, but the instrument of framework agreements is increasingly being used. Development of e-procurement is under way.

Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle

The PPA has issued a quite comprehensive set of guidelines, manuals, model tender documents, evaluation and report formats and other tools to help contracting authorities carry out proceedings in line with the prescribed procedures. As a consequence, despite the lack of materials on concessions, the indicator describing the nature and extent of guidelines and instructions has a value of 4.

Contracting authorities lack³¹⁹ skills in procurement planning and needs assessment, as well as in the process of drafting the technical specifications. This is especially true when it comes to defining the required quality rather than just the price. It also includes cases where there is a need to establish criteria for the selection of the most favourable bid in the contract notice or the invitation to tender pursuant to Article 92 of the PPL. However, guidance materials have been issued by the PPA with the intention of addressing this problem, which is also covered in the training provided by the PPA.

An important reason for this is the high number of contracting authorities, many of them small (including, for example, primary and secondary schools). As a result, public procurement-related tasks are typically carried out in addition to the main duties of one or a few officials, rather than by specialised staff in a dedicated department. The problem is compounded by the low incidence of joint procurement or centralised purchasing.

By virtue of Article 58 of the PPL, only a person with a university degree (though not necessarily in procurement or a related subject) can be employed as a public procurement officer. In addition,

³¹⁸ E.g. Directive 2014/24/EU, Article 40.

³¹⁹ As repeatedly stated in SIGMA’s interviews with contracting authorities, the Chamber of Economy and the PPA.

candidates must have passed the PPA's professional exam for performing public procurement tasks. The assessment of competences in the exams currently includes:

- statutory aspects of procurement, including EU rules;
- protection of rights in the procurement process;
- other pertinent regulations, forms, documents, etc.

Professional training and education are mandatory (Article 61 of the PPL). However, only the PPA delivers the mandatory educational training at present and its extent is currently limited. In 2014, 105 certificates were issued after training by the PPA, for a total of 615³²⁰ procurement officials. The main focus of the training is on tendering and award procedures, and less attention is paid to planning, preparation and contract management-related issues. For these reasons, the indicator concerning the level of professionalisation of procurement officials receives a value of 4.

The PPA also provides advisory assistance to contracting authorities, economic operators and other interested parties upon request.

Besides training activities, which are currently limited, the PPA offers a wide range of day-to-day assistance and advice, including issuing opinions on request. In 2014, in response to the corresponding requests, 200 such opinions were issued to contracting authorities, 120 to economic operators and 60 to other interested parties.

Key recommendations

Short-term (1-2 years)

- 1) The Government should reduce the number of contracting authorities, so that procurement management in those that remain can become more effective and efficient.
- 2) The PPA, in consultation with other authorities concerned, should promote joint procurement and explore the potential for centralised purchasing, including at a sectoral level, so that a decision can be taken on the right approach for the future (as part of the strategy);
- 3) The PPA should start implementation of e-procurement, in line with the principles set out in the 2014 Directives;
- 4) The PPA and other authorities concerned should examine ways of raising the professional status of procurement officials and improving access to basic education in the field. It should also review the approach to training of procurement officials. The goal should be to ensure that it becomes comprehensive (including procurement planning and preparation and contract management), useful (in particular, for improving economy and efficiency) and sustainable.

Medium-term (3-5 years)

- 5) The PPA should complete the introduction of e-procurement.
- 6) The PPA should manage the introduction of centralised purchasing.

2.8. Key requirement: The constitutional and legal framework guarantees the independence, mandate and organisation of the Supreme Audit Institution to perform its mandate autonomously according to the standards applied for its audit work, allowing for high-quality audits that impact on public sector functioning.

Baseline values

The legal framework of the Supreme Audit Institution, in Montenegro the SAI, is examined through four quantitative indicators and one qualitative indicator, by reviewing the Constitution, the legislation

³²⁰ As per the list on the PPA's website.

Montenegro
Public Financial Management

governing the SAI, including internal rules and procedures and other relevant documents. The functioning of the SAI is examined through three quantitative indicators and one qualitative indicator, by an analysis of the relevant documentation. All the data collected are supplemented by interviews.

The SAI in Montenegro has a legal basis that meets the international standards, and its work is regularly published, as shown in the indicators below. Institutional development and the application of the standards in audit work include specific weaknesses (as analysed under the Principles below).

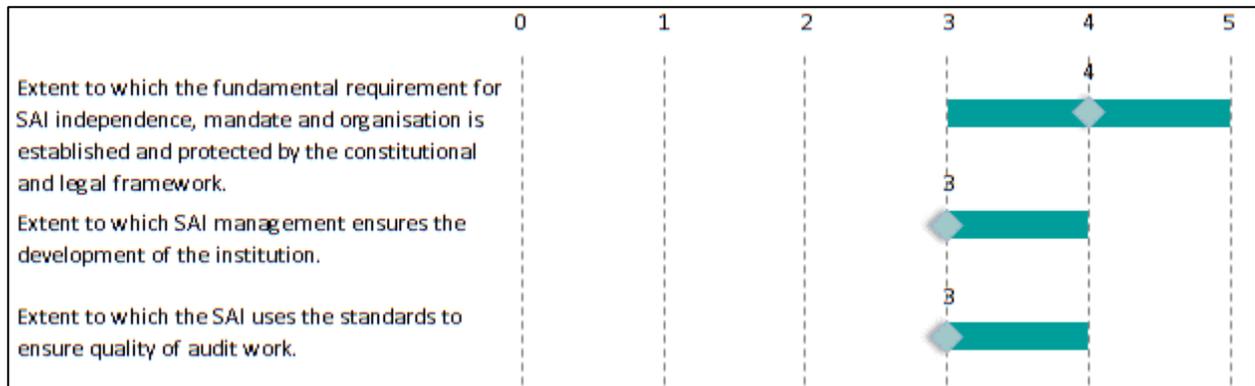
	Principle no.	Indicator	Baseline year	Baseline value
Qualitative	15	Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework.	2014	4
	15	Extent to which SAI management ensures the development of the institution.	2014	3
	16	Extent to which the SAI uses the standards to ensure quality of audit work.	2014	3
Quantitative	15	Difference between approved budget and realised expenditure of the SAI.	2014	21 %
	15	Share of SAI budget in the state Budget.	2014	0.1%
	15	Amount of resources used for mandatory audits compared with resources for audits selected independently by the SAI.	2014	70%
	16	Proportion of audit reports published on the SAI website compared to total audit reports adopted.	2014	100%
	16	Share of audit recommendations accepted ³²¹ and implemented by auditees.	2013	45% ³²²
	16	Share of timely audit reports.	2014	100%

³²¹ 100% of audit recommendations are accepted by auditees.

³²² Related to recommendations for mandatory audits.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 12. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 15: The independence, mandate and organisation of the Supreme Audit Institution are established and protected by the constitutional and legal framework and are respected in practice.

The Constitution establishes the State Audit Institution as the Supreme Audit Institution and asserts its independence as an institution³²³, designates the Senate as the body leading the Institution, and provides its members with functional immunity in exercising their duty. The Law on the SAI (SAI Law) further clarifies the independence, mandate, rights and responsibilities of the SAI, in line with the requirements of international standards. With the amendments of the Law in 2014, the financial³²⁴ and management³²⁵ independence of the SAI is strengthened. The audit mandate is exhaustive and now also includes EU funds and the funds of international organisations³²⁶.

The SAI is empowered to undertake financial, compliance and performance audits³²⁷ in accordance with international auditing standards and the professional code of ethics. The SAI reports its audit findings to the Parliament and the Government, mainly through its annual report. It does not, however, submit all its individual audit reports to Parliament. The indicator related to the quality and implementation of the legal framework is therefore set at 4.

The SAI sets its own annual audit plan³²⁸ and makes sure it is followed through. The annual mandatory audits take up the majority of the SAI resources (in 2014, the average number of auditor days per engaged auditor for mandatory audits was 116 and 90 for individual audits). The SAI exercises a full financial audit of the final budget accounts of Montenegro, as well as financial audits of the final accounts of all political parties. The SAI reaches audit coverage of 83% of the state budget.

³²³ Article 144.

³²⁴ Article 51 of the Supreme Audit Institution law now clarifies that the SAI budget shall be decided by the Parliament (competent working body in charge of finances).

³²⁵ Article 48 of the Supreme Audit Institution law now gives the right of decision about agreements, rights, duties and responsibilities of the employees to the Senate.

³²⁶ Article 4 of the Supreme Audit Institution law.

³²⁷ Article 5 of the amended Supreme Audit Institution law of 2014 now defines the audit types in accordance with International Standards of Supreme Audit Institutions.

³²⁸ Article 9 of the Supreme Audit Institution law. The annual audit plan now has to be adopted by the end of the current year for the following year.

Despite the fact that there have been only four members of the Senate (out of five envisaged by the law) for several years, the SAI has management and support structures in place allowing it to implement its mandate. However, horizontal functions created in 2013, e.g. for legal support, have still not been filled.

Through an exam for state auditors, the SAI makes sure that audit staff have theoretical qualifications for the audit work. A human resource management strategy has not yet been developed. The SAI establishes a training programme each year based on a needs assessment, but for the 2014 training programme, which listed 10 topics, only English-language training was actually organised. Given the small scale of the institution, substantial professional development occurs through on-the-job training. However, there is no clear training strategy with an explicit vision for professional development that includes this type of rather informal training.

The SAI has a development strategy in place³²⁹, which is published. The senate of the SAI reviewed the plan in July 2014, but this has not been an annual exercise. Given the above-mentioned weaknesses, the value of the indicator related to the extent to which the SAI management ensures the development of the institution is 3.

The independence, mandate and organisation of the Supreme Audit Institution are established and protected by the constitutional and legal framework and are respected in practice. The mandatory annual audits are binding the majority of SAI resources and leave little room for audits decided at the discretion of the SAI.

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.

By the new formulation of Article 5 of the SAI law, the SAI performs its audits in a manner and with procedures complying with the established framework of the auditing standards of INTOSAI³³⁰ and its professional Code of Ethics. In 2014, the SAI revised its audit methodology and adopted new instructions for financial, compliance and performance audit, which comply with those standards. At the same time, it has developed and adopted guidelines for the control of audit quality adapted to the specific circumstances of the collegially organised SAI. The audit manuals still need to be harmonised with the revised methodology. The audit quality control guidelines will be applied for the audit plan in 2015.

The SAI develops and adopts its annual audit plan according to its internal guidelines, and the implementation of the annual plan is assessed annually by the Senate. However, so far the SAI has not established a multi-annual system to prioritise its audit work, taking into account the need to maintain quality. For 2014, the SAI adopted and published 48 audit reports, out of which 43 were financial audits, 3 compliance audits, 1 performance audit and 1 follow-up audit. In 2014, three financial audits ended in an adverse opinion. These were discussed in the Parliament in public hearings, called “control” hearings, to monitor the implementation of recommendations. The Parliament³³¹ also requires the Government to report quarterly on the implementation of audit recommendations arising from the annual audit of the budget account.

The SAI monitors the implementation of its recommendations arising from the audit of the annual final accounts of the Government and of political parties. It also exercises one specific follow-up audit. In 2013, 36 of its 82 audit recommendations of mandatory audits were implemented³³². Altogether, the indicator related to the extent to which the SAI uses international standards in its audit work has a value of 3 for the reasons already mentioned. Under the amended SAI law, audited entities are now

³²⁹ Strategic Development Plan of the State audit Institution for the period 2012-2017.

³³⁰ International Organisation of Supreme Audit Institutions.

³³¹ The Committee for economy, budget and finance.

³³² Audit of annual final budget account, audit of consolidated financial statements of political parties and a follow-up audit.

legally obliged to submit a report on the implementation of the recommendations given in an audit report within the time frame set by the SAI³³³, which also should strengthen the follow-up of audit reports for non-mandatory audits.

As in previous years, in 2014, the SAI did not spend 21% of its annual budget, mainly because of the non-filling of a membership vacancy in the Senate, but also due to delays in other recruitments and procurements.

The SAI reports annually on activities other than its audit work in its annual report (Chapter 4 in 2014), which is comparable to an annual activity report. Active communication to the media does not take place.

The SAI publishes audit reports that meet international standards and have an impact on the functioning of the public sector. A strategic approach to professional development based on a human resource management strategy and a training strategy has not yet been developed.

Key recommendations

Short term (1-2 years)

- 1) The SAI should endeavour to change legislation, to be able to audit the final accounts of political parties following a risk-based approach, instead of having to audit all political parties every year.
- 2) Following the adoption of reviewed methodological guidance, the SAI should now develop and adopt updated audit manuals to provide practical guidance to auditors regarding the new methodology for financial and performance audits.
- 3) The SAI needs to develop and implement a human resource management strategy and a training strategy to ensure the continuous professional development of audit staff.
- 4) The SAI needs to develop and implement a communications strategy.
- 5) The SAI needs to improve its statistical data, e.g. on the use of resources for audits, implementation of audit recommendations and its own performance against indicators, to support its own management's decisions and strengthen its communications with external stakeholders.

Medium-term (3-5 years)

- 6) The SAI needs to develop a multi-annual audit strategy to prioritise its work, taking into account the need to maintain quality.

³³³ Article 15, paragraph 4 of the Supreme Audit Institution law.



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