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Monitoring Report:

# The Principles of Public Administration

## MONTENEGRO

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## LIST OF ABBREVIATIONS AND ACRONYMS

AI	Administrative Inspectorate
AIA	Administration for Inspection Affairs
ASK	Agency for Prevention of Corruption
AURUM	Strategy of Public Administration Reform 2011-2016
BFR	Budget and Fiscal Responsibility
BPF	beneficiaries of public funds
CHU	Central Harmonisation Unit
CIT	corporate income tax
COE	Code of ethics
CoG	centre of government
CSL	The Law on Civil Servants and State Employees
DMPARP	Department for the Management of the Public Administration Reform Process
DOOPA	Decree on Organisation and Operation of the Public Administration
EI	European integration
eIDAS	Electronic Identification and Signature
ERP	Economic Reform Programme
ESA	European System of Accounts
EU	European Union
FBA	Final Statement of Accounts of the State Budget of Montenegro
FMA	Framework for Managerial Accountability
FMC	financial management and control
FPG	Fiscal Policy Guidelines
GAWP	Government Annual Work Plan
GDP	gross domestic product
GSG	General Secretariat of the Government
HR	human resources
HRM	human resource management
HRMA	Human Resource Management Authority
HRMIS	Human Resource Management Information System
IA	internal audit
IIA	International Standards for the Professional Practice of Internal Audit
IPA	Instrument for Pre-accession Assistance
ISSAI	International Standards of Supreme Audit Institutions

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List of Abbreviations and Acronyms

IT	Information technology
LAD	Law on Administrative Disputes
LAP	Law on Administrative Procedures
LFAI	Law on Free Access to Information
LGAP	Law on General Administrative Procedures
LPC	Law on Prevention of Corruption
LSA	Law on State Administration
LWPSE	Law on Wages of Public Sector Employees
MDD	Montenegro Development Directions 2015–2018
MEA	Ministry of European Affairs
MEAT	most economically advantageous tender
MoE	Ministry of Economy
MoF	Ministry of Finance
Moi	Ministry of Interior
MoTMA	Ministry of Transport and Maritime Affairs
MPA	Ministry of Public Administration
MTBF	medium-term budgetary framework
NGO	non-governmental organisation
OGP	Open Government Partnership
PAM	Programme of Accession of Montenegro
PAR	public administration reform
PFM	public financial management
PFMRP	Public Financial Management Reform Programme 2016–2020
PIFC	public internal financial control
PM	Prime Minister
PP	public procurement
PPA	Public Procurement Administration
PPL	Public Procurement Law
PPP	public–private partnership
RIA	Regulatory Impact Assessment
RoP	rules of procedure
SAI	State Audit Institution
SC	State Commission for the Review of Public Procurement Procedures
SL	Secretariat for Legislation
SOE	state-owned enterprise
SRR	Structural and Regulatory Reform

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List of Abbreviations and Acronyms

SWIS	Social Welfare Information System
UNDP	United Nations Development Programme
VAT	value added tax
WCAG	Web Content Accessibility Guidelines

## INTRODUCTION

SIGMA developed the Principles of Public Administration in 2014 to support the European Commission's reinforced approach to public administration reform (PAR) in the European Union (EU) Enlargement process. In 2017, the Principles<sup>1</sup> were updated and a new methodological framework developed to improve clarity, without changing the substance of the conceptual framework. The Principles define what good public governance entails in practice and outline the main requirements to be followed by countries during EU integration. The monitoring framework enables regular analysis of progress made in applying the Principles and setting country benchmarks.

In 2015 SIGMA undertook comprehensive Baseline Measurement assessments for the seven EU Enlargement candidate countries and potential candidates against the Principles and has continued to monitor subsequently the progress of PAR. Monitoring reports were also published in 2016 for assessments in selected priority areas of PAR.

This 2017 Monitoring Report, for the period May 2015 to June 2017, covers the six key areas of reform: 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 and external audit.

The first part of the Report sets out major developments and progress made since 2015, based on the indicators and methodology used in the Baseline Measurement Reports. The analysis of individual Principles is further enhanced through the introduction of a new set of monitoring indicators and sub-indicators, described in the *Methodological Framework for the Principles of Public Administration*<sup>2</sup>. The indicator values, based on the points allocated to each sub-indicator, are indicative and should not be used nor interpreted on their own without the context of the full qualitative analysis provided under each Principle.

The Report also contains short- and medium-term recommendations to help the administration take concrete actions for tackling some of the most important challenges. These include recommendations from the 2015 SIGMA Baseline Measurement Report<sup>3</sup> which have not been implemented yet and are still relevant.

The analytical findings and recommendations in this Monitoring Report are also designed to inform the policy dialogue and discussions between the EC and the administration about priority areas for reform and potential support.

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<sup>1</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris: [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)

<sup>2</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>3</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

## OVERVIEW

Montenegro is in an active stage of the EU accession process. As of June 2017, 28 chapters have been open for negotiations, of which 3 are provisionally closed.

Since SIGMA's 2015 Baseline Measurement Report, the Government has adopted the Public Administration Reform Strategy and the Public Finance Management Reform Programme both covering the period 2016-2020. The strategies form a comprehensive framework for PAR and set ambitious objectives in all six areas. The new Government which took office after the 2016 October parliamentary elections established the Ministry of Public Administration to steer the reform process. It is too early to assess the fulfilment of objectives from the two PAR planning documents, but the implementation of activities has been so far slow.

In addition to ensuring procedural and formal compliance with the existing legal framework, the administration needs to improve its performance in developing and implementing sound policies, as well as in delivering good quality public services. Further delegation of decision-making authority to the administrative level while increasing their managerial discretion and accountability can help in that regard.

This report has identified the following priorities for improving the functioning of public administration in Montenegro:

- The rationality of the organisation of state administration needs to be enhanced, together with optimising the number of public sector employees so that the additional capacity needs associated with the EU accession process can be met within the existing fiscal constraints;
- The recruitment process of civil servants needs to be further professionalised in order to ensure the implementation of the merit principle and the appointment of the best candidates;
- A proper medium-term policy and fiscal planning framework needs to be put in place which establishes a clear and limited number of the Government's priority objectives and activities for achieving them and ensures that plans are consistent with the available resources.

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# Strategic Framework of Public Administration Reform

## STRATEGIC FRAMEWORK OF PUBLIC ADMINISTRATION REFORM

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1.1. State of play

Following expiration of the Strategy of Public Administration Reform 2011-2016 (AURUM), the Government of Montenegro adopted a new Public Administration Reform (PAR) Strategy 2016-2020 and Public Financial Management Reform Programme 2016-2020 (PFMRP). These two planning documents (hereafter referred to as the Strategies) cover all six substance areas of the Principles of Public Administration<sup>4</sup>.

All key horizontal planning documents analysed for this assessment prioritise PAR, but not all include activities covering its full scope. Although most activities in the Strategies have been costed, the financial sustainability of the planned reforms is not consistently ensured, as both Strategies include activities for which funding has not yet been secured from the domestic budget or from donors.

The implementation rate of planned activities is low. Outcome-level indicators to measure the progress of reforms against the set objectives are developed and are linked to the objectives of the Strategies, but they have not yet been used to monitor progress.

The recently established Ministry of Public Administration (MPA)<sup>5</sup> is responsible for overall PAR co-ordination, and the Public Administration Reform Council (PAR Council)<sup>6</sup> was established in 2016 as the political-level co-ordination body, though it has yet to meet. A Co-ordination Group has also been established by the Minister of Finance for co-ordinating implementation of the PFMRP at the administrative level, but there is no such body for the PAR Strategy. Instead, the Department for the Management of the Public Administration Reform Process (DMPARP) of the MPA communicates directly with the institutions responsible for implementing reforms.

#### 1.2. Main developments

The following sections describe key changes in the public administration for each key requirement and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

**Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances.**

In the two years since the 2015 Baseline Measurement<sup>7</sup>, the Government has adopted the PFMRP<sup>8</sup> and the PAR Strategy<sup>9</sup>. A detailed Action Plan for the PFMRP was adjusted and adopted by the Strategy Co-ordination Group in October 2016, and on 30 June 2017 the Government adopted a revised version

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<sup>4</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)

<sup>5</sup> Rulebook on Internal Organisation and Systematisation of the Ministry of Public Administration, adopted 29 December 2016.

<sup>6</sup> Government Decision on Establishment of the Public Administration Reform Council, Official Gazette Nos. 066/16 and 003/17; latest amendments 23 March 2017.

<sup>7</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf)

<sup>8</sup> Adopted November 2015.

<sup>9</sup> Adopted July 2016.

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of the PFMRP and its Action Plan, covering state aid, customs and auditing of European Union (EU) funds, which had been left out of the initial version. The finalisation of the Strategies addresses the 2015 Baseline Measurement Report recommendation<sup>10</sup> on establishing a comprehensive set of new planning documents in the field of PAR, setting clear objectives and specific targets, and including clear information about costs and sources of funding. As a result, the scope of PAR central planning documents is complete, which is reflected in the value assigned to the respective indicator. The value of the indicator on the comprehensiveness of the PAR reporting and monitoring system has also improved, since now all objectives of the Strategies are accompanied by outcome-level indicators.

Three of the five central planning documents analysed present objectives and priorities in a consistent and coherent manner. However, the primary cause for raising the respective indicator value is the most recent Exposé of the Prime Minister (PM), which is more focused on reforming public administration than the previous one was.

The reform orientation of PAR planning documents has also improved, and most activities in the Strategies are costed. However, the implementation rate of activities related to PAR has decreased.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the scope of PAR central planning document(s) is complete.	4	5
	Extent to which a comprehensive PAR reporting and monitoring system is in place.	3	4
<b>Quantitative</b>	Ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently.	50% <sup>11</sup>	60% <sup>12</sup>
	Share of public administration development activities and reforms from all activities in PAR planning documents.	77% <sup>13</sup>	96% <sup>14</sup>

<sup>10</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p. 10, recommendation 1, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf)

<sup>11</sup> The five planning documents analysed in 2015 were: 1) the Exposé of the PM 2012; 2) Montenegro Development Directions 2013-2016; 3) Montenegro's Programme of Accession to the European Union 2014-2018; 4) the Government Annual Work Plan (GAWP) 2015; and 5) Guidelines for Macroeconomic and Fiscal Policy 2015-2018.

<sup>12</sup> The five planning documents analysed in 2017 were: 1) the Exposé of the PM 2016; 2) Montenegro Development Directions 2015-2018; 3) Montenegro's Programme of Accession to the European Union 2017-2018; 4) the GAWP 2017; and 5) Guidelines for Macroeconomic and Fiscal policy 2016-2019. The first three feature objectives and priorities in a consistent and coherent manner.

<sup>13</sup> 141 out of 182 activities included in the following plans were considered reform-oriented: the Strategy of Public Administration Reform in Montenegro 2011-2016 (AURUM); the PAR Action Plan for 2014-2015; the Plan for Internal Restructuring of the Public Sector (2013); the Strategy for Development of Information Society 2012-2016; the Strategy for Development of Public Procurement System for the period 2011-2015 (with Action Plan); and the Strategy for Further Development of Public Internal Financial Control (PIFC) in Montenegro for the Period 2013-2017 (with Action Plan 2013-2014).

<sup>14</sup> 183 out of 186 activities in the two PAR Strategies are reform-oriented. The value cannot be directly compared with the 2015 value for the same indicator, which was calculated based on different planning documents.

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	Annual implementation backlog <sup>15</sup> of public administration development activities and reforms.	46% <sup>16</sup>	36% <sup>17</sup>
	Percentage of fulfilled PAR objectives.	Not available <sup>18</sup>	Not available <sup>19</sup>
	Share of resourced and costed PAR measures.	0%	89% <sup>20</sup>

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<sup>15</sup> Note that the indicator looks at the implementation rate of public administration development activities and reforms within the particular year.

<sup>16</sup> This value represents the implementation rate of activities planned for 2014 according to the Action Plan of the PAR Strategy covering 2014-2015, and has been calculated based on the two Implementation Reports prepared by the Ministry of Interior (Mol) on all quarters of 2014.

<sup>17</sup> The value has been calculated based on data provided in the reports on implementation of the PAR Strategy and the PFMRP for 2016. Out of the 14 activities planned, only 5 were implemented. This value cannot be directly compared with the 2015 value for the same indicator, which was calculated based on different planning documents.

<sup>18</sup> The value of the indicator cannot be set because the PAR planning documents do not feature performance indicator targets for the PAR objectives, making it impossible to assess whether these objectives have been achieved.

<sup>19</sup> The value of the indicator cannot be set because the PAR planning documents do not feature targets for 2016 (or earlier) for the PAR objectives, making it impossible to assess whether these objectives have been achieved.

<sup>20</sup> Cost estimates were provided for 164 of the 185 activities included in the two strategies.

## 2. ANALYSIS

This analysis covers four Principles for the strategic framework of public administration reform area, grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>21</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

**Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

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

Before expiration of the AURUM for 2011-2016, the Government prepared an analysis of the effects of implementing the Strategy<sup>22</sup>. The analysis also contained indicative guidelines for preparing the new strategic plan for PAR, including a list of priority actions, which have contributed to the development of good-quality planning documents for the new period. The PAR Strategy and the PFM RP contain all the expected information, namely situation analysis, indicators linked to policy objectives, targets, activities with clear deadlines and responsible institutions, costing information and descriptions of monitoring and reporting mechanisms.

The two new Strategies fully cover the six substance areas defined by the Principles of Public Administration. The PAR Strategy sets objectives and identifies activities in policy development and co-ordination, public service and human resource management (HRM), accountability, and service delivery. As an umbrella strategy for the entire PAR area, it also contains a short situation analysis in the public financial management (PFM) area, but the actual objectives and activities of PFM reform (together with a more comprehensive analysis) are addressed separately in the PFM RP, which also

<sup>21</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>22</sup> MoI (2015), *Analysis of the Effects of the Implementation of the Public Administration Reform Strategy Achieved in the Period 2011-2014*, Government of Montenegro, Podgorica.

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covers public procurement and external audit. Other sector and sub-sector strategies<sup>23</sup> also contain reform initiatives applicable to PAR, but they are complementary to the two Strategies and are therefore not covered in this analysis.

The plans are mostly coherent and consistent with one another<sup>24</sup> and with the legislative plan of the Government. Four of the five laws to be developed in 2017 according to the PAR planning documents were included in the Government Annual Work Plan (GAWP)<sup>25</sup>. Both plans are highly reform-oriented, as 96%<sup>26</sup> of the activities are aimed at reforming the public administration system.

PAR is prioritised in the three key horizontal planning documents analysed for this assessment. The Montenegro Development Directions 2015-2018 and the Exposé of the PM designate tangible actions in nearly all substance areas of PAR<sup>27</sup>. Montenegro's Programme of Accession to the EU for 2017-2018, the third document analysed, does not cover policy development and co-ordination, or public service and HRM. The activities covered in these three horizontal documents are aligned with the activities foreseen in the PAR Strategy and the PFMRP. For example, reorganisation of state administration is a priority activity under accountability, as are increasing the efficiency of tax administration under PFM and optimising the number of public sector employees under public service and HRM.

Both Strategies were disclosed for public consultation for a sufficient period of time. Non-governmental stakeholders<sup>28</sup> were involved in discussions during the development of the PAR Strategy, but not during preparation of the PFMRP. On 23 June 2017, the MPA established a new working group for development of the next Action Plan for the PAR Strategy (covering 2018-2020), also including members from civil society<sup>29</sup>.

PAR planning documents meet the requirements for minimum content, coverage, scope and coherence; PAR is acknowledged as a priority, although it is not fully addressed in all relevant central plans; and the two Strategies are highly reform-oriented. Consequently, the value for the indicator 'Quality of the strategic framework of public administration reform' is 5.

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<sup>23</sup> The Strategy for the Development of the Procurement System 2016-2020, the Strategy for Further Development of Public Internal Financial Control in Montenegro 2013-2017, the Strategy for the Development of Information Society until 2020, and the Strategy for the Reform of the Judiciary 2014-2018.

<sup>24</sup> Only one inconsistency was identified, as the deadline for developing methodologies for monitoring and reporting on performance (activity C.1.4 in the PFMRP and activity 2 under objective 4.1.3 in the PAR Strategy) was different in the two plans: the 4<sup>th</sup> quarter of 2017 in the PAR Strategy, but 2020 in the PFMRP.

<sup>25</sup> Only the Law on Utility Services, which was included in the PAR Strategy under objective 4.6.1, is not mentioned in the GAWP for 2017.

<sup>26</sup> 183 out of 186 activities.

<sup>27</sup> The Exposé of the PM does not include activities or measures under policy development and co-ordination, but the Montenegro Development Directions covers all areas.

<sup>28</sup> The Union of Municipalities, the Chamber of Economy and Institut Alternativa.

<sup>29</sup> The Union of Municipalities and Institut Alternativa.

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**Quality of the strategic framework of public administration reform**

This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms.

A separate indicator measures financial sustainability and cost estimates in detail.

Overall indicator value 0   1   2   3   4   **5**

Sub-indicators	Points
1. Coverage and scope of PAR planning documents	5/5
2. Prioritisation of PAR in key horizontal planning documents	1/2
3. Coherence of PAR planning documents	4/4
4. Presence of minimum content of PAR planning documents	7/7
5. Reform orientation of PAR planning documents	3/3
6. Quality of consultations related to PAR planning documents	1/2
<b>Total<sup>30</sup></b>	<b>21/23</b>

**The PAR Strategy and the PFMRP are highly reform-oriented planning documents that cover all substance areas of PAR and are coherent and consistent with each other, as well as with the legislative plans of the Government. PAR is addressed as a priority in the majority of key horizontal planning documents. The draft Strategies were disclosed for public consultation, but civil society was involved in development of the PAR Strategy only.**

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

The PAR Strategy and the PFMRP, adopted more than six months after the AURUM expired, also replaced the previous institutional framework for monitoring PAR implementation. Instead of reporting to the Government through the Council for Regulatory Reform and Improvement of Business Environment and the Coordination Committee for Local Government Reform, the new monitoring mechanism involves regular reporting to the PAR Council and the Government<sup>31</sup>. The first annual reports of the new Strategies were prepared in March 2017 and discussed by the Government<sup>32</sup> but not by the PAR Council, as the Council had not yet convened as of June 2017. One consequence of this is that civil society, represented by two Council members<sup>33</sup>, has not been involved in the monitoring of the Strategies.

In addition to an annual report, the PFMRP monitoring mechanism stipulates the presentation of quarterly reports to the administrative-level Co-ordination Group, but in practice these quarterly reports have not yet been prepared; similarly, semi-annual reports on the PAR Strategy are to be discussed by the PAR Council once it becomes functional. The semi-annual and quarterly reports are to focus on the implementation of activities and outputs, while annual reports should also monitor progress towards objectives and set targets.

<sup>30</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

<sup>31</sup> PAR Strategy, p. 58 and PFMRP, p. 44.

<sup>32</sup> PAR Strategy of 30 March 2017 (<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=269878&rType=2>); PFMRP of 16 March 2017 (<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=268365&rType=2>).

<sup>33</sup> A representative of the non-governmental organisations (NGOs) and the Union of Municipalities; see the Government Decision of 23 March 2017 amending composition of the PAR Council.

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Outcome-level indicators are linked to the objectives of the two Strategies. Indicator passports<sup>34</sup>, defining the data sources, formulas, and baseline and target values, have been developed for all indicators in the PAR Strategy, but the passports are not publicly available. The indicators of the PFMRP have not been defined in detail.

Despite the existence of outcome-level indicators for both Strategies, the annual reports covering 2016 only provide an overview of achieved outputs, not information on progress towards outcome-level targets. To provide a more comprehensive overview, the report of the PFMRP also covers activities not included in the strategy, but which contribute to achieving its objectives. The report of the PFMRP also identifies some challenges that have negatively affected implementation of the strategy and suggests solutions. For example, ineffective co-ordination among the bodies responsible for implementing activities has been identified as one of the problems. The suggested solution is to broaden the composition of the Co-ordination Group, hold regular Group meetings and submit reports to the Ministry of Finance (MoF) and the Senate of the State Audit Institution.

The number of activities planned for implementation by the end of 2016 was small for both Strategies, as the Strategies were only finalised in 2016. Even so, only 5 out of 14 planned activities were completed: the 35.7% implementation rate of PAR activities results in zero points being assigned for the respective sub-indicator. Delays had also been highlighted as a problem in the last report prepared on AURUM implementation in June 2016. Most of the activities planned for 2015 were of an ongoing nature, but the one activity with a clear deadline in 2015 was not completed. Similarly, in 2014 two out of four activities had been carried forward<sup>35</sup>. Low implementation rates for the new Strategies indicate that the previous problems have not been properly addressed in the current strategic framework for PAR.

There were no outcome-level targets set for 2016 by the PAR Strategy or the PFMRP. The report on implementation of the previous PAR Strategy covering 2011–2016<sup>36</sup> provides a good overview of the situation in all PAR substance areas and includes information on outcomes, but as there were no targets set in the Strategy, it is not possible to determine whether the objectives were achieved. Consequently, the sub-indicator measuring the fulfilment of PAR objectives is assigned zero points.

The low implementation rate of planned PAR activities and the lack of outcome-level targets for PAR planning documents in 2016 (and earlier) result in a value of 1 for the indicator 'Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting'. The fact that civil society has so far not participated in monitoring the Strategies, and that indicator passports have not been developed for the PFMRP indicators, also contributes to this low value.

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<sup>34</sup> A document containing the detailed specifications of indicators linked to the objectives of the Strategy.

<sup>35</sup> MoI (2016), *Report on the Realisation of the Action Plan for the Implementation of the Public Administration Reform in 2015*, Government of Montenegro, Podgorica.

<sup>36</sup> MoI (May 2015), *Analysis of the Effects of the Implementation of AURUM*, Government of Montenegro, Podgorica.

Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting						
This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Comprehensiveness of PAR reporting and monitoring systems	4/8
2. Implementation rate of PAR activities (%)	0/4
3. Fulfilment of PAR objectives (%)	0/4
Total <sup>37</sup>	4/16

**A reporting and monitoring system for the two Strategies has been established. Outcome-level indicators have been developed and are linked to the objectives of the Strategies, but the most recent annual reports still focus on the implementation of activities only. The implementation rate of PAR activities is low.**

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

Costing of activities in PAR planning documents has improved. While the Action Plan for the Implementation of the AURUM in 2014-2015 did not contain costing information for any of its activities, basic costing is provided for 89% of activities included in the current Strategies (94% for the PAR Strategy and 85% for the PFMRP). A large share of planned activities is to be implemented with donor support.

**Table 2. Share of costed activities and share of activities implemented with donor involvement**

	PAR Strategy	PFMRP
Total number of activities	81	104
Costed activities	94% (76)	85% (88)
Activities to be implemented with donor involvement	41% (32)	75% (78)

Source: SIGMA calculation based on the Action Plans of the PAR Strategy and the PFMRP.

In both Strategies, estimates are provided for additional costs needed for implementation, and nearly all activities likely to require additional resources have a cost estimate attached<sup>38</sup>. A positive feature of the PFMRP Action Plan is that for most donor-funded activities, the exact source of funding is provided in a detailed manner, to the extent of citing the exact activity or lot from the Instrument for Pre-accession Assistance (IPA) II 2014 Action Programme. The Action Plan for the PAR Strategy does not contain the same level of detail on sources of donor funding – several activities are to be co-financed by donors and the domestic budget, but exact shares of donor funding and their sources are not provided.

Additional costs of both Strategies are not usually broken down into one-off costs and recurring expenditures<sup>39</sup>, but is clear from the descriptions of activities that several will involve recurring

<sup>37</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

<sup>38</sup> The only exception is PFMRP Activity D.1.4: “Develop the IT system to support double-entry bookkeeping”.

<sup>39</sup> Only one activity from the PAR Strategy (“Implementation of the EDMS, Stage 1”) will have recurring costs according to the Action Plan.

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implementation costs that are not referred to in the Strategies<sup>40</sup>. Actual funding of activities included in the Strategies is not consistently ensured, so zero points are assigned for the respective sub-indicator. Funding has not been secured for two of the five most costly PAR Strategy activities to be financed from the 2017 budget<sup>41</sup>, and one of the three donor-funded initiatives with the highest estimated cost is not referred to in the funding plans of donors<sup>42</sup>.

As the Strategies do not include complete financial information and the actual funding of PAR activities has not been consistently ensured, the value for the indicator 'Financial sustainability of PAR' is 1.

Financial sustainability of PAR						
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Costed PAR activities (%)	2/3
2. Completeness of financial information in PAR planning documents	1/4
3. Actual funding of the PAR agenda	0/3
<b>Total<sup>43</sup></b>	<b>3/10</b>

**The majority of planned activities in the two Strategies have been costed, but estimates are provided for additional costs only and they are not broken down into one-off or recurring costs. Most PAR activities are to be co-financed with donors, but the exact division between domestic and donor funding is not stated. Actual funding of the activities is not consistently ensured from the state budget nor according to the planning documents of the donors.**

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

Overall institutional responsibility for PAR, which had previously been covered under the broad mandate of the Ministry of Interior, has been transferred to the recently established MPA. Within the MPA, the DMPARP is tasked with co-ordinating PAR<sup>44</sup>. The Department is responsible for monitoring implementation of reform activities, preparing strategic documents and action plans as well as reports on their implementation, and providing administrative support to the PAR Council. The Council<sup>45</sup>,

<sup>40</sup> Other information technology (IT) systems planned for implementation during the duration of the Strategies (e.g. single information system for administering real property taxes in 2017 under the PAR Strategy and the new tool for public debt and cash management in 2016 under the PFMRP) will incur maintenance costs.

<sup>41</sup> The two activities are: 1) to "Establish electronic services defined within priority objectives" under the PAR Strategy Objective 4.2.3 (EUR 500 000 total cost, of which EUR 50 000 is to be financed by the United Nations Development Programme (UNDP), but no funds have been allotted from the 2017 state budget) and 2) "Capacity building of the administration for the implementation of the new Law on Administrative Procedure" under the PAR Strategy 4.2.1 (planned cost of EUR 220 800 to be financed entirely from the Human Resource Management Authority budget, but this is more than the actual overall 2017 training budget of the institution (EUR 180 000)).

<sup>42</sup> According to the Action Plan of the PFMRP, the proposal for funding the development of PFMRP activity B.2.3, the "Integrated Tariff Management System (ITMS)" (total cost EUR 3.3 million) from IPA II has been made, but this activity is not referenced in the IPA Action Programmes.

<sup>43</sup> Point conversion ranges: 0=0, 1-3=1, 4-5=2, 6-7=3, 8-9=4, 10=5.

<sup>44</sup> Rulebook on Internal Organisation and Systematisation of the Ministry of Public Administration, adopted 29 December 2016, Article 7.

<sup>45</sup> Government Decision on Establishment of the Public Administration Reform Council, Official Gazette Nos. 066/16 and 003/17; latest amendments 23 March 2017.

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established as the political-level co-ordination body, had not yet met as of June 2017; therefore, political-level co-ordination of PAR has not been functional since expiration of the AURUM, for which the Council for Business Environment, Regulatory and Structural Reform provided the forum. It is intended that the PAR Council will be presided over by the Deputy PM for Political System, Internal and Foreign Politics and will comprise the Ministers of Finance, Public Administration and European Affairs, the Secretary General of the Government, a representative of the Union of Municipalities, the Director of the Human Resources Administration and a civil society representative.

A separate administrative-level co-ordination body has not been established for the PAR Strategy. Although overall responsibility for four of the five substance areas of the Strategy<sup>46</sup> falls under the mandate of the MPA<sup>47</sup>, there are still other state authorities involved in implementing it. The DMPARP communicates directly with those in charge of different measures from within the MPA and other institutions, including the MoF for implementation of the PFMRP. The plan is to establish thematic working groups on specific topics (e.g. optimisation of the number of employees), but they have not yet been established.

The MoF leads reforms in the PFM area and has established a separate Co-ordination Group for co-ordinating implementation of the PFMRP at the administrative level<sup>48</sup>. The Group held three meetings in 2016<sup>49</sup>.

Responsibility for implementing reform activities has generally been established at the level of the institution in the strategy action plans. Only for those PFMRP activities for which an MoF department is responsible has a relevant unit within a ministry been nominated as well.

The political-level co-ordination body has yet to meet, and administrative-level co-ordination for implementing the PAR Strategy has remained informal. It is due mainly to these shortcomings that the value for the indicator 'Accountability and co-ordination in PAR' is 2.

Accountability and co-ordination in PAR						
This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative levels, and the performance of the leading institution.						
Overall indicator value	0	1	<b>2</b>	3	4	5

Sub-indicators	Points
1. Establishment of organisational and managerial accountability for PAR	4/6
2. Co-ordination mechanisms for PAR	3/10
<b>Total<sup>50</sup></b>	<b>7/16</b>

**Organisational and managerial accountability for PAR has been established within the DMPARP of the MPA. The PAR Council has been established as the political-level co-ordination body, but it has**

<sup>46</sup> The organisation of public administration, service delivery, public service and HRM, and local self-government systems fall under the responsibility of the MPA. Only for policy development is the main responsibility carried by other institutions such as the General Secretariat, the Ministry of European Affairs and the MoF.

<sup>47</sup> According to the responsibilities of ministries established in the Decree on State Administration Organisation and Manner of Work, Official Gazette No. 003/17.

<sup>48</sup> Decision of the Minister of Finance of 2 February 2016.

<sup>49</sup> In February, April and October 2016. The October meeting was held electronically via e-mail to adopt the detailed Action Plan for the PFMRP.

<sup>50</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

yet to convene. Although administrative-level co-ordination for the PFMRP has recently been strengthened, it remains informal for implementation of the PAR Strategy.

**Key recommendations**

**Short-term (1–2 years)**

- 1) The MPA should establish an administrative-level co-ordination body to support implementation of the PAR Strategy, consisting of representatives from all relevant MPA departments, from the MoF (from the budget department as well as from departments responsible for specific strategy objectives) and from other institutions leading implementation of PAR Strategy activities (the General Secretariat of the Government, the Human Resource Management Authority, the Agency for Personal Data Protection and Access to Information, the Ministry of European Affairs, etc.).
- 2) The MPA and the MoF should begin to comprehensively implement the monitoring framework of the two Strategies, including preparing reports containing clear information on progress in relation to outcome-level targets and objectives as well as recommendations for corrective actions to address key implementation shortcomings.
- 3) Financial coverage from the budget for activities foreseen in the action plans of the Strategies should be clearly indicated.
- 4) The MoF should develop indicator specifications (including data sources, time of data availability, calculation formulas, responsible institutions, and baseline and target values) for all indicators included in the PFMRP. Indicator specifications for both Strategies should be made publicly available.
- 5) Representatives of non-governmental organisations should be consistently involved in PAR co-ordination (as members of the co-ordination bodies and working groups).

**Medium-term (3–5 years)**

- 6) The MoF should include clearer references to PAR implementation in the Guidelines for Macroeconomic and Fiscal Policy and Annual Budget, and should work with the MPA to present more complete costing information, including clearly differentiating between one-off and recurring costs.



## POLICY DEVELOPMENT AND CO-ORDINATION

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1.1. State of play

The legal framework for policy development and co-ordination is in place, and the critical functions for the policy-making system, including co-ordination of the European integration (EI) process, have been assigned to centre-of-government (CoG) institutions. Key challenges remain with ensuring the quality of policy proposals, as the General Secretariat of the Government (GSG) focuses on the procedural compliance of drafts submitted to the Government. In addition, the Ministry of Finance (MoF) does not provide negative opinions on Regulatory Impact Assessment (RIA) reports that do not meet the expected standards. Policy planning is primarily annual, and the links between policy and fiscal plans are limited. The central planning documents do not establish clear outcome-level objectives for the Government. As a result, the reports provide information mainly on the implementation of individual activities. A large number of draft laws is being prepared outside the plans. The Fiscal Policy Guidelines (FPG), as the Government's medium-term fiscal plan, do not allow for a proper sectoral identification of costs. The requirements for developing sector have not been established.

The routines for evidence-based policy making and consultation procedures are in place, but the standards set by the regulations are not consistently met in practice. The quality of analysis supporting the proposals is limited and does not provide clear information on the costs of implementation. Reports on the consultation process accompany the drafts submitted to the Government, but the documents usually do not contain information on the outcome of the interministerial consultation process.

#### 1.2. Main developments

The following sections describe key changes in the public administration for each key requirement<sup>51</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

Very little has changed in the policy development and co-ordination area in the past two years in Montenegro. The effectiveness of the Government in passing new policies and legislation was somewhat reduced in 2016, as a result of the general elections held in October.

The new Government, which took office at the end of 2016, established a separate Ministry of European Affairs (MEA). In addition to its mandate for co-ordinating EI-related affairs, it is also responsible for enhancing the medium-term planning of the Government, by establishing the requirements for the development of sector strategies and for monitoring compliance with these requirements.

The Government approved the first-ever draft Fiscal Strategy for the duration of its mandate (2017-2020) in June 2017 and submitted it to the Parliament for adoption.

As of June 2017, 28 of the 33 Negotiation Chapters have been opened in the European Union (EU) accession negotiation process, and 3 have been provisionally closed.

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<sup>51</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

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

The CoG institutions fulfil the critical functions defined in the Principles of Public Administration at the same level as they did in 2015: the value for the corresponding indicator is therefore still 4. The greatest shortcomings remain in co-ordinating the policy content of proposals as the GSG is focusing on ensuring the procedural compliance of proposals and the MoF has not been able to ensure that the analysis in RIA reports meets the established requirements. The recommendations in the 2015 Baseline Measurement Report<sup>52</sup>, on enhancing the GSG's capacity to steer the policy-development process and establishing the regular administrative-level co-ordination mechanism involving all CoG bodies, have not been addressed. The GSG and the MEA co-ordinate to ensure that activities from the Programme of Accession of Montenegro (PAM) are included in the Government Annual Work Plan (GAWP), but similar practices have not been established for the regular review of policy proposals submitted to the Government. However, the EI functions remain assigned and fulfilled at the same high level.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>53</sup>**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Proportion of critical CoG functions that are fulfilled by the institutions.	4	4
	EI functions are fulfilled by the institutions.	5	5

**Key requirement: Policy planning is harmonised, aligned with the government's financial circumstances and ensures that the government is able to achieve its objectives.**

The value for the indicator on reporting on the outcomes has deteriorated, mainly because the reports on the sector strategies discussed by the Government in 2015-2016 focus on the implementation of planned activities and not on the outcomes achieved as a result of these activities. The reports on the implementation of the PAM, as the plan for all EI-related activities, the budget and the GAWP are prepared regularly, but they also focus on the outputs. Exceptionally, the reports on the implementation of the GAWP only covered the implementation of planned activities during the first three quarters of 2016, that is, to the end of the mandate of the previous Government.

The majority of strategies still do not include information on financial estimates. This is not explicitly required, as the unified rules for the development of strategies have not been established and the corresponding recommendation from the 2015 Baseline Measurement Report<sup>54</sup> has not yet been addressed. In addition, the FPG for 2016-2019<sup>55</sup> does not include the costs for implementing activities or achieving objectives in specific sectors. In consequence, the value for the indicator on alignment of financial information included in the medium-term fiscal plan of the Government and sector strategies has remained at 0. The annual backlog of strategies has decreased slightly, but the overall backlog of the GAWP has increased, and the share of items carried forward in the PAM as the EI plan has

<sup>52</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p.19, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>53</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>54</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p.23, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>55</sup> Adopted by the Government in July 2016, but not published.

remained the same. The recommendation from the 2015 Baseline Measurement Report that the backlogs be reduced has not been fully addressed<sup>56</sup>.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Completeness of financial estimates in sector strategies <sup>57</sup> .	1	1
	Extent to which reporting provides information on the outcomes achieved.	4	3
<b>Quantitative</b>	Annual implementation backlog of planned commitments in the central planning document(s).	26%	37% <sup>58</sup>
	Annual backlog in developing sectoral strategies.	21%	19% <sup>59</sup>
	Ratio between total funds estimated in the sectoral strategies and total funding identified for corresponding sectors within the MTBF <sup>60</sup> .	0%	0% <sup>61</sup>
	Annual implementation backlog of EI-related commitments.	25%	27% <sup>62</sup>

**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.**

The transparency and legal compliance of government decision-making remains at a relatively high level. The share of agenda items submitted on time to the Government session has increased even further. However, the recommendation from the 2015 Baseline Measurement Report<sup>63</sup> that the GSG put additional emphasis on checking that proposals align with the priorities and plans of the Government has not been addressed. The GSG still does not check policy content from this perspective.

The Government submits a large share of unplanned draft laws to the Parliament for adoption. In 2016, 49% of the draft laws submitted did not originate from the GAWP. The 2015 recommendation<sup>64</sup> on limiting the deliberation of unplanned draft laws has thus also not been addressed. The Parliament continues to process the Government's bills efficiently, but it discussed only one report on the implementation of policies in 2016. Discussing reports on implementation of laws or strategies is still

<sup>56</sup> OECD (2015), Baseline Measurement Report: Montenegro, OECD Publishing, Paris, p.23, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>57</sup> A sample of five recently adopted sector strategies is used.

<sup>58</sup> Twenty-two of the 59 draft laws planned for adoption in 2016 also appear in the 2017 GAWP.

<sup>59</sup> Five of the 27 strategies planned for adoption also appear in the 2017 GAWP.

<sup>60</sup> The ratio is calculated as a percentage (0% being minimum and 100% maximum), illustrating the differences in planned funding in the last five strategies adopted and the medium-term expenditure framework (MTEF). The outcome value of the indicator is the average of the five cases. In the event it is not possible to make the calculation, due to a lack of financial data in the MTEF and/or in all or some sector strategies, the ratio is determined to be 0%.

<sup>61</sup> The FPG does not specify the funding allocated for implementing activities or for achieving objectives from the sample sector strategies. The indicator value is thus 0%.

<sup>62</sup> A total of 104 of the 383 EI-related commitments planned for implementation in 2016 also appear in the 2017 plan.

<sup>63</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p.27, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>64</sup> *Ibid.*

not a systematic process covering all major policies, as recommended in the 2015 Baseline Measurement Report<sup>65</sup>.

**Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Quantitative</b>	Ratio of regular agenda items submitted on time <sup>66</sup> by ministries to the government session.	90.1%	96% <sup>67</sup>
	Ratio of laws initiated by the government and approved by the parliament no later than one year after submission.	97.4%	96% <sup>68</sup>
	Number of law implementation reports discussed in the parliament.	3	1 <sup>69</sup>

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

The regulatory framework for inclusive and evidence-based policy making is established, but ensuring the quality of the policy proposals developed remains a challenge. The indicator ‘Extent to which ministries are oriented towards policy development’ has not changed. No regulations are yet in place covering the internal policy development process within ministries, and the share of staff allocated for policy development functions remains disproportionately low in ministries that include subordinate executive agencies as “administrative bodies within ministries”.

The quality of analysis in the RIA reports has remained at the same level. The reports include only limited information on alternative options, as well as on costs of implementing the proposals. The recommendation from the 2015 Baseline Measurement Report<sup>70</sup> that the MoF increase its capacity to assess the full quality of RIAs has not been addressed. Therefore the value for the indicator on the ‘Extent to which the policy development process makes the best use of analytical tools’ remains the same.

Despite the recommendation from the 2015 Baseline Measurement Report<sup>71</sup>, the mechanism for monitoring the execution of the public consultation process has not been established. The GSG only checks if the report on the outcomes of the consultation process is attached to the package submitted to the Government. While the ministries comply with this requirement, they do not execute other requirements for consultation procedures consistently (like reporting on the outcomes, publishing the

<sup>65</sup> *Ibid.*

<sup>66</sup> “On time” is understood as within the procedural criteria set by regulation(s).

<sup>67</sup> In the fourth quarter of 2016, 513 out of 536 items were submitted to the Government within the required deadlines.

<sup>68</sup> A total of 92 of the 9doopa6 draft laws submitted to the Parliament by the Government in 2015 were adopted or rejected within one year of submission.

<sup>69</sup> Only the report on the implementation of the Regional Development Strategy 2014–2020 was discussed according to the *Report on the Implementation of the 2016 Legislative Plan of the Parliament*, [http://www.skupstina.me/images/dokumenti/plan-zakonodavnog-rada/Informacija\\_o\\_sprovođenju\\_Plana\\_zakonodavnog\\_rada\\_za\\_2016\\_godinu.pdf](http://www.skupstina.me/images/dokumenti/plan-zakonodavnog-rada/Informacija_o_sprovođenju_Plana_zakonodavnog_rada_za_2016_godinu.pdf)

<sup>70</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p.35, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>71</sup> *Ibid.*

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consultation reports, etc.). As a result, the value for the indicator ‘Extent to which public consultation is used in developing policies and legislation’ remains the same.

The report on the outcomes of the consultation process also covers interministerial consultation. However, the samples analysed indicate that the report rarely includes any comments provided by other ministries. Instead, the opinions of the ministries who responded during the interministerial consultation are simply attached to the proposal as separate letters without explaining if and how the comments were taken into account during the finalisation of the draft. This practice still does not enable full utilisation of the consultation procedures for resolution of possible conflicts and therefore the value for the indicator ‘Extent to which the inter-ministerial consultation process occurs’ has not changed.

There has been no change in the practices for publishing legislation. All laws and by-laws are available online in the Official Gazette, but not in consolidated format. As a result, the value for the indicator on making primary and secondary legislation publicly available has remained the same.

**Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which ministries are oriented towards policy development.	3	3
	Extent to which the policy development process makes the best use of analytical tools.	3	3
	Extent to which public consultation is used in developing policies and legislation.	3	3
	Extent to which the inter-ministerial consultation process occurs.	4	4
	Extent to which primary and secondary legislation is made publicly available in a centralised manner.	3 <sup>72</sup>	3

<sup>72</sup> The value in the published 2015 Baseline Measurement report was 5 but, according to new information obtained during the 2017 assessment, legislation has not been available in consolidated format free of charge and therefore the value is corrected here.

## 2. ANALYSIS

This analysis covers 12 Principles for the policy development and co-ordination area grouped under 4 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>73</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Legend: ◆ Indicator value    — Regional range    | Regional average

### ***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 acts regulating the functioning of the Government and ministries are the Law on State Administration (LSA)<sup>74</sup>, the Law on Budget and Fiscal Responsibility (BFR Law)<sup>75</sup>, the Rules of Procedure (RoP) of the Government<sup>76</sup>, the Decree on Organisation and Operation of the Public Administration (DOOPA)<sup>77</sup>, the Decree on the Government<sup>78</sup> and the rulebooks of internal organisations of the respective institutions<sup>79</sup>. The CoG functions<sup>80</sup> have been assigned to: the GSG, the Secretariat for Legislation (SL), the MoF and the MEA. The GSG is responsible for co-ordinating the preparation of government sessions, leading the preparation of the GAWP and the monitoring of its implementation, co-ordinating government communication activities and managing the relationship between the Government and other parts of the state. The GSG and the MoF share the responsibility for checking the policy content of proposals, as the MoF scrutinises the quality of RIA reports attached to draft regulations. In addition, the MoF is tasked with public resource planning and ensuring the affordability of policies. The SL is responsible for ensuring legal conformity. The recently established MEA co-

<sup>73</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>74</sup> Official Gazette No. 022/08.

<sup>75</sup> Official Gazette No. 20/14.

<sup>76</sup> Official Gazette No. 03/12, most recent amendments published in No. 31/15.

<sup>77</sup> Official Gazette No. 005/12, most recent amendments published in No. 003/17.

<sup>78</sup> Official Gazette No. 080/08.

<sup>79</sup> Rulebook on Internal Organisation and Systematisation of General Secretariat, Rulebook on Internal Organisation and Systematisation of the Secretariat for Legislation and rulebooks on internal organisation of ministries.

<sup>80</sup> As defined in: OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, p.19, <http://sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

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ordinates the EI process and, since 2017, has been assigned the task of establishing the system of sector strategies (including co-ordinating their development and monitoring their implementation).

Guidelines or detailed regulations are in place to support the policy-making process, except for the development of strategies. The GSG supports the development of the GAWP by sending letters to ministries that include deadlines for the process and general guidance on what proposed activities for the next year's plan should be based on, but detailed guidelines have not been developed on preparing the GAWP. The Government monitors the implementation of the plan through an information technology (IT) system that contains information on all proposals discussed at its sessions and makes it possible at any given moment to extract reports on fulfilment of commitments. Given the output-focused content of the reports, separate guidelines for monitoring implementation have not been considered necessary.

In implementing the assigned functions, the greatest shortcomings persist with checking the policy content of proposals and with policy planning. Administrative level co-ordination forums between CoG bodies have not been established. The Government's Commissions<sup>81</sup> are the political-level bodies for discussing the content of proposals prior to Government sessions, and the GSG is supporting the work of the Commissions as their secretariat, but its review focuses on procedural compliance only. The RIA reports include little information on the impact of proposed legislation but the MoF rarely provides negative opinions on their quality.

The Government has no medium-term work programme and plans its activities on an annual basis only. The GSG has a leading role in the process and co-ordinates bilaterally with the MEA regarding alignment between the GAWP and PAM, but there is no such formal co-ordination with the MoF for ensuring alignment with fiscal limits. The Commission for Political System, Internal and Foreign Policy is the political-level forum for co-ordinating the preparation process prior to the adoption of the plan. The MoF submits its opinion on the draft GAWP to the Commission. There are no institutionalised co-ordination arrangements in place between the CoG bodies for the preparation of the GAWP.

Given the lack of institutionalised co-ordination between the CoG bodies and as guidelines supporting the preparation of the GAWP and the development of sector strategies do not exist, the value for the indicator 'Fulfilment of critical functions by the centre-of-government institutions' is 3.

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<sup>81</sup> Four permanent commissions have been established under Article 14 of the RoP: 1) the Commission for Political System, Internal and Foreign Policy; 2) the Commission for Economic Policy and Financial System; 3) the Committee for Personnel and Administration; 4) the Commission for Distributing a Part of Budget Reserve.

### Fulfilment of critical functions by the centre-of-government institutions

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

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

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Critical functions are assigned to CoG institutions by legislation	8/8
2. Availability of guidelines to line ministries and other government bodies	2/4
3. Institutionalisation of co-ordination arrangements between the CoG institutions	0/4
<b>Total<sup>82</sup></b>	<b>10/16</b>

**The critical CoG functions are all established, but their fulfilment is not adequately supported by guidelines or detailed regulations regarding policy planning and development of strategies. In practice, the limited institutionalised co-ordination between CoG bodies decreases the effectiveness of the government-level policy planning.**

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

The legislative framework<sup>83</sup> assigns the functions necessary for an effective and efficient EI process to the recently established MEA. It is responsible for overall daily co-ordination of EI, planning of EI-related activities as well as monitoring their implementation, co-ordinating alignment of national legislation with the EU *acquis* and co-ordinating EU assistance and accession negotiations. Guidelines and detailed regulations support the implementation of all these key EI-related functions.

The Collegium for Negotiations has been established as the political-level co-ordination body presided over by the Prime Minister (PM)<sup>84</sup>, but it met only three times in 2016. It discusses the negotiations, but not other matters related to EI, like planning or monitoring the implementation of EI-related plans. The Commission for European Integration<sup>85</sup> is the administrative-level co-ordination body (still chaired by the Minister of European Affairs). It met six times in 2016. The Commission includes directors general and heads of department from ministries as well as other state bodies. It co-ordinates the updating of the PAM and monitors its implementation. In its meetings in 2016, it also discussed EC Progress Reports and the plan for translation of the *acquis*<sup>86</sup>. The MEA acts as the secretariat for both the Collegium and the Commission.

The PAM is updated annually and currently runs until 2018. The MEA consistently prepares quarterly reports on its implementation. As for co-ordination of EU assistance, the MEA leads the preparation and updating of the Indicative Strategy Paper setting out the priorities for EU financial assistance in

<sup>82</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

<sup>83</sup> Article 27c of the DOOPA; Rulebook on Internal Organisation and Systematisation of the Ministry of European Affairs.

<sup>84</sup> Government's Decision on Establishing Negotiating Structure for the Accession of Montenegro to the European Union (Official Gazette No. 9/12, 15/14). Other members of the Collegium are the Deputy Prime Ministers of Montenegro, the Minister of European Affairs and the Chief Negotiator for Negotiations on Accession of Montenegro to the European Union.

<sup>85</sup> The most recent composition of the Commission was established by the Government's Decision of 4 May 2017.

<sup>86</sup> According to the agenda of the meetings on 11 November 2016.

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Montenegro. Under the RoP<sup>87</sup>, the MEA's opinion on compliance with EU legislation must be attached to all draft regulations submitted to the Government, and this requirement is consistently followed in practice. As of June 2017, 28 out of the 33 Negotiation Chapters have been opened in the EU accession negotiation process, and 3 have been provisionally closed.

As the co-ordination mechanisms at the political and administrative levels for the EI process are not fully functional, the value for the indicator 'Fulfilment of European integration functions by the centre-of-government institution' is 4.

**Fulfilment of European integration functions by the centre-of-government institutions**

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

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

Overall indicator value 0   1   2   3   **4**   5

Sub-indicators	Points
1. Proportion of the EI functions that are assigned to the CoG institutions by law	6/6
2. Availability of guidelines to line ministries and other government bodies	4/4
3. Government's capacity for co-ordination of EI	6/8
<b>Total<sup>88</sup></b>	<b>16/18</b>

**All EI functions have been assigned to the MEA, and the functions are being implemented in practice. The effectiveness of EI-related co-ordination bodies is limited by the irregularity of their meetings and the fact that the Collegium at the political level discusses only matters related to the negotiation process.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The GSG's role in reviewing whether policy content aligns with the Government's priorities, strategic documents and existing policies should be increased, by giving the GSG the right to send back material that does not meet quality expectations or is not aligned with overall Government policy.
- 2) The Government should establish the requirements for developing sector strategies and start putting these processes into effect. The launch of the new requirements should be accompanied with the relevant guidelines and trainings organised for line ministries and relevant centre-of-government bodies.
- 3) The established co-ordination bodies for the EI process at the political and administrative level should become fully functional, with the political level convening once every three months and the administrative level monthly. The Collegium for Negotiations should widen its focus and cover EI-related planning and monitor progress in key reforms crucial for the EU accession process.

<sup>87</sup> Article 40.

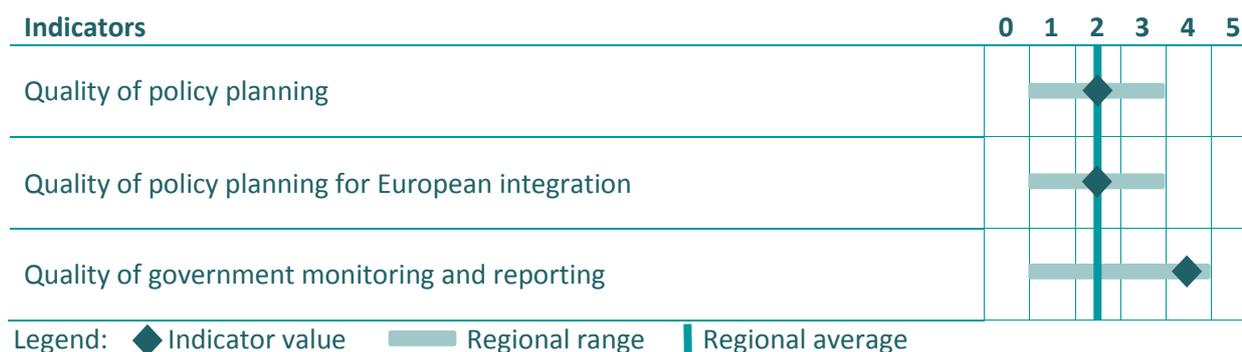
<sup>88</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-13=3, 14-16=4, 17-18=5.

### Medium-term (3-5 years)

- 4) The CoG bodies should establish a co-ordination mechanism to consolidate the opinions of all constituent bodies during the GAWP preparation process.

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

The values of the indicators assessing Montenegro’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

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

The legal framework for policy planning is established in the BFR Law<sup>89</sup> and the RoP<sup>90</sup>. On the basis of its Fiscal Strategy, the Government is required to adopt the FPG annually for a three-year period, which specifies the spending ceilings for the next budget and indicative ceilings for the two subsequent budgets. The Exposé of the PM<sup>91</sup> (the Exposé) contains a short overview of the Government’s medium-term priorities and is the basis for the development of the annual GAWPs for the duration of the Government’s mandate. Obligations arising from the accession process to the EU, which are comprehensively listed in Montenegro’s PAM, are also one of the bases for the development of the GAWP<sup>92</sup>. In addition to the planning documents explicitly referred to in the legal framework, the Government has adopted the Montenegro Development Directions 2015-2018 (MDD)<sup>93</sup>, containing a medium-term vision for the country and the Economic Reform Programme (ERP)<sup>94</sup> as a rolling planning document covering a three-year period. As these medium-term plans are not mentioned in the legal framework, the status and hierarchy of key government planning documents is not conclusively established. The Parliament had not adopted the Fiscal Strategy for the term of the current

<sup>89</sup> Law on Budget and Fiscal Responsibility, Articles 18, 22 and 29.

<sup>90</sup> Article 28 of the RoP.

<sup>91</sup> The most recent Exposé was delivered to the Parliament in November 2016, <http://www.gov.me/ResourceManager/FileDownload.aspx?rid=258908&rType=2>.

<sup>92</sup> According to Article 28 of the RoP.

<sup>93</sup> Montenegro Development Directions 2015–2018, adopted in June 2015, <http://www.mf.gov.me/ResourceManager/FileDownload.aspx?rid=216638&rType=2>.

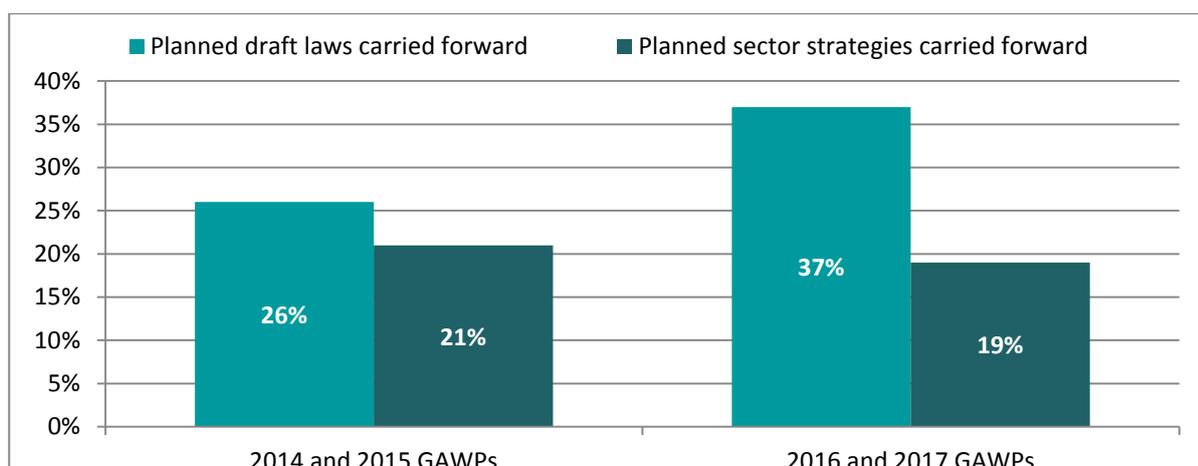
<sup>94</sup> The most recent Economic Reform Programme was adopted in January 2017 and covers 2017–2019, <http://www.gov.me/ResourceManager/FileDownload.aspx?rid=263672&rType=2>.

Government by the end of June 2016<sup>95</sup>. As a consequence, finalisation of the FPG for 2017-2020 was delayed<sup>96</sup>. The FPG 2016-2019 lists a selection of medium-term policy goals that are not in full alignment with the priorities of the GAWP<sup>97</sup>. The FPG does not specify exact measures for achieving these goals, their cost, or outcome-level indicators for measuring their achievement. It contains ministry-specific spending limits, but does not link them to policies that the ministries are expected to implement within these limits. The plan is prepared by the MoF without systematic written input from the ministries.

There is no medium-term government work programme, and the GAWP is the Government’s principal planning document. The GSG leads the preparation of the GAWP and provides guidance to the line ministries. In addition to containing a general description of the Government’s priorities, it specifies the deadlines and the ministries responsible for delivering the Government’s commitments, but does not include outcome-level objectives, which would enable the achievement of priority objectives to be monitored. Activities in the GAWP are not costed, but each legislative commitment includes a short preliminary assessment of whether the implementation of the regulation will have an impact on the budget (without specifying the extent of the impact) and the confirmation that all such impacts will be analysed in the course of the RIA.

Alignment regarding legislative commitments originating from strategies is quite high as five of the six draft laws to be developed during 2017 (according to the last five sector strategies adopted in 2016<sup>98</sup>) appear in the 2017 GAWP<sup>99</sup>. The share of planned draft laws carried forward from one GAWP to the next has increased compared to the 2015 Baseline Measurement, while the share of planned sector strategies carried forward has decreased slightly.

**Figure 1. Share of planned commitments carried forward in the GAWP**



Source: Analysis of the Government’s annual work plans by SIGMA

<sup>95</sup> The draft Strategy was approved by the Government on 8 June, but has not been adopted by the Parliament by 30 June.

<sup>96</sup> The FPG is to be adopted by 31 March each year, but the plan for 2017-2020 was adopted only on 6 July 2017 by the Government.

<sup>97</sup> “Providing conditions for complete opening of the rail and energy markets” and “Increasing the quality and availability of the health services” are two goals of the FPG 2016-2019 that are not listed as priorities in the GAWP for 2017. At the same time, the GAWP 2017 prioritises reforms in the judicial sector, which are not referred to in the FPG.

<sup>98</sup> The Strategy for Execution of Criminal Sanctions (2017-2021), the Mid-term Plan for the Rationalisation of the Judicial Network (2017-2019), the Action Plan of Employment and Development of Human Resources for 2017, the Action Plan of the Teachers’ Education Strategy (2017-2018), and the Strategy and Action Plan for Protection Against Ionising Radiation, Radiation Safety and Management of Radioactive Waste (2017-2021).

<sup>99</sup> The draft laws included in the GAWP: the Law on Spatial Planning and Construction of Facilities, the Labour Law, the Law on Employment and Realisation of Rights from Insurance Against Unemployment, the Law on Regulated Professions and Recognition of Foreign Professional Qualifications, the Law on Amendments to the Law on Social and Child Protection. Only the amendments to the Law on National Vocational Qualifications have been left out of the GAWP for 2017.

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The number of strategies planned for development in 2017 decreased considerably by comparison with 2016 (from 27 to 15), but the strategic planning system remains fragmented, illustrated by the fact that separate strategies are planned for areas that should be covered by a single sector strategy<sup>100</sup>. Under its new mandate<sup>101</sup>, the MEA has been tasked with drafting the unified requirements for developing sector strategies, which were not established as of June 2016. A lack of content-related requirements and of corresponding quality control is evident from the limited financial information included in the five sector strategies analysed for the assessment. Only the Action Plan for Employment and Development of Human Resources in 2017 included systematic information about its implementation costs. The FPG does not contain information on the funding allocated for implementing the Government's priorities, and since the strategies include limited information about expenditure needs, it is not possible to assess the alignment of the medium-term fiscal plan with the costs of sector strategies.

Due to shortcomings in the legal framework for policy planning and lack of financial estimates in the sector strategies, in addition to the limited alignment of the priorities of the GAWP and the FPG and a lack of outcome-level indicators for measuring their achievement, the value for the indicator 'Quality of policy planning' is 2.

Quality of policy planning						
This indicator measures the legislative, procedural and organisational set-up established for harmonized policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the legal framework for policy planning	3/7
2. Availability of guidance to line ministries during the policy-planning process	2/4
3. Alignment between central policy-planning documents	2/6
4. Planned commitments carried forward in the legislative plan of the government (%)	2/4
5. Planned sectoral strategies carried forward (%)	4/4
6. Completeness of financial estimates in sector strategies	1/5
7. Alignment between planned costs in sector policy plans and medium-term budget (%)	0/3
<b>Total<sup>102</sup></b>	<b>14/33</b>

**Policy planning is primarily done on an annual basis, since the Government has no comprehensive medium-term planning framework. The medium-term fiscal plan is not linked to policy plans. Strategies contain limited information on costing, and requirements for their content and how they are developed are only being established under the co-ordination of the MEA.**

<sup>100</sup> The 2017 GAWP calls for the development of the Strategy for the Development of Rural Tourism (2018-2022) and the Strategy for the Development of Cultural Tourism (2018-2022).

<sup>101</sup> Established in Article 27c of the DOOPA.

<sup>102</sup> Point conversion ranges: 0-5=0, 6-11=1, 12-17=2, 18-23=3, 24-29=4, 30-33=5.

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

The legal basis for the PAM as the key planning document for all EI-related activities is set in the Stabilisation and Association Agreement signed between Montenegro and the EU<sup>103</sup>. The MEA is responsible for its development<sup>104</sup> and has established the Commission for EI as the administrative-level body for co-ordinating its preparation with other ministries and relevant state institutions. The specific requirements for the development of the PAM are not established in the regulations. The RoP only emphasises the need to include EI-related commitments in the GAWP as well<sup>105</sup>, thereby laying the legal grounds for aligning the Plans. The GSG and the MEA co-operate during the preparation of both Plans, and 92% of the draft laws to be adopted in 2017 under the PAM are included in the GAWP.

The PAM is a planning document revised annually, initially prepared for the period 2014-2018. Its most recent version covers 2017-2018<sup>106</sup>. It contains a detailed plan of activities with deadlines and responsible institutions by negotiation chapters, covering both legislative and strategic commitments. In addition to future tasks, the plan also provides an overview of the existing strategies and legislative framework (including EU Directives that have already been transposed) in the sector. The activities in the Plan are not costed, but it does contain information about needs for additional staff and infrastructure (mainly IT systems), which would have to be in place for the implementation of the aligned legislation.

Of the commitments from 2016, 27%<sup>107</sup> were carried forward to the 2017 Plan (compared to 25% at the time of the 2015 Baseline Measurement). Mostly these included legislative commitments, since 78 of the 104 items carried forward dealt with the drafting of a law or a secondary regulation. Thus, the implementation rate regarding development of draft laws is low – only 37%<sup>108</sup> of the planned draft laws were actually approved by the Government in 2016. As a result, no points were awarded for the respective sub-indicator.

Due to the low implementation rate of planned legislative activities and a lack of costing information in the planning documents, the value for the indicator ‘Quality of planning for European integration’ is 2.

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<sup>103</sup> Article 72 of the SAA specifies the requirement for the preparation of a programme covering all legal approximation-related activities.

<sup>104</sup> DOOPA, Article 27c.

<sup>105</sup> The RoP Article 28.

<sup>106</sup> Adopted by the Government on 27 January 2017.

<sup>107</sup> A total of 104 out of 383 commitments from the 2016 plan also appear in the 2017 plan.

<sup>108</sup> A total of 22 of the planned 59 draft laws were approved by the Government.

### Quality of policy planning for European integration

This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI-related commitments.

Overall indicator value 0   1   **2**   3   4   5

Sub-indicators	Points
1. The legal framework enables harmonised planning of EI	1/2
2. Quality of planning documents for EI	4/6
3. EI-related commitments carried forward	3/4
4. Implementation rate of the government's plans for EI-related legislative commitments (%)	0/4
<b>Total<sup>109</sup></b>	<b>8/16</b>

**The PAM is the rolling plan for all EI-related activities. It provides a detailed overview of future tasks and contains predictions for additional staff needs arising from each negotiation chapter, but does not include information about the costs of the planned activities. Its alignment with the GAWP is also incomplete. The overall share of planned items carried forward is small, but the implementation rate of legislative activities is very low.**

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

The legal framework stipulates regular monitoring and reporting on the implementation of key horizontal central-planning documents: the budget<sup>110</sup>, the GAWP<sup>111</sup> (including all legislative commitments) and the PAM<sup>112</sup>. There is no general legal requirement to report on the implementation of sector strategies. The mechanism and frequency of reporting is established in individual strategies. All reports – including reports on the implementation of strategies, when they are prepared – must be submitted to the Government, and their public availability is provided for through the general requirement to publish materials which have been considered at a Government session<sup>113</sup>. All reports are publicly available in practice as well.

The MoF consistently prepares the reports on budgets, which provide an overview of the fiscal situation, but do not contain information on progress towards the policy goals stipulated in the FPG. The GSG prepares quarterly reports on the implementation of the GAWP that provide detailed information on implementation of planned activities. The fourth-quarter report covers the entire year. However, as clear outcome-level targets have not been established in the Plan, it is not possible to monitor progress towards them. In addition, in 2016, the reports were prepared only for the first three

<sup>109</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

<sup>110</sup> BFR Law, Articles 65-68. Rulebook on Internal Organisation and Systematisation of the MEA, February 2017.

<sup>111</sup> Article 31 of the RoP.

<sup>112</sup> The general obligation of the MEA to monitor the implementation of the PAM is stipulated in Article 27c of the DOOPA. It is mirrored in the Government's decision on adopting the PAM (see p. 2 of Decision No. 07-159 of 27 January 2017). Article 4 of the Rulebook on Internal Organisation and Systematisation of MEA also stipulates a quarterly reporting obligation.

<sup>113</sup> Article 71 of the RoP.

quarters, and the activities planned for implementation in the fourth quarter (after the parliamentary elections in October) were not reported on.

The MEA prepares quarterly and annual reports on the implementation of the PAM, which also focuses on outputs only. The Ministry also co-ordinates the preparation of country inputs to the progress reports of the European Commission and prepares semi-annual reports to the Parliament on overall progress on EU accession. In addition to providing an overview of the activities carried out, the reports prepared for the EC and the Parliament also contain general information about developments under the political and economic criteria, as well as progress in the accession negotiations.

The reports on the implementation of sector strategies, which were analysed for this assessment<sup>114</sup>, focus on outputs only. The strategies contain objectives, but since they are not linked to relevant outcome-level indicators, their achievement cannot be properly monitored. The narrative sections in the implementation reports usually contain descriptions of implemented activities, and the reports do not highlight any real challenges in implementation or offer solutions for overcoming them.

As reports on key governmental planning documents only focus on outputs, the value for the indicator 'Quality of government monitoring and reporting' is 4.

Quality of government monitoring and reporting						
This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. The legal framework enables good monitoring and reporting	7/8
2. Quality of reporting documents	6/12
3. Public availability of government reports	5/5
<b>Total<sup>115</sup></b>	<b>18/25</b>

**Reporting on the implementation of central planning documents focuses on outputs, because the planning documents do not contain outcome-level indicators against which progress can be measured. Exceptionally in 2016, reports on the implementation of the GAWP were prepared only for the first three quarters, and the overall annual report was not prepared. On the positive side, the reports are publicly available, as all material discussed at the Government sessions is published online.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should comply with the established deadlines for the preparation of central planning documents (including the Fiscal Strategy and the FPG) and should make the plans consistently publicly available.

<sup>114</sup> Report on the Realisation of the 2016 Action Plan for the Implementation of the Strategy for the Development of General Medium Education in Montenegro (2015-2020); the Fourth Semi-annual Report on the Implementation of Measures from the Action Plan for the Implementation of the Judicial Reform Strategy 2014-2016; Report on the Implementation of the 2015 Action Plan for Implementation of the Strategy for the Development of Women Entrepreneurship 2015-2020; Report on the Implementation of the Strategy for Combating Trafficking in Human Beings for the period from 1 January to 30 June 2016; Report on the Implementation of the Strategy for the Prevention and Suppression of Terrorism, Money-Laundering and Terrorist Financing for the period January-June 2016.

<sup>115</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-12=2, 13-17=3, 18-21=4, 22-25=5.

- 2) The Government should establish of the status and hierarchy of planning documents together with setting up unified requirements for the development of sector strategies (including costing). The requirements should correspond to the capacity of the administration to ensure their successful implementation.
- 3) The MEA and the GSG should increase their co-operation, to achieve full alignment of the PAM and the GAWP at the level of planned draft laws.
- 4) The MEA should ensure that the PAM is based on realistic planning, in line with the capacities of line ministries for legislative drafting.

### Medium-term (3-5 years)

- 5) The MEA should ensure that the next plan for EI-related activities prioritises commitments according to the needs of the accession process and other ongoing reform initiatives, and includes cost estimates as well as information about sources of funding.
- 6) After the outcome-level indicators have been introduced in the Government’s planning documents, the implementation reports should include an assessment of the impact of the policies implemented, not just the output of activities.

**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.**

The values of the indicators assessing Montenegro’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Legend: ◆ Indicator value    ■ Regional range    | Regional average

### ***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 establish the legal framework for preparation, follow-up and communication on Government sessions<sup>116</sup>. The exact roles of the CoG bodies involved are also stipulated in the regulations establishing the internal systematisation of the respective bodies<sup>117</sup>.

The GSG has the responsibility to ensure procedural compliance (including compliance with requirements for consultation procedures) and for checking the coherence of proposals with the Government’s priorities<sup>118</sup>. However, according to the RoP, it only has the explicit right to return items to ministries in cases where procedures have not been complied with<sup>119</sup>. In practice, the GSG is able to ensure that proposals are submitted to the Government with all the required accompanying

<sup>116</sup> RoP, Articles 32-35, 38, 40-49, 51 63-70, and 71.

<sup>117</sup> Rulebook on Internal Organisation and Systematisation of General Secretariat and Rulebook on Internal Organisation and Systematisation of the Secretariat for Legislation.

<sup>118</sup> Article 10 of the Rulebook on Internal Organisation and Systematisation of General Secretariat.

<sup>119</sup> RoP, Article 49.

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materials<sup>120</sup>. The content-related review of proposals is undertaken by the Government's four standing commissions. The Commission for Political System, Internal and Foreign Policy and the Commission for Economic Policy and Financial System<sup>121</sup>, which are presided over by Deputy PMs and are made up primarily of Ministers and Deputy Ministers, convene weekly and discuss all items before they are put on the Government's agenda. As a consequence, the GSG's authority to ensure the coherence of proposals with the Government's priorities is limited. In practice, the check is carried out by a political-level co-ordination forum<sup>122</sup>.

The SL is responsible for legal scrutiny, and its opinion is consistently attached to all draft regulations submitted to the Government. Its professional opinion is regarded highly by line ministries, which is illustrated by the fact that often it also has to provide comments in the earlier stages of the policy development process, e.g. prior to interministerial consultation. The MoF provides an opinion on the financial affordability and on the quality of RIA reports attached to the proposals. It occasionally provides guidance to line ministries for improving the impact assessments, but rarely provides negative opinions. The MEA is responsible for reviewing the compliance of draft regulations with the *acquis*.

According to the RoP, all regulations and strategic documents must be submitted 15 days, and all other proposals 7 days, prior to the Government session. In the last quarter of 2016, 96% of the items were submitted on time<sup>123</sup>. The agenda of the session is required to be published online after its approval but before the session of the Government<sup>124</sup>, but this requirement is not fulfilled consistently. Nevertheless, Government's decisions are made available online<sup>125</sup> and an internal IT system accessible to members of the Government is used for keeping and distributing the records of meetings. Press conferences are regularly held after the Government's meetings. The GSG's Public Relations Service proactively plans communications based on items on the agenda and regularly identifies areas for improvement in media appearances.

Despite the relatively high level of transparency of the Government's decision making, the Balkan Barometer Business Opinion Survey for 2017 shows that only 44% of businesses in Montenegro agree with the statement "Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently."

The transparency and legal compliance of the Government's decision making has reached a relatively high level, as illustrated by the value of 4 set for the indicator 'Transparency and legal compliance of government decision-making'. The only shortcomings exist in the CoG bodies' limited role in reviewing the policy content of proposals and businesses' low perception of the clarity and stability of government policy making.

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<sup>120</sup> Assessment based on the completeness of a sample of five proposals submitted to the Government in 2016.

<sup>121</sup> In addition to the two Commissions, which convene weekly, the Commission for Personnel and Administration and the Commission for the Allocation of Funds Budget Reserves convene when necessary.

<sup>122</sup> As evidenced by the review of agendas and minutes of the sessions of Commissions from December 2016.

<sup>123</sup> A total of 513 out of 536 items were submitted according to the required deadlines (information provided by the General Secretariat).

<sup>124</sup> Government's Decision on the Publication of Materials from the Session of the Government of Montenegro, adopted on 7 July 2011, Articles 2-4.

<sup>125</sup> [http://www.gov.me/sjednice\\_vlade\\_2016](http://www.gov.me/sjednice_vlade_2016).

### Transparency and legal compliance of government decision making

This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision-making, and businesses' perception of the transparency of government policy making.

Overall indicator value 0 1 2 3 **4** 5

Sub-indicators	Points
1. The legal framework establishes procedures for government sessions	4/5
2. Consistency of the CoG in setting and enforcing the procedures	3/4
3. Timeliness of ministries' submission of regular agenda items to the government session (%)	3/3
4. Openness of government decision-making process	3/4
5. Perceived clarity and stability of government policy making by businesses (%)	1/4
<b>Total<sup>126</sup></b>	<b>14/20</b>

**The legal framework regarding the procedures for Government sessions is clear and mainly followed in practice. The only exception is the limited role of the GSG and the MoF in checking the policy content of proposals. The Government's decision-making process is relatively transparent, but agendas are not made publicly available before the sessions despite this being a requirement.**

#### *Principle 7: The parliament scrutinises government policy making.*

The regulatory framework for parliamentary scrutiny of Government policy making is stipulated by the Decree on the Government of Montenegro<sup>127</sup> and the Rules of Procedure of the Parliament<sup>128</sup>, as well as the RoP of the Government<sup>129</sup>.

According to the established procedures, the Parliament adopts draft laws after three readings. The Legislative Committee gives legal scrutiny to all drafts prior to the first reading. The Parliament follows the same legal drafting rules as the Government<sup>130</sup>. The draft laws submitted by the Government to the Parliament have to be accompanied by reports on the RIA conducted for the law (as well as the opinion of the MoF on the quality of the RIA), but the report on the outcome of public consultation is not included in the package<sup>131</sup>. As a part of parliamentary scrutiny, Members of the Parliament can ask written and oral questions from ministers and the Government must ensure its representation at the sessions of the Parliament. The Government is expected to provide an opinion on all drafts initiated by MPs within 15 days.

In practice, the Government consistently provides its opinions and submits drafts to the Parliament with all the requested accompanying materials. The Deputy Prime Minister for Political System, Internal and Foreign Affairs co-ordinates the Government's participation in the Parliament. Ministers or their deputies are present at plenary and committee sessions when issues they are responsible for are being discussed.

<sup>126</sup> Point conversion ranges: 0-1=0, 2-5=1, 6-9=2, 10-13=3, 14-17=4, 18-20=5.

<sup>127</sup> Articles 26-28.

<sup>128</sup> RoP of the Parliament, Official Gazette No. 51/06.

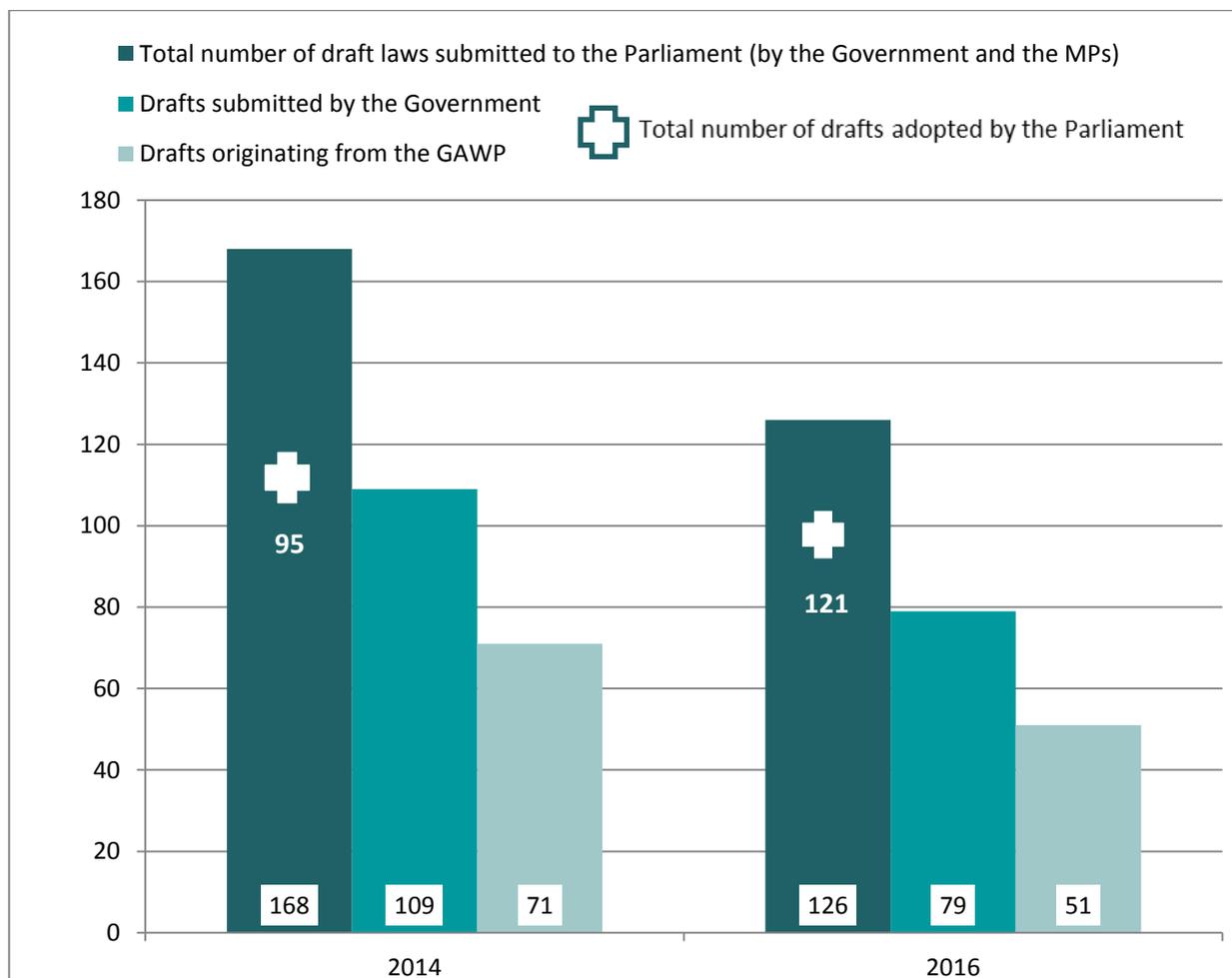
<sup>129</sup> Articles 9 and 30.

<sup>130</sup> <http://www.gov.me/en/search/162903/LEGAL-AND-TECHNICAL-RULES-FOR-LEGAL-DRAFTING.html>.

<sup>131</sup> See Article 67 of the RoP.

The Secretary General of the Parliament communicates daily with the Deputy Secretary General of the GSG on legislative matters at the highest administrative level. The GSG submits the GAWP to the Parliament after it has been adopted to improve co-ordination of the legislative process. However, 35% of the Government's drafts submitted to the Parliament in 2016 did not originate in the GAWP.

**Figure 2. Submission and adoption of draft laws in the Parliament**



Source: Reports on the implementation of the legislative plans of the Parliament.

Despite the relatively high share of drafts that did not originate in the Government's plans, the Parliament was able to process the Government's bills efficiently; 96% of drafts submitted in 2015 were adopted within a year. Ten of the Government's bills (9% of all drafts submitted by the Government), were adopted in urgent proceedings in 2016, including the state budget for 2017 and several amendments to tax laws<sup>132</sup>. This, and the fact that the opposition parties did not participate in the work of the Parliament after the October 2016 elections has limited the effectiveness of parliamentary scrutiny<sup>133</sup>.

The Parliament does not make a practice of discussing reports on the implementation of laws. However, the Government submits its reports on the EU accession process to the Parliament semi-annually. It also regularly discusses the report on the implementation of the Regional Development

<sup>132</sup> Law on Amendments to the Law on Personal Income Tax, Law on Amendments to the Law on Value Added Tax, the Law on Amendments to the Law on Excise and the Law on Rescheduling of Tax Claims.

<sup>133</sup> <http://www.balkaninsight.com/en/article/montenegro-parliament-to-vote-new-govt-amid-opposition-boycott-11-27-2016>

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Strategy 2014-2020. In addition, several public sector bodies<sup>134</sup> that exercise executive functions submit their annual reports to the Parliament, allowing it to scrutinise the implementation of policies.

Parliamentary scrutiny of Government policy making is hampered because the Government is not following its annual work plan consistently and due to the relatively high share of drafts processed in extraordinary proceedings. As a result, the value for the indicator on 'Parliamentary scrutiny of government policy making' is 4.

Parliamentary scrutiny of government policy making						
This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making	4/5
2. Completeness of supporting documentation for draft laws submitted to the parliament	2/3
3. Co-ordination of governmental and parliamentary decision-making processes	2/2
4. Systematic review of parliamentary bills by government	1/1
5. Alignment between draft laws planned and submitted by the government (%)	1/2
6. Timeliness of parliamentary processing of draft laws from the government (%)	2/2
7. Use of extraordinary proceedings for the adoption of government-sponsored draft laws (%)	3/5
8. Government participation in parliamentary discussions of draft laws	2/2
9. Basic parliamentary scrutiny of the implementation of policies	2/2
<b>Total<sup>135</sup></b>	<b>19/24</b>

**The legislative framework is in place for the Parliament to provide scrutiny on the policy-making activity of the Government. In practice, its effectiveness is limited by the relatively high share of Government drafts that do not originate in its annual work plan and by the considerable number of drafts processed in extraordinary procedures.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The GSG and the MoF should increase the emphasis on the quality control of policy proposals with respect to their affordability and coherence with the Government's priorities. Proposals which do not meet the criteria should be returned to the ministries or, as a minimum, negative opinions should be issued before they reach the political-level co-ordination bodies.
- 2) The Government should follow its legislative plans when submitting drafts to the Parliament. It should request the processing of drafts in urgent procedures only in case of unforeseen circumstances and should not use this possibility for the regular adoption of the state budget.

**Medium-term (3-5 years)**

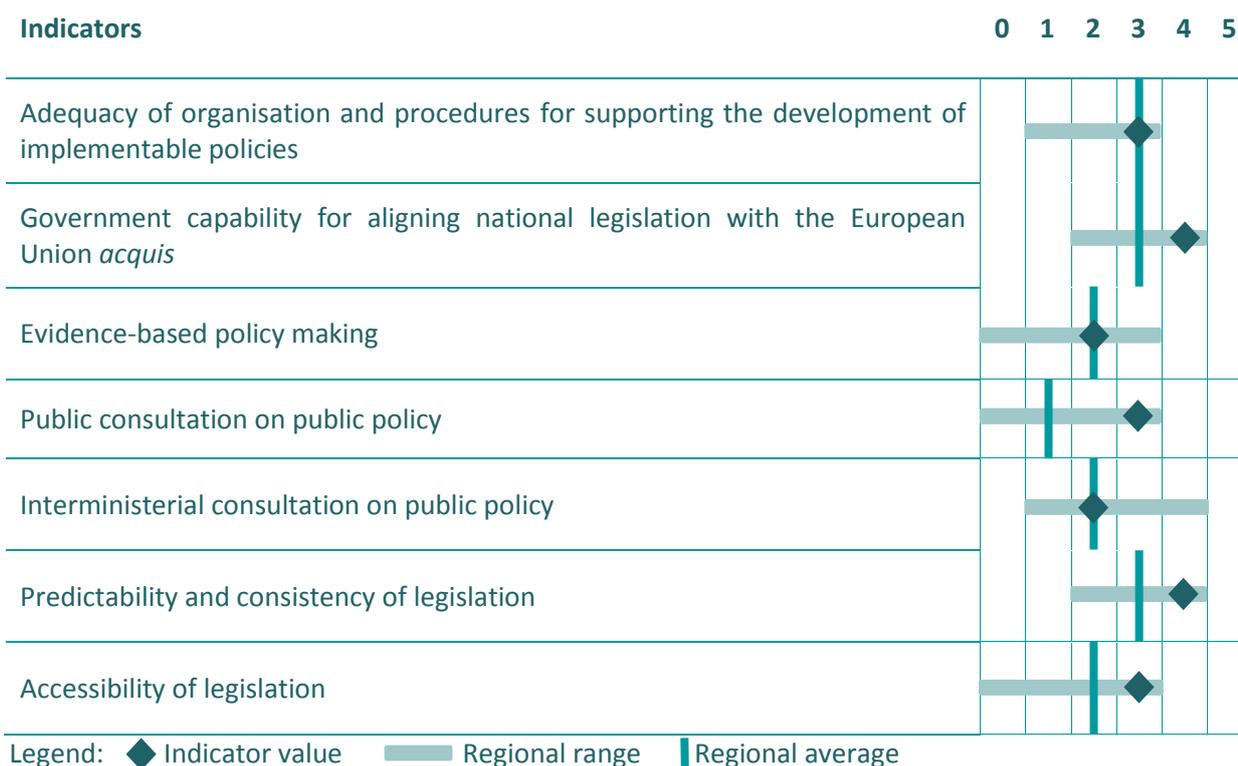
<sup>134</sup> For example, the State Commission for the Control of Public Procurement Proceedings and the Agency for Personal Data Protection and Access to Information.

<sup>135</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-16=3, 17-20=4, 21-24=5.

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

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

The values of the indicators assessing Montenegro’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



**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.***

The LSA places the responsibility for policy development on ministries<sup>136</sup>. The DOOPA stipulates the exact mandates of the 18 ministries currently established in Montenegro, including the Ministry of Public Administration and the Ministry of Sports, which were created by the new Government after the 2016 elections. Policy implementation is usually the responsibility of subordinate administrative bodies called administrations, directorates, agencies and bureaus. However, 22 subordinate bodies are operating as “administrative bodies within ministries”<sup>137</sup> which blurs the otherwise clear distinction between the policy development functions of ministries and policy implementation functions of subordinate bodies<sup>138</sup>. For example, the Food Safety, Veterinary and Phytosanitary Administration, the Forest Administration, the Water Administration and the Tobacco Agency, with a total actual staff of 366, act as administrative bodies within the Ministry of Agriculture and Rural Development. As a result,

<sup>136</sup> Article 27.

<sup>137</sup> Including, for example, the Tax Administration, Customs Administration, Games of Chance Administration and Real-Estate Administration within the MoF, and the Police Administration within the Ministry of Interior.

<sup>138</sup> Despite being formally separate from the ministries, heads of bodies within ministries cannot decide independently on key aspects of internal management (e.g. human resource management issues, financial management, contractual relations), and for the purposes of the assessment, have been considered equal to departments within a ministry.

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only 7% of the total staff of the Ministry is assigned to policy development functions. The share of policy development staff is higher in ministries without these internal administrative bodies<sup>139</sup>.

State secretaries of ministries are responsible for the policy development process within ministries<sup>140</sup>. Rulebooks on internal organisation and systematisation outline the structures and responsibilities of departments. Separate legal or policy co-ordination departments have not been established<sup>141</sup>. Sector-specific policy departments (directorates), led by directors general, are responsible for elaboration of policy proposals and for legal drafting in their respective area of work. These departments also direct the work in practice, and the roles of different departments are consistently followed<sup>142</sup>.

The policy-making and legislative processes in the ministries are not regulated by internal procedures or guidelines. Working groups are usually established for the preparation of draft regulations and strategy documents, composed of representatives of the relevant departments within the ministry and other ministries. Collegiums presided over by the minister, made up of the state secretary, secretary, heads of directorates and departments are used for regular co-ordination and also substance-related discussions within the ministry. But the practice of establishing regular meetings of collegiums is not consistent throughout all ministries.

Due to a lack of established internal procedures for policy making within ministries and a low share of staff allocated to policy development functions in some ministries, the value for the indicator 'Adequacy of organisation and procedures for supporting the development of implementable policies' is 3.

Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for effective policy making	3/4
2. Staffing of policy-development departments (%)	1/2
3. Adequacy of policy-making processes at ministry level in practice	4/6
Total <sup>143</sup>	8/12

**Ministries are responsible for policy development both under the legal framework and in practice. Regulations describing the process within ministries have not been established and in practice co-ordination between departments is ensured through working groups and collegiums. Ministries that include large executive agencies as internal bodies have a disproportionately low share of staff allocated to policy development, as compared with staff dealing with enforcement functions.**

<sup>139</sup> For example, 71% in the Ministry of Economy (MoE), 56% in the Ministry of Labour and Social Affairs and 65% in the Ministry of Sustainable Development and Tourism.

<sup>140</sup> According to Article 41a of the LSA.

<sup>141</sup> On the basis of the assessment of the internal systematisations of the four sample ministries: the Ministry of Agriculture and Rural Development, the MoE, the Ministry of Labour and Social Affairs and the Ministry of Sustainable Development and Tourism.

<sup>142</sup> Confirmed during interviews and also by the fact that the head of the relevant policy department is usually designated as responsible for the preparation of draft regulation.

<sup>143</sup> Point conversion ranges: 0=0, 1-2=1, 3-5=2, 6-8=3, 9-10=4, 11-12=5.

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

The responsibilities regarding the alignment process with the *acquis* are stipulated in the RoP, in the DOOPA and in the Rulebook on the Internal Systematisation of the MEA. The Directorate for the *acquis* of the MEA is responsible for planning, co-ordinating and monitoring of the *acquis* alignment process<sup>144</sup>. Draft regulations can only be submitted to the Government if they are accompanied by the Table of Compliance and Declaration of Conformity prepared by the sponsoring ministry and with the corresponding opinion of the MEA confirming their substance<sup>145</sup>. These requirements are consistently followed in practice<sup>146</sup>. The MEA has prepared guidelines for instructing line ministries in *acquis* alignment<sup>147</sup> and is also providing guidance on specific drafts.

Policy proposals dealing with the alignment of the *acquis* are required to be accompanied by RIA reports and to undergo public and interministerial consultation procedures, in the same way as domestic proposals<sup>148</sup>. In case of conflicting opinions, the Government's commissions serve as the bodies for resolving them, as for all draft regulations. Starting from 2017, the MEA has asked line ministries to accompany all drafts submitted to them for opinion with completed RIA reports and reports on public consultation, to make it possible to submit the entire package to the European Commission, together with the Ministry's own opinion on conformity.

The PAM is the Plan for all approximation-related activities. In 2016 the implementation rate of planned commitments was 77%<sup>149</sup>. A total of 27%<sup>150</sup> of the commitments from the 2016 Plan were carried forward to the 2017 Plan.

The Department for Preparing the Montenegrin Version of the *Acquis* is responsible for co-ordinating the translation of the *acquis*. A plan of priority translation needs has been prepared, but the unit's five staff members have not been able to ensure that the Directives which the Government plans to transpose in 2017 have been consistently translated into the local language by the middle of the year<sup>151</sup>. As a temporary replacement, the Croatian version of the *acquis* is often used.

Given the above factors and despite some shortcomings in the translation of the *acquis* and in implementing the planned commitments relating to *acquis* alignment, the value for the indicator 'Government capability for aligning national legislation with the European Union *acquis*' is 4.

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<sup>144</sup> Rulebook on the Internal Organisation and Systematisation of MEA, Article 4.

<sup>145</sup> RoP, Article 40.

<sup>146</sup> Assessment on the basis of analysis of packages of sample policy proposals, including: Draft Regulation on the Manner and Conditions for placing on the Marketing Food for Special Dietary Needs, Draft Law on Quality Schemes for Agricultural and Food Products, Draft Law on Amendments to the Law on Excise, Draft Law on Amendments to the Law on Lawyers, Draft Regulation on Vitamins, Minerals and Other substances that can be added to Food.

<sup>147</sup> "Information on Introduction of New Instruments for Harmonisation with the *acquis* in procedure of Drafting Montenegrin Legislation", prepared by the MEA and adopted by the Government.

<sup>148</sup> RoP, Article 40.

<sup>149</sup> A total of 247 of the 318 planned items in the PAM were approved.

<sup>150</sup> A total of 66 of 245 commitments from the 2016 PAM also appear in the plan for 2017.

<sup>151</sup> Only one of the five sample EU Directives had been translated into Montenegrin and professionally edited (including legal editing) by 30 June. The other four Directives were in the final stages of the official editing process.

**Government capability for aligning national legislation with the European Union *acquis*.**

This indicator measures the adequacy of the legal framework for the *acquis* alignment process, the government's consistency in using the tables of concordance in the *acquis* alignment process and the availability of the EU *acquis* in the national language. It also assesses the results of the *acquis* alignment process, focusing on the planned *acquis* alignment commitments carried forward from one year to the next and how the government is able to achieve its *acquis* alignment objectives.

Overall indicator value 0 1 2 3 **4** 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process	5/5
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)	2/2
3. Translation of the <i>acquis</i> into the national language	0/2
4. <i>Acquis</i> alignment commitments carried forward (%)	3/4
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)	2/4
<b>Total<sup>152</sup></b>	<b>12/17</b>

**The responsibilities and procedures for *acquis* alignment have been established in the legal framework and are followed in practice. The requirements are the same as those for the preparation of domestic proposals. The share of *acquis* alignment commitments carried forward from 2016 to 2017 was relatively low. Challenges remain with ensuring timely translation of the *acquis* into the local language.**

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

The obligation to assess the impact of all regulations during the drafting process is established in the RoP<sup>153</sup>. If the sponsoring ministry considers that an RIA is not necessary, it must provide an explanation for this. The MoF has adopted Instructions<sup>154</sup> for the development of the RIA report, which must be submitted to the Government together with the draft regulation and the MoF's opinion on the quality of the report. The Instructions are accompanied by the RIA Manual<sup>155</sup>. Both the RoP and the instructions call for analysis of a broad range of impacts, including economic, social and fiscal. The RIA report must provide an overview of the problem and the objectives of the proposed regulation. It must also identify and analyse options for addressing these problems, include the fiscal impact assessment and the results of the stakeholder consultation process, and describe the mechanisms for implementing and monitoring implementation of the regulation<sup>156</sup>.

The quality control on an RIA is carried out by two departments of the MoF. The Directorate for Budget checks the accuracy of budgetary impact analysis and the Directorate for Financial System and Improvement of Business Environment is responsible for checking the quality of the analysis in the RIA report, as well as for the overall development of the RIA system in Montenegro.

In practice, RIA reports are prepared consistently<sup>157</sup>, but the quality of analysis remains very basic.

<sup>152</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-17=5.

<sup>153</sup> Article 33.

<sup>154</sup> Instructions on the Development of Reports on Regulatory Impact Assessment adopted by the MoF; Official Gazette No. 09/12.

<sup>155</sup> Also available at <http://www.srr.gov.me/en/home/RIA/>.

<sup>156</sup> Article 2 of the Instructions.

<sup>157</sup> According to information obtained from the MoF, only a few exceptions were made to the requirement to prepare RIA in 2016 (15 to 20 out of approximately 300).

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Assessment of the sample RIA reports<sup>158</sup> suggests that the ministries are able to define the main objective of the regulation, but have difficulty describing alternative options for achieving the objective. Most drafts deal at least partly with alignment of the domestic legislation with the *acquis* and simply conclude that there are no alternatives to the regulatory intervention. Alternatives which exist within the regulatory option (e.g. regarding the exact measures or deadlines for meeting the obligations stemming from the *acquis*) are not described in the analysis. Assessment of the impact of the proposed option is limited and does not mention its negative effects or the measures that could be used to limit them. For example, the RIA report for the Law on the Management of Municipal Wastewater refers to the benefits of building new systems for dealing with wastewater, but does not mention the increasing tariffs for consumers or the overall cost of setting up the systems. Implementation and monitoring mechanisms are not described in the RIA reports or the explanatory memoranda accompanying the draft regulation. Despite these shortcomings, the MoF has issued a positive opinion on all five RIA reports.

Budget impact assessment is approached very formally by the ministries and the MoF. Generally, the RIA reports confirm that the regulation will be implemented, at the cost provided for in the budget, without describing the exact amounts needed<sup>159</sup>. This limits using costing information for selecting between the possible options by comparing the cost of alternatives with the predicted benefits. The MoF states in its opinion that the budget impact assessment is approved, because no additional costs will incur. The opinion is thus used as a tool in the budgetary process, to deprive line ministries the possibility of requesting additional funds to implement policies that have received a positive opinion from the MoF.

While the requirements call for analysis of a wide range of impacts, whether social, environmental or fiscal, the sample analyses focus most consistently on the fiscal and business aspects. These areas have been prioritised by the MoF. In addition to reviewing the quality of RIA reports submitted to the Ministry for opinion, it has collected 230 suggestions for administrative simplification through the *Bez Barijera* campaign since November 2015<sup>160</sup>.

The capacity of line ministries to conduct high-quality RIAs is limited. In 2016, there was no centrally organised training on the topic.

Mainly because of the limited analysis in RIA reports accompanying draft regulations, and insufficient information on the budgetary impact, the value for the indicator 'Evidence-based policy making' is 2.

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<sup>158</sup> The sample involved the following draft laws: the Law on Quality Labels for Agricultural and Food Products; the Law on Rescheduling of Tax Claims; the Accounting Act; the Law on the Management of Municipal Waste Water and the Law on International and Temporary Protection of Foreigners.

<sup>159</sup> The only exception among the five samples analysed was the RIA report for the Accounting Act, which included an assessment of the necessary funds that were to be covered by the budget.

<sup>160</sup> <http://www.bezbarijera.me>

Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and broad impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Use of basic analytical tools and techniques to assess the potential impacts of new draft laws	2/2
2. Use of budgetary impact assessment prior to approval of policies	1/3
3. Use of broad Regulatory Impact Assessments	2/3
4. Availability of guidance documents on RIAs	2/2
5. Quality control of RIAs	2/3
6. Quality of analysis in RIAs	3/15
Total <sup>161</sup>	12/28

**The requirements and procedure for RIA have been established, and the forms containing the analysis are used consistently, but the quality of analysis is limited. Alternative options are not analysed and little, if any, information is provided on implementation costs. The quality control on RIA is not functioning, and no comprehensive training programme on RIA has been set up.**

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

The requirements for conducting public consultations during the policy development process are laid out in the RoP<sup>162</sup> and other secondary regulations<sup>163</sup>. According to the RoP, all draft laws and by-laws submitted to the Government must be accompanied by a report on the consultation process, covering either public and interministerial consultation or an explanation of why the consultation was not carried out. The GSG has the mandate to return proposals that do not comply with this requirement, but no institution is responsible for checking the quality of consultations or the compliance with the specific procedural requirements set out in the regulatory framework.

As the first step in public consultation, the ministry preparing the draft proposal is responsible for publishing a call for participation in developing the draft on its website and on the e-Government portal. The call can also be addressed directly to any stakeholder whom the ministry may consider as being affected. The intent of the call is to gather suggestions before the first draft has been prepared. The deadline for providing suggestions may not be less than 20 days. The ministry is expected to prepare a report on the ideas collected and to publish it online, also distributing it to bodies that have provided comments. The consultation on the actual draft regulation can take place in the form of public presentations, roundtable discussions and by publishing the draft regulation on the website of

<sup>161</sup> Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.

<sup>162</sup> Article 35.

<sup>163</sup> Decree on the Procedure and Manner of Conducting Public Debates during the Preparation of Laws (Official Gazette No. 12/12). According to Article 6 of the Decree, it also applies to secondary regulation, strategies and other planning documents. The general principles for engaging non-governmental bodies in the policy development process and the procedure for selecting specific representatives for working groups is established in the Decree on the Manner and Procedure of Co-operation between State Administration Authorities and Non-Governmental Organisations.

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the ministry and the e-Government portal for a minimum of 40 days. The report on the outcomes of the consultation process, which is published online and submitted to the Government, must contain the comments provided as well as the sponsoring ministry's feedback on them.

In practice, the regularity in publishing drafts for written public consultation varies from one ministry to another. For example, two of the four sample ministries published online at least 50% of the draft laws they submitted to the Government in 2016 for public consultation, but one did not publish any of the draft laws it prepared for public consultation<sup>164</sup>.

Analysis of consultation procedures for sample draft laws<sup>165</sup> revealed that four out of five drafts were published online for the required 40-day period<sup>166</sup>. The obligation to submit the report of the public consultation process to the Government was fulfilled in each case. According to the reports, stakeholders provided comments to all drafts, but only three out of five reports included at least some of the comments and feedback from the ministry<sup>167</sup>. As a positive practice, public presentations were held in addition to the written public consultation for the same three draft laws. Nevertheless, the effectiveness of the consultation procedures is limited, since for most proposals only the draft regulation, and no accompanying materials (such as an explanatory note), was published<sup>168</sup>.

Representatives of civil society highlighted the difficulty of planning their participation in the policy development process, since the ministries do not publish consultation plans. The GAWP cannot be taken as the basis for these plans, given the high share of the Government's legislative activity that is not included in the Plan<sup>169</sup>. Still, in three out of the five drafts assessed in detail, the ministries had published the prior call for suggestions, as required<sup>170</sup>.

The requirement for interministerial co-operation is laid out in the LSA<sup>171</sup> and the RoP<sup>172</sup>. Ministries are expected to provide their opinion within 14 days, but the minimum duration of the consultation process has not been established. The comments and suggestions received must be included in the report submitted to the Government with the draft proposal, the explanatory note and the opinions of the CoG bodies (the MoF, the SL and the MEA).

In practice, the CoG bodies are consulted consistently and their opinions provided to the Government, but the consultation reports rarely contain any information about the comments received from other ministries or relevant state bodies<sup>173</sup>. Instead, the opinions of the ministries who responded during the interministerial consultation are usually simply attached to the proposal as separate letters without explaining if and how the comments were taken into account during the finalisation of the draft. This

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<sup>164</sup> The Ministry of Labour and Social Affairs did not publish for public consultation any of the four drafts it submitted to the Government. The MoE published two out of five drafts, the Ministry of Sustainable Development and Tourism published two out of four, and the Ministry of Agriculture and Rural Development published two out of three drafts it submitted to the Government for approval in 2016.

<sup>165</sup> The sample involved the following draft laws: the Law on Quality Labels for Agricultural and Food Products; the Law on Rescheduling of Tax Claims; the Accounting Act; the Law on the Management of Municipal Waste Water; the Law on International and Temporary Protection of Foreigners.

<sup>166</sup> The Law on Rescheduling of Tax Claims was published for 23 days.

<sup>167</sup> The reports on the consultation processes of the Draft Law on Quality Labels for Agricultural and Food Products, the Draft Accounting Act and the draft Law on the Management of Municipal Wastewater included specific comments and the response of the sponsoring Ministry.

<sup>168</sup> The explanatory note was published together with the draft only for the Draft Law on the Management of Municipal Wastewater and for the draft Law on International and Temporary Protection of Foreigners.

<sup>169</sup> A total of 49% of the draft laws the Government submitted to the Parliament in 2016 did not originate in the GAWP.

<sup>170</sup> The draft Law on Quality Labels for Agricultural and Food Products, the draft Law on the Management of Municipal Wastewater and the draft Law on International and Temporary Protection of Foreigners.

<sup>171</sup> LSA, Article 66.

<sup>172</sup> RoP, Article 40.

<sup>173</sup> Only the report on the public debate on the draft Law on the Management of Municipal Wastewater included an overview of the comments provided by line ministries (as well as information on whether they were taken on board or not, with relevant substantiation).

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means that it is not evident from the materials submitted to the Government how the comments of other ministries affected the draft proposal or which conflicting opinions still remain. Interinstitutional working groups are often formed for the development of regulations, but the composition of these groups and the outcomes of the discussions held at their meetings are not included in the documents accompanying the draft proposals.

There is no administrative-level co-ordination body prior to the Government session, and all proposals are discussed at the Government's Commissions<sup>174</sup> at political-level co-ordination forums. This means that all interministerial conflicts emerge and have to be solved at the political level, which places a burden on ministers and their deputies and does not encourage managerial accountability at the highest administrative level.

Due to the lack of quality assurance in the public consultation process and because the consultation practices of ministries are not consistent, the value for the indicator 'Public consultation on public policy' is 3.

As the minimum duration for interministerial consultation process is not set, an administrative level co-ordination forum has not been established and the materials submitted to the Government for decision do not provide a clear overview of how the opinions of other ministries influenced the content of the proposal, the value for the indicator 'Interministerial consultation on public policy' is 2.

Public consultation on public policy						
This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved drafts laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective public consultation process	8/10
2. Quality assurance of the public consultation process	0/3
3. Regularity in publishing draft laws for written public consultation	1/4
4. Test of public consultation practices	12/24
<b>Total<sup>175</sup></b>	<b>21/41</b>

<sup>174</sup> RoP Article 14.

<sup>175</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-41=5.

Interministerial consultation on public policy						
This indicator measures the adequacy of the regulatory framework for the interministerial consultation process and tests the system in practice for five draft laws.						
Overall indicator value	0	1	<b>2</b>	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective interministerial consultation process	5/9
2. Test of interministerial consultation practices	3/12
Total <sup>176</sup>	8/21

**The mechanism for public consultation procedures is well established in the legal framework, but there is no quality control for checking the fulfilment of the specific requirements, and the practice is not consistent. Administrative-level forums for interministerial consultation have not been established and the co-ordination process relies extensively on the Government’s commissions as political-level forums. Comprehensive information on the detailed results of the interministerial consultation process is not provided to the Government consistently.**

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

Processes are in place to ensure the coherence and quality of legislative drafting. The SL is responsible for checking the quality of legal drafting. Its official opinion on the compliance with the Constitution and the legal system is required to be attached to all draft regulations submitted to the Government for decision. It has adopted instructions on legal drafting<sup>177</sup> and consistently ensures their application in practice. The 17 lawyers working in the SL issued 898 opinions<sup>178</sup> in 2016. The lawyers of the SL also participate in the working groups formed for development of draft regulations and provide guidance when necessary. For some regulations, the SL has been required to provide opinions on several occasions as the comments of the SL are sometimes sought already in the early phases of policy development, before the draft is submitted to other ministries for comments or before public consultation. This suggests that the SL’s opinion is highly respected.

To improve the capacities of the lawyers in ministries, the SL lawyers participate in the preparation of training programmes on legal drafting and usually conduct training on the topic as well. However, in 2016, only one half-day training on legal drafting was held, for 14 officials<sup>179</sup>. According to the SL, the participants at this training are often not the officials responsible for legal drafting in ministries.

Less than eight months after their adoption by the Parliament, the Government approved amendments to the Law on Health Protection and the Law on Health Insurance<sup>180</sup>. The overall share of legislation amended within one year after adoption is 4%. According to the 2017 Balkan Barometer survey for 2017, only 44% of responding businesses tend to agree or strongly agree that the laws and

<sup>176</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

<sup>177</sup> SL has established legal and technical rules for legal drafting, which are made available online at <http://www.gov.me/en/search/162903/LEGAL-AND-TECHNICAL-RULES-FOR-LEGAL-DRAFTING.html>.

<sup>178</sup> Including 106 opinions on draft laws, 576 on secondary legislation (regulations, decisions, instructions and commands) and 216 on other documents (articles of association, collective bargaining agreements, resolutions, decisions, plans, programmes, etc.), according to the 2016 Report of the Secretariat for Legislation.

<sup>179</sup> According to the list of the participants in the training held on 28 June 2016.

<sup>180</sup> Both Laws were adopted on 28 December 2015 and amendments were approved by the Government on 25 August 2016.

regulations affecting their companies are clearly written, are not contradictory and do not change too frequently.

The Law on Publishing Legislation and Other Acts<sup>181</sup> stipulates the process, the deadlines and the responsibilities of relevant bodies for publishing legislation. All primary and secondary legislation is available for free on an online central registry provided by the Official Gazette<sup>182</sup>, but not in consolidated format. The 2017 Balkan Barometer survey shows that only 52% of business representatives found that information on laws and regulations affecting their companies was easily obtainable from the authorities.

Despite some shortcomings in ensuring legal certainty and the correspondingly low perception of legal clarity and stability reported by businesses, the value for the indicator 'Predictability and consistency of legislation' is 4. As legislation is not available in consolidated format, the value for the indicator on 'Accessibility of legislation' is 3.

<b>Predictability and consistency of legislation</b>						
This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.						
Overall indicator value	0	1	2	3	<b>4</b>	5

<b>Sub-indicators</b>	<b>Points</b>
1. Availability of guidance documents on legal drafting	2/2
2. Quality assurance on legal drafting	3/3
3. Laws amended one year after adoption (%)	2/3
4. Perceived clarity and stability of government policy making by businesses (%)	0/2
<b>Total<sup>183</sup></b>	<b>7/10</b>

<b>Accessibility of legislation</b>						
This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.						
Overall indicator value	0	1	2	<b>3</b>	4	5

<b>Sub-indicators</b>	<b>Points</b>
1. Adequacy of the regulatory framework for public accessibility of legislation	5/6
2. Accessibility of primary and secondary legislation in practice	4/8
3. Perceived availability of laws and regulations affecting businesses (%)	1/2
<b>Total<sup>184</sup></b>	<b>10/16</b>

<sup>181</sup> Adopted by the Parliament on 26 December 2007.

<sup>182</sup> <http://www.sluzbenilist.me>

<sup>183</sup> Point conversion ranges: 0=0, 1-2=1, 3-4=2, 5-6=3, 7-8=4, 9-10=5.

<sup>184</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

**The institutional and procedural framework for ensuring legal quality is in place. However, the capacities of ministries in legal drafting are not well developed, which has led to extensive reliance on the SL. Primary and secondary legislation is published online, but the consolidated versions are only accessible for a fee.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The MoF should increase its capacity and focus on performing quality control of RIA reports, including ensuring that the cost of proposals is described and analysed, even if this is covered by the budget.
- 2) The Government should amend legislation on the public consultation process, stipulating that draft RIA reports and explanatory memorandums be published with the draft regulation.
- 3) The responsibility for ensuring that the requirements of the public consultation process are consistently fulfilled should be entrusted to a CoG body (e.g. the GSG), and this body should start exercising its role.
- 4) The Government should develop the procedures for high-level civil servants to resolve conflicts before the political level becomes involved.
- 5) All primary and secondary legislation should be made available online in consolidated format, free of charge.

**Medium-term (3-5 years)**

- 6) The SL and the MoF should develop and implement dedicated training and capacity-building programmes for key ministry staff. This would help to professionalise policy analysis and legislative drafting work.
- 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 the effects on those being regulated and how the 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: MAY 2015 – JUNE 2017

#### 1.1. State of play

The Law on Civil Servants and State Employees (CSL)<sup>185</sup> defines a clear horizontal, vertical and material scope<sup>186</sup> of the civil service, but is limited to the state authorities and to administrations listed in the CSL. Thus, public servants in other institutions which exercise public authority, such as regulatory agencies for energy, telecommunications or civil aviation, are not assured of identical working conditions to the civil servants.

The development of staffing plans has improved, but a strategic approach to identify and to cope with staffing needs is still lacking. Continuous training and internal mobility are not sufficiently drawn upon in order to optimise human resources. Personnel data in the Human Resource Management Information System (HRMIS) is not yet complete, and interoperability with the payroll information system has not been implemented.

Merit-based recruitment for non-senior positions is hampered by shortcomings in the composition of selection panels and in the practical part of tests. The use of an option provided for in the CSL to appoint candidates other than the first ranked is less prevalent, but persists. Effectiveness of recruitments is still insufficient and the number of candidates is particularly low in internal competitions, which are not functioning as a mechanism for internal mobility and promotion. The lack of adequate entry requirements, competency profiles, professionalism of assessment panels and methods, as well as political discretion in appointments, hampers professional selection of senior managers.

The new Law on Wages of Public Sector Employees<sup>187</sup> (LWPSE) considerably widens the scope of the previous Law on Wages of Civil Servants and State Employees<sup>188</sup>. However, the regulation of some salary components does not ensure equal pay for the equivalent job, and the criteria and procedures to award bonuses are not sufficiently clear.

The legal and institutional framework to ensure integrity in the public service is in place, although a multi-annual policy to promote integrity and to fight against corruption in the public sector has not been developed.

#### 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>189</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

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<sup>185</sup> CSL of 3 August 2016, Official Gazette No. 016/16.

<sup>186</sup> See definition of horizontal, vertical and material scopes of the civil service in OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf), p. 41.

<sup>187</sup> Decree promulgating the Law on Wages of Public Sector Employees of 1 March 2016, Official Gazette No. 01-232/2.

<sup>188</sup> Decree promulgating the Law on Wages of Civil Servants and State Employees of 22 December 2009, Official Gazette No. 01-3160/2.

<sup>189</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)

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The newly-created Ministry of Public Administration (MPA)<sup>190</sup> has assumed responsibility for the civil service, as well as the supervision of the Human Resource Management Authority (HRMA), which had hitherto been exercised by the Ministry of Interior (Mol).

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

There have been no changes in the regulation regarding the horizontal and vertical scope of the civil service in the last two years.

The material scope has been changed through the introduction of new laws. The Law on Wages of Public Sector Employees was enacted by the Parliament on 24 February 2016 and came into force on 1 March 2016. By-laws regulating salary supplements were adopted by the Government on 28 April and on 8 September 2016, but secondary legislation is not yet complete. The new Law on Prevention of Corruption (LPC), entered into force on 1 January 2016 (adopted in 2014)<sup>191</sup>. The Law centralises all authority related to the fight against corruption under the Agency for Prevention of Corruption (ASK), which supersedes the Directorate for Anti-Corruption Initiatives and the Commission for the Prevention of Conflicts of Interest.

In addition, the new Public Administration Reform (PAR) Strategy 2016–2020<sup>192</sup> was introduced, including a pillar on civil service and human resource management (HRM), setting new strategic objectives for the area.

Nevertheless, none of these changes address the issues highlighted in the SIGMA 2015 Baseline Measurement report for Montenegro<sup>193</sup>, which is reflected in the 2015 values.

The indicator value for institutional set-up has decreased mainly due to limited capacities in performing oversight functions. The Administrative Inspection is operational, but has only four inspectors (seven in 2015) with which to monitor, in addition to the CSL, the implementation of the Law on Free Access to Information and the Law on General Administrative Procedures (LGAP), among others. The Appeals Commission is formally independent, but depends on the HRMA for administrative support and budget resources. Therefore, independent oversight of the civil service is only partially in place.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement Indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the scope of public service is adequate, clearly defined and applied in practice.	3	3
	Extent to which the policy and legal frameworks for professional and coherent public service is established and implemented.	3	3
	Extent to which the institutional set-up enables consistent HRM practices across the public service.	4	3

<sup>190</sup> Decree on the State Administration Organisation and Manner of Work of 13 January 2017, Official Gazette No. 003/17.

<sup>191</sup> LPC of 19 December 2014, Official Gazette No. 53, (in force from 1 January 2016).

<sup>192</sup> The Government of Montenegro (2016), The Public Administration Reform Strategy 2016–2020, Podgorica.

<sup>193</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

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

During 2015 and 2016, the HRMA worked to develop staff planning across civil service institutions, providing methodological guidelines and trainings. The staffing plans were approved by the Government, at the proposal of the HRMA, on 18 June 2015 and on 12 May 2016<sup>194</sup>. Compliance of state bodies with the obligation to present draft human resources (HR) plans to the HRMA improved remarkably in 2016 (83%) compared to 2015 (43%).

All the public institutions (117)<sup>195</sup> are obliged to use the HRMIS, however, the data provided for the assessment show that there are still serious data gaps that do not allow thorough analysis of basic HR data<sup>196</sup>.

The meritocratic principle in recruitments is formally established, but some of the shortcomings – particularly in the composition of panels, in the definition and management of the practical part of the written test and of the oral interview, and the margin of discretion that persists in the appointment of candidates – do not allow for its proper application in all cases. This particularly affects internal competitions, which are clearly ineffective, and has a negative effect on internal mobility and thereby on the optimisation of HR, which is one of the objectives of the recently approved PAR Strategy.

Political influence in the recruitment and dismissal of senior managerial positions remains unaltered. Turnover in these positions, however, was moderate in 2016 but spiked after the formation of the new Government in November 2016<sup>197</sup>.

The new LWPSE is a step forward and sets forth a common salary structure for all public employees, but the internal fairness of the new salary system is still challenged by a considerable level of discretion to establish both base salary and salary supplements for similar job positions in different groups of public institutions.

Training continues to be proactively managed by the HRMA. In addition to managing the horizontal professional training programmes for civil servants in the central and local administration, the HRMA has developed a specific course on HRM which is currently under certification. However, commitment to training of senior managers is low and the state budget in this area is not sufficient.

The prevention of and fight against corruption in the civil service is now more comprehensively regulated and managed, with the entry into force of the new Law and the setting up of the ASK.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the recruitment of public servants is based on the merit principle in all its phases.	4	4
	Extent to which the termination of employment of public servants is based on merit.	3	3

<sup>194</sup> HRMA Report on the Implementation of HR Plans in Governmental Organisations, the Government and the General Secretariat of the Government of Montenegro, February 2017.

<sup>195</sup> Data provided by HRMA, responsible for the HRMIS.

<sup>196</sup> The analysis of data provided by HRMA shows that for instance data from the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Science, the Ministry of Transport and Maritime Affairs and the Ministry of Labour and Social Welfare are incomplete.

<sup>197</sup> In the period November 2016 - May 2017, 30 senior civil servants left their positions. Ministry of Public Administration (2017), Annual Report on Implementation of Action Plan Implementing 2016 – 2020 Public Administration Reform Strategy, p. 27

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	Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.	2	2
	Extent to which the remuneration system of public servants is fair and transparent and applied in practice.	2	3
	Extent to which the training system of public servants is in place and applied in practice.	4	4
	Extent to which the performance appraisal system of public servants is in place and applied in practice.	3	3
	Extent to which the integrity and anti-corruption system of the public service is in place and applied in practice.	3	4
	Extent to which the disciplinary procedures against public servants are established to promote individual accountability and avoid arbitrary decisions.	3	3
<b>Quantitative</b>	Annual turnover of civil servants at the level of central administration.	Not available <sup>198</sup>	3.8% <sup>199</sup>
	Percentage of vacant positions filled by external competition in the civil service at the level of central administration.	10.4% <sup>200</sup>	71.9% <sup>201</sup>
	Percentage of women in senior managerial positions in the civil service at the level of central administration.	Not available <sup>202</sup>	Not available <sup>203</sup>
	Annual turnover of senior managerial civil servants at the level of central administration.	Not available <sup>204</sup>	9% <sup>205</sup>
	Percentage of vacant senior managerial positions at the level of central administration filled by external competition.	100%	100% <sup>206</sup>

<sup>198</sup> The respective data was not provided to SIGMA for the 2015 Baseline Measurement assessment.

<sup>199</sup> 2016 HR Plan: there were 9997 civil servants employed at the beginning of 2016, of which 380 (HRMA data) or 3.85% left the civil service during the year.

<sup>200</sup> Due to erroneous data provided to SIGMA, the figure in the 2015 Baseline Assessment report was recorded as 10.4%, the HRMA has not provided the correct data for 2015.

<sup>201</sup> HRMA Annual Report for 2016. The proportion corresponds to the number of civil service vacancies filled through public announcement (352), over the total number of civil service vacancies filled (757).

<sup>202</sup> The respective data was not provided to SIGMA for the 2015 Baseline Measurement assessment.

<sup>203</sup> The data presented by HRMA is incomplete, which does not allow calculation of the exact percentage. According to the incomplete sample of 103 senior managers, the share of women was 45%.

<sup>204</sup> The respective data was not provided to SIGMA for the 2015 Baseline Measurement assessment.

<sup>205</sup> According to the 2016 HR Plan there were 145 senior civil servants at the beginning of the assessment year, 13 of which (HRMA data) left their positions during the year.

<sup>206</sup> According to the CSL, all the vacancies at the senior management level should be filled through open competition, which is confirmed with the data about practice provided by the administration.

## 2. ANALYSIS

This analysis covers seven Principles for the public service and human resource management area, grouped under two key requirements. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>207</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

### Policy, legal and institutional frameworks for public service

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest



#### ***Analysis of Principles***

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

The horizontal scope of the civil service is clearly established in the CSL. It encompasses the state authorities, defined as ministries, administrative authorities, which are public institutions reporting to ministries, the administrations of the President, the Parliament, the Constitutional Court, the courts, the State Prosecutor's Office, and employees of public funds<sup>208</sup>. The CSL leaves open the possibility that other authorities, regulatory and independent bodies, are included in the scope of the civil service if so prescribed by special laws<sup>209</sup>. Indeed, the CSL applies to employees of the local administration, as provided by the Law on Local Self-Government<sup>210</sup>. However, employees of agencies and other institutions exercising public authority can be subject to the Labour Code or to special laws<sup>211</sup>. There are no common principles governing public employment outside the CSL.

The vertical scope of the civil service is clear at the upper end, although it is regulated by partially overlapping provisions in the CSL and in the Law on State Administration (LSA)<sup>212</sup>. A professional category of senior managers is established in the CSL<sup>213</sup> and includes the positions of Secretary and

<sup>207</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>208</sup> CSL, Article 3. Public funds include the Pension and Disability Insurance Fund, Health Insurance Fund, Employment Office, Labour Fund, and Agency for Peaceful Settlement of Labour Disputes.

<sup>209</sup> CSL, Article 3.

<sup>210</sup> The Law on Local Self-government Article 90, Official Gazette No. 3/2010.

<sup>211</sup> For example, the Labour Code and the Law on Energy regulate the status of the employees of the Regulatory Agency for Energy and also that of the employees of the Regulatory Agency for Aviation and of the Regulatory Agency for Telecommunications.

<sup>212</sup> CSL, Articles 20 and 21, and LSA, Articles 42-46.

<sup>213</sup> CSL, Articles 20 and 21.

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Director General in ministries, and the positions of Deputy Head of administrative authorities and Deputy Head of Service in other public institutions. Ministries may have State Secretaries, which are politically appointed and do not belong to the civil service<sup>214</sup>. Heads of administrative authorities are also politically appointed, although the CSL includes some basic requirements for their nomination<sup>215</sup>. Political advisors are excluded from the scope of the law<sup>216</sup>.

The lower end of the civil service is broadly defined, and includes operational support functions. The CSL distinguishes state employees from civil servants in the lower professional category<sup>217</sup>, but the tasks attributed to both groups are similar<sup>218</sup>. The CSL states that civil servants in the operational category shall perform the simplest administrative actions, such as keeping of records, gathering and exchanging information, reports or data and their processing, as well as other tasks of an administrative nature. On the other hand, Article 27 of the Law establishes that state employees shall perform administrative, technical and ancillary tasks.

In 2016, there were 9997 civil servants in state administration bodies<sup>219</sup>, which represented 24% of the employment in the public sector (40 390<sup>220</sup>). This is a high proportion which reflects the wide scope of the civil service defined in the Law.

The CSL includes all the general provisions relevant to the employment relations of the civil servants and the management of the civil service except remuneration, which is regulated in the Law on Wages of Public Sector Employees and applies to all employees paid from the state budget.

The scope of civil service is well defined and adequate. However, due to the unclear division of the lower line of civil service, the value for the indicator 'Adequacy of the scope of public service' is 4.

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<sup>214</sup> LSA, Article 41a.

<sup>215</sup> CSL, Article 57.

<sup>216</sup> CSL, Article 58.

<sup>217</sup> CSL, Article 2.

<sup>218</sup> CSL, Article 26.

<sup>219</sup> 2016 HR Plan.

<sup>220</sup> Ministry of Public Administration (2017), Annual Report on Implementation of Action Plan Implementing 2016–2020 Public Administration Reform Strategy, p. 29.

Adequacy of the scope of public service						
This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service <sup>221</sup> , and whether it is consistently applied across the public sector.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Clarity in the legislative framework of the scope of the civil service	2/2
2. Adequacy of the horizontal scope of the public service	5/6
3. Comprehensiveness of the material scope of civil service legislation	2/2
4. Exclusion of politically-appointed positions from the scope of the civil service	2/2
5. Clarity of the lower division line of the civil service	0/1
Total <sup>222</sup>	11/13

The CSL clearly defines the organisations belonging to the civil service, but leaves the door open so that other organisations exercising public authority can be added (or excluded) by a separate law. Therefore, similar policies and practices are not guaranteed in other authorities that are left out of the scope of CSL. The vertical scope is clear at the upper end and excludes political appointees, but it is less clearly defined at the lower end, including administrative support functions.

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

A sound balance between the primary and secondary legislation is not fully achieved, because detailed procedural and administrative provisions on internal mobility, disciplinary procedures, demotion, termination of employment and some components of the salary system, are not developed at the secondary legislation level. At the same time, primary legislation includes sometimes quite technical details, but as the law format is more limited in this respect, important details remain unregulated.

The political responsibility for the civil service is vested in the MPA, established by the new Government in autumn 2016<sup>223</sup>. The new Ministry assumed responsibility for the civil service and the supervision of the HRMA, an independent administrative authority whose supervision had hitherto been exercised by the Mol.

The civil service policy is part of the PAR Strategy 2016–2020, adopted in July 2016. The Strategy includes a good situation analysis of the civil service, and sets clear objectives, indicators, targets and deadlines in this area<sup>224</sup>. Also the action plan and costings are in place<sup>225</sup>. All the activities included in

<sup>221</sup> In OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, SIGMA clarifies that it applies the narrow scope of public service covering: 1) ministries and administrative bodies reporting directly to the government, prime minister or ministers (i.e. the civil service, strictly speaking); administrations of the parliament, the president and the prime minister; 2) other administrative bodies at the level of the central administration, if they are responsible for safeguarding the general interests of the state or other public bodies; and 3) independent constitutional bodies reporting directly to the parliament. The scope of public service thus does not cover institutions at the level of the sub-national administration and special types of public service, elected and politically appointed officials, or support and ancillary personnel in the administrative bodies.

<sup>222</sup> Point conversion ranges: 0-3=0, 4-5=1, 6-7=2, 8-9=3, 10-11=4, 12-13=5.

<sup>223</sup> Decree on the State Administration Organisation and Manner of Work of 13 January 2017, Official Gazette No. 003/17.

<sup>224</sup> Public Administration Reform Strategy 2016-2020, section 4 (Reform objectives), sub-section 4.3 (civil service system and human resource management), pp. 47-50.

<sup>225</sup> Government of Montenegro (2016), Public Administration Reform Strategy: Action Plan 2016-2017, Podgorica.

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the PAR Strategy in the civil service area started in 2016, but the deadlines are in 2017 or later, which did not allow for assessment of implementation.

Competences of the HRMA are regulated in the CSL<sup>226</sup>. The structure of the HRMA includes 54 positions (43 filled in 2016)<sup>227</sup>. The HRMA has no competences on the remuneration policy, which, together with the payroll management, is handled by the Ministry of Finance (MoF). The HRMA strives to promote horizontal co-ordination in the HR system, which is complicated, since very few public service organisations have well-established and properly staffed HRM systems in place.

The HRMIS is used as a database for individual personnel files. All the public institutions (117) obligated to use the system are connected to it. However, by the end of 2016 only 89% of the 117 institutions that used the HRMIS had complete and updated data in the system. This proportion was higher in the state administration bodies (98%) and lower in the courts (70%)<sup>228</sup>. Due to technical reasons and the legal environment, the HRMA has limited capacity to verify whether the information is duly updated and complete. The records must also be kept on paper, which does not encourage the organisations to keep them up to date in the HRMIS. Interoperability with other databases is missing, which would push them to update the data. The system allows for quick reporting on some key HR indicators. However, the proper use of these functionalities is still limited by the degree of completeness and quality of the data. The connection with the payroll is absent. The HRMA runs regular monthly comparative checks with the MoF payroll system, which is a highly time-consuming process.

The Appeals Commission<sup>229</sup> is an administrative body responsible for deciding on appeals against decisions on the rights and responsibilities of civil servants and state employees, and on appeals by candidates regarding recruitment procedures. The law establishes that it shall be autonomous and independent in its operation<sup>230</sup>.

Finally, the Administrative Inspection is responsible for the supervision of compliance with the CSL<sup>231</sup>. Although it has very limited capacities (only four inspectors) taking into account that the Inspection also oversees compliance with the Law on Local Self-government, the LGAP and the Law on Free Access to Information, among other legislation. Inspections conducted in 2016 affected municipalities and regional branches of the MoI, and included HRM procedures<sup>232</sup>.

The policy, legal framework and institutional framework are quite well established. However, problems related to achieving the proper use of the central HRMIS and the issues around the professionalism of HRM units in civil service bodies, the comprehensiveness of the material scope of the legislation and the monitoring of public service policies result in an indicator value of 3.

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<sup>226</sup> CSL, Article 151.

<sup>227</sup> Acts of Internal Organisation and Systematisation of HRMA of 31 December 2015 and 31 December 2016, respectively.

<sup>228</sup> HRMA data.

<sup>229</sup> CSL, Article 36.

<sup>230</sup> CSL, Article 140.

<sup>231</sup> CSL, Chapter XIII.

<sup>232</sup> Report of Activities of the Administrative Inspection for 2016. Unfortunately, the information does not allow a distinction to be made between inspections and administrative measures related to HRM procedures.

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

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

Overall indicator value 0   1   2   **3**   4   5

Sub-indicators	Points
1. Establishment of political responsibility for the civil service in the legal framework	2/2
2. Quality of public service policy document	4/4
3. Implementation and monitoring of public service policy	1/4
4. Right balance between primary and secondary legislation	0/2
5. Existence of a central, capable co-ordination body	3.5/4
6. Professionalism of HRM units in civil service bodies	1/2
7. Existence of a functional HR database with data on the civil service	0/4
8. Availability and use of data on the civil service	3/5
<b>Total<sup>233</sup></b>	<b>14.5/27</b>

**The policy direction in the civil service area is established by the PAR Strategy 2016–2020. The HRMIS is used in all civil service institutions, although data on all civil servants is not fully available, and interoperability with the payroll database is not established. The HRMIS allows for quick reporting on some key HR indicators. However due to incomplete data these functionalities cannot be effectively used to strengthen staff planning.**

***Key recommendations***

**Short-term (1-2 years)**

- 1) The Government should define the lower end of the vertical scope of civil service more precisely by clarifying whether employees dealing with administrative, technical and ancillary functions are part of the civil service or not.
- 2) The MPA should take steps to ensure that all bodies which exercise public authority should apply the merit principles which comply with the CSL.
- 3) The MPA should review the existing civil service legislation and ensure the right balance between primary and secondary acts, and that detailed procedural provisions are usually stipulated in the secondary regulation.
- 4) The Government should ensure the interoperability of the HRMIS with the payroll system.
- 5) The HRMA should define the set of mandatory data which should be entered to the HRMIS for each civil servant and should take steps to ensure that this data is entered consistently by all civil service institutions.

**Medium-term (3-5 years)**

- 6) The Government should take steps to replace paper-based HRM record keeping with the electronic system.

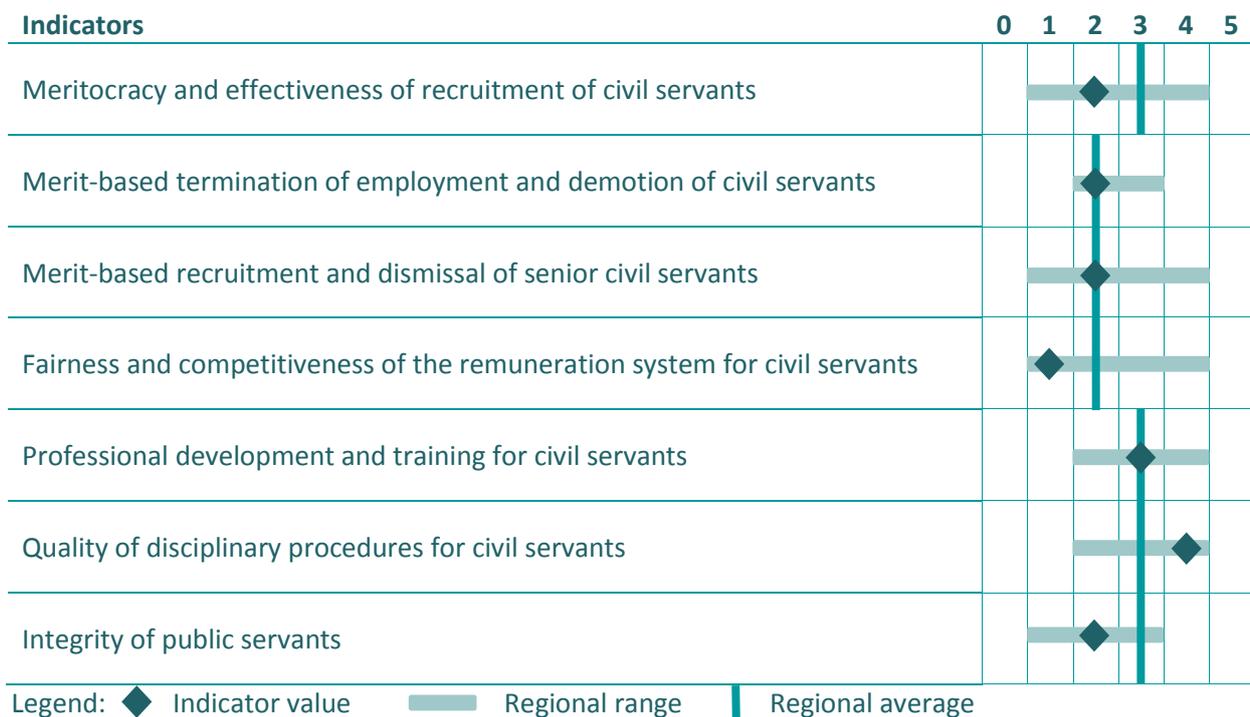
<sup>233</sup> Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-23=4, 24-27=5.

- 7) The Government should invest in increasing the professionalism of HRM units in civil service bodies and the HRMA should establish active and regular training and networking activities for HR professionals.

## Human resource management

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### **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 regulates recruitments based on the principle of equal access to jobs, and establishes the public announcement of vacancies, equal terms for all candidates, and the assessment of candidates based on merit<sup>234</sup>. Testing procedures, including written and oral examinations, are set forth for all competitions to fill vacancies in non-senior civil service positions<sup>235</sup>. Procedures and assessment criteria are regulated in the secondary legislation<sup>236</sup>.

However, both regulations and practices present some shortcomings that challenge the principle of merit. First, the Law opens the door to alternative methods to assess candidates, without specifying reasons or criteria for such exceptions<sup>237</sup>. Second, selection committees are established on an *ad hoc*

<sup>234</sup> CSL, Article 10.

<sup>235</sup> CSL, Article 42.

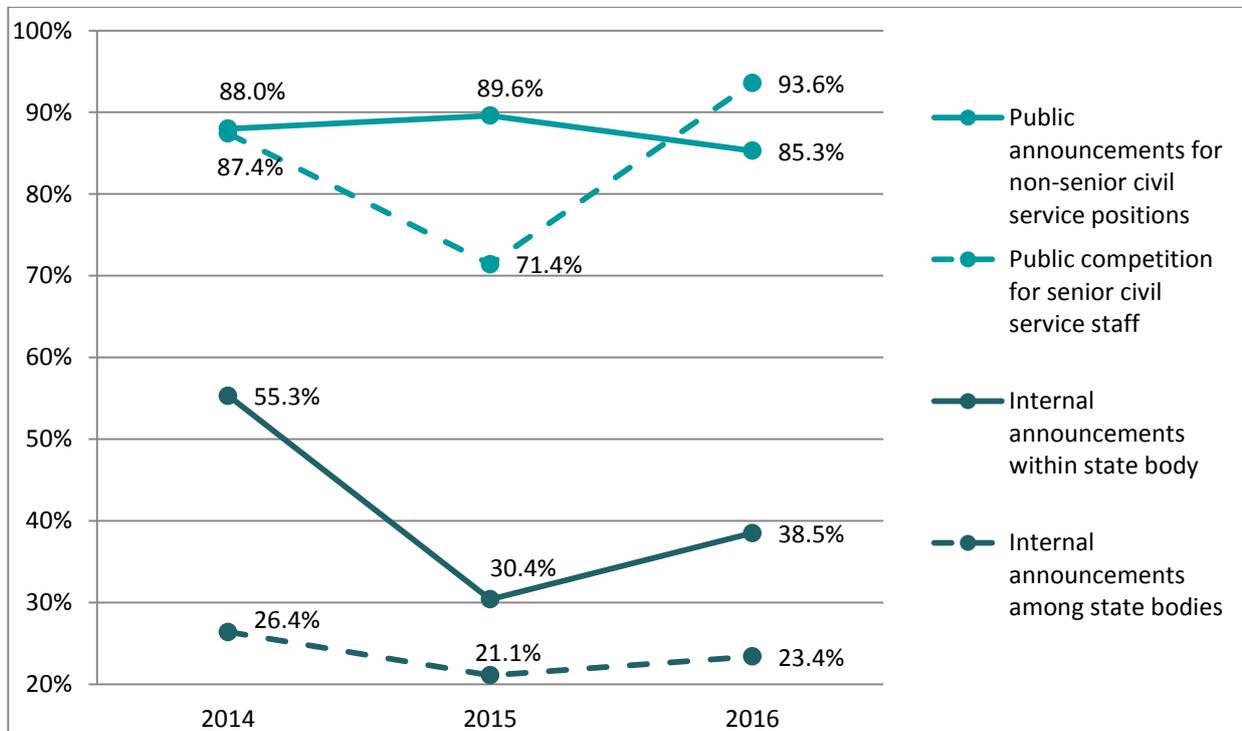
<sup>236</sup> Regulation on the manner of verification of required skills, and specific assessment criteria of candidates for performing jobs in the state authorities of 25 April 2016, Official Gazette No. 027/18.

<sup>237</sup> CSL, Article 42.

basis for each recruitment, with no continuity in their composition, which makes ensuring their professionalism, knowledge accumulation and the harmonisation of assessment practices more difficult. Third, the professional composition of selection committees is not fully guaranteed because the CSL does not establish the obligation of the representative of the employment authority to be a civil servant<sup>238</sup>, and also because of the difficulties of finding external experts with adequate qualification willing to participate in the panels<sup>239</sup>. Fourth, the practical part of the written test is under the control of the employing institutions. As there are no standards or guidelines for designing written tests and the HRM capacities differ considerably across organisations, it challenges the principle of equal opportunity for all candidates<sup>240</sup>.

Finally, the merit principle is challenged also by the margin of discretion provided in the Law for the appointment of candidates. The appointments are decided by the head of an institution (often a minister) after an interview with the five best-ranked candidates, with an option to opt for any of them. The appointment of a candidate who was not highest-ranked has to include a written justification. This practice is becoming less prevalent each year, but in 2016 5% of appointments were still of non-first-ranked candidates<sup>241</sup>.

**Figure 1. Proportion of successful competitions through different types of recruitment methods in 2015-2016.**



Source: Human Resource Management Authority Annual Report for the years 2014, 2015 and 2016

The number of eligible candidates per vacancy is low, especially considering that the appointing authority has discretion to choose between the five highest-ranked candidates. However, there were sharp differences by the type of competition: only 38.5% of competitions within institutions and 23.4% among institutions were successful (Figure 1). This low effectiveness of internal competitions was combined with a very small number of candidates per vacancy in these internal procedures (Figure 2), being well below one in the last three years.

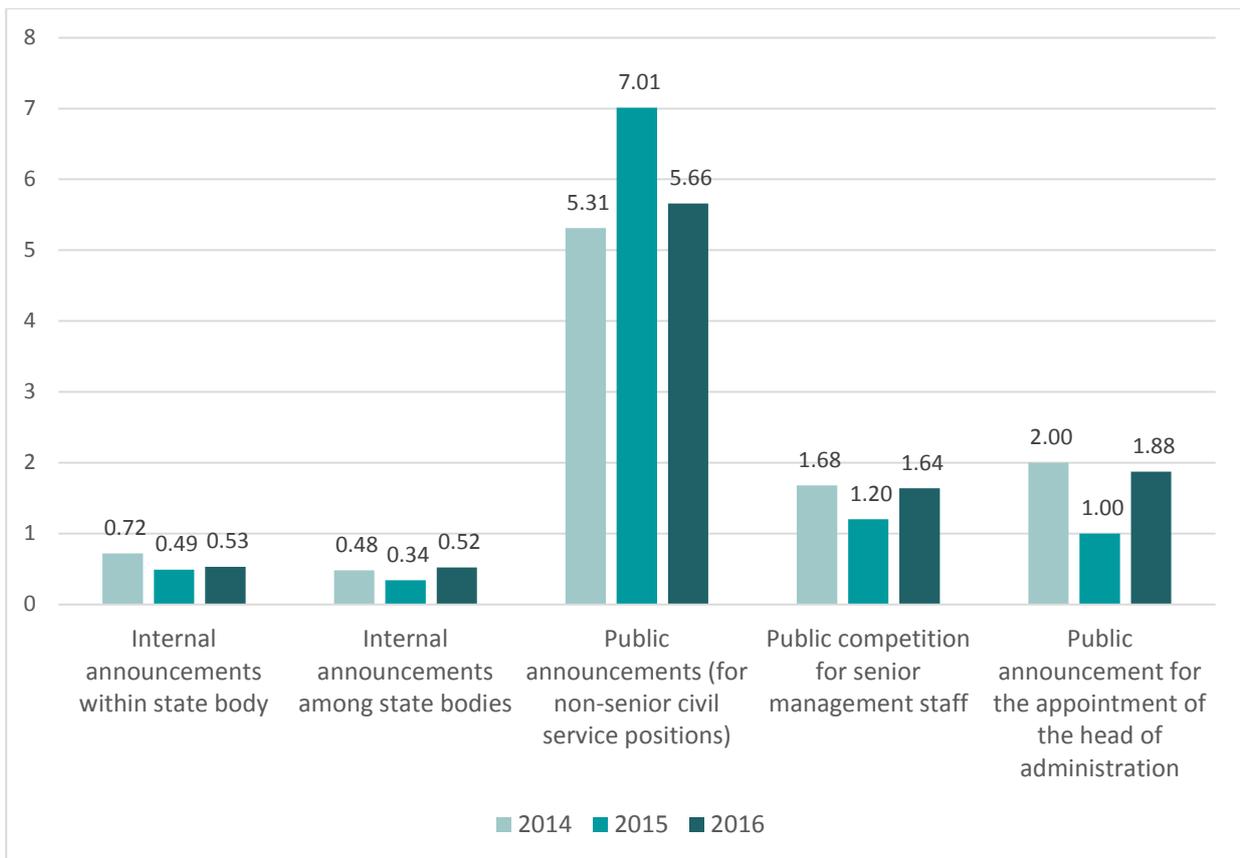
<sup>238</sup> *Ibid.*

<sup>239</sup> Information received in interviews with HRMA staff.

<sup>240</sup> HRMA Annual Report for 2016, p. 39.

<sup>241</sup> *Idem*, p. 12.

**Figure 2. Ratio of candidates per vacancy in recruitments, 2014 - 2016**



Source: Human Resource Management Authority Annual Report for the years 2014, 2015 and 2016

In compliance with the CSL<sup>242</sup>, the HRMA compiled the HR plans for 2015 and 2016, based on the proposals of institutions in the state administration. The plans were approved by the Government long after the start of the budgetary year<sup>243</sup>, which points to a weak linkage between such plans and the organisation of recruitments. Although the compliance with the obligation to prepare staffing plans has improved markedly since 2015, there are still organisations that do not have them (43% of state bodies had them in 2015, and 83% in 2016). However, so far, the identification of staffing needs in the plans prepared seems to rely mostly on annual retirements forecasts. A holistic approach to the analysis of staffing needs, as well as of the mechanisms to cope with them – recruitments, training and mobility – is absent.

The organisation of recruitments suffers from a lack of proper planning. The concentration of competitions before summer holidays and the end of the year<sup>244</sup> also points to planning issues. This accumulation leads to delays, given the limited availability of the staff, venues and equipment required to conduct the tests in proper conditions. Also the highly bureaucratic nature of recruitment lengthens the process and puts a heavy burden both on the HRMA and the candidates.

Candidates have the right to appeal recruitment decisions to the Appeals Commission and to the courts<sup>245</sup>. In 2016, the appeals presented to the Appeals Commission on recruitments were the most numerous (181 or 18%)<sup>246</sup>. Out of them 103 (57%) questioned the ranking of successful candidates, and

<sup>242</sup> The CSL, Articles 148-150.

<sup>243</sup> The 2015 and 2016 plans were approved on 18 June 2015 and on 12 May 2016, respectively. HRMA Report on the Implementation of HR plans in Governmental Organisations, the Government and the General Secretariat of the Government, February 2017.

<sup>244</sup> Information received in the interviews with HRMA staff.

<sup>245</sup> CSL, Chapter XI.

<sup>246</sup> Annual Report of the Appeals Commission for 2016, p. 5.

35 (19%) questioned the decision not to appoint the first-ranked candidate. The number of appeals filed to the Appeals Commission on recruitments has increased by 10% between 2014 and 2016.

Termination of employment is regulated thoroughly in the CSL<sup>247</sup>, based on objective criteria. The number of civil servants terminated from service decreased by 19% between 2015 and 2016 (from 467 to 380). Appeals filed to the Appeals Commission against dismissal decisions decreased also by the same percentage between 2015 and 2016.

Since the legislative framework and the application of the procedures do not fully ensure merit-based recruitment and the performance of recruitment practices lack a certain level of quality, the value for the indicator 'Meritocracy and effectiveness of recruitment of civil servants' is 2.

The legal framework and organisation of dismissals and demotions is adequate. However, the lack of data on the court decisions and their implementation results in a value of 2 for the indicator 'Merit-based termination of employment and demotion of civil servants'.

<b>Meritocracy and effectiveness of recruitment of civil servants</b>						
<p>This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.</p> <p>This indicator measures only external recruitment. The indicator on merit-based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.</p>						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework and organisation of recruitment</b>	
1. Adequacy of the legislative framework for merit-based recruitment for civil service positions	10/18
2. Application in practice of recruitment procedures for civil service positions	6/18 <sup>248</sup>
<b>Performance of recruitment practices</b>	
3. Time required to hire a civil servant	0/2 <sup>249</sup>
4. Average number of eligible candidates per vacancy	2/4
5. Effectiveness of recruitment for civil service positions	3/4
6. Retention rate of newly hired civil servants (%)	0/4 <sup>250</sup>
<b>Total<sup>251</sup></b>	<b>21/50</b>

<sup>247</sup> CSL, Chapter IX.

<sup>248</sup> Insufficient data provided to enable assessment.

<sup>249</sup> Ditto.

<sup>250</sup> Ditto.

<sup>251</sup> Point conversion ranges: 0-7=0, 8-16=1, 17-25=2, 26-35=3, 36-43=4, 44-50=5.

### Merit-based termination of employment and demotion of civil servants

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

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
<b>Legal framework and organisation of dismissals and demotions</b>	
1. Objectivity of criteria for termination of employment in civil service legislation	6/6
2. Objectivity of criteria for demotion of civil servants in the legislative framework	1/2
3. Right to appeal dismissal and demotion decisions to the courts	2/2
<b>Fairness and results of dismissal practices</b>	
4. Dismissal decisions confirmed by the courts (%)	0/4 <sup>252</sup>
5. Implementation of court decisions favourable to dismissed civil servants (%)	0/4 <sup>253</sup>
<b>Total<sup>254</sup></b>	<b>9/18</b>

**The CSL establishes the general principles for merit-based recruitment but the procedures do not ensure that candidates are professionally assessed in a uniform manner. Organisation of recruitments is bureaucratic and suffers from a lack of proper planning, which can lead to an excessive length of procedures. The low number of candidates in internal competitions further limits the efficiency of recruitment procedures. The number of dismissals remains low and decreased by 20% in the last two years.**

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

The scope of the senior civil service provided in the CSL is appropriate in ministries, where positions one level below the minister are classified as senior civil servants, as well as the position of Director General<sup>255</sup>. The Secretaries of Ministries, although being responsible for the overall co-ordination of the ministry<sup>256</sup>, do not have the key responsibility for HRM, which is left in the hands of the minister, if not expressly delegated<sup>257</sup>.

Although the heads of administrative authorities (i.e. bodies which report to the ministries or Government) are one level below ministers, they are not civil servants<sup>258</sup>. The CSL includes, however, some general provisions on their appointment<sup>259</sup>. Deputy heads of administrative authorities are part of the senior management category of the civil service.

Senior managers are appointed for five years, one more than the four-year mandate of the Government, which should contribute to the strengthening of the professionalism of these positions.

<sup>252</sup> No data available.

<sup>253</sup> Ditto.

<sup>254</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

<sup>255</sup> CSL, Articles 20 and 21.

<sup>256</sup> CSL, Article 20.

<sup>257</sup> CSL, Article 134.

<sup>258</sup> CSL, Article 20, does not include Heads of Administration Authorities within the civil service category of Senior Managers.

<sup>259</sup> Provisions on the nomination of the Heads of Administration Authorities are included in the Article 57 of the CSL, but separately from provisions on the appointment to senior management positions, Articles 53–55.

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However, after six months of appointment of the new Government (in the period 29 Nov 2016-29 May 2017), 30 heads of state administration and top management staff left their positions through resignation or dismissal<sup>260</sup>.

Recruitments to senior management positions present several shortcomings. In particular, they suffer from the lack of adequate entry requirements and competency profiles of the jobs. The only entry requirements, besides general eligibility criteria applicable to enter the civil service, are higher education (level VIII qualification in the national qualification system) and three years of work experience in management positions or “other appropriate jobs requiring autonomy of work”<sup>261</sup>. The single selection method established in the CSL is a structured interview, which cannot be properly conducted in the absence of the said elements, and there are no detailed regulations or guidelines on how to conduct and assess such interviews. Also, the *ad hoc* composition of the selection panels, the difficulties in involving qualified experts, and the unclear profile of the representative of the employment institution<sup>262</sup>, do not offer sufficient guarantees in this respect. The CSL establishes that, as in the case of recruitments for other professional categories in the civil service, selection committees shall be formed by HRMA and will be composed by a representative of HRMA, a representative from the employment authority (without further specification) and reputable expert(s) in the area of competency of the employing authority. Similarly to lower-level positions, the appointing authority has discretion not to choose the highest-ranking candidate from the shortlist suggested by the selection committee.

The effectiveness of competitions for senior civil service positions is higher than for the rest of the civil service with 94% of the vacancies filled (one-third higher compared to 2014). However, the number of applicants in these competitions is also very low and has been below two since 2014.

The exact proportion of women in senior management positions is not fully known, although the incomplete data presented by the administration shows that the share is rather high<sup>263</sup> and it compares favourably with the situation in many European Union member countries<sup>264</sup>.

Due to the problems with the appropriateness of the scope of senior civil service, the adequacy of the legislative framework and application of relevant practices (especially relating to the number of candidates for vacancies), the value for the indicator measuring ‘Merit-based recruitment and dismissal of senior civil servants’ is 2.

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<sup>260</sup> Ministry of Public Administration (2017), Annual Report on Implementation of Action Plan Implementing 2016 – 2020 Public Administration Reform Strategy, p. 27.

<sup>261</sup> CSL, Article 21.

<sup>262</sup> CSL, Article 53.

<sup>263</sup> According to the data provided by the HRMA the share of women in the incomplete sample of 103 senior managers was 45%. Even if all the missing managers from the data set are men, the share of women is above 30%.

<sup>264</sup> For example, this proportion is 39% in the United Kingdom, 32% in Italy and 28% in France (EY Senior Civil Service Women’s Leadership Index 2016, <https://go.ey.com/2ontgSu>).

### Merit-based recruitment and dismissal of senior civil servants

This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.

Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
<b>Legal framework and organisation of recruitment and dismissal of senior civil servants</b>	
1. Appropriateness of the scope for the senior civil service in legislation	1/3
2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions	9/15
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework	4/4
4. Legislative protection of the rights of senior civil servants during demotion	1/2
<b>Merit-based recruitment and termination of employment in senior civil service positions</b>	
5. Application in practice of recruitment procedures for the senior civil service	1/9
6. Ratio of eligible candidates per senior-level vacancy	0/4
7. Effectiveness of recruitment for senior civil service positions (%)	4/4
8. Women in senior civil service positions (%)	4/4
9. Stability in senior civil service positions	2/4
10. Dismissal decisions confirmed by the courts (%)	0/4 <sup>265</sup>
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)	0/4 <sup>266</sup>
<b>Total<sup>267</sup></b>	<b>26/57</b>

The scope of the senior civil service is appropriately regulated in ministries, but not in administrations subordinated to ministries, where heads of administration are excluded from the senior management staff and civil service. Recruitments involve open competitions, but adequate entry requirements and competency profiles of the jobs are missing, which, together with weaknesses in selection panels and methods, hamper the objective and professional evaluation of candidates. Broad political discretion in the appointment of candidates remains.

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

The LWPSE<sup>268</sup> has a wider scope<sup>269</sup>, encompassing not only the civil service but also employees of local

<sup>265</sup> No data available.

<sup>266</sup> Ditto.

<sup>267</sup> Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5.

<sup>268</sup> Decree promulgating the Law on Wages of Public Sector Employees of 1 March 2016, Official Gazette No. 01-232/2.

<sup>269</sup> Decree promulgating the Law on Wages of Civil Servants and State Employees of 22 December 2009, Official Gazette No. 01-3160/2.

governments, agencies or other legal entities established by the Government or by local governments, independent or regulatory bodies, whether or not included in the scope of the CSL, and publicly owned enterprises<sup>270</sup>. This assessment is based only on the provisions covering the civil service.

The potential of the new Law to improve the internal fairness and transparency of the salary system is challenged by the lack of clear criteria to award some salary components (e.g. the compensation for working in specific posts). As far as the base salary is concerned, the Law stipulates coefficients for calculating the base salary for all civil service positions<sup>271</sup>.

However, fair allocation of base salaries is not fully ensured due to insufficient regulation of the process designing of job description and conducting job evaluation and classification. On the other hand, although the Law regulates salary supplements<sup>272</sup> and establishes a ceiling for these supplements of 45% over the fixed salary<sup>273</sup>, the lack of clear criteria to award some supplements persists. This applies particularly to the salary supplement for specific positions, which can amount to up to 30% of the base salary, and which must be regulated and approved by the Government in the case of employees in the central administration, while in other cases it is in the hands of the competent authority to decide.

Furthermore, the Law maintains bonuses<sup>274</sup> for exceptional results and quality of work without setting any criteria, procedures or ceilings. A decision adopted by the Government on these bonuses<sup>275</sup> establishes a ceiling of 50% of the national average monthly gross salary for the previous year, irrespective of the level and base salary of the employee. Moreover, criteria and procedures to award the bonuses are not sufficiently regulated. The Decision sets forth only that the person entitled to make the decision on the variable pay will decide on the fulfilment of conditions and on the amount in each case. This results in a high level of managerial discretion in affecting the total reward of civil servants.

Due to the scarcity of data and analysis on public sector wages, comparison between salaries in the public sector and salaries in the general labour market can only be made based on the average gross monthly salaries, without controlling for the variables of qualification or level of responsibility. The salary levels in the public sector are comparable to the general labour market<sup>276</sup>. Information on civil service salaries is not systematically publicly disclosed, neither general salary scales nor salaries of all categories or positions. The Law on Free Access to Information<sup>277</sup> requires public authorities to publish on its website a list of public officials, with their wages calculated and other benefits and compensation awarded in connection with the exercise of public functions. But this is not done systematically and includes only the salary data of the minister and senior management staff.

Decisions on the allocation of salaries have resulted in an increasing number of appeals that has not changed after the introduction of the new Law. In 2016, the proportion of appeals on allocation of salaries filed to the Appeals Commission over the total number of appeals (134 or 13%<sup>278</sup>) was the second highest and has more than doubled between 2014 and 2016.

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<sup>270</sup> The Law on Wages of Public Sector Employees, Article 2.

<sup>271</sup> *Idem*, Articles 22 and 24.

<sup>272</sup> *Idem*, Articles 15-19.

<sup>273</sup> *Idem*, Article 19.

<sup>274</sup> *Idem*, Articles 11 and 21.

<sup>275</sup> Decision of the Government on the Variable Part of Salaries of 28 April 2016, Official Gazette, No. 032/16, amended by the Decision of the Government of 6 April 2017.

<sup>276</sup> According to data provided by HRMA, the average monthly gross salary for civil servants in government administration in 2016 was EUR 789, and according to the Montenegro Statistical Office, the average gross monthly salary in the economy was EUR 764 in December 2016 (Montenegro Statistical Office Release No. 8, Podgorica, 26 January 2017).

<sup>277</sup> The Law on Free Access to Information of 26 July 2012, Official Gazette No. 44/12, Article 12.

<sup>278</sup> Annual Report of the Appeals Commission for 2016, p. 5.

Although salaries in the civil service are based on job classification and the central pay scale is set across the public sector, the clarity and transparency of legal definitions of different salary components, criteria and allocation procedures are not sufficient, while the discretion of managers to influence total salaries is high. This, combined with the very limited availability of data in this area, means that the value for the indicator 'Fairness and competitiveness of the remuneration system for civil servants' is 1.

Fairness and competitiveness of the remuneration system for civil servants						
This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the systems in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework and organisation of the remuneration system</b>	
1. Legal obligation to base salaries on job classifications	2/2
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation	0/2
3. Availability of salary information	0/3
<b>Performance and fairness of the remuneration system in practice</b>	
4. Fairness in the allocation of base salaries in the job classification system	2/4
5. Base salary compression ratio	2/2
6. Managerial discretion in the allocation of bonuses	0/2
7. Motivational character of bonuses (%)	0/2 <sup>279</sup>
8. Competitiveness of civil service salaries (%)	0/3
<b>Total<sup>280</sup></b>	<b>6/20</b>

The new LWPSE establishes civil service salaries based on job classification. However, clear criteria and procedures to allocate some salary supplements and variable pay are not in place. There are very limited statistics available on the remuneration of civil servants and the competitiveness of civil service salaries compared with different segments of the labour market.

*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.*

Professional training and development are established as rights and duties of civil servants and state employees in the CSL<sup>281</sup>. The HRMA is the public body responsible for the preparation and implementation of horizontal training programmes, their monitoring and evaluation, as well as for assisting public institutions in developing specific training activities<sup>282</sup>.

The HRMA proactively manages the training of civil servants in horizontal areas. Training needs analysis is conducted regularly, involving the HRM units of ministries and administrative bodies. Continuous horizontal training offered by the HRMA is structured into two main programmes: the Programme of Professional Training of Civil Servants and the Programme of Professional Training of Local Government Employees. In addition to these courses, in 2015 and 2016 the HRMA worked in the

<sup>279</sup> No data available.

<sup>280</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-10=2, 11-13=3, 14-16=4, 17-20=5.

<sup>281</sup> CSL, Article 115.

<sup>282</sup> *Ibid.*

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development of specific programmes, among them, a training programme for the acquisition of skills in HRM<sup>283</sup>.

Training plans are implemented to a large extent, with 82% of the planned training activities implemented (42 courses out of 51)<sup>284</sup>. No training statistics are available for the entire civil service. The HRMA is collecting and analysing training-related data but it covers only its own training activities. Data on the training courses provided by individual organisations is not centrally collected. However, as the training system is rather centralised, the available data shows that both funds allocated for training and availability of training options are low<sup>285</sup>. Attendance on training courses is a substantial problem as only 60% of public employees who registered for the training in 2016 completed the courses<sup>286</sup>. The trainees' perception of the quality and usefulness of the courses is assessed through individual questionnaires and the results are good<sup>287</sup>. Assessment of the impact of training programmes is not yet in place.

Issues in the design and implementation of individual performance appraisals remain. Transparent criteria for the appraisals are missing, and the tendency of supervisors to give the maximum scores has become more pronounced<sup>288</sup>. In 2016, the proportion of staff assessed was 69.3%.

Horizontal mobility can result from temporary or permanent reassignments linked to workload or specific functional needs, as well as the reinstatement of civil servants affected by circumstances foreseen in the Law<sup>289</sup>. Voluntary horizontal mobility and promotion are managed through internal competitions which follow the same rules as recruitments for admission into the civil service, and present the same shortcomings. However, the effectiveness of internal competitions is much lower than that of public recruitments<sup>290</sup>. Thus, the current mechanisms for internal mobility and promotion are not functioning properly.

The legal framework and organisation of professional development is well developed, however there are some deficiencies in the implementation of performance appraisals, merit-based mobility and promotion. The low central training budget results in low volumes of training per civil servant. Therefore, the value for the indicator 'Professional development and training for civil servants' is 3.

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<sup>283</sup> In December of 2016, the curriculum of the course was delivered to the Centre for Professional Education to initiate the accreditation procedure. Information received in the interviews with HRMA staff.

<sup>284</sup> HRMA Annual Report 2016, pp. 17-21.

<sup>285</sup> The annual training budget of the HRMA is EUR 180 000. The HRMA has provided 1 808 hours of training and the total number of civil servants who participated in its training courses was 3 477 in 2016. Data provided by the HRMA.

<sup>286</sup> HRMA Annual Report 2016, pp. 18-19. Of the 1 445 registered participants, 887 completed the courses.

<sup>287</sup> HRMA Annual Report 2016, p. 27.

<sup>288</sup> According to data included in HRMA annual reports for 2014, 2015 and 2016, in 2016 48.5% of the assessment results fell within the "Excellent" category, compared to 42.1% in 2015 and 32.7% in 2014 (according to the annual reports of HRMA).

<sup>289</sup> CSL, Chapter VI.

<sup>290</sup> According to the data received from the HRMA the total number of people appointed through the internal competition among state authorities was 63 (0.6% of the civil service).

Professional development and training for civil servants						
This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework and organisation of professional development</b>	
1. Recognition of training as a right and a duty of civil servants	2/2
2. Co-ordination of the civil service training policy	3/3
3. Development, implementation and monitoring of training plans	3/3
4. Evaluation of training courses	2/2
5. Professionalism of performance assessments	3/4
6. Linkage between performance appraisals and measures designed to enhance professional achievement	2/4
7. Clarity of criteria for and encouragement of mobility	1/2
8. Adequacy of legislative framework for merit-based vertical promotion	1/2
9. Absence of political interference in vertical promotions	0/2 <sup>291</sup>
10. Right of civil servants to appeal against performance appraisal decisions	2/2
11. Right of civil servants to appeal mobility decisions	2/2
<b>Performance of professional development practices</b>	
12. Training expenditures in proportion to the annual salary budget (%)	0/4
13. Participation of civil servants in training	1/5
14. Perceived level of meritocracy in the public sector (%)	3/5
<b>Total<sup>292</sup></b>	<b>25/42</b>

**The HRMA is proactively managing training of civil servants in horizontal areas. All the relevant elements of the training system are in place. Nevertheless, the training budget and share of civil servants trained is low, while the number of trainees has declined. The limited effectiveness of internal mobility and promotion mechanisms persists.**

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

The legal and institutional framework to ensure integrity in the public service is in place. The LPC entered into force in 2016<sup>293</sup>. The legislation includes all the essential elements to guarantee integrity in the public service. Conflicts of interest are regulated for civil servants in the CSL<sup>294</sup>, and for public officials in the LPC<sup>295</sup>. Whistle-blowing protection is regulated in the CSL, Article 79, and in the LPC, Chapter III<sup>296</sup>. Ethical principles for civil servants are regulated in the CSL<sup>297</sup> and developed through the

<sup>291</sup> No data provided.

<sup>292</sup> Point conversion ranges: 0–6=0, 7–13=1, 14–21=2, 22–29=3, 30–36=4, 37–42=5.

<sup>293</sup> The LPC of 19 December 2014, Official Gazette No. 53/14 (in force from 1 January 2016).

<sup>294</sup> The CSL, Articles 69–78.

<sup>295</sup> The LPC, Chapter II.

<sup>296</sup> *Ibid.*

<sup>297</sup> The CSL, Article 6.

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Code of Ethics<sup>298</sup>. Integrity plans are regulated in the LPC<sup>299</sup>. Furthermore, the Penal Code regulates the deception and corruption offences perpetrated by public officials<sup>300</sup>.

The LPC comprehensively regulates potential conflicts of interest and the reception of gifts, and it imposes restrictions on the exercise of public duties, as well as on sponsorships and donations to public authorities. It also regulates the disclosure of assets, as well as whistle-blowing and the protection of whistle-blowers. Additionally, the LPC sets forth the obligation for public authorities to adopt an integrity plan and to submit it to the newly established ASK. The elaboration of integrity plans is established in the CSL<sup>301</sup> for public institutions within the scope of the civil service, but the CSL does not regulate them in detail. The LPC defines them and establishes their basic contents, implementation requirements, including the appointment of an integrity manager in each institution, and monitoring duties.

Secondary legislation necessary for the implementation of the Law was adopted during 2015. The Law has also centralised all authority related to the fight against corruption under the ASK<sup>302</sup>, which supersedes and replaces the Directorate for Anti-Corruption Initiatives and the Commission for the Prevention of Conflicts of Interest. The Agency is established as an independent state institution, with a structure of 55 positions, 49 of which had been filled as of April 2017.

The capacity of the ASK to enforce the Law seems well established. In 2016, its decisions and opinions led to the resignation of 75 public officials and to the dismissal of 26 public officials<sup>303</sup>. There was almost full compliance with the obligation to present the annual declaration of assets by public officials<sup>304</sup>. During 2016, the ASK filed 807 requests for criminal proceedings to the competent courts, of which 372 were for violating the provisions of the LPC. It settled 626 cases in the field of conflict of interest (including cases from 2015) and imposed fines totalling EUR 82 837, as well as 141 fines totalling EUR 38 270 for failure to report income and assets. The Agency filed 56 requests for initiation of misdemeanour proceedings against public bodies which did not adopt integrity plans. Finally, in the area of whistle-blowing, the ASK received 56 complaints through whistle-blowing channels, and submitted two requests to initiate criminal proceedings in 2016 against authorities for violation of the obligation to protect whistle-blowers.

A multi-annual policy to promote integrity and to fight against corruption in the public sector does not exist. Thus, the ASK performs its functions on the basis of its annual operational plans. There is a fluid co-operation between the ASK and other authorities, such as the Ministry of Internal Affairs, the Tax Administration, the Administration of the Property, and the Commission for Securities. This ensures access to databases for verification of the contents of declarations of assets and income of public officials<sup>305</sup>.

According to the 2017 Balkan Barometer survey, the public perception of citizens and businesses of corruption in the public sector is rather high. Almost a quarter of the responding businesses (24%) either strongly agreed or tended to agree that it is common for firms to have to pay some irregular

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<sup>298</sup> The Code of Ethics of Civil Servants and State Employees of 12 April 2012, Official Gazette No. 20/12.

<sup>299</sup> The LPC, Chapter IV.

<sup>300</sup> The penal code regulates deception and corruption offenses perpetrated by public officials, including financial fraud against the state (Articles 419 and 421a), acts of forgery and counterfeiting documents (Articles 412-414), active bribery (Article 424), passive bribery (Article 423), embezzlement (Article 420), abuse of power (Articles 416 and 421), trading in influence (Articles 422 and 422a), illicit enrichment (Articles 247, 419 and 421), and money laundering (Article 268).

<sup>301</sup> The CSL, Article 68.

<sup>302</sup> The ASK is mandated in Article 4 of the LPC. Its structure, basic governing rules and competences are regulated in Chapter V of the same Law.

<sup>303</sup> Annual Report of the Agency for Prevention of Corruption for 2016, p. 9.

<sup>304</sup> According to the Annual Report of Activities of the ASK for 2016, out of 4 427 registered public officials, 4 409 submitted their declarations.

<sup>305</sup> Annual Report of the Agency for Prevention of Corruption for 2016, p. 74.

“additional payments/gifts” to “get things done”. In addition to that, 6% of the citizens surveyed (or anyone in their household) had made a payment in the form of a bribe in the past year.

Disciplinary procedures are only broadly regulated in the CSL. For instance, the legislation does not describe the competences of the disciplinary committee during the investigation of facts; the contents of the disciplinary decision and the reasoning of the decision, or the explanation of the facts that led to the decision; the obligation to inform the civil servant in the notification about the initiation of the disciplinary procedure, about the alleged violation and his/her rights; and the timelines of the disciplinary procedure. The lack of detailed regulations leads to problems in implementation, as is illustrated by the increase in the number of appeals against disciplinary decisions filed to the Appeals Commission between 2014 and 2016<sup>306</sup>.

The legal framework of the disciplinary system and compliance with the procedural principles are advanced and legislative safeguards for the suspension of civil servants are in place. Still, due to the lack of performance data, the value for the indicator ‘Quality of disciplinary procedures for civil servants’ is 4.

In addition, the legal framework of the integrity system is established, but a comprehensive integrity policy and action plan is missing. This, combined with the relatively high level of bribery as perceived by businesses and citizens, results in a value of 2 for the indicator ‘Integrity of public servants’.

Quality of disciplinary procedures for civil servants						
This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework and organisation of disciplinary system</b>	
1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures	4/4
2. Compliance between disciplinary procedures and essential procedural principles	6/6
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour	1/2
4. Legislative safeguards for suspension of civil servants from duty	2/2
<b>Performance of the disciplinary procedures</b>	
5. Disciplinary decisions confirmed by the courts (%)	0/4 <sup>307</sup>
<b>Total<sup>308</sup></b>	<b>13/18</b>

<sup>306</sup> The number increased from 46 to 96 in 2014-2016. Annual Report of the Appeals Commission for 2016, p. 5.

<sup>307</sup> No data available.

<sup>308</sup> Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

Integrity of public servants						
This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service.						
The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework and organisation of the public sector integrity</b>	
1. Completeness of the legal framework for public sector integrity	5/5
2. Existence of a comprehensive public sector integrity policy and action plan	0/4
3. Implementation of public sector integrity policy	0/3
<b>Public sector integrity in practice and public perceptions</b>	
4. Use of investigations in practice	3/4
5. Perceived level of bribery in the public sector by businesses (%)	2/4
6. Bribery in the public sector by citizens (%)	1/4
<b>Total<sup>309</sup></b>	<b>11/24</b>

**The legal and institutional framework to ensure integrity in the civil service has been completed with the entry into force of the LPC and the creation of the ASK. However, a multi-annual anti-corruption policy does not exist, and the ASK performs its functions on the basis of annual operational plans. Disciplinary procedures are broadly regulated in the CSL, but secondary legislation has not been developed**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should change the underlying principles of selection panels established in the CSL in order to increase the stability of their composition. This would assist the accumulation of better selection practices and improve the professional standards of recruitments.
- 2) The HRMA should develop common standards for the design and administration of the practical part of the written test across the civil service and apply unified methods.
- 3) The Government should ensure that all professional (i.e. non-political) positions one level below ministers who exercise public authority functions, are within the scope of the CSL or of similar regulations that ensure merit-based recruitment and dismissal.
- 4) The Government should improve the regulations on job descriptions, evaluation and classification, and the HRMA should develop detailed guidelines to ensure uniform standards.
- 5) 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. Job profiles as well as selection criteria should be subsequently established on the basis of the competency framework.

<sup>309</sup> Point conversion ranges: 0–3=0, 4–7=1, 8–11=2, 12–15=3, 16–19=4, 20–24=5.

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- 6) The MoF should review the legislation covering the civil service remuneration in order to improve its transparency and clarity.

**Medium-term (3-5 years)**

- 7) The MoF should establish regular public sector salary reports for the Government that enable it to analyse the internal and external equity and provide better analytical basis for decision-making in this area.
- 8) The Government should provide the HRMA with adequate resources to ensure sustainable and sufficient access to training for civil servants.
- 9) The Government should prepare a multi-annual plan for the prevention of corruption and for promoting integrity in public service.



## ACCOUNTABILITY

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1.1. State of play

The official typology of central government bodies is not accompanied by a consistent governance and accountability scheme for each type of institution, nor is the performance of government institutions monitored for outcomes delivered, as the planning and reporting mechanisms focus on inputs and activities. Another distinctive feature of the organisation of central government is centralisation, as the heads of administrative authorities within ministries lack managerial autonomy and ministers accumulate all decision-making powers within each ministry. Although there are some legal grounds for delegating these powers to lower-level officials, in practice the ministers retain decision-making authority, even for decisions of a technical nature.

Significant deficiencies in implementing the Law on Free Access to Information (LFAI) have become evident, especially in monitoring proactive transparency and imposing sanctions for non-compliance. A review of public institution websites conducted for this assessment revealed problems with access to annual plans, budgets and reports. The Agency for Personal Data Protection and Free Access to Public Information (the Agency) only started monitoring proactive disclosure of public information in March 2017, and it has no power to impose sanctions for violations of the LFAI. Such cases are under the exclusive jurisdiction of the Administrative Inspectorate (AI), which may file a request with the Misdemeanour Court.

The share of the Ombudsman's recommendations reported as having been implemented remains relatively high, but the independence of this institution is hampered by the mandatory involvement of the Ministry of Finance (MoF) in public procurement procedures relating to the Ombudsman's office.

The quality of the Administrative Court's case law, gauged by the share of successful appeals against its rulings, is high. However, the backlog of cases and, correspondingly, the average duration of proceedings are gradually increasing due to the growing number of incoming administrative cases.

There is a procedure in place for seeking compensation for damages caused by unlawful acts of state administration bodies and it is applied in practice by the courts. However the full effectiveness of the public liability regime cannot be assessed as payments made on public liability requests are not centrally monitored.

#### 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>310</sup> and main developments based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

In July 2016, the new Public Administration Reform (PAR) Strategy 2016-2020 was adopted with an accompanying Action Plan for 2016-2017. The documents set objectives and detailed tasks relating to the government organisation, management of bodies subordinated to the ministries, access to public information and administrative justice.

The new Law on Administrative Disputes (LAD) was adopted on 30 July 2016 and entered into force on 1 July 2017, providing a new legislative framework for judicial administrative proceedings.

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<sup>310</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>

With the formation of the new Government at the end of 2016, the Ministry of Public Administration (MPA) was established<sup>311</sup> with responsibility for the overall organisation of the state administration, which had previously been assigned to the Ministry of Interior.

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

Regarding central government organisation, in the 2015 Baseline Measurement<sup>312</sup> SIGMA had recommended the development of clear criteria for establishing public agencies and for setting up their accountability schemes. This has been addressed in several activities included in the PAR Strategy<sup>313</sup>, but they have not yet led to tangible results. Despite a lack of actual changes, the value for the indicator ‘Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent’ has deteriorated slightly, due to new information acquired about types of state organisations (funds) not covered in the Law on State Administration (LSA)<sup>314</sup>.

There have been no overall changes in the number of bodies reporting to the Government or the Parliament since the 2015 Baseline Measurement. However, additional information obtained on accountability mechanisms of public bodies during the 2016 assessment has caused the respective indicator value to be revised considerably. 30 bodies report directly to the Government or to the Parliament rather than five as was previously understood in the 2015 assessment.

The budget of the Agency for 2016 grew by 60% from 2014, in line with SIGMA’s 2015 recommendation<sup>315</sup>. However, as the number of staff dealing with access to public information did not increase until the first quarter of 2017, this has not yet led to changes in the extent to which the right to access public information is enacted in legislation and applied in practice, so the value for the corresponding indicator remains at 3. The share of public information requests refused by the supervisory authority has increased considerably since 2015.

There have been no changes in the functioning of oversight institutions, hence the value for the indicator ‘Extent to which mechanisms are in place to provide effective checks and balances, and controls over public organisations’ remains at 3.

The Administrative Court has been strengthened by the appointment of new judges. However, the backlog of cases in the Court grew by half, primarily because the influx of cases has increased by nearly 30%. While the Court still manages to ensure relatively short average case duration, the overall trend is negative.

The mechanism for ensuring the liability of public bodies has remained the same as in 2015, but the value for the indicator on the ‘Extent to which public authorities assume liabilities and guarantee redress’ has increased due to additional information obtained on the legal framework for public liability during this assessment. Similar to liability in contractual relationships, the Law on Obligations is applied in public liability cases. The Law provides rules for calculating compensation and stipulates that rectifying the fault is preferable to paying financial compensation.

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<sup>311</sup> Decree on the State Administration Organisation and Manner of Work, Official Gazette No. 003/17 of 13 January 2017.

<sup>312</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p. 66, recommendation 1, [http://sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf)

<sup>313</sup> Activities under Objective 4.1.1, “Enhanced control over the legality and expedience of work of public administration authorities”.

<sup>314</sup> Official Gazette No. 38/03, 27 June 2003.

<sup>315</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, p. 66, recommendation 2, [http://sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>316</sup>**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent.	2	1
	Extent to which the right to access public information is enacted in legislation and applied in practice.	3	3
	Extent to which the mechanisms are in place to provide effective checks and balances, and controls over public organisations.	4	4
	Extent to which public authorities assume liabilities and guarantee redress.	2	4 <sup>317</sup>
<b>Quantitative</b>	Number of bodies reporting to the council of ministers, to the prime minister or to the parliament.	5 <sup>318</sup>	30 <sup>319</sup>
	Share of public information requests refused in a given year by the supervisory authority.	9.6% <sup>320</sup>	24% <sup>321</sup>
	Share of oversight institutions' recommendations to state administrative bodies implemented within two years <sup>322</sup> .	73% <sup>323</sup>	64% <sup>324</sup>
	Number of complaints submitted to the administrative court in a given year.	3 668 <sup>325</sup>	4 691 <sup>326</sup>

<sup>316</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>317</sup> There were no changes in the legal framework regarding public liability, but modification of the indicator value is based on revised analysis of the laws that regulate obligations of the state.

<sup>318</sup> Two bodies report to the Government and three bodies report to the Parliament according to the information provided by the administration.

<sup>319</sup> Twenty institutions report to the Government and ten institutions report to the Parliament. There were no overall changes in the number of bodies reporting to the CoM or the Parliament since the last assessment. However, calculations provided in 2015 were revised by SIGMA in the 2017 assessment to account for detailed information on accountability structures within the state administration.

<sup>320</sup> Data provided by the Agency sets the number at 165 out of 1 753.

<sup>321</sup> Data provided by the Agency sets the number at 654 out of 2 687 (annual report, p. 73).

<sup>322</sup> Relates to the Ombudsman only.

<sup>323</sup> 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.

<sup>324</sup> In 2016, the Ombudsman issued 115 recommendations, 14 of which are still pending; 65 were fully implemented and 36 were not, according to the Report of the Ombudsman for 2016.

<sup>325</sup> Data provided by the Judicial Council.

<sup>326</sup> Annual report of the Administrative Court.

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	Percentage of cases changed or returned for verification by the higher court.	11.9% <sup>327</sup>	16% <sup>328</sup>
	Backlog of administrative cases.	1 815 <sup>329</sup>	2 717 <sup>330</sup>

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<sup>327</sup> Out of 361 cases, 43 were returned according to the Administrative Court's Work Report for 2014, <http://sudovi.me/uscg/izvjestaji-o-radu/>.

<sup>328</sup> Out of 394 cases, 63 were returned according to the annual report of the Administrative Court for 2016, <http://sudovi.me/podaci/uscg/dokumenta/5473.docx>.

<sup>329</sup> Annual report of the Administrative Court for 2014.

<sup>330</sup> Annual report of the Administrative Court for 2016.

## 2. ANALYSIS

This analysis covers five Principles for the accountability area grouped under one key requirement. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>331</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### ***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 institutional architecture of the central government is regulated by the LSA<sup>332</sup> and the Decree on Organisation and Operation of the Public Administration (DOOPA)<sup>333</sup>. The catalogue of organisational forms of government administration established in the LSA is extensive and includes ministries, administrations, secretariats, bureaus, directorates and agencies. The accountability scheme for all of them is largely uniform, but this catalogue of government bodies overlaps with another typology established by the DOOPA that distinguishes between “a body within the ministry” having very limited autonomy and a more independent institution functioning “outside” the ministry<sup>334</sup>. There are no clear criteria for distinguishing between these types of bodies. In addition, there are institutions operating in

<sup>331</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>332</sup> LSA, Official Gazette No. 38/03, latest amendments published in Official Gazette No. 054/16.

<sup>333</sup> Decree on Organisation and Operation of the Public Administration, Official Gazette No. 005/12, latest amendments published in Official Gazette No. 003/17.

<sup>334</sup> For example, the Rail Transport Directorate and the Property Directorate operate as bodies within the relevant ministries, while the Public Procurement Directorate and the Real Estate Directorate do not have this status.

a form not envisaged by the LSA, as the legal basis for funds is established by special regulations (Table 2).

**Table 2. Major types of administrative bodies in Montenegro (ministries excluded)**

Type of administrative body	Legal basis	Number
Administration	LSA, DOOPA	21
Agency	LSA, DOOPA, Special regulation	10
Directorate	LSA, DOOPA	8
Bureau	LSA, DOOPA, Special regulation	5
Secretariat	LSA, DOOPA	2
Fund	Special regulation	7

Source: Inventory of public bodies prepared by SIGMA.

The MPA is responsible for the overall organisation of the state administration, including regular review and planning of institutional development<sup>335</sup>, but there is no specific procedure provided in the legal framework for establishing, merging or abolishing administrative bodies. However, according to the general policy development process, all proposals submitted to the Government for approval must be accompanied by a Regulatory Impact Analysis, which should provide an overview of alternative options and costs for implementing the proposal<sup>336</sup>. Proposals must also be accompanied by the opinion of the MoF and – in the case of adoption or amendment of systematisation of an administrative body – the opinion of the Human Resource Management (HRM) Authority. The practical application of this procedure could not be assessed, however, due to sample unavailability. The PAR Strategy envisages preparation of detailed guidelines for decisions on changes to the Government’s structure<sup>337</sup>.

The basic accountability mechanisms between ministries and subordinate bodies are in place. The LSA specifies the managing organs of administrative bodies and key instruments of ministerial oversight of the administrative bodies subordinated to the ministries. More detailed management schemes for each body individually are set out in the regulations establishing the respective institutions.

While bureaucratic mechanisms for planning, budgeting and reporting on the activities of central government bodies are in place, the transition towards results-based management has not progressed. Annual plans and reports of bodies subordinated to the ministries are process-oriented and overloaded with statistical data on planned and executed actions. They are not linked to specific, measurable objectives, performance indicators and targets. As a result, the accountability mechanisms in place do not support effective management of bodies subordinate to ministries, so the value for the respective sub-indicator is 0.

Management in ministries is heavily centralised: 22 institutions have the status of an administrative body within a ministry, but the heads of the institutions have very limited managerial authority. Despite being formally separate from the ministries, heads of bodies within ministries cannot decide independently on key aspects of internal management (e.g. HRM issues, financial management and

<sup>335</sup> Rulebook on Internal Organisation of the MPA, adopted 29 December 2016, Article 3.

<sup>336</sup> Rules of Procedure of the Government of Montenegro, Article 40, Official Gazette No. 03/12.

<sup>337</sup> Activity 2 under Objective 4.1.1: Enhanced control over the legality and expedience of work of public administration authorities.

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contractual relations). Decision-making processes within the departments of ministries are also largely centralised, as the vast majority of decisions of a technical nature regarding staff management and finances are made by the minister. The secretary of the ministry (top-level civil servant) and heads of units within ministries may make decisions autonomously solely in matters delegated by the minister, but in practice ministers are reluctant to transfer their powers to lower-level officials. This arrangement distracts ministers from focusing on policy-making functions and hampers the managerial accountability of senior civil servants. The value for the sub-indicator measuring delegation of decision-making authority is therefore 0.

In total, ten administrative bodies report directly to the Parliament.

Mainly due to shortcomings in the clarity of the typology of central government bodies and in the mechanisms ensuring effective management of subordinate bodies, as well as insufficient delegation of decision-making authority within ministries, the value for the indicator 'Accountability and organisation of central government' is 2.

Accountability and organisation of central government						
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Policy and legal framework for central government organisation</b>	
1. Clarity and comprehensiveness of official typology of central government bodies	2/5
2. Adequacy of the policy and regulatory framework to manage central government institutions	4/5
3. Strength of basic accountability mechanisms between ministries and subordinated bodies	5/5
4. Managerial accountability mechanisms in the regulatory and legislative framework	1/5
<b>Central government's organisation and accountability mechanisms in practice</b>	
5. Consistency between practice and policy in government re-organisation	0/4 <sup>338</sup>
6. Number of public bodies subordinated to the parliament	2/4
7. Accountability in reporting between central government bodies and parent ministry	3/4
8. Effectiveness of basic managerial accountability mechanism for central government bodies	0/4
9. Delegation of decision-making authority within ministries	0/4
<b>Total<sup>339</sup></b>	<b>17/40</b>

**The official typology of administrative bodies lacks clarity, and the multiplicity of organisational forms in state administration is not justified by differences in functions or tasks. A bureaucratic, centralised model of managing central government bodies is evident in the process-oriented**

<sup>338</sup> Consistency between policy and practice could not be assessed because the samples necessary for analysis were not provided.

<sup>339</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

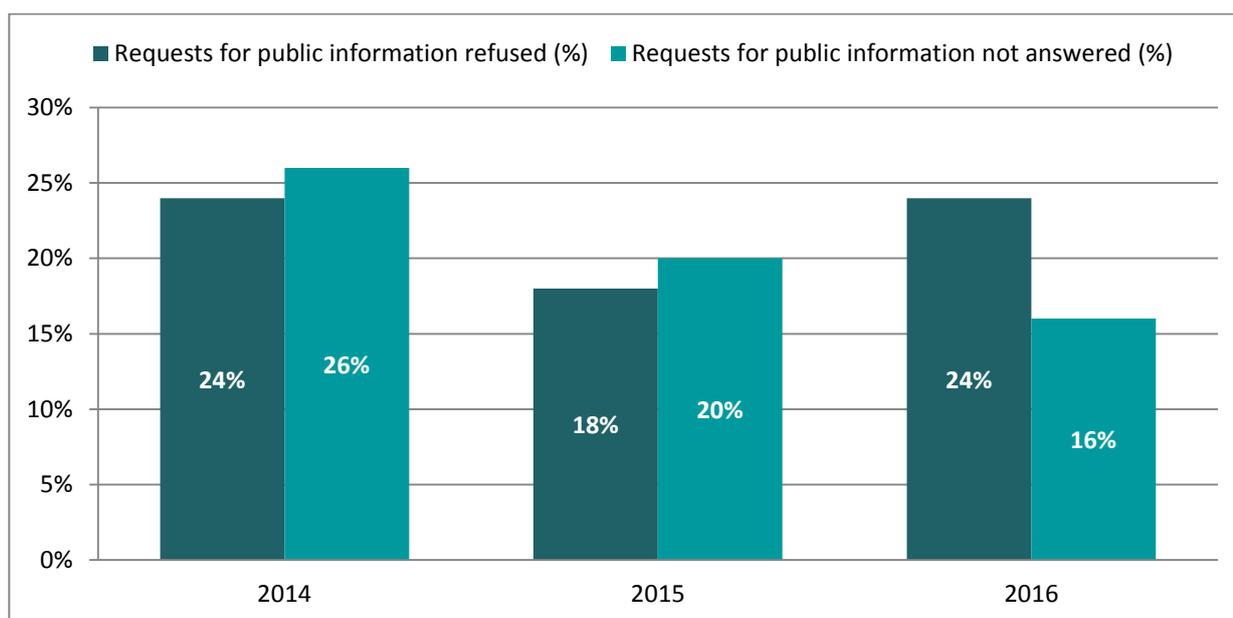
**approach to planning and reporting, deficient delegation of decision-making authority within ministries, and inadequate managerial autonomy for the heads of administrative bodies within ministries.**

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

The right to information is extensively regulated in the Constitution, which contains not only a general guarantee of this right, but also establishes an exhaustive catalogue of restrictions in access to public information<sup>340</sup>. The LFAI<sup>341</sup> complies with the constitutional standard by providing a broad definition of public information and adequate procedural guarantees for access to information upon request. Applicants are not required to provide justification for requests, and the information should be disclosed in the requested format. Access to information is generally free of charge, but the applicant could be charged for copying documents. Fees cannot be imposed arbitrarily by information holders, but are determined by Government regulation and rates are moderate (EUR 0.05 per page)<sup>342</sup>.

Refusals of access to information or failure to respond to public information requests can be challenged by the Agency, acting as an independent monitoring and supervisory body in the information access area. The total number of complaints submitted to the Agency increased by 78% from 2015 to 2016<sup>343</sup>. According to the Agency data, the share of requests left unanswered by public authorities remains high (Figure 1), and it should be noted that some information holders still do not submit statistical data to the Agency<sup>344</sup>.

**Figure 1. Statistical data on requests for access to public information (2014-2016)**



Source: Data provided by the Agency for Personal Data Protection and Access to Public Information.

The Agency has no power to impose sanctions on public authorities for non-compliance with reporting obligations or for not responding to public information requests. If the Agency identifies violations of the LFAI, it may submit a case to the AI, which can subsequently file a request for sanction to the Misdemeanour Court. The Agency submitted 243 such cases in 2016 according to its report, but was not able to provide data on the number of sanctions actually imposed on the basis of these cases. Lack

<sup>340</sup> Constitution of Montenegro, Official Gazette No. 1/07, Article 51.

<sup>341</sup> Law on Free Access to Information, Official Gazette No. 044/12.

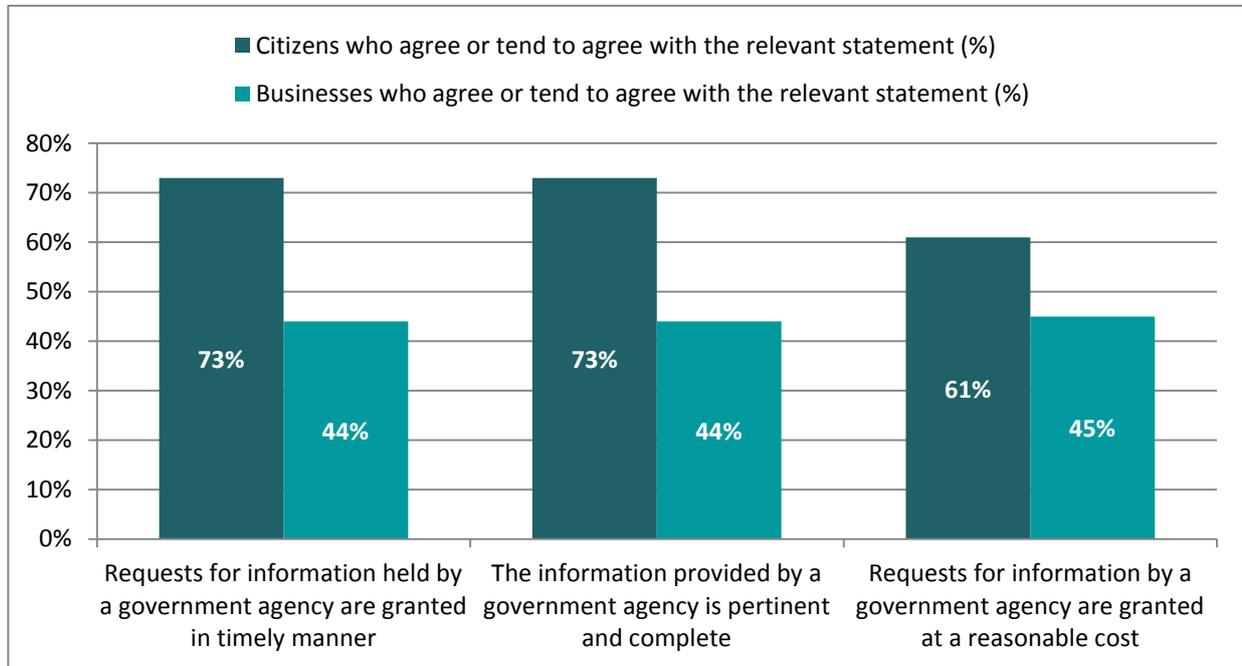
<sup>342</sup> Regulation on the Compensation of Costs of Access to Information, Official Gazette No. 066/16.

<sup>343</sup> According to the Agency reports, the total number of complaints in 2015 was 2 513, and 2 687 in 2016.

<sup>344</sup> According to information provided by the Agency during interviews. Statistical data on the exact number of institutions not complying with the reporting obligation were not provided.

of information about the actual consequences of non-compliance with the requirements of the legal framework indicates that the current monitoring mechanism is not effective. Still, the majority of citizens and almost half of businesses are generally satisfied with the procedural guarantees of access to public information upon request according to the 2017 Balkan Barometer survey. In their opinion, public information requests are usually handled in a timely manner, information provided is pertinent and complete, and the fees for access to information do not pose an obstacle (Figure 2).

**Figure 2. Perceived accessibility of public information by the population**



Source: The 2017 Balkan Barometer survey, the Regional Cooperation Council.

Proactive transparency of public institutions remains another challenge. The LFAI stipulates a list of datasets which should be disclosed on the websites of public bodies, but the list does not contain some key information like names and contact details of heads of organisational units and the organisational structure of the institution. In addition, there are shortcomings in ensuring compliance with the legal requirements. While the Agency is formally tasked with monitoring proactive disclosure of public information, it only started reviewing the websites of public institutions in March 2017 after its staff had been increased. Lack of adequate monitoring contributes to limited availability of data and documents (e.g. annual plans, reports and budgets) on the websites of various ministries, bodies subordinated to ministries and independent institutions. All primary and secondary legislation is available to citizens online free of charge<sup>345</sup>, but not in a consolidated format.

Taking into account shortcomings in monitoring the implementation of legislation on access to information but also the limited proactive disclosure of information by state administration bodies on their websites, the value for the indicator 'Accessibility of public information' is 3.

<sup>345</sup> Available at [www.sluzbenilist.me](http://www.sluzbenilist.me).

### Accessibility of public information

This indicator measures the extent to which the legal and institutional framework regarding access to public information is established, promoting timely responses to public information requests free of charge or at a reasonable cost. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information and perceptions of availability of public information.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
<b>Legal and institutional framework for access to public information</b>	
1. Adequacy of legislation on access to public information	10/10
2. Comprehensiveness of monitoring on the implementation of legislation on access to public information	1/5
<b>Citizens' level of access to public information</b>	
3. Proactivity in disclosure of information by state administration bodies on their websites (%)	2/5
4. Proactivity in disclosure of datasets by the central government (%)	4/5
5. Perceived accessibility of public information by the population (%)	2/2.5
6. Perceived accessibility of public information by businesses (%)	1/2.5
<b>Total<sup>346</sup></b>	<b>20/30</b>

**An adequate legal framework ensuring access to public information is in place. The Agency is responsible for monitoring implementation of the established requirements, but despite recent improvements in its capacity, it has not been able to fulfil its tasks comprehensively. Proactive disclosure of information on the websites of public institutions remains limited, and the number of complaints submitted to the Agency regarding access to information has increased considerably. The Agency lacks effective instruments to enforce its decisions and there is no evidence of sanctions imposed for non-compliance with the legal requirements.**

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

Oversight institutions (courts, the Ombudsman, the State Audit Institution [SAI]) enjoy the status of constitutional bodies. Guarantees of their independence from the executive are established in the Constitution and in laws regulating their status and manner of work. The Law on the SAI<sup>347</sup> further clarifies the independence, mandate, rights and responsibilities of the SAI, conforming to international standards.

Courts are expected to rule solely on the basis of the Constitution, laws and international treaties. Judges are appointed for a permanent tenure and are protected by functional immunity. The judge shall not be held responsible for the expressed opinion or vote at the time of adoption of the decision of the court, unless this represents a criminal offense. The Judicial Council, as an independent body composed predominantly of judges, is responsible for appointing judges and executing disciplinary proceedings against them, including dismissal from office. The Law on Judges<sup>348</sup> provides clear and

<sup>346</sup> Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-20=3, 21-25=4, 26-30=5.

<sup>347</sup> Law on the SAI, Official Gazette Nos. 28/04 of 29 April 2004; 7/06 of 27 April 2006; 78/06 of 22 December 2006; No. 17/07 of 31 December 2007; No. 73/10 of 10 December 2010; No. 40/11 of 8 August 2011; and No. 31/14 of 24 July 2014.

<sup>348</sup> Law on Judges, Official Gazette No. 11/15.

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transparent criteria for selecting candidates for all judicial positions. Information about vacancies is made publicly available, and the recruitment procedure involves a written test and interviews conducted by the Judicial Council; final ranking is based on scores received by the candidates. Nevertheless, civil society has raised concerns about the transparency and integrity of the selection and appointment process of judges in practice<sup>349</sup>.

The Institution of the Ombudsman has a wide remit and may initiate investigations both upon request and on its own initiative; it has access to the information, documents and premises of public authorities. In addition to the right to issue recommendations, the Ombudsman has the power to submit a request for disciplinary measures against the person(s) whose actions or omissions resulted in a human rights violation.

However, the status of the Ombudsman institution does not fully comply with international standards. Concerns about the Ombudsman's independence were confirmed when an accreditation process measuring compliance of national human rights institutions with the Paris Principles assigned it a grade of 'B' in 2016<sup>350</sup>. The Ombudsman Institution's autonomy in managing its staff and budget is considerably limited, as the MoF approval is required to release funds available from the adopted budget to fill vacant staff positions or to conduct public procurement procedures<sup>351</sup>. These arrangements undermine the constitutional principle of independence of Ombudsman's Institution and ignore the special status of this body.

Furthermore, the promotion of human rights is not explicitly included in the mandate of the Ombudsman<sup>352</sup>, preventing the Ombudsman from taking a more active role in public debates on human rights issues. This lack of a clear mandate to promote human rights is one of the reasons civil society organisations criticise the low visibility and proactivity of the Ombudsman institution<sup>353</sup>.

The total number of complaints submitted to the Ombudsman increased by 39% from 2015 to 2016, and the number of recommendations doubled from 57 to 115. The reported implementation rate of Ombudsman recommendations remains high (64%)<sup>354</sup>, but an analysis of sample recommendations reveals that not all have in fact been fully implemented, despite being declared as such<sup>355</sup>. The implementation rate of SAI recommendations resulting from the 2015 audits was 50%.

On average, 37% of respondents to the 2017 Balkan Barometer survey believe that oversight institutions are independent of political influence. This is the second-highest share in the Western Balkans, and exceeds the perceived level of media independence in Montenegro (31%). The level of

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<sup>349</sup> Institut Alternativa (2016), *Monitoring and Evaluation of the Rule of Law in Montenegro*, Institute Alternativa, Podgorica.

<sup>350</sup> Global Alliance of National Human Rights Institutions (GANHRI), *Chart of the Status of National Institutions*, 24 January 2017.

<sup>351</sup> GANHRI (2016), *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 9-13 May 2016, pp. 17-20, <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

<sup>352</sup> Human rights promotion is not explicitly included in the Ombudsman's mandate established by Article 2 of the Law on the Ombudsman. Article 21 of this Law provides only vague grounds for action in this area: "The Ombudsman also deals with general issues of importance for the protection and promotion of human rights and freedoms and co-operates with organisations and institutions dealing with human rights and freedoms."

<sup>353</sup> Čalović, V. et al. (2016), *Assessment of the National Integrity System of Montenegro*, Network for affirmation of NGO sector – MANS Monitoring and Analytic Programme, Podgorica, p. 186, <http://www.mans.co.me/en/wp-content/uploads/2016/09/NISreportEN.pdf>.

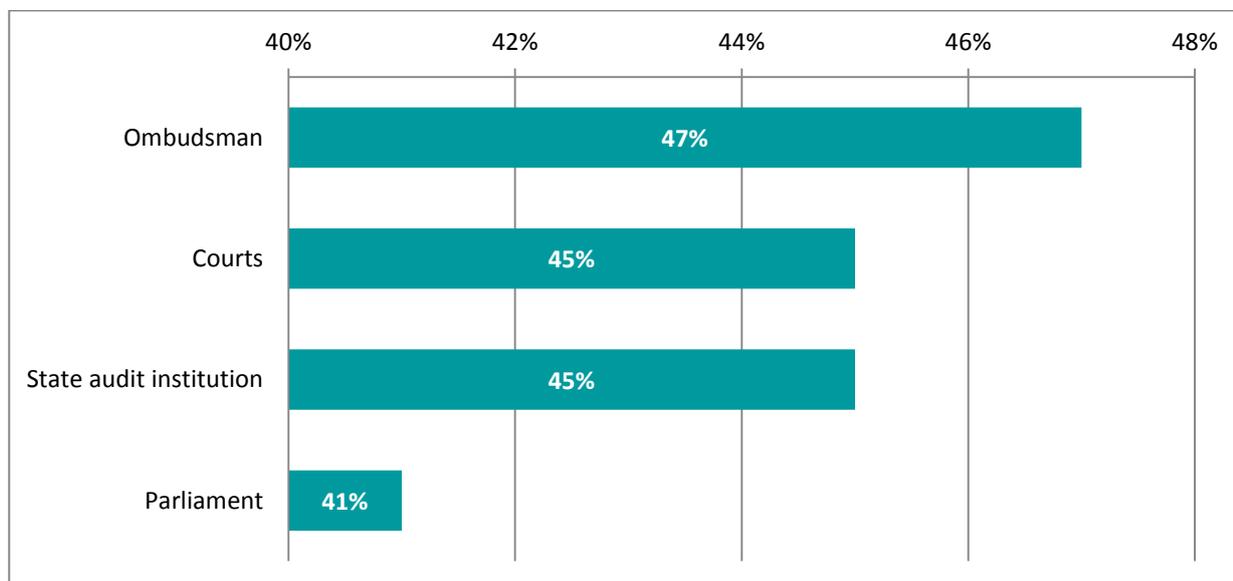
<sup>354</sup> It should be noted, however, that in 2014 the share of recommendations declared as implemented was 73%, and in 2015 83%.

<sup>355</sup> Recommendation No. 356/16 of 22 July 2016 addressed to the Ministry of Economy. The recommendation tasked the Ministry with drafting and adopting provisions to clarify discrepancies regarding work during holidays. Correspondence between the Ombudsman and the Ministry concluded on 14 February 2017 without resolving the discrepancies because, according to the Ministry, the necessary secondary regulations can be drafted only after certain amendments to the Law on Public Holidays have been prepared by the Ministry of Culture and adopted by the Assembly. Nevertheless, the recommendation was reported as fully implemented.

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trust in oversight bodies on average (45%) is higher than trust in the Government (41%). 48% of respondents believe that the Parliament, the courts, the Ombudsman and the SAI are capable of scrutinising the Government effectively<sup>356</sup>.

**Figure 3. Citizens' trust in oversight institutions**



Source: The 2017 Balkan Barometer survey, the Regional Cooperation Council.

The effectiveness of public authority scrutiny by independent oversight institutions is limited by shortcomings in the consistent implementation of Ombudsman and SAI recommendations. Therefore, the value for the indicator 'Effectiveness of scrutiny of public authorities by independent oversight institutions' is 4.

<sup>356</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC): <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>

### Effectiveness of scrutiny of public authorities by independent oversight institutions

This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.

Overall indicator value 0 1 2 3 **4** 5

Sub-indicators	Points
<b>Legal and institutional framework for oversight institutions</b>	
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution	8/10
2. Legislative safeguards for the independence and adequate mandate of the SAI	10/10
3. Legislative safeguards for the independence of courts and judges	10/10
<b>Effectiveness of oversight institutions</b>	
4. Implementation of ombudsman recommendations (%)	4/8
5. Implementation of SAI recommendations (%)	4/8
6. Perceived independence of oversight institutions by the population (%)	2/5
7. Trust in oversight institutions by the population (%)	2/5
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)	3/5
<b>Total<sup>357</sup></b>	<b>43/61</b>

**The legislative framework for oversight institutions generally meets international standards. In practice, however, the Ombudsman's independence is hampered by the influence the MoF exerts over management of its budget. Furthermore, recommendations of the Ombudsman and the SAI are implemented inconsistently.**

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

The new LAD<sup>358</sup> entered into force on 1 July 2017. It guarantees extensive rights to appeal administrative actions and omissions to the single Administrative Court of Montenegro, although the deadline for filing a complaint against an administrative act is relatively short (20 days). The Court may repeal the contested administrative act or replace it through a final ruling deciding the case on merit. The Court may act in full jurisdiction, especially if the administrative body did not issue the administrative act by the statutory deadline or failed to adopt the new decision following the Court's ruling repealing the act. If the complaint was lodged against administrative silence, the Court may order the respective body to issue an administrative act. However, it has no power to impose sanctions on administrative bodies that fail to deliver decisions within the deadline set by the Court.

Rulings of the Administrative Court may be challenged in the Supreme Court. In 2016, the Supreme Court repealed 16%<sup>359</sup> of the first-instance rulings appealed to it, illustrating the high quality of case law in the Administrative Court.

Accessibility to administrative justice is promoted by the Law on Free Legal Aid<sup>360</sup>. All typical forms of legal aid are listed in this Law, including legal representation before the court and assistance in

<sup>357</sup> Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-61=5.

<sup>358</sup> LAD, Official Gazette No. 054/16.

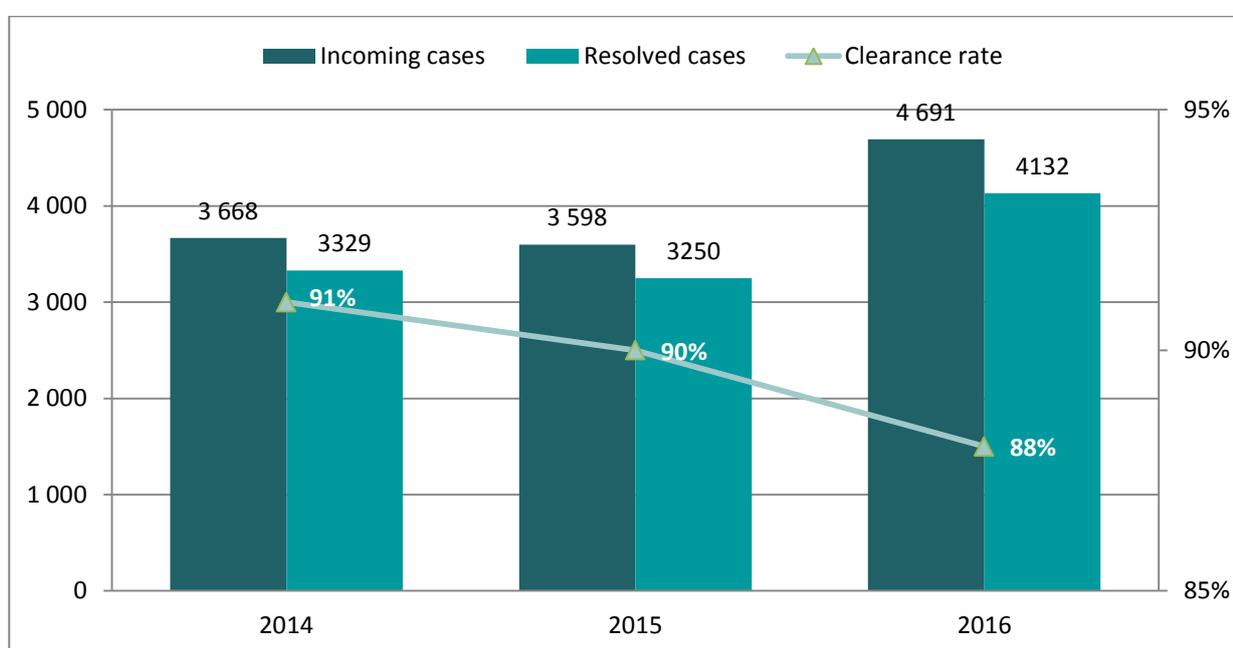
<sup>359</sup> Sixty-three of 394 first-instance judgments were repealed in 2016 according to data provided by the Government.

<sup>360</sup> Law on Free Legal Aid, Official Gazette No. 020/11, latest amendments published in Official Gazette No. 020/15.

preparing pleadings, as well as exemption from court fees. Access to legal aid is contingent upon the material situation of the applicant, and decisions on legal aid applications are made by the president of the basic court having territorial jurisdiction over the applicant's place of residence. According to the Law on Court Fees, the fee for filing a complaint to the Administrative Court is EUR 10, representing only 1.3% of average gross monthly salary in the country<sup>361</sup>. In written proceedings, however, parties to the proceedings are expected to cover their court costs regardless of the result of the case. In cases decided in favour of the applicant, court costs can be covered by the other party only when there has been an oral hearing<sup>362</sup>. This can limit access to the justice system or negatively affect the efficiency of proceedings, as oral hearings may be requested when there is no need, just to be able to claim expense compensation.

The influx of cases to the Administrative Court is on the rise, so the Court faces the challenge of preventing a significant backlog increase (Figure 4). Although three new judges were appointed in late 2015, the Court ended 2016 with 26% more unresolved cases than in 2015<sup>363</sup>, and the average duration of proceedings also increased to eight months in 2016. Still, the court has no cases pending in proceedings for more than two years<sup>364</sup>.

**Figure 4. Clearance rate in the Administrative Court (2014-2016)**



Source: Annual reports of the Administrative Court.

In the case of excessively long judicial proceedings, applicants can submit a special complaint to the president of the respective court and apply for financial compensation of EUR 300 to EUR 5 000. Applications for just satisfaction are decided by the Supreme Court<sup>365</sup>, and there were 50 submitted in 2016. Compensation was granted in approximately half of the cases according to information obtained from the Supreme Court<sup>366</sup>.

<sup>361</sup> Law on Court Fees, Official Gazette No. 076/05, latest amendments published in Official Gazette No. 073/10. Average monthly salary in January 2017 was EUR 767 (<http://www.tradingeconomics.com/montenegro/wages>).

<sup>362</sup> LAD, Article 39.

<sup>363</sup> According to the annual report of the Administrative Court, there were 2 155 unresolved cases at the end of 2015 and 2 717 at the end of 2016.

<sup>364</sup> Annual report of the Administrative Court, p. 8.

<sup>365</sup> Law on the Protection of the Right to Trial in a Reasonable Time, Official Gazette No. 011/07.

<sup>366</sup> The number of applications is published in the Annual Report of the Supreme Court for 2016 ([http://sudovi.me/podaci/vrhs/depo/depo\\_ink/15-02-2017-V%20i%20o%20r%202016.pdf](http://sudovi.me/podaci/vrhs/depo/depo_ink/15-02-2017-V%20i%20o%20r%202016.pdf)), page 47. Information about outcomes was provided during interviews with the representatives of the Supreme Court.

Working conditions in the Administrative Court are good. The electronic case management system meets the basic criteria for sophistication: it enables registration and searching of cases, and generates statistics on judges' workloads. Administrative judges are supported by legal assistants (10 assistants per 12 judges) and have access to trainings organised by the Judicial Training Centre. In the 2017 Balkan Barometer survey, 36% of respondents agreed that the judicial system is independent of political influence. This is the second-highest share among Western Balkan countries, but is still considerably below the EU average (52%)<sup>367</sup>.

Given the above factors and despite some shortcomings in the legislative framework for administrative justice and the relatively low public perception of judicial independence, the value for the indicator 'Fairness in handling of administrative judicial disputes' is 4.

Fairness in handling of administrative judicial disputes						
This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes. It covers the main criteria for an effective judiciary in efficiency, quality (including accessibility) and independence. Outcomes, in terms of case flow and public perceptions of independence are also measured.						
Overall indicator value	0	1	2	3	<b>4</b>	5

Sub-indicators	Points
<b>Legal framework and organisation of the judiciary</b>	
1. Adequacy of the legislative framework for administrative justice	4/6
2. Accessibility of administrative justice	3/4
3. Effectiveness of remedies against excessive length of proceedings in administrative cases	2/2
4. The use of an electronic case management system	1/1
5. Availability of court rulings	2/2
6. Organisation of judges handling administrative justice cases	5/5
<b>Performance of the administrative justice system</b>	
7. Perceived independence of the judicial system by the population (%)	2/5
8. Calculated disposition time of first-instance administrative cases	3/5
9. Clearance rate in first-instance administrative courts (%)	3/5
10. Cases returned for retrial by a higher court (%)	4/5
<b>Total<sup>368</sup></b>	<b>29/40</b>

**Judicial review of administrative actions is ensured by the specialised Administrative Court, which handles cases within a reasonable amount of time. The effectiveness of judicial review is limited, however, by the absence of a mechanism for ensuring enforcement of the Court's decisions. In addition, the considerable increase in the number of cases is prolonging the average duration of proceedings.**

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

The principle of state liability is enshrined in three legal acts: first, the Law on Obligations<sup>369</sup> providing for liability of a legal person for damage caused by its organs. While this provision does not explicitly

<sup>367</sup> According to the 2017 EU Justice Scoreboard ([http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm)).

<sup>368</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

<sup>369</sup> Law on Obligations of 29 July 2008, Article 166, Official Gazette No. 47/08.

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relate to state liability, it clearly covers damage caused by activities and omissions of state administration bodies as well as private bodies performing public functions. The right to seek compensation is also mentioned in the LSA and the Law on Civil Servants. The LSA stipulates state liability for “damage caused by unlawful or inaccurate work of a state administration authority”<sup>370</sup>, and the Law on Civil Servants assures that the state is responsible for damage resulting from the actions of civil servants<sup>371</sup>. However, both acts only enshrine the general principle of liability and do not provide procedural mechanisms for seeking compensation. Thus, the only comprehensive legal regime for public liability cases is the one established by the Law on Obligations.

Compensation for cases based on the Law on Obligations encompasses both direct loss and lost profits. Requests for compensation are disposed by courts of general jurisdiction according to the procedure for civil cases. A lawsuit for compensation of damage caused by an administrative act can be filed within three years from the time the relevant act is declared unlawful by the Administrative Court.

There is no mechanism for monitoring the application of provisions relating to public liability, and statistical data on court practices in this matter are not centrally collected. Thus, there is no evidence available attesting to the effectiveness of the public liability regime.

There is no mechanism for central monitoring the application of provisions relating to public liability. However, statistical data provided by the Supreme Court demonstrate that the procedural framework for public liability is applied in practice by the courts. In 2016, the first instance courts resolved 201 public liability cases awarding compensations in total value of nearly EUR 300,000. However, it was not possible to obtain data about the actual payments made to the applicants as this is not monitored by the MoF.

Owing to a lack of information on the payments made on public liability requests, the value for the indicator on ‘Functionality of public liability regime’ is 4.

Functionality of public liability regime						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Legal framework for public liability</b>	
1. Comprehensiveness of the scope of public liability	1/1
2. Coverage of the public liability regime to all bodies executing public authority	1/1
3. Non-discrimination in seeking the right to compensation	1/1
4. Efficiency and fairness of the procedure for seeking compensation	3/3
<b>Practical implementation of the right to seek compensation</b>	
5. Application of the public liability mechanism in the court in practice	3/3
6. Proportion of entitled applicants receiving payments	0/3 <sup>372</sup>
<b>Total<sup>373</sup></b>	<b>9/12</b>

<sup>370</sup> LSA, Article 7.

<sup>371</sup> Law on Civil Servants of 22 July 2011, Article 96; Official Gazette No. 39/11, latest amendments published in Official Gazette No. 16/16.

<sup>372</sup> Data not available.

<sup>373</sup> Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-12=5.

**A clear procedural framework is in place for seeking compensation for damage caused by administrative actions and omissions. However, the application of these guarantees in administrative and judicial practice is not systematically monitored.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The MPA should develop a procedure and criteria for *ex ante* analysis of proposals to create new administrative bodies and reorganise existing institutions.
- 2) The legal framework regulating internal management of the ministries should be amended to encourage delegation of ministerial decision-making powers to senior civil servants (heads of internal units), especially for decisions of a technical nature (e.g. HRM, financial management, public procurement).
- 3) The mandate of the Agency should be extended so that in cases of non-compliance with the LFAI it has the power to file a request for sanctions directly to the court without the mediation of the AI.
- 4) The Ombudsman independence should be strengthened by eliminating direct MoF influence in management of the Ombudsman institution's budget and staff.
- 5) The Judicial Council, together with the Administrative Court, should analyse the reasons for the considerable increase in incoming cases to the Administrative Court by identifying the categories of cases which have increased the most, and the public bodies against which most complaints have been submitted. Based on the analysis, the Government should identify and implement suitable measures for solving the problems in the respective bodies or administrative procedures.

**Medium-term (3-5 years)**

- 6) The Government, under the lead of the MPA, should restructure the institutional architecture of the central government around the three objectives of: a) ensuring a simplified and clarified typology of administrative bodies; b) introducing a results-oriented management scheme for all government bodies; and c) enhancing the managerial autonomy of heads of bodies subordinated to the ministries, accompanied by a mechanism for regular performance reviews.
- 7) The Government should introduce a mechanism for monitoring the implementation of provisions of the Law on Obligations, which stipulates state liability for wrongdoings of the state administration in judicial and administrative practices, in order to develop policies to improve administrative practices and reduce the number of liability cases in the future.
- 8) The effects of implementing the LAD should be assessed and, if necessary, additional measures should be identified to ensure effective enforcement of Administrative Court decisions and further streamline the procedure.



## SERVICE DELIVERY

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1.1. State of play

The Government has improved some administrative procedures in areas of service delivery such as social security, taxation and higher education. It now faces a challenge to expand the positive experience from these very few selected examples to other areas, in a context where administrative burdens on citizens and businesses are generally high.

The Government has put in place a strategic framework to make service delivery more citizen oriented. The Public Administration Reform Strategy 2016–2020 (PAR Strategy), the Strategy for the Development of Information Society until 2020 (hereafter: the Information Society Strategy 2020) and Economic Reform Programme (ERP) 2017–2019 put the focus on important issues, such as monitoring user satisfaction, developing digital service interfaces, creating interoperability between government information systems, and reducing administrative burdens. The recent creation of the Ministry of Public Administration (MPA) pools resources for digitisation and state administration reforms.

The new Law on Administrative Procedures (LAP) is well-aligned with European Union (EU) principles for good administration and contains provisions on electronic communications, one-stop shops and the “once only” principle on data. The Law had already been adopted in 2014 but only came into force in July 2017, after the enactment had been postponed twice. Harmonisation of special primary legislation with the LAP is advancing, although there is still a considerable backlog. The major challenge is harmonisation of the numerous by-laws with the LAP, which has not really started yet.

The Government has dedicated too few resources to the systematic analysis of service delivery performance and understanding of user needs. There is no system to collect service data such as transaction volumes, costs, satisfaction rates and digital take-up. Complaints data is collected but not utilised. There is no effective promotion of quality management due to a lack of capacities and human resources.

The situation is somewhat better in the area of digitisation. The digital signature is widely used by businesses, although not at all by citizens due to the high cost, low convenience and lack of relevant services. The main registers are digitised but are not yet part of a government-wide interoperability framework for automated data exchanges (except in the area of social security). The MPA co-ordinates and reviews government information technology (IT) projects, but application and compliance are not systematic.

Accessibility for people with disabilities remains a major challenge. A policy framework is in place but monitoring is underdeveloped, which makes it difficult to assess progress.

#### 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>374</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

**Key requirement: The public administration is citizen-oriented; the quality and accessibility of public services is ensured.**

Since 2015, the Government has adopted three medium-term planning documents that are relevant to administrative service delivery. A new PAR Strategy 2016–2020 was adopted in 2016<sup>375</sup>; the

<sup>374</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)

<sup>375</sup> The Government of Montenegro (2016), *The Public Administration Reform Strategy 2016–2020*, Podgorica.

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Information Society Strategy 2020 was adopted in 2016<sup>376</sup>; and the latest ERP 2017–2019<sup>377</sup> was adopted in 2017. In terms of institutional developments, the MPA has been created<sup>378</sup>, acquiring competencies from two ministries:

the Ministry for Information Society, which ceased to exist: responsibility for digital government policy and implementation, and use of IT in the public administration;

the Ministry of Interior (MoI): responsibility for policy and implementation regarding local self-government, state administration reform, and administrative simplification.

Despite these developments, the value for the indicator ‘Extent to which citizen-oriented service policies are in place and applied’ substantially decreased in 2017 due to the absence of significant and systematic service delivery reforms over the past two years. The Government has a strategic framework for service delivery in place, as well as formal rules to reduce and avoid administrative burdens, but there has been little tangible progress in actually improving service quality and reducing burdens. Improvements to administrative service delivery took place in individual sectors, e.g. social security and taxation, but these were not part of service delivery reforms across government. Administrative simplification and the regulatory guillotine have largely stagnated since 2015.

The Government continues to advance digitisation and has achieved some results, which explains a stable indicator value compared to 2015. Some business-related services benefited from digitisation of internal workflows (e.g. company registration) and user-facing interfaces (e.g. tax declarations where the share of companies that sent their tax declarations using the Internet has increased almost five times). Digital services for citizens are much less advanced, largely due to slow progress on digital signature use among individuals and due to the lack of interoperability between government information systems. The new Law on Electronic Identification and Electronic Signature was introduced on 27 April 2017<sup>379</sup>. It is aligned with the EU Electronic Identification and Signature (eIDAS) framework but the impact of this Law on digitisation is yet to be seen.

The new LAP includes major improvements and aligns well with the EU principles for good administration. It also includes improvements in the area of electronic communications and the “once only” principle. Some legislation has been harmonised with the new LAP, but there is still a backlog and a lot of secondary legislation remains unchecked for compliance. Therefore, the value of the indicator on the legal framework for good administration has not changed.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>380</sup>**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which citizen-oriented policy for service delivery is in place and applied.	5	3
	Extent to which policy and administrative preconditions for e-service delivery are applied.	3	3
	Extent to which the legal framework for good	3	3

<sup>376</sup> The Government of Montenegro (2016), *Strategy for the Development of Information Society*, Podgorica.

<sup>377</sup> [www.gov.me/en/homepage/Montenegro Economic Reform Programme](http://www.gov.me/en/homepage/Montenegro_Economic_Reform_Programme)

<sup>378</sup> Decree on the State Administration Organisation and Manner of Work of 13 January 2017, Article 27a, Official Gazette No. 003/17.

<sup>379</sup> Law on Electronic Identification and Electronic Signature of 27 April 2017, Official Gazette No 31/2017.

<sup>380</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

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	administration is in place and applied.		
<b>Quantitative</b>	Expenditure on general public services as a share of gross domestic product.	27.9% <sup>381</sup>	23.4% <sup>382</sup>
	Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards).	Not available <sup>383</sup>	Not available <sup>384</sup>
	Average time needed to acquire a personal identification document (passport or ID card) after submitting the application.	5-10 days <sup>385</sup>	5 days <sup>386</sup>
	Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years).	Not available <sup>387</sup>	Not available <sup>388</sup>
	Average number of days needed to set up a business.	10 <sup>389</sup>	10 <sup>390</sup>
	Average cost of setting up a business.	1.6% <sup>391</sup>	1.5% <sup>392</sup>
	Share of citizens who submitted paperless/electronic/digital income tax statements last year.	Not available <sup>393</sup>	0% <sup>394</sup>
	Share of companies that sent their tax declarations using the Internet.	4.6% <sup>395</sup>	23% <sup>396</sup>

<sup>381</sup> ERP, 2015. There was a mistake in the 2015 SIGMA Baseline Measurement report; the ERP shows that the correct figure for 2015 is 27.9% not 10.6%.

<sup>382</sup> ERP 2017-2019.

<sup>383</sup> No data available.

<sup>384</sup> Ditto.

<sup>385</sup> 2015 information provided by the MoI.

<sup>386</sup> The Ministry of Interior (2017) *Planned and realized activities from Work Program of the Government of Montenegro for 2017*, p. 5.

<sup>387</sup> No data available.

<sup>388</sup> Ditto.

<sup>389</sup> World Bank (2015) *Doing Business* report.

<sup>390</sup> World Bank (2017) *Doing Business* report.

<sup>391</sup> Percentage of income per capita, according to the World Bank (2015) *Doing Business* report.

<sup>392</sup> Percentage of income per capita, according to the World Bank (2017) *Doing Business* report.

<sup>393</sup> No data was received from the country on annual personal income tax declarations.

<sup>394</sup> Personal income tax declarations could not be submitted digitally.

<sup>395</sup> Ministry of Finance (MoF) data. In 2014, 946 of a total 20 557 annual corporate income tax declarations were sent electronically.

<sup>396</sup> Tax Administration data. In 2016, 5 015 of a total 21 876 annual corporate income tax declarations were sent electronically.

## 2. ANALYSIS

This analysis covers four Principles for the service delivery area grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>397</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

**Key requirement: The public administration is citizen-oriented; the quality and accessibility of public services is ensured.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### **Analysis of Principles**

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

The Government has achieved some important service delivery improvements in recent years. A Social Welfare Information System (SWIS, also called "Social Card") was launched with support from the United Nations Development Programme. An electronic data exchange infrastructure has helped to reduce the number of paper-based proofs that applicants need to submit (e.g. on personal details, income, property, social and family situation, existing benefits). It has also helped to free up resources and build capacities for the core business of the Ministry of Labour and Social Affairs<sup>398</sup>. The Government has launched a few successful digital services on the portal [www.eUprava.me](http://www.eUprava.me) (online applications for student loans and graduate traineeships). Moreover, the Tax Administration has been providing online declaration channels for businesses since 2014. Their use is growing and the increase in efficiency helped to improve the country's Ease of Doing Business score in the Doing Business 2017 report<sup>399</sup> in the category "Paying Taxes"<sup>400</sup>. However, it is not possible to declare and pay personal income taxes online. Registration of a personal vehicle requires the submission of more than one form,

<sup>397</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>398</sup> More detail is available at: [www.me.undp.org/content/montenegro/en/home/operations/projects/socialinclusion/SWIS.html](http://www.me.undp.org/content/montenegro/en/home/operations/projects/socialinclusion/SWIS.html).

<sup>399</sup> World Bank (2017) Doing Business report.

<sup>400</sup> In 2017 the "distance-to-frontier" (DTF) score for "Paying Taxes" was 80, up from 65 in 2015. The DTF score shows how far on average an economy is from the best performance achieved by any economy on each Doing Business indicator. The measure is normalized to range between 0 and 100, with 100 representing the frontier.

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which cannot be done at the service counter and often entails visiting a separate building. No part of the service is available digitally.

These improvements are moving in the right direction, but some major challenges are hampering the further spread of good practice. The 2017 Balkan Barometer survey finds that the general level of satisfaction with public services is rather low among both citizens (42%) and businesses (34%). Most administrative services remain paper-based and require multiple procedures and fees.

The Government has adopted a new PAR Strategy 2016-2020, which includes a dedicated chapter on better service delivery. It envisages activities to measure user satisfaction, introduce quality management, reduce administrative burdens, create new digital services and develop a government-wide interoperability framework.

The Information Society Strategy 2020 has dedicated chapters on e-government and on e-inclusion. The activities are generally well aligned with those of the PAR Strategy, covering digital services, interoperability, digital signature and open data.

The ERPs (the latest covering 2017-2019)<sup>401</sup> include measures for digitising land registration and the issuing of construction permits and developing electronic invoicing to address the informal economy<sup>402</sup>. There is little evidence of synergies being attempted or realised with other activities on interoperability or digital services creation.

The newly created MPA is responsible for monitoring the implementation of the PAR and Information Society 2020 Strategies. As such, the MPA is taking the role of a central provider of assistance on service delivery improvements, on monitoring and on digital transformation.

However, the MPA's capacity to centrally monitor and improve service quality is limited. A major problem is that the strategies outlined above have few suitable benchmarks or indicators to measure the impact of reforms. Most objectives and indicators are activity-based (e.g. to conduct satisfaction surveys) or measure intermediate results (e.g. number of e-services). The quality of benchmarking and monitoring suffers from the fact that the Government has virtually no mechanisms to measure performance or users' perception of service delivery.

Since 2015 progress on administrative simplification has been limited. A regulatory guillotine was launched in 2012 and most activities had been implemented by 2015. Some measures are still being implemented and monitored quarterly by the Ministry of Finance (MoF). However, there is no evidence of the systematic monitoring of results and impacts since 2015<sup>403</sup>, which makes it hard to evaluate the overall impact of the guillotine. The Council for the Improvement of Business Environment, Structural and Regulatory Reform (SRR), responsible for the implementation and monitoring of the guillotine, has been dormant for most of 2015 and 2016<sup>404</sup> and is due to be restructured in 2017<sup>405</sup>.

A campaign called "No Barriers! So Business Doesn't Wait" ("*Bez Barijera*") was launched to engage the public more proactively in administrative simplification. The campaign's impact has been limited as only 230 inputs have been received since November 2015<sup>406</sup> via the online platform<sup>407</sup>. It is unclear at

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<sup>401</sup> Available at [www.gov.me/en/homepage/Montenegro\\_Economic\\_Reform\\_Programme](http://www.gov.me/en/homepage/Montenegro_Economic_Reform_Programme).

<sup>402</sup> ERP 2017-2019, Measures 11 and 12.

<sup>403</sup> Implementation Report of the ERP 2017-2019. Interviews with business representatives support the view that the regulatory guillotine achieved some progress over the 2012-2015 period, but no major developments since. The SRR Council's website ([www.srr.gov.me/srr](http://www.srr.gov.me/srr)) has been inactive since December 2015; and its sub-section on the regulatory guillotine has been inactive since June 2012 ([www.srr.gov.me/rubrike/Giljotina-propisa](http://www.srr.gov.me/rubrike/Giljotina-propisa)).

<sup>404</sup> State Audit Institution (November 2016), *Effects of the activities of the Council for Improvement of Business Environment, Structural and Regulatory Reform*, SAI No. 40116/16-024-1363/16.

<sup>405</sup> According to an interview with the MoF.

<sup>406</sup> MoF (March 2017). The report on business barriers identified through the 'No Barriers! So Business Doesn't Wait' campaign.

<sup>407</sup> [www.bezbarijera.me](http://www.bezbarijera.me)

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this point how the resulting recommendations will be implemented, considering that the SRR Council, as formal addressee, is being restructured.

An additional challenge for administrative simplification has been the ineffectiveness of Regulatory Impact Assessments (RIAs). Formal instructions<sup>408</sup>, a manual and templates have been in place since 2012, covering both primary and secondary legislation. However, there has been very little practical application of central guidance. Administrative burdens are neither systematically identified, nor assessed; the standard cost model is not usually applied because ministries lack capacities<sup>409</sup>. Business and civil society representatives concur on the poor compliance and quality of RIAs<sup>410</sup>. RIAs have therefore not been an effective tool to prevent new administrative obstacles from appearing.

The policy framework for citizen-oriented service delivery is in place with some shortfalls in monitoring mechanisms. However, the public perception of services provided to citizens is low, and this was supported by the deficiencies in the provision of services assessed in the course of this study. Therefore, the value for indicator on 'Citizen-oriented service delivery' is 2.

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<sup>408</sup> Instructions about the Development of Regulatory Impact Assessment reports, adopted by the Ministry of Finance on 10 February 2012.

<sup>409</sup> Challenges highlighted in PAR Strategy 2016-2020. Interviews with Ministry of Finance.

<sup>410</sup> Interviews with business representatives and civil society.

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Citizen-oriented service delivery						
This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception-based metrics.						
Overall indicator value	0	1	<b>2</b>	3	4	5

Sub-indicators	Points
<b>Policy framework for citizen-oriented service delivery</b>	
1. Existence and extent of application of policy for service delivery	6/8
2. Existence and extent of application of policy for digital service delivery	4/8
3. Existence of central co-ordination for digital government projects	2/4
4. Established policy for administrative simplification	10/12
<b>Performance of citizen-oriented service delivery</b>	
5. Perceived quality of public service delivery by citizens (%)	2/6
6. Renewing personal identification document	1.5/6
7. Registering a personal vehicle	0/6
8. Declaring and paying personal income taxes	0/6
9. Perceived quality of public service delivery and administrative burdens by businesses (%)	1.5/6
10. Starting a business	5/6
11. Obtaining a commercial construction permit	3/6
12. Declaring and paying corporate income taxes	4/6
13. Declaring and paying value added taxes	2/6
<b>Total<sup>411</sup></b>	<b>41/86</b>

The Government has achieved some service delivery improvements, notably in the administration of social security benefits. However progress on administrative simplification has been modest since 2015 and administrative procedures require paper-based submission of information already available to the administration. Recognising these challenges, the Government has developed a strategic framework for citizen-oriented service delivery that is of good general quality, but these are major challenges related to its implementation.

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

A new version of the LAP was adopted in 2014 which was initially planned for enactment in January 2016, then postponed to July 2016 and eventually enacted in July 2017. The new LAP<sup>412</sup> introduces major improvements in order to align it with EU practices and principles for good administration and better service delivery. Most of these were present in the previous LAP (and its amendments) but the new LAP introduces more details to support its wider practical application and expand citizens' rights with regard to the administration<sup>413</sup>.

<sup>411</sup> Point conversion ranges: 0-14=0, 15-28=1, 29-42=2, 43-56=3, 57-70=4, 71-86=5.

<sup>412</sup> LAP of 16 December 2014, Official Gazette No. 01-1252/2.

<sup>413</sup> Regional School of Public Administration (2016), *Legal Remedies in Administrative Procedures in Western Balkans*.

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Provisions for electronic communications and electronic submission of requests are much more detailed in the new LAP<sup>414</sup> and one-stop shops for citizen services are foreseen<sup>415</sup>. The “once only” principle is substantially strengthened<sup>416</sup> compared to the previous provision<sup>417</sup>, obliging institutions to obtain data or information *ex officio* from within the administration. There are, however, no specific time limits for *ex officio* procedures, nor any misdemeanour sanctions for failure to comply.

Implementation of the modern features poses challenges. The “once only” principle and one-stop shops depend on interoperable registers. While the quality of some important registers has improved, they are not yet part of a national interoperability framework. Which means the Government has no means to efficiently exchange data *ex officio* via digital channels.

Harmonisation of existing legislation with the new LAP is another challenge. The MPA has identified 90 laws as deviating from the new LAP; amendments have been adopted by the Parliament for almost half (40) of those laws, amendments to the remaining 50 laws are still in preparation.<sup>418</sup> Harmonisation has not covered the large body of secondary legislation so far, which is problematic because by-laws define many administrative procedures, requirements, time limits and fees.

According to the 2017 Balkan Barometer survey, people perceive the efficiency of administrative procedures quite positively<sup>419</sup>. Most of the respondents (64%) who have been in contact with central government services either totally agree or tend to agree with the statement “Administrative procedures in public institutions are efficient”. At the same time, the very high share (45%) of administrative acts annulled by the Administrative Court in relation to the total number of filed lawsuits demonstrates the problems related to the quality of administrative procedures<sup>420</sup>.

The Open Government Partnership (OGP) has not been used as a driver for good administration or better service delivery. The Government sent a formal letter of intent as early as 2011 and established an Action Plan for the 2011-2012 period. No notable follow-up in the form of commitments, activities or independent reviews has taken place. In 2016, the lack of commitment triggered a formal procedure by the OGP to reconsider the country’s status within the OGP<sup>421</sup>.

Open government data is identified as a strategic lever for good administration and better public services in the Information Society Strategy 2020. However, there is a lack of specific activities and objectives beyond the abstract commitment. There is little evidence for proactive co-operation or collaboration between government and other sectors in this area.

The legislative framework is in place and adequate although there is a high level of appeals to decisions of administrative bodies made by the Administrative Court. The value for the indicator ‘Fairness and efficiency of administrative procedures’ is 4.

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<sup>414</sup> LAP, Articles 59 and 63.

<sup>415</sup> *Idem*, Article 43,

<sup>416</sup> *Idem*, Articles 13 and 105.

<sup>417</sup> LAP of 28 October 2003, Official Gazette No. 60/2003, Article 127.

<sup>418</sup> MPA (March 2017), *Information on the Completeness of the Conditions for the Beginning of the Application of the New Law on Administrative Procedure*.

<sup>419</sup> Sixty-four percent of the respondents who have been in contact with central government services either totally agree or tend to agree with the statement: “Do you agree that the administrative procedures in public institutions are efficient?”

<sup>420</sup> MPA, Indicator Passports for the PAR Strategy, 2016, p. 6.

<sup>421</sup> <http://institut-alternativa.org/vlada-odustala-od-ogp-a/?lang=en>.

Fairness and efficiency of administrative procedures						
The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications.						
Overall indicator value	0	1	2	3	<b>4</b>	5

Sub-indicators	Points
<b>Legal framework for administrative procedure</b>	
1. Existence of legislation on administrative procedures of general application	3/3
2. Adequacy of law(s) on administrative procedures to ensure good administration	7/7
<b>Fairness and efficiency of administrative procedures</b>	
3. Perceived efficiency of administrative procedures in public institutions by citizens (%)	3/4
4. Repeals of or changes to decisions of administrative bodies made by the administrative courts (%)	0/4 <sup>422</sup>
<b>Total<sup>423</sup></b>	<b>13/18</b>

**The new LAP is largely in alignment with the EU principles for good administration. It contains important provisions on electronic communications, one-stop shops and the “once only” principle. Harmonisation of special legislation with the LAP has advanced for primary legislation, but a major challenge remains with the harmonisation of secondary legislation. Neither the OGP nor open data are being leveraged as drivers for good administration and better service delivery.**

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

There is no central monitoring of user perception or service delivery performance. The MPA has neither a formal mandate nor the mechanisms to carry out this task. There is no common benchmark for what constitutes quality in service delivery and there is no system to regularly collect and analyse basic data like transaction volumes, costs, satisfaction rates, and channel choices.

There is no system to monitor and compare institutions’ performance. Some individual institutions are introducing quality management (e.g. ISO<sup>424</sup> standards) or conducting customer satisfaction surveys. These mechanisms are being handled autonomously without central support or harmonisation of methodology. The MPA collects data on the numbers of formal complaints received by line ministries. The data has little detail (e.g. no information about the reason for complaint or the response times) and the latest report adopted by Government dates back to 2015<sup>425</sup>.

The void left by the absence of official data on user satisfaction and service delivery performance is partly filled by non-government agents. Institut Alternativa, for example, has conducted satisfaction surveys and mystery shopper visits to public administration bodies<sup>426</sup>; it also launched a website<sup>427</sup> to collect evidence about administrative obstacles and unfair treatment. However, such efforts cannot compensate for the fact that the Government does not produce such data of its own.

<sup>422</sup> MPA, Indicator Passports for the PAR Strategy, 2016, p. 6.

<sup>423</sup> Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

<sup>424</sup> International Organization for Standardization.

<sup>425</sup> MoI (2015), report on the status of deciding on administrative matters for 2014.

<sup>426</sup> IPSOS (2017), Perception of Public Administration, commissioned by Institut Alternativa; and IPSOS (2017), Survey on Provision of Public Services in eight Montenegrin Municipalities, commissioned by Institut Alternativa.

<sup>427</sup> <http://mojauprava.me>

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Official performance monitoring is better for digital services. The MPA regularly publishes<sup>428</sup> reports about online services accessed via the government portal<sup>429</sup>. The reports do not, however, analyse the popularity of digital services available outside the online services portal, e.g. online tax declarations (Tax Administration) and online requests for birth, citizenship or residence certificates, and address changes (Mol).

The quality of main registers is good overall, but the digital registers are not leveraged to automatically exchange data and reduce administrative burdens. The Law on Electronic Governance<sup>430</sup> foresaw the creation of a single infrastructure for electronic data exchange by July 2016. That target was not achieved and the MPA is planning to pilot automated data exchanges around two services in 2017. A national interoperability framework has been developed but implementation is not yet advanced enough to support the implementation of the “once only” principle set by the new LAP.

Progress on interoperability has only been achieved in the social security sector. The SWIS has helped to make key registers interoperable and to exchange data about social security beneficiaries across various state registers, but wider expansion of the interoperability framework to cover other sectors and services hinges on a number of challenges, which are outlined in the following paragraphs.

The legal framework for the digital signature is in place but mostly adopted just by business users. The Law on Electronic Identification and Electronic Signature<sup>431</sup> establishes the qualified digital signature as equivalent to a handwritten signature. The Law is aligned with the eIDAS framework.

More than 14,000 digital signature certificates have been issued, virtually all of them to legal entities like businesses and associations. Individuals face a very high cost of EUR 110 for a certificate that is valid for three years but supports only a few services and requires a physical token for authentication.

The framework around personal data protection is only partly suited to an increase in the electronic exchange of and access to personal data contained in registers. A Law on Personal Data Protection<sup>432</sup> is in place and the Agency for Personal Data Protection and Free Access to Information exists. The Agency has not, however, been asked to contribute to the development of the interoperability framework, and this represents a missed opportunity to improve the governance of, and citizen confidence in, personal data access by the administration.

The MPA has the formal mandate to co-ordinate and steer digital projects across government, but its capacities have so far been limited. The former Ministry for Information Society and Telecommunications (now part of the MPA) was tasked to create a database of all registers and information systems across government by July 2015<sup>433</sup>. The database holds information about 215 state registers, but does not cover local administrations<sup>434</sup>. A formal review mechanism for government IT projects obliges line ministries to report the initiation of any new information system<sup>435</sup>. The application and impact of this review process is not systematic, as illustrated by major developments that have not been subject to central review, e.g. the SWIS or the Tax Administration’s digital services.

Electronic payments or direct payments at the point of service are not available. Virtually all payments to the administration require a separate procedure – typically payment at the post office or bank – followed by manual submission of proof of payment. The situation is the same for online services – electronic payments are not possible at this point, which limits the possibilities for end-to-end digital

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<sup>428</sup> MPA (March 2017), *Informacija o Portalu e-uprave za 2016. godinu*.

<sup>429</sup> [www.eUprava.me](http://www.eUprava.me)

<sup>430</sup> Law on Electronic Government (2014) of 16 July 2014, Official Gazette No. 32/2014.

<sup>431</sup> Law on Electronic Identification and Electronic Signature of 27 April 2017, Official Gazette No 31/2017.

<sup>432</sup> Official Gazette Nos. 79/2008 and 70/2009.

<sup>433</sup> Law on Electronic Government (2014), Articles 15 and 27.

<sup>434</sup> Official data received during interview with the MPA.

<sup>435</sup> Law on Electronic Government (2014), Article 15.

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transactions. Any administrative procedure requiring payment therefore entails an additional procedure for citizens and an additional paper record for the administration.

The lack of central monitoring of service delivery performance and common standards for public service delivery, along with the limited use of quality management and user engagement tools, results in a value of 1 for the indicator 'Existence of enablers for public service delivery'.

Existence of enablers for public service delivery						
This indicator measures the extent to which citizen-oriented service delivery is being facilitated by the existence and implementation of enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using those tools and technologies to improve the design and delivery of public services.						
Overall indicator value	0	<b>1</b>	2	3	4	5

Sub-indicators	Points
<b>Central and shared mechanisms to better enable public service provision</b>	
1. Central monitoring of service delivery performance	0/3
2. Interoperability infrastructure in place	1/3
3. Existence of common standards for public service delivery	0/3
4. Legal recognition and affordability of electronic signatures	2/3
<b>Performance of central and shared mechanisms for public service delivery</b>	
5. Use of quality management tools and techniques	0/4
6. Adoption of user engagement tools and techniques	0/4
7. Interoperability of basic registers	2/4
<b>Total<sup>436</sup></b>	<b>5/24</b>

**The Government has made little use of enabling tools to improve service delivery. There is no central mechanism to monitor user perceptions or service delivery performance or to assist line ministries in the transformation of service delivery arrangements. The situation is somewhat better around digital services where some data is collected and more central assistance is available. But there is no government-wide interoperability framework yet to support further digitisation and simplification of administrative procedures.**

**Principle 4: The accessibility of public services is ensured.**

Basic administrative services for citizens are relatively well spread, e.g. the MoI issues personal identification documents via its own offices plus the National Post's network of offices. Mystery shopper analysis finds that the service is delivered satisfactorily in most municipalities<sup>437</sup>. Business registration is currently only possible in the capital city, which can pose a challenge to small businesses. The Tax Administration is planning to make the service available in local branches.

Few one-stop shops currently exist even if the new LAP explicitly promotes their establishment<sup>438</sup>. Business registration is relatively simple at the Central Registry of Business Entities of the Tax Administration even though not all procedures can be handled at the one-stop shop<sup>439</sup>. Social security

<sup>436</sup> Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

<sup>437</sup> IPSOS (2017), Survey on Provision of Public Services in eight Montenegrin Municipalities, commissioned by Institute Alternativa.

<sup>438</sup> LAP, Article 43.

<sup>439</sup> <http://www.doingbusiness.org/data/exploreeconomies/montenegro#starting-a-business>

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centres act as one-stop shops for benefits applications thanks to the SWIS. There, too, some additional documents may be required in specific cases, e.g. marriage or divorce certificates on paper because registers at local courts are not connected to the SWIS.

The online portal [www.eUprava.me](http://www.eUprava.me) is a convenient entry point for information, but not a one-stop shop for services. Only two services are of significance since they constitute almost 100% of transactions: student loan and graduate traineeship applications<sup>440</sup>. Use of the portal is still low but growing: at the end of 2016 the portal had 35 000 registered users, representing around 5% of the adult population<sup>441</sup>. Survey data shows that only 16% of people that needed to get in contact with the public administration in the previous 12 months visited a government website.<sup>442</sup>

Outside the online portal a few other digital services are available. Citizens can request certificates on birth, citizenship and residence at [www.dokumenta.me](http://www.dokumenta.me), and they can change their residence at [www.biraci.me](http://www.biraci.me). It has been possible to declare corporate income tax (CIT) and value added tax (VAT) declarations online since 2014 using the digital signature. In 2016, around 23% of businesses used the online channel, and since 2017 it is mandatory for CIT declarations<sup>443</sup>. Personal income taxes cannot yet be declared online.

Online accessibility of government information is generally good. Government websites are relatively harmonised with respect to visual elements, structure and content presentation. The online services portal [www.eUprava.me](http://www.eUprava.me) is easy to access using mobile devices, the government portal [www.gov.me](http://www.gov.me), less so. Government websites have only 13 accessibility errors on average. However, not all information is updated regularly and there is a lack of information in more accessible formats than PDFs.

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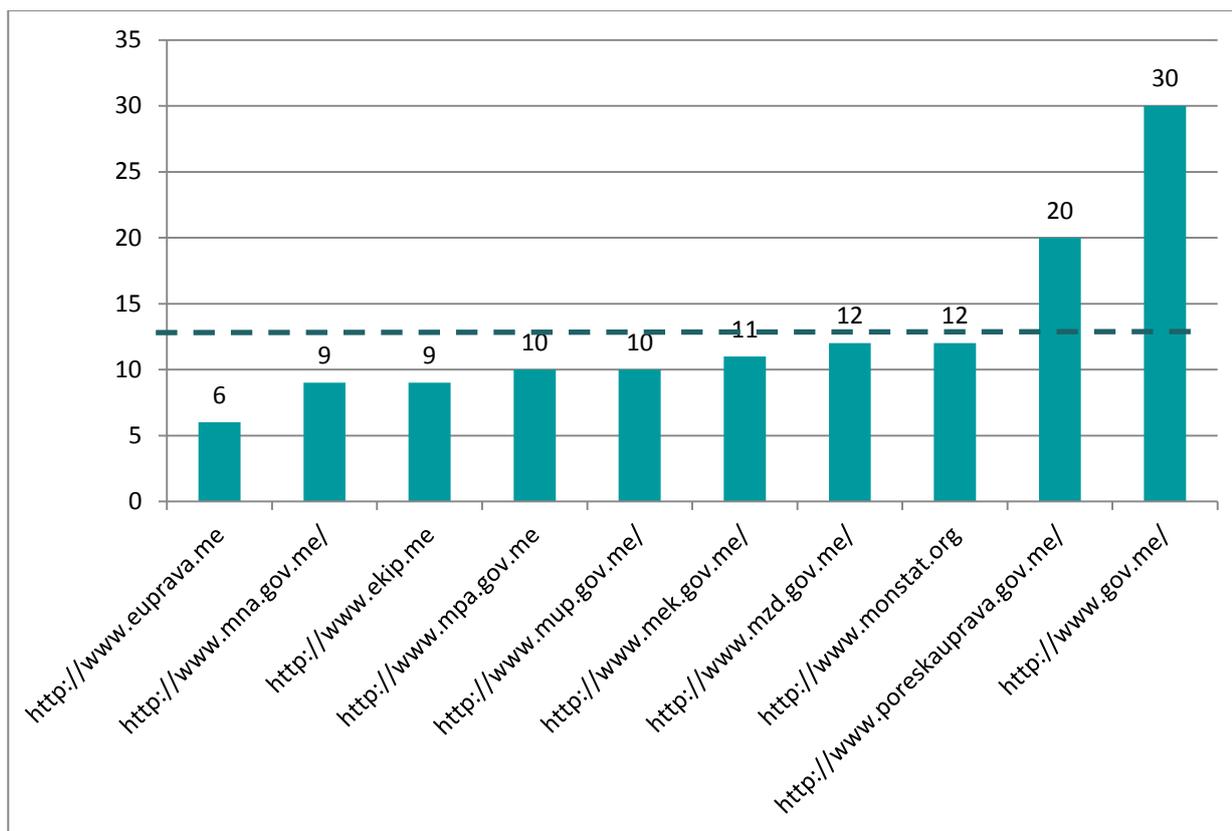
<sup>440</sup> MPA (2017), *Information on the e-Government Portal for 2016*.

<sup>441</sup> *Ibid.*

<sup>442</sup> IPSOS (2017), *Perception of Public Administration*, commissioned by Institute Alternativa.

<sup>443</sup> Information provided during an interview with Tax Administration.

**Figure 1. Number of content accessibility problems on government websites, 2017**



Source: SIGMA test of compliance with Web Content Accessibility Guidelines (WCAG), February 2017.

A comprehensive policy framework is in place for access to services for people with disabilities. Following ratification of the Optional Protocol of the Convention on the Rights of People with Disabilities in 2009, the Government adopted a general Law on Prohibition of Discrimination<sup>444</sup> and a specific Law on Prohibition of Discrimination of Persons with Disabilities<sup>445</sup>. Sign language, however, is not officially recognised. Several strategies are currently being implemented: the Strategy for Integration of Persons with Disabilities 2016-2020, the Strategy for the Protection of Persons with Disabilities, Discrimination and Promotion of Equality (2017-2021), and Information Society Strategy 2020, which contains a dedicated chapter on “e-inclusion”<sup>446</sup>.

A major challenge is implementation and monitoring. There has been some progress on reducing physical access barriers to premises – legal obligations for new buildings are stringent<sup>447</sup> and the Government has started retro-fitting some existing buildings to make them more accessible. Despite such progress as is outlined in action plans and analysis<sup>448</sup>, there is no solid evidence to enable an assessment of the current compliance of government buildings with accessibility standards. Mystery shopper analysis reveals that levels of accessibility vary vastly across the administration<sup>449</sup>.

<sup>444</sup> Official Gazette Nos. 46/2010, 40/2011, 18/2014.

<sup>445</sup> Official Gazette No. 39/2011.

<sup>446</sup> The MPA also developed a guide to make PDF, Word and Excel documents accessible for people with visual impairments: MPA (2017), *Guidelines for Creation of Electronic Documents in Compliance with e-accessibility*.

<sup>447</sup> Law on Spatial Development and Construction (amended in 2013); Regulation on Detailed conditions and methods of adjusting facilities for access to persons with reduced mobility and persons with disabilities (amended in 2014).

<sup>448</sup> Ministry of Sustainable Development and Tourism (2014), *Action Plan. Adapting Objects in Public Use for Access, Movement and Use of Reduced Mobility Persons for 2014*; Ministry of Sustainable Development and Tourism (2016), *Analysis of the Objects of the State Administration Authority from the Aspect of Accessibility of Persons with Reduced Relativity and Persons with Disabilities*.

<sup>449</sup> IPSOS (2017), *Survey on Provision of Public Services in eight Montenegrin Municipalities*, commissioned by Institute Alternativa.

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The Government generally collects little data of its own to monitor accessibility to public services or to assess the impact of policies. There is no functioning complaints mechanism<sup>450</sup> and no mechanism to keep records of incidents of discrimination. National statistics in this area are mostly outdated (e.g. prevalence of disabilities dates from 2011) and have a little detail. The lack of good monitoring is underlined by non-government organisations<sup>451</sup>.

According to the 2017 Balkan Barometer survey the perceived satisfaction with public services is rather low (34%). Less than half (45%) of the respondents ranked highly the accessibility to digital public services. A much higher share of the respondents is satisfied with the time (75%) and cost (66%) of accessing public services.

Due to the lack of policies and statistical data in this area, the value for the indicator 'Accessibility of public services' is 2.

Accessibility of public services						
This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizen perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Policy framework for accessibility</b>	
1. Existence of policy for the accessibility of public services	1/3
2. Availability of statistical data on accessibility to public services	1/3
3. Adequacy of policy framework for public service users with special needs	1/4
4. Existence of common guidelines for government websites	2/2
<b>Government performance on accessibility</b>	
5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)	2/3
6. Perceived satisfaction with public services across the territory by population (%)	1/3
7. Perceived accessibility of digital public services by population (%)	1/3
8. Perceived time and cost of accessing public services by population (%)	2.5/3
<b>Total<sup>452</sup></b>	<b>11.5/24</b>

**The Government has utilised one-stop shops and digitisation to improve access to selected services like business registration, taxation and social security. There is still a large body of services that would benefit from easier access, created through, for example, better digitisation. Information is in general well presented on government websites that largely comply with international accessibility standards. The policy framework for accessibility of services for people with disabilities is quite comprehensive, but the Government faces major challenges in its implementation.**

<sup>450</sup> The Ombudsman office received only six complaints regarding access for people with disabilities during 2016.

<sup>451</sup> MANS (The Network for Affirmation of the NGO Sector [2017]), "Rights of persons with disabilities" in *Report on Implementation of Action Plan for Chapter 23*.

<sup>452</sup> Point conversion ranges: 0–4=0, 5–8=1, 9–12=2, 13–16=3, 17–20=4, 21–24=5.

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government, under the co-ordination of the MPA, should intensify harmonisation of existing legislation with the new LAP. In addition to laws, special attention should be given to harmonising secondary regulations so that the general principles of the LAP can effectively be implemented in all administrative procedures.
- 2) The MoF in collaboration with the civil society and the businesses should continue to systematically collect suggestions for decreasing the administrative burden currently placed on citizens and businesses. This should lead to the development and implementation of a government-wide road map for administrative simplification.
- 3) The MoF through its scrutiny of RIA reports should ensure that the creation of additional administrative burdens with the proposed adoption of new legislation is detected in time and, whenever possible, avoided.
- 4) The MPA should prepare a realistic roadmap for improving the interoperability of registers at the state and local levels, submit it to the Government for adoption and start co-ordinating its implementation.
- 5) The Government, under the co-ordination of the MPA, should take steps to ensure that administrative fees can be paid at the point of service, using card-based or mobile-based payment options.
- 6) The Government should reduce the cost of the certificates for digital signature for individuals as well as develop relevant and well-designed electronic services for increasing the use of digital signature among the general population.

**Medium-term (3-5 years)**

- 7) The MPA should establish a central policy framework for quality management and take a more active role in promoting different quality management tools (e.g. the Common Assessment Framework (CAF), European Foundation for Quality Management (EFQM) or ISO 9001).
- 8) The MPA should gradually start monitoring user satisfaction with delivery of public services by initially collecting basic data for each service, such as transaction numbers, complaint volumes and numbers of online users. User satisfaction data at the level of individual services, rather than at that of administrations or institutions, should be added later.



## PUBLIC FINANCIAL MANAGEMENT

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-JUNE 2017

#### 1.1. State of play

The budgetary position in Montenegro has worsened in recent years. Despite the introduction of a new organic budget law in 2014<sup>453</sup> that set limits of 3% of gross domestic product (GDP) on the annual deficit and 60% of GDP on public debt, these targets have not been met. In addition, the lack of solid medium-term fiscal planning remains an issue. Debt levels are elevated and continue to rise, posing a problem for the country in the future, as debt repayment may crowd out productive expenditure. A retrenchment programme aimed at addressing these factors was introduced in December 2016. During the last two years, the budget timetable was not observed, and the medium-term budgetary frameworks (MTBFs) were not prepared on time.

The operational framework for financial management and control (FMC) and internal audit (IA) is in place. The main legislation is the Law on Public Internal Financial Control System<sup>454</sup> (PIFC Law), supported by secondary legislation on both FMC and IA.

Implementation of FMC and IA is lagging, although it has gradually increased over the years. Not all beneficiaries of public funds (BPFs) fully follow their legal obligations regarding FMC and IA, and the framework for managerial accountability (FMA) as well as reporting on major investment projects and irregularities are not yet fully developed. Improvements are underway on audit planning, compliance with international audit standards and independence of IA units, as well on implementation of IA recommendations by BPFs.

The Public Procurement Law (PPL)<sup>455</sup> is largely aligned with the European Union (EU) *acquis* on public procurement, although the 2014 Directives have not yet been fully transposed. Regulations on public-private partnerships (PPPs)/concessions have not been harmonised with the Directives, and further alignment is therefore required. The institutional set-up for public procurement is comprehensive, except for concessions and PPPs. The Public Procurement Administration (PPA), which is the main policy-making body in practice, has developed the public procurement strategy, drafted primary legislation, and issued secondary legislation.

As a separate, autonomous and independent administrative review body, the State Commission for the Review of Public Procurement Procedures (SC) rules on complaints against procurement decisions made by contracting authorities. The Decisions of the SC are final, although it is possible to file appeals against its decisions in the Administrative Court.

The transparency of the public procurement system is ensured by the obligation to publish all documents relevant to tenders on the Public Procurement Portal (PP Portal) of the PPA. Procurement officials in the 624 contracting authorities and entities<sup>456</sup> are obliged to pass a professional examination, which is organised by the PPA. No centralised purchasing body has been established, but some authorities carry out joint procurement on an *ad hoc* basis.

The approach of many stakeholders to public procurement is for the most part very formalistic, which has resulted in a large number of complaints to the SC, causing delays and increasing the costs of public procurement.

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<sup>453</sup> Law on the Budget and Fiscal Responsibility 2014, Official Gazette No. 20/14.

<sup>454</sup> Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

<sup>455</sup> Official Gazette Nos. 42/11, 57/14 and 28/15.

<sup>456</sup> Situation at the beginning of 2017. These contracting authorities and entities are listed on the following website: <http://www.ujn.gov.me/lista-obveznika-za-2017-godinu/>.

The Supreme Audit Institution (SAI) in Montenegro has a legal basis that meets international standards, and its work is regularly published. Institutional development and the application of audit standards, however, still need to be improved.

## 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>457</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

The Public Finance Management (PFM) Reform Programme 2016-2020<sup>458</sup>, adopted in November 2015, is still in the initial stages of implementation.

The new Law on the Budget and Fiscal Responsibility (BFR Law), enacted in April 2014, has been the basis for budget formulation since 2015. It sets ceilings of 3% of GDP for the budget deficit and 60% of GDP for public debt. Despite this, the budget deficit increased from 0.7% of GDP in 2014 to 3.8% in 2016<sup>459</sup>, mainly due to the impact on public expenditure of the cost of the Bar-Boljare highway.

The debt level has also increased and stands at an estimated 67% of GDP in 2016<sup>460</sup>. The Government endorsed a retrenchment programme in December 2016<sup>461</sup>. It is now estimated that the deficit for 2017 will be 6.1% of GDP and the debt will be 71.6% of GDP, with the deficit reducing to 3.8% of GDP by 2019, but public debt climbing to over 77% of GDP by that year<sup>462</sup>. It is estimated that, without the retrenchment, the deficit for 2017 would be 9% of GDP.

Internal control has been enforced in the entire public sector, with the 2015 Government decision whereby all users of budget funds at the central level and all legal entities in which the state has majority ownership are required to implement the PIFC Law.

In December 2015, the Government adopted the Strategy for the Development of the Procurement System 2016-2020 (the Strategy). On 23 February 2016, a co-ordinating body for monitoring the implementation of the measures of the Strategy was established by the Ministry of Finance (MoF)<sup>463</sup>. A new set of amendments to the PPL was adopted by the Parliament on 29 June 2017 and came into force upon its publication, but the corresponding secondary legislation had not been adopted by the time the Law was published<sup>464</sup>.

In 2015-2016 the SAI worked on developing its capacity with regard to the new legal obligation of providing an annual assessment of the Government's respect of the fiscal rules in its annual report<sup>465</sup>.

**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 the ratio of debt to gross domestic product are on a sustainable path.**

There has been little progress since the Baseline Measurement in 2015. In fact, the situation has worsened. The budget deficit increased from 0.7% of GDP in 2014 to 3.8% of GDP in 2016, with an

<sup>457</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf).

<sup>458</sup> The PFM Reform Programme 2016-2020 of November 2015.

<sup>459</sup> Economic Reform Programme (ERP) for Montenegro 2017-2019, p.9.

<sup>460</sup> Report on the Public Debt of Montenegro as of 31 December 2016, Ministry of Finance, March 2017.

<sup>461</sup> Plan for the Rehabilitation of the Deficit and Debt 2017-2021, December 2016, and the ERP 2017-2019, January 2017.

<sup>462</sup> Plan for the Rehabilitation of the Deficit and Debt 2017-2021, December 2016; and the ERP 2017-2019, January 2017.

<sup>463</sup> Decision No. 07-3437/1.

<sup>464</sup> Official Gazette No. 42/17.

<sup>465</sup> Obligation introduced in 2014 by Article 26 of the Law on the Budget and Fiscal Responsibility 2014, Official Gazette No. 20/14.

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estimated deficit of 6.1% of GDP in 2017 and no prospect of reducing it to below 3% until 2020. That forecast is based on strong economic growth; with lower growth, the correction in debt and deficit levels will go beyond 2020<sup>466</sup>.

Adoption of the BFR Law in 2014 was to have brought with it new discipline on fiscal targets for the deficit and the debt and for monitoring adherence to the targets, with corrective mechanisms in place. However, the debt and deficit targets have been exceeded. Even in the best-case scenario, corrective measures will take some years to bring the debt and deficit back into line with the Law, in certainly a longer time frame than specified by the Law. These factors, combined with the lack of publication of the Fiscal Policy Guidelines in 2016 and both adoption and publication by 30 June 2017, result in decreased values for the indicators. In addition, the targets set in the medium-term forecasts for 2016 in 2014 were not met, and this casts doubt on the accuracy of forecasting by the authorities and on their fiscal planning and execution.

The 2015 Baseline Measurement Report<sup>467</sup> recommended introducing better sectoral inputs into medium-term planning and providing performance information in both the medium-term guidelines and the annual budget. These recommendations have not been implemented. Nor has the recommendation to strengthen *ex-ante* review of the appraisal of capital investment projects.

In addition, the level of information sent to the Parliament has not improved, and the timetable for parliamentary discussion of the budget is still too short. All these factors have led to a reduction in indicator values from those in the 2015 Baseline Measurement Report. In particular, the failure to observe the budget timetable, the lack of publication of the Fiscal Policy Guidelines, and the failure to adhere to the deficit and debt targets set out in legislation contribute to the decline in indicator values.

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<sup>466</sup> ERP 2017-2019, p. 29.

<sup>467</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement Indicator	2015 value	2017 value
<b>Qualitative</b>	MTBF strength index.	2	1 <sup>468</sup>
	Fiscal rules strength index.	3	2
	Extent to which the annual budget proposal includes full information at the time of presentation to the parliament.	3	3
<b>Quantitative</b>	Percentage differences between the planned budget revenue in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	+0.2%	+4.0% <sup>469</sup>
	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.	+9.4%	+50.2% <sup>470</sup>
	General government budget balance.	-0.7%	-3.8% <sup>471</sup>
	Percentage differences between the planned budget revenue (as approved in the budget) compared to the outturn of the latest available year.	+7.5%	+13.5% <sup>472</sup>
	Percentage differences between the planned budget expenditure (as approved in the budget) compared to the outturn of the latest available year.	+9.6%	+9.2% <sup>473</sup>

<sup>468</sup> The Fiscal Policy Guidelines were not published in 2016 and in 2017 they were not adopted by the end of assessment period (30 June)

<sup>469</sup> The value is based on: revenue forecast for 2016 as in the Fiscal Policy Guidelines 2014 – EUR 1.593 billion and revenue outturn 2016 (initial data, ERP) – EUR 1.657 billion.

<sup>470</sup> The value is based on: expenditure forecast for 2016 as in the 2014 Fiscal Policy Guidelines – EUR 1.260 billion and expenditure outturn (initial data, ERP) – EUR 1.893 billion.

<sup>471</sup> The value is based on revenue outturn 2016 (initial data, ERP) – EUR 1.657 billion and expenditure outturn (initial data, ERP) – EUR 1.893 billion

<sup>472</sup> The value is based on 2016 plan – EUR 1.459 billion and outturn (initial data, ERP) – EUR 1.657 billion.

<sup>473</sup> The value is based on 2016 plan – EUR 1.732 billion, outturn (initial data, ERP) – EUR 1.826 billion.

**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.**

The current system of reporting has not changed since the 2015 Baseline Measurement Report. It still lacks a level of detail in commenting on the outturn each month on the results for revenue and expenditure. The quarterly reports do not include details about the evolution of the budgetary elements. Reports from the local government level are not published.

The main area of concern remains the debt. The ratio of debt to GDP continues to worsen, and it will keep on growing in the coming years even under the Government’s plan for tackling the debt<sup>474</sup>.

Another area of concern is the lack of clear definition and data on arrears at both central government and local authority levels. There is a need to clearly identify and measure arrears and, where arrears are excessive, to take actions to reduce them as soon as possible.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which in-year financial reporting provides full information and is made publically available.	2	2
	Extent to which the annual financial report includes full information and is made available in time to the parliament.	4	4
<b>Quantitative</b>	Accumulated arrears for central government measured as a percentage of total expenditure at the end of the latest available calendar year.	2.8%	Not available <sup>475</sup>
	Public-sector debt servicing costs as a share of gross domestic product.	2.2%	2.2% <sup>476</sup>
	Difference of public-sector debt level outturn from target.	+1.4%	+8% <sup>477</sup>

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

Although the PIFC Strategy 2013–2017 is the main document for reforming the FMC, it is mainly the document for the Central Harmonisation Unit (CHU), with the support of the Human Resource Management Authority (HRMA). A PFM Reform Programme 2016–2020 has been established to address the reforms related to internal control, but implementation of the actions planned for 2016 is still underway, including development of the Framework for Managerial Accountability (FMA) and updating of the FMC Manual.

<sup>474</sup> Plan for the Rehabilitation of the Deficit and Debt, 2017-2021, December 2016.

<sup>475</sup> Reliable data not available.

<sup>476</sup> Debt Management Report 2016, Table 7. Debt service was EUR 628 million.

<sup>477</sup> If the Fiscal Target is 60%, as set out in the 2014 Law on the Budget and Fiscal Responsibility.

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Risk Management Guidelines were established in 2016, and work is ongoing on development of the FMA in the ministries.

The number of organisations where internal procedures, FMC managers, FMC plans and risk management practices are in place has increased in comparison to previous years.

Training programmes for both FMC and IA areas were adopted by the Commission for Economic Policy and Financial System of the Government of Montenegro in 2016<sup>478</sup>.

Progress has been made in the area of irregularity management. The Strategy to Fight Fraud and Irregularity Management<sup>479</sup> has been established, to protect the financial interests of the EU for the period 2015-2017. At the end of 2015, 62% of its actions (18 out of 29) were fully implemented, 6 were partially implemented and 5 were not implemented<sup>480</sup>. However, the Strategy does not cover the national system.

Implementation of most of the SIGMA recommendations from the 2015 assessment is underway (including revision of the FMC manual and adjustment of quality-control activities). Just one recommendation, related to the FMC training programme, has been fully implemented.

The operational framework for FMC remains in place, leaving the value for that qualitative indicator used in the 2015 assessment at the same level. The current share of first-level budget organisations where the budget structure is aligned with the organisational structure is 29 out of 45 (67%), lower by 9 percentage points than in 2015<sup>481</sup>.

**Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the operational framework for FMC is complete, in place and applied.	4	4
<b>Quantitative</b>	Share of first-level budget organisations where the budget structure is aligned with the organisational structure.	78%	67% <sup>482</sup>

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

In the area of IA, the main developments since 2015 relate to improvement of the regulatory framework, organising and holding training for auditors, and certification of auditors. The new decree on titles of internal auditors in the public sector was passed by the Government at its session on 21 April 2016. The rulebook for the programme and the method of taking the exam for authorised internal auditors in the public sector was passed in June 2015, and 23 internal auditors obtained their certificates in 2016. A professional development programme for IA was introduced in 2016 and 20 training courses were held at central and local levels.

<sup>478</sup> Training Programme for Acquisition and Improvement of Knowledge and Skills in the Field System of Internal Financial Control in the Public Sector of 19 January 2016.

<sup>479</sup> Strategy to Fight Fraud and Irregularity Management of 16 April 2017.

<sup>480</sup> First Report on the Realisation of Measures from the Action Plan for Implementation of the Strategy to Fight Fraud and Irregularity Management Aiming to Protect the Financial Interests of the European Union 2015-2017 (for the period 1 May 2014 to 31 December 2015), February 2016.

<sup>481</sup> SIGMA calculations with the use of CHU data and analysis of budget alignment in agencies and ministries in line with Baseline Measurement methodology. The value used for 2017 analysis (CHU data) is 29%.

<sup>482</sup> Ditto.

With this, the SIGMA 2015 short-term recommendations on putting in place sustainable long-term arrangements for training internal auditors, have been implemented. However, the medium-term recommendations still require follow-up.

This progress is reflected in the indicator values. The values addressing the IA operational framework and the quality of IA reports have increased from 2 to 3. The share of public administration organisations meeting national legal requirements for establishing and minimum staffing of IA units is still low, but it has increased by 8 percentage points. Furthermore, the share of certified internal auditors has increased to 87%.

**Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which the operational framework for internal audit is designed and in place.	2	3
	Quality of internal audit reports.	2	3
Quantitative	Share of public administration organisations meeting national legal requirements for establishing and minimum staffing of internal audit units.	21%	29%
	Share of internal auditors with a national or international internal audit certificate.	73%	87%

**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.**

In addition to the amendments to the PPL adopted by the Parliament in June 2017, a working group for the preparation of a new public procurement law was appointed in July 2016 and started working in the autumn of 2016. The new law is intended to achieve full alignment with the *acquis*. Efforts have been made to finalise the draft law on concessions and PPPs, but the legal and institutional framework in this area, which is required to ensure its conformity with the *acquis*, has still not been established.

Of the 56 measures planned in the Strategy for the Development of the Procurement System 2016-2020 (the Strategy), 16 were carried out in 2016, 13 continue to be implemented, 14 have been partly implemented, 3 have not been implemented, and 10 are planned for implementation in the coming years<sup>483</sup>. The most important activities still to be implemented are the drafting of the new PPL in line with the 2014 EU Directives; tendering of the Instrument for Pre-accession Assistance project “Implementation of e-procurement”; and improvement of the functionalities of the current PP Portal. The co-ordinating body meets every three months and issues reports on the implementation of the Strategy.

Monitoring of public procurement has been enhanced, leading to a higher value for the corresponding indicator. Transparency in the procurement process has been slightly increased by means of additional obligations to publish procurement plans, tender documentation and award notices on the PP Portal. Some functionalities of the PP Portal have also been improved.

<sup>483</sup> Annual Report for 2016 on *Coordination Body for Monitoring of Implementation of the Public Procurement Strategy 2016-2020*, PPA 2017, Podgorica.

Efforts have been made to finalise the draft law on concessions and PPPs, but the legal and institutional framework in this area, which is required to ensure its conformity with the *acquis*, has still not been established.

The recommendations in SIGMA's Baseline Measurement in 2015 are thus still in the process of being implemented, with notable delays, e.g. in the development of information technology (IT) skills and the introduction of e-procurement.

**Table 5. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>484</sup>**

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which public procurement legislation is complete and enforced.	4	4
	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	4	4
	Extent to which policy framework for public procurement is developed and implemented.	4	4
	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	3	3
	Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.	2	3
	Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	4	4

**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.**

A steady and marked increase has been observed in the number of complaints received by the SC (741 in 2013, 768 in 2014, 808 in 2015 and 1 027 in 2016). As a result, and because of staff shortages at the SC, the actual processing time of complaints increased to 46 days in 2016, which is more than three times longer than the maximum allowed by legislation. For related reasons, the value for the indicator on the presence and functioning of the review body has decreased. The focus of complaints made and of their handling remains highly formalistic, with great attention to minor clerical errors.

At the end of 2016, the SC created an internal document management system to facilitate the preparation of annual reports and improve the tracking of active SC cases. However, due to the lack of capacity within the SC, this system is still not used.

<sup>484</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

Most of SIGMA's recommendations from the 2015 assessment about greater focus on substantive issues and greater effective transparency thus remain to be addressed.

**Table 6. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value <sup>485</sup>	2017 value
Qualitative	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.	3	2
	Presence of a user-friendly procurement review website including timely publication of decisions and statistics, with adequate search functions.	3	3
Quantitative	Actual processing time of complaints related to procurement compared with maximum legal requirements.	21 days vs. 15 days	46 days vs. 15 days
	Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.	43.0% <sup>486</sup>	Not available <sup>487</sup>
	Number of complaints in relation to the number of tender notices published.	15.0% <sup>488</sup>	13.9% <sup>489</sup>
	Share of complaints in procurement that are challenged to the next judicial level.	8.6% <sup>490</sup>	6.1% <sup>491</sup>

**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.**

A few changes have been made at the level of contracting authorities. The PPA organised several certified training seminars in 2016, which increased the knowledge of contracting authorities. Also, by improving the PP Portal, transparency has increased as it is obligatory to publish all relevant documents.

Apart from the PPA's continued efforts in providing training, most of the recommendations in SIGMA's Baseline Measurement – including lowering the number of contracting authorities and further developing modern public procurement methods – have not been implemented.

<sup>485</sup> Quantitative data in this column has been updated using final figures for 2014 provided by the SC during SIGMA's assessment in 2016.

<sup>486</sup> In 2014, 768 complaints were received and 330 complaints were not dealt with on time.

<sup>487</sup> No data available.

<sup>488</sup> In 2014, 768 complaints were received and 5134 tender notices were published on the PP portal of the PPA.

<sup>489</sup> There were 7291 tenders published in 2016 and 1071 complaints submitted to the SC.

<sup>490</sup> 768 complaints were received in 2014, and 66 appeals were made to the Administrative Court (updated figures provided by the SC).

<sup>491</sup> 1017 complaints were received in 2016, and 62 appeals were made to the Administrative Court.

**Table 7. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement indicator	2015 value <sup>492</sup>	2017 value
<b>Qualitative</b>	Extent of use of modern procurement techniques and methods.	2	2
	Nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials.	4	4
<b>Quantitative</b>	Share of contracts already announced in published procurement plans or indicative notices.	Not available <sup>493</sup>	Not available <sup>494</sup>
	Share of contracts awarded by competitive procedures.	7.4% by number, 91.5% by value <sup>495</sup>	9.6% by number, 94.0% by value <sup>496</sup>
	Share of contracts awarded based on acquisition price only.	87.2%	93.0%
	Share of contracts amended after award.	Not available <sup>497</sup>	Not available <sup>498</sup>
	Average number of tenders submitted per goods contract to be procured.	Not available <sup>499</sup>	Not available <sup>500</sup>
	Average number of tenders submitted per works contract to be procured.	Not available	Not available
	Average number of tenders submitted per services contract to be procured.	Not available	Not available

<sup>492</sup> Quantitative data in this column has been updated using figures (if published) in the PPA's annual report for 2014.

<sup>493</sup> No data available.

<sup>494</sup> Ditto.

<sup>495</sup> In 2014, 5 659 contracts for a total value of EUR 318.5 million were awarded using procedures other than negotiated procedure without publication of a notice and direct agreement, which were used for 70 799 contracts for a total value of EUR 29.4 million, according to the PPA's annual report.

<sup>496</sup> In 2016, 7 528 contracts for a total value of EUR 443 million were awarded using procedures other than negotiated procedure without publication of a notice and direct agreement, which were used for 70 799 contracts for a total value of EUR 28.1 million, according to the PPA's annual report.

<sup>497</sup> The data was not compiled by the PPA.

<sup>498</sup> No data available.

<sup>499</sup> The average number of tenders submitted for all contracts for which tender notices were published was 3.52 in 2014.

<sup>500</sup> The average number of tenders submitted for all contracts for which tender notices were published was 2.21 in 2016.

**Key requirement: The constitutional and legal frameworks guarantee 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.**

No significant developments were observed in 2015-2016 with regard to the legal and regulatory framework for external audit, apart from the adoption of the code of ethics (COE) for state auditors and other employees of the SAI<sup>501</sup>. The methodology for auditing the Final Statement of Accounts of the State Budget of Montenegro (FBA) has been drafted, and methodologies for financial, compliance and performance audits are due to be developed within the framework of the Instrument for Pre-accession Assistance II (IPA II), starting in the spring of 2018.

None of SIGMA's short-term recommendations from the 2015 Baseline Measurement<sup>502</sup> report have been implemented<sup>503</sup>.

**Table 8. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

	2015 Baseline Measurement Indicator	2015 value	2017 value
<b>Qualitative</b>	Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework.	4	4
	Extent to which the SAI management ensures the development of the institution.	3	3
<b>Quantitative</b>	Share of SAI budget in the state budget.	0.1%	0.2%
	Proportion of audit reports published on the SAI website compared with audit reports adopted.	100%	100%
	Share of audit recommendations accepted <sup>504</sup> and implemented by auditees.	45% <sup>505</sup>	50%

<sup>501</sup> COE for state auditors and other employees of the SAI, adopted by the Senate of the State Audit Institution on 15 October 2015.

<sup>502</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>503</sup> SAI proposed amendment to Article 43 of the Law on Financing Political Parties but it has not been adopted.

<sup>504</sup> Auditees have accepted 100% of the audit recommendations.

<sup>505</sup> Related to recommendations for mandatory audits.

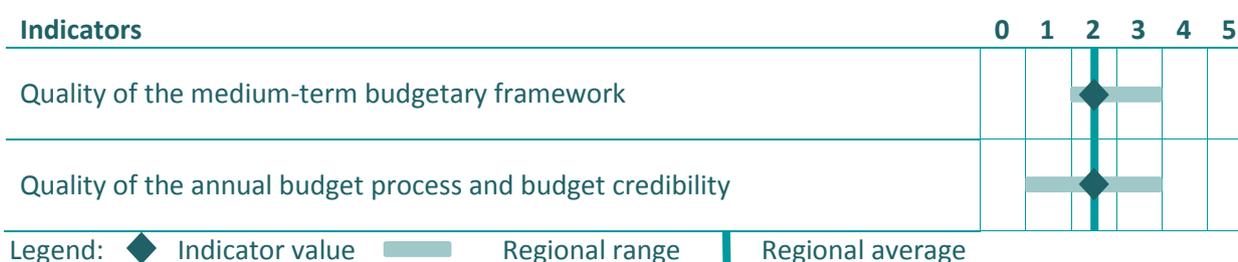
## 2. ANALYSIS

This analysis covers 16 Principles for the public financial management area grouped under 8 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>506</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

### Budget management

**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 the ratio of debt to gross domestic product are on a sustainable path.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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 period of three years; all budget organisations operate within it.**

Montenegro does not have a robust medium-term economic planning process or a solid medium-term budgetary framework. The Parliament, on the basis of a proposal from the Government, is required to adopt a Fiscal Strategy<sup>507</sup> for the period of the term of the Government, but this has not happened during the 6 months after the formation of the new Government in the autumn of 2016<sup>508</sup>. The BFR Law<sup>509</sup> requires the Government to annually adopt the Fiscal Policy Guidelines covering the three-year period ahead and, within those guidelines, to cover matters such as macroeconomic projections, fiscal indicators and projections, and spending ceilings. The Government is required to adopt the Guidelines by the end of March for the following three-year period<sup>510</sup>. The ceilings on spending contained in the Guidelines are the basis for the budget for the coming year, but they only act as indicative ceilings for the following two years<sup>511</sup> and are not the starting point for the annual budget the following year. The

<sup>506</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>507</sup> BFR Law 2014, Article 17, Official Gazette 20/14.

<sup>508</sup> The Government approved the Fiscal Strategy on 8 June 2017 but it has not been adopted by the Parliament by the end of the assessment period (30 June 2017).

<sup>509</sup> BFR Law, Article 18, Official Gazette 20/14.

<sup>510</sup> *Idem*, Article 29.

<sup>511</sup> *Idem*, Article 22.

Guidelines are not subject to parliamentary debate or approval. The Guidelines were published in previous years, but they were not published in 2016 nor by the end of June 2017.

In terms of forecasting accuracy, the macroeconomic forecasts have shown some variation in the past, and this casts doubt on their accuracy for medium-term planning. In general the projections are overly optimistic which can, of course, affect forecasting of the deficit and debt targets.

**Table 9. Real GDP growth forecast**

Economic Reform Programme	Forecast/Outturn for 2015	Forecast for 2016	Forecast for 2017
2015-2017	3.5%	3.8%	4.0%
2016-2018	4.3%	4.1%	4.0%
2017-2019	3.4%	2.4%	3.2%

Source: Economic Reform Programmes.

The new BFR Law specifies the ceilings for deficit and debt<sup>512</sup> and sets out the rectifying measures required when the ceilings are exceeded<sup>513</sup>. When the deficit is exceeded, the Government is required to bring forward rectifying measures within 60 days. However, the deficit ceiling was exceeded in 2015 and 2016 and will continue to be exceeded in 2017, 2018 and 2019. The Government has brought forward a plan to reduce the deficit<sup>514</sup>, but it was only adopted in December 2016. Under this plan, the exceeded deficit will only be eliminated in 2020 (i.e. five years after the deficit occurred). This is not in accordance with the Law, which requires that corrective measures be adopted to eliminate the excess deficit within three years<sup>515</sup>. The deficit forecast under this plan will still be 3.8% of GDP in 2019.

In relation to debt, the rules specify that where the debt to GDP ratio exceeds 60%, the Government will propose changes to reduce this. If the excess is due to capital spending, it is to be reduced within three years. Under the Rehabilitation Plan, the debt to GDP level in 2019 will be still over 77%. With lower growth scenarios, the deficit level will be 5.2% of GDP, and the debt level will be 84% of GDP<sup>516</sup>.

The SAI independently monitors adherence to the fiscal targets on an annual basis<sup>517</sup>. Its report covers adherence to the rules, but it does not comment on budget targets or the macro-economic and fiscal background to the annual budget or on Fiscal Policy Guidelines when the Government is considering them. The Central Bank has recently recommended the establishment of a Fiscal Council comprised of the MoF, the Central Bank, the SAI and independent experts<sup>518</sup>.

Sectoral Policy Plans are not aligned with medium-term fiscal planning, and line ministries have little input into the medium-term framework. The PFM Reform Programme<sup>519</sup> recognises this as an area that

<sup>512</sup> BFR Law, Article 22.

<sup>513</sup> *Idem*, Article 21.

<sup>514</sup> Plan for the Rehabilitation of the Deficit and Debt, 2017-2021, December 2016.

<sup>515</sup> BFR Law, Article 21,

<sup>516</sup> ERP 2017-2019, pp. 29-30.

<sup>517</sup> BFR Law, Article 26.

<sup>518</sup> Recommendations to the Government of Montenegro for Economic Policy 2017, Central Bank, November 2016, [http://www.cb-cg.org/eng/slike\\_i\\_fajlovi/fajlovi/fajlovi\\_publikacije/preporuke/recommendations\\_to\\_the\\_government\\_2017.pdf](http://www.cb-cg.org/eng/slike_i_fajlovi/fajlovi/fajlovi_publikacije/preporuke/recommendations_to_the_government_2017.pdf).

<sup>519</sup> Objective 4.1.1., PFM Reform Programme 2016-2020, November 2015.

needs to be addressed and where revised procedures and processes need to be put in place, along with training for line ministry staff to improve their skills in this area.

Since the Parliament has not adopted the Fiscal Strategy and the Fiscal Policy Guidelines for the next three years, and the medium-term estimates for revenues and expenditure have not been accurate, the value for the indicator 'Quality of the medium-term budgetary framework' is 2.

Quality of the medium-term budgetary framework						
This indicator measures how well the medium-term budgetary framework (MTBF) is established as a fiscal plan of the government, focusing on the process of budget preparation and four areas that influence the quality of the budget documents. A good MTBF should increase transparency in budget planning, contribute more credible forecasts and ultimately lead to a better general government budget balance.						
Overall indicator value	0	1	<b>2</b>	3	4	5

Sub-indicators	Points
1. Strength of the medium-term budgetary framework	5/12 <sup>520</sup>
2. Strength of the fiscal rules	2/5
3. Credibility of medium-term revenue plans (%)	3/4 <sup>521</sup>
4. Credibility of medium term expenditure plans (%)	0/4 <sup>522</sup>
<b>Total<sup>523</sup></b>	<b>10/25</b>

**The basis for a medium-term framework is in place, but there is a need to integrate sectoral strategies with it and to improve the forecasting. In addition, adherence to the fiscal rules is weak, and there is no independent monitoring of the Government's fiscal plans. The Fiscal Strategy for the term of this Government, as required by law, has not been approved by the Parliament.**

*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 budget process described in the BFR Law<sup>524</sup> specifies that, following the adoption of the multi-annual Fiscal Policy Guidelines in March, the MoF issues a budget circular to budget users outlining the spending ceilings and other data, to which budget users must respond. In 2016, budget users had 60 days to respond. The MoF then proposes a draft budget to the Government, and the Government is required to submit a draft budget to Parliament by 15 November.

In 2015, the budget was sent to the Parliament on 15 November. In 2016, due to the elections, it was only sent on 25 November. In the Parliament, the main economic subcommittee considers the draft budget along with information from the SAI and the Central Bank. It is then considered in a plenary session of the Parliament. The Parliament can make amendments to the budget. There is no

<sup>520</sup> Based on information provided by the MoF. The Fiscal Policy Guidelines were not published in 2016 and in 2017 they were not adopted by the end of assessment period (30 June).

<sup>521</sup> The value is based on: revenue forecast for 2016 as in Fiscal Policy Guidelines 2014 – EUR 1.593 billion and revenue outturn 2016 (initial data, ERP) – EUR 1.657 billion.

<sup>522</sup> The value is based on: expenditure forecast for 2016 in 2014 Fiscal Policy Guidelines – EUR 1.260 billion and expenditure outturn (initial data, ERP) – EUR 1.893 billion.

<sup>523</sup> Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-22=4, 23-25=5.

<sup>524</sup> BFR Law 2014, Articles 28-40.

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requirement that amendments must be in line with the Fiscal Rules or that alternative sources of revenue must be provided when new initiatives are proposed. The length of time the Parliament has to consider the draft budget and to approve it before the beginning of the budgetary year is very short and outside good practice<sup>525</sup>. During parliamentary debate on the budget, Members of Parliament have available the views of the Central Bank<sup>526</sup> on general economic policy.

The budget includes both capital and current expenditure and all revenues. But for the Instrument for Pre-accession Assistance (IPA) funds, it includes only the domestic element of the specified spending.

The budget documents do not present non-financial information on multi-annual commitments, and there is no disaggregation of the costs of new services from existing services. The budget is prepared on a programme basis and is not clearly broken down into administrative units. In addition, the budget proposal does not contain an estimate of the outturn for the current year against which comparisons could be made. The aggregate ceiling for expenditure established in the MTBF was not exceeded in the annual budget bill but the sector ceilings vary more than 2%<sup>527</sup>.

The capital budget forms part of the annual budget law, but it is subject to separate procedures. In January, budget users are requested to develop proposals for the capital budget (i.e. prior to the completion of the Fiscal Policy Guidelines in March). The selection of projects is not transparent. There is no requirement to justify project proposals based on cost-benefit or other investment analysis, and no central analytical guidelines are issued to guide cost-benefit analysis.

These shortcomings result in a value of 2 for the indicator 'Quality of the annual budget process and budget credibility'.

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<sup>525</sup> OECD (2002), *OECD Best Practices for Budget Transparency*, OECD Journal on Budgeting, Vol. 1/3, <http://dx.doi.org/10.1787/budget-v1-art14-en>; EU Regulation (EU) 473/2013, Article 4.2.

<sup>526</sup> Recommendations to the Government of Montenegro for Economic Policy 2017, Central Bank, November 2017.

<sup>527</sup> Based on 2017 Budget Law and 2016 Fiscal Policy Guidelines (not published).

### Quality of the annual budget process and budget credibility

This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi-annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in-year budget adjustment.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
1. Operational alignment between the MTBF and the annual budget process	2/4 <sup>528</sup>
2. Reliability of the budget calendar	2/4
3. Transparency of the budget proposal before its adoption in parliament	2/8
4. Quality in the budgeting of capital investment projects	1/5
5. Parliamentary scrutiny of the annual budget	1/5
6. Transparency and predictability of procedures for in-year budget adjustments	3/4
7. Credibility of revenue plans in the annual budget (%)	3/4 <sup>529</sup>
8. Credibility of expenditure plans in the annual budget (%)	2/4 <sup>530</sup>
<b>Total<sup>531</sup></b>	<b>16/38</b>

**The existing legislation properly describes the budget process, however the budget calendar in 2016 was not respected and the time envisaged by law for the Parliament is too tight for a proper assessment and debate. The aggregate ceiling for expenditure established in the MTBF is not exceeded in the annual budget bill but the sector ceilings established in the MTBF are not fully observed. The credibility of the expenditure and revenue plans remains a challenge.**

#### Key recommendations

##### Short-term (1-2 years)

- 1) The Government should commit to observing the legal timetable for the budget.
- 2) The MoF should revise the Plan for the Rehabilitation of the Deficit and Debt and, if growth is lower than forecast, it should include alternative scenarios and estimates to reach the desired targets, along with a menu of possible additional measures. Sensitivity analyses should also be included, especially for the debt outlook.
- 3) The MoF should introduce improved and transparent procedures to plan capital investment, including requiring a cost-benefit analysis for each proposed project and guidelines as to the main elements of the analysis. The MoF should also ensure standard training for line ministries and other budget users in these techniques.

<sup>528</sup> Ditto.

<sup>529</sup> The value is based on: 2014 plan - EUR 1.307 billion, outturn EUR - 1.348 billion, divergence - 3%; 2015 plan – EUR 1.329 billion, outturn - EUR 1.320 billion, divergence - 0.6%; 2016 plan - EUR 1.459 billion, outturn (initial data, ERP) – EUR 1.657 billion, divergence – 13.5%.

<sup>530</sup> The value is based on: 2014 plan - EUR 1.372 billion, outturn - EUR 1.457 billion; divergence - 6%; 2015 plan – EUR 1.565 billion, outturn EUR 1.618 billion, divergence - 3%; 2016 plan - EUR 1.732 billion, outturn (initial data, ERP) – EUR 1.826 billion - divergence 9.2%

<sup>531</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-26=3, 27-32=4, 33-38=5.

- 4) The published draft budget as presented to the Parliament should include more information on the existing costs of programmes and any new costs, along with estimates of the current year's outturn for revenue and spending.
- 5) In co-operation with the General Secretariat and Ministry of European Affairs, 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.

#### Medium-term (3-5 years)

- 6) The MoF should improve performance information provided in the Fiscal Policy Guidelines and the annual budget.
- 7) At the time of presentation of the draft Budget Law to the Parliament, the MoF should provide information and analysis on the medium-term impact of the budget on the fiscal targets as set out in the BFR Law.
- 8) All budget users should be required to provide the MoF with accurate estimates, including contingent liabilities for years beyond the budget year.

**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.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



#### ***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.***

Cash management is handled through the Treasury under the control of the Minister of Finance.

There is a single treasury account that is established in law and into which all public revenues are deposited<sup>532</sup>. Only the Minister of Finance can open bank accounts and authorise payments from the accounts. He/she is also authorised to invest unused funds in the Central Bank or low-risk securities.

In relation to cash flow projections, the system still operates on the basis of a spending control mechanism. Rather than having budget users provide expected spending profiles to the Treasury at the beginning of the year, the Treasury instead devises cash flow estimates and divides the annual allocation for each budget user into 12 parts, one per month. When a budget user needs to draw more

<sup>532</sup> BFR Law 2014, Article 9, Official Gazette No. 20/14.

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than its monthly allocation, it can seek permission to “borrow” from the next month’s allocation, but the allocation must be in balance within two months. Additionally, as the projections are used to distribute the annual allocations not for the active management of the cash flows, they do not provide the detailed and updated monthly profiles for each budget user. As the result of these shortcomings of the cash flow projections, no points are awarded for the respective sub-indicator.

In relation to arrears, the picture is unclear. The 2015 Baseline Measurement Report put the figure at 2.8% of GDP in 2013<sup>533</sup>. More recent figures are not available (or not published), and the amount of arrears at the local government level is not clearly stated in any report<sup>534</sup>.

The World Bank has estimated that arrears (including central government and local authorities) could be 11% of GDP<sup>535</sup>, but this may be an overestimation due to problems with the national definition of arrears, as there is no clear definition of what constitutes arrears or of the mechanisms to identify and control them.

In order to avoid commitments above the expenditure ceilings, the Treasury has introduced monthly expenditure ceilings in their financial system. Commitments are recorded in the system at the time an invoice is received, but the system does not require (or allow) recording of the date that payment is due. The spending units inform the Treasury of the due date for payments in a separate order, and the Treasury recognises as arrears only those payments which are not paid within 30 days after receiving the order. Spending units are required to calculate arrears and report on this manually, as the system does not record payment dates. Arrears are reported in the quarterly budget execution reports. According to the SAI 2015 Annual Report<sup>536</sup>, the Statement of Arrears is part of the institutions’ annual accounts. However, there is no procedure for monitoring arrears, and the definition of arrears appears to vary from one institution to another. Based on interviews with the SAI and the Treasury, it appears that some institutions include all outstanding liabilities in their report on arrears. As the result of these shortcomings, no points are awarded for the respective sub-indicator.

The Central Bank has recommended the creation of a new information system for budget execution control to improve and automate the system for the control of expenses. It also recommends changes to procedures for budget payments to prevent accumulation of outstanding liabilities<sup>537</sup>.

The Treasury maintains an account in the Central Bank and only uses commercial banks to deal with specific payments/loans. The Central Bank account is reconciled daily with the general ledger and the Treasury’s own information system. There are no suspense accounts.

Due to the weaknesses in cash flow planning and arrears management, the value for the indicator ‘Reliability of budget execution and accounting practices’ is 3.

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<sup>533</sup> OECD (2015), *Baseline Measurement Report: Montenegro*, OECD Publishing, Paris, pp. 83-84, [http://www.sigmaweb.org/publications/Baseline\\_Measurement\\_2015\\_Montenegro.pdf](http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf).

<sup>534</sup> The SAI, in the Audit Report of the Proposed Law on the Final Statement of Accounts of the State Budget of Montenegro for 2015, questions the data provided by the government and presents its own figures.

<sup>535</sup> World Bank (May 2016), *Montenegro – Country Partnership Framework*, Report No. 105039.

<sup>536</sup> The SAI Annual Report on Performed Audits and Activities of the State Audit Institution of Montenegro for the period October 2015 - October 2016 (No. 4011/16-06-1733 of 27 October 2016).

<sup>537</sup> Recommendations to the Government of Montenegro for Economic Policy 2017, Central Bank, November 2017.

### Reliability of budget execution and accounting practices

This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.

Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Presence of a treasury single account (TSA)	2/2
2. Frequency of revenue transfer to the TSA	1/1
3. Frequency of cash consolidation	1/1
4. Credibility of cash flow planning	0/2
5. Budget classification and chart of accounts	2/2
6. Frequency of bank account reconciliation (for all central government bank accounts)	2/2
7. Availability of data on the stock of expenditure arrears	1/2
8. Expenditure arrears (%)	0/3
<b>Total<sup>538</sup></b>	<b>9/15</b>

**The Treasury system is firmly established and controls disbursements from the single treasury account. It maintains and reconciles its system with bank accounts regularly. The definition of arrears and the level of year-end arrears within both central government and at the local level need to be clarified.**

*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.*

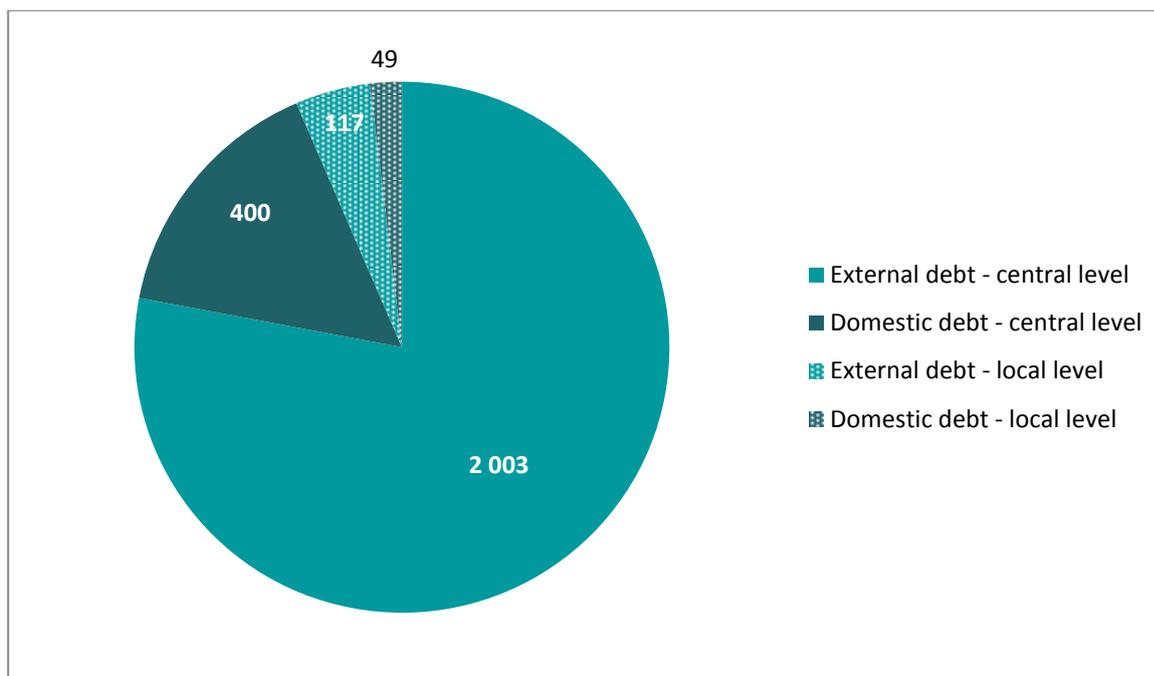
The level of debt in Montenegro has been rising and will continue to rise in the coming years. In 2014, the gross public debt was 61% of GDP, but this rose to 67% of GDP in 2016<sup>539</sup> and is forecasted to climb to over 77% of GDP by 2019<sup>540</sup>. However, under a low growth scenario, it could reach 84% of GDP by 2019. Total gross public debt was around EUR 2.6 billion in 2016 of which external debt was just over EUR 2 billion. Domestic debt was EUR 400 million, with a local government debt of EUR 176 million, of which external debt was EUR 117 million.

<sup>538</sup> Point conversion ranges: 0-1=0, 2-4=1, 5-7=2, 8-10=3, 11-13=4, 14-15=5.

<sup>539</sup> Report on the Public Debt of Montenegro as of 31 December 2016, MoF, March 2017.

<sup>540</sup> ERP for Montenegro 2017-2019.

**Figure 1. Structure of public debt in Montenegro**



Source: MoF, Report on the Public Debt of Montenegro as of 31 December 2016, March 2017

The drawdown of the loan to finance part of the BAR-Boljare highway project was EUR 189 million. The total loan for this project alone is USD 900 million, with drawdown scheduled in tranches as the highway progresses. Once this loan, denominated in USD, is drawn down in full, it will increase the exposure to foreign currency movements because, at present, the majority of the foreign debt is denominated in EUR, the currency used in the country. There has been no involvement with financial instruments to hedge the foreign currency exposure of the debt – an exposure that will rise as the highway loan is called down.

Responsibilities for debt and debt management are set out in legislation<sup>541</sup>. Only the MoF can carry out foreign borrowing, with the approval of the Government. Guarantees may be given by the Government, but they are limited to 15% of GDP. In 2016, the level of guarantees was 9.25% of GDP, similar to the level reported for 2014.

The current debt management strategy, covering the period 2015-2018, was published in June 2015<sup>542</sup>. Since then, the debt has grown beyond what was envisaged in the Strategy. It forecast a debt to GDP ratio of 67% for 2017<sup>543</sup>, but the ratio is estimated now to be 71.6% for 2017<sup>544</sup>. However, there is currently no plan to update the Strategy before 2018, despite the continued rise in debt beyond original forecasts and current forecasts which see it climbing to a ratio of over 77% by 2019.

The MoF and the Government must give prior permission for any proposed borrowing by state-owned enterprises (SOEs) and local governments<sup>545</sup>. The MoF receives quarterly reports on their debt from both SOEs and local authorities.

Because public debt exceeds the level of 60% of GDP and there is no adequate debt management strategy, the value for the indicator 'Quality of public debt management' is 2.

<sup>541</sup> BFR Law 2014, Articles 59-61.

<sup>542</sup> MoF, Debt Management Strategy 2015-2018, June 2015.

<sup>543</sup> MoF, Report on the Public Debt of Montenegro as of 31 December 2016, of 25 April 2017.

<sup>544</sup> ERP for Montenegro 2017-2019.

<sup>545</sup> BFR Law 2014, Article 57.

Quality of public debt management						
This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to GDP, and the difference between public sector debt outturn and target.						
Overall indicator value	0	1	<b>2</b>	3	4	5

Sub-indicators	Points
1. Existence of requirements and limitations for borrowing in the legal framework	2/3
2. Existence and minimum content of a public debt management strategy	1/4
3. Clarity of reporting on public debt	2/4
4. Risk mitigation in the stock of public debt	2/6
5. Difference between public sector debt outturn from target (%)	2/3
6. Public debt as a share of GDP (%)	0/2
<b>Total<sup>546</sup></b>	<b>9/22</b>

**The level of debt has increased at a rapid rate during the last two years. While there is legislation on government borrowing, guarantees and recording and reporting of debt, the existing strategy on debt management cannot be applied in practice because of the continued rise in debt beyond original forecasts.**

***Principle 5: Transparent budget reporting and scrutiny are ensured.***

The MoF publishes limited data on a monthly basis. These monthly reports are based on the International Monetary Fund's General Data Dissemination System (GDDS)<sup>547</sup>. This provides some data in general rather than specific terms that is not broken down by budget user or ministry. The reports are compiled from information on the Treasury system, not from data supplied by the line ministries or budget users. The monthly report does not explain variations between any original profile of revenue and expenditure and actual revenue and expenditure for that month. Because the numbers are taken from Treasury cash flow figures, they display evenness over the months that does not reflect the reality. For example, the figures for capital expenditure are relatively even for each month, although capital expenditure is normally very uneven during any year.

Line ministries report quarterly to the MoF, but these reports are not published. The MoF publishes a short quarterly report<sup>548</sup> on revenue and expenditure in the previous quarter. These MoF quarterly reports, issued three months after the end of the quarter, do not provide details to explain why variations occurred during the quarter. Local administrations report quarterly to the MoF within one month of the end of each quarter, but these reports are not published.

A financial report is prepared annually, which is audited by the SAI. The report's content is set out in legislation<sup>549</sup>. In addition to budget details, it includes elements such as outstanding liabilities and receipts and expenditures of public bodies that are not in the treasury single account (these are small). It does not include details from local and municipal authorities and is not done on a general-government basis.

<sup>546</sup> Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-16=3, 17-19=4, 20-22=5.

<sup>547</sup> <http://www.mf.gov.me/rubrike/prezentacije/170917/SAOPsTENJE-GDDS-tabela-sa-fiskalnim-i-podacima-o-javnom-dugu.html>

<sup>548</sup> <http://www.mf.gov.me/rubrike/prezentacije/168188/Analiza-javnih-finansija-III-kvartal-2016.html>.

<sup>549</sup> BFR Law 2014, Article 68.

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The annual financial report, prepared and submitted to Government by the MoF, is adopted by the Government by the end of June for submission to the SAI<sup>550</sup>. The Government must also submit the draft law on year-end accounts to the Parliament by the end of September<sup>551</sup>. The SAI must submit its audit report of the proposed law to the Parliament by 15 October<sup>552</sup>. In 2016, the SAI Report on the 2015 annual financial report was submitted on time.

The MoF prescribes the accounting standards, but they are not yet in accordance with the standards of the European System of Accounts (ESA).

State assets valuations are not included in the annual financial report. No reporting on changes in fiscal risks identified in the budget exists.

In light of the circumstances described above, the value for the indicator 'Transparency and comprehensiveness of budget reporting and scrutiny' is 3.

Transparency and comprehensiveness of budget reporting and scrutiny						
This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Comprehensiveness of published information</b>	
1. Quality of in-year reports of government revenue, expenditure and borrowing	3/7
2. Quality of the annual financial report of the government	5/7
3. Quality of annual reports of state-owned enterprises, extra-budgetary funds and local government	2/5 <sup>553</sup>
4. Clarity of national accounting standards and consistency with international standards	1/4
5. Existence of reporting on fiscal risks identified in the budget	0/1
<b>Scrutiny and oversight using published information</b>	
6. Quality of the annual financial reporting on the use of public finances	3/3
7. Timeliness of dissemination of the SAI report to the national parliament	2/2
8. Timeliness of parliamentary discussion on the report of the SAI	3/3
<b>Total</b> <sup>554</sup>	<b>19/32</b>

**The in-year monthly and quarterly reports on government revenue and spending lack detail and explanations of variations where they occur, and they do not show how the budget is evolving. The annual financial report is submitted on time to the Parliament and the SAI. But since the audited report is only submitted to the Parliament by 15 October, there is little time for parliamentary discussions before the draft budget law for the following year is presented in November.**

<sup>550</sup> BFR Law 2014, Article 67.

<sup>551</sup> *Ibid.*

<sup>552</sup> *Ibid.*

<sup>553</sup> Information on the reporting of extra-budgetary funds was not provided.

<sup>554</sup> Point conversion ranges: 0-7=0, 8-12=1, 13-17=2, 18-22=3, 23-27=4, 28-32=5.

**Key recommendations**

**Short-term (1-2 years)**

- 1) The MoF should prepare a new debt management strategy in 2017 to coincide with the new Fiscal Strategy to be published by the Government, as the existing strategy is out of date.
- 2) The MoF should publish a profile of expected revenue and spending in January of each year for the 12 months ahead and should issue monthly updates explaining any variations with the profile.
- 3) The MoF should publish more detailed quarterly reports on the evolution of the budget, explaining variations and expected outturns for the year as a whole.
- 4) The MoF should overhaul the cash flow estimating process to create accurate cash flow estimates based on the needs of budget users.
- 5) The MoF should publish its definition of arrears, accurately measure the level of arrears at central government and local authority levels, report on the stock and evolution of arrears at least annually, reduce excessive levels of arrears, and introduce a system to monitor arrears.
- 6) The Government should amend the BFR Law to ensure that the annual audited financial statement is submitted to the Parliament earlier than the current deadline of 15 October.

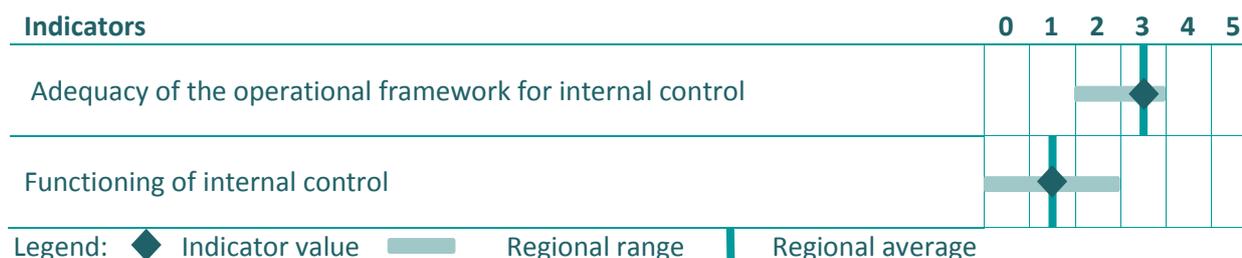
**Medium-term (3-5 years)**

- 7) The MoF should adopt ESA standards for the annual financial statement and quarterly reports.
- 8) The MoF should publish the quarterly reports submitted by local authorities by the end of the following quarter.
- 9) The MoF should enhance the annual financial report by including a statement of the up-to-date position on state assets and liabilities.

## Internal control and audit

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

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

The operational framework for FMC is in place, regulating the responsibilities of the CHU, the MoF and the BPFs. The legislation is based on internationally accepted standards on internal control<sup>555</sup>. Although there is no analysis of the coherence of PIFC legislation with other horizontal legislation to date, the CHU plans to do this within its analysis on managerial accountability in the ministries (an action item in the PIFC Strategy Action Plan 2016-2017).

The PIFC Law<sup>556</sup> permits the delegation of decision-making authority based on the internal systematisation and organisation acts. In practice, these acts are not used for delegation purposes, but rather for explaining the responsibilities of specific organisational units and job posts.

The FMC Manual<sup>557</sup> lays down further instructions to the managers of BPFs and their staff on their role in establishing a framework for FMC in public entities. The manual is currently being revised, with a new version to be issued in 2017. Furthermore, Risk Management Guidelines were established in 2016, and work is ongoing to develop the FMA in the ministries.

Two strategy documents address the actions relating to FMC and IA in Montenegro: 1) the PFM Reform Programme 2016-2020; and 2) the Strategy for Further Development of Public Internal Financial Control in Montenegro 2013-2017 (PIFC Strategy). The action plans of both documents allocate responsibilities for reforms in the PIFC area mainly to the CHU, with the support of the HRMA. The PIFC Strategy is the main programme, with action plans in place for two-year periods. Of the actions foreseen in the plan for 2016-2017, 53% have currently been implemented (16 of a total of 30 actions),

<sup>555</sup> The FMC framework in Montenegro is based on the COSO (Committee of Sponsoring Organisations of the Treadway Commission, Internal Control – Integrated Framework, 1992). These principles, originally drafted to apply to private sector companies, include five components: 1) control environment; 2) risk management; 3) control activities; 4) information and communication; and 5) system monitoring and assessment (PIFC Law, Article 6-11).

<sup>556</sup> PIFC Law, Article 13, Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

<sup>557</sup> FMC Manual, MoF, 2011

and work is ongoing in all other fields<sup>558</sup>. Major pending changes relate to development of the FMA and updating of the FMC Manual.

According to Article 15 of the PIFC Law, all public sector entities are required to implement internal control and submit internal control reports (FMC Reports). FMC Reports are the basis on which the CHU prepares the annual consolidated report on the system of internal financial controls. This Consolidated PIFC Report is submitted to the Government by the end of March of the current year for the previous year<sup>559</sup>. The CHU Annual Consolidated PIFC Report 2015 provides comprehensive information on the status of FMC. The BPFs' data is supported by CHU's own on-the-spot assessment of the quality of FMC, with five institutions having been under CHU review in 2015. CHU is continuously improving its methodologies for such quality control. On the basis of this report, the Government issues specific recommendations to individual BPFs with regard to improvement of the FMC system. According to the Consolidated PIFC Report for 2015, of the seven recommendations made in the 2014 Consolidated PIFC Report, two were fully implemented, and implementation of the other five varied among institutions (although they were implemented by the majority of institutions addressed)<sup>560</sup>.

Again according to the CHU Consolidated PIFC Report for 2015, 89 out of 117 institutions (76%) submitted FMC Reports to CHU in 2015, representing a 7% increase over 2014<sup>561</sup>. According to preliminary results for 2016, 70 of the 90 institutions required to implement internal control did submit FMC Reports (78%).<sup>562</sup>

While the internal control systems of both national and EU-funded programmes are based on five elements of the Committee of Sponsoring Organisations framework<sup>563</sup>, the overall procedural and legal base differs (the above-described system is only applicable for the national system, while a separate manual and legislation are in place for implementing programmes under the IPA). Furthermore, overall monitoring and reporting on internal control are conducted under the special IPA structures for EU funds, and by the CHU for the national budget. The same applies to public procurement, payment authorisations and reporting on irregularities, where the institutional and regulatory frameworks for these two systems are currently separate.

The overall value for the indicator 'Adequacy of the operational framework for internal control', set at 3, is affected mainly by the lack of alignment between national budget management and control systems and those for EU-funded programmes.

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<sup>558</sup> CHU informal report on implementation of the action plan of PIFC Strategy 2016-2017, obtained by SIGMA in April 2017.

<sup>559</sup> PIFC Law, Article 38, Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

<sup>560</sup> CHU Annual Consolidated PIFC Report 2015, Section 2, Implementation of Conclusions from the Consolidated Report for 2014.

<sup>561</sup> CHU data.

<sup>562</sup> Ditto.

<sup>563</sup> COSO of the Tredway Commission, Internal Control – Integrated Framework, 1992. These principles were originally drafted to apply to private sector companies.

### Adequacy of the operational framework for internal control

This indicator measures the extent to which the operational framework for internal control (financial management and control) is established, in terms of policy and strategic content, the regulatory framework, and adequate review and reporting mechanisms.

A separate indicator measures the implementation of the operational framework for internal control.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Policy for the development of internal control	4/6
2. Completeness of the regulatory framework for internal control	4/5
3. Comprehensiveness and regularity of the annual review and reporting on internal control	4/5
4. Alignment between national budget management and control systems and those for EU-funded programmes	0/4
<b>Total<sup>564</sup></b>	<b>12/20</b>

**The regulations covering the operational framework required for FMC implementation are in place. However, improvements are needed and planned in the field of managerial accountability, as well as in CHU quality assessments related to the internal control system. The strategy documents covering PIFC are in place, although implementation of the actions planned for 2016 is still underway, including development of the FMA and updating of the FMC manual.**

***Principle 7: Each public organisation implements internal control in line with the overall internal control policy.***

All BPFs are required to introduce FMC<sup>565</sup>. On 23 April 2015, the Government required all users of budget funds at the central level and all legal entities in which the state has majority ownership to take certain activities in setting up FMC. These include appointing a person in charge of the establishment, developing an FMC system and a plan for upgrading it, appointing persons to co-ordinate setting up the risk management process and adoption of the risk register<sup>566</sup>. The Government recommended that users of budget funds at local levels and all legal entities in which municipalities have majority ownership do the same.

The number of budget users is different every year. Some budget users (commissions, councils, etc.) are established only to improve specific areas. In 2016, 90 users at central level were required to report to the CHU on implementation of internal control<sup>567</sup>, compared to 117 in 2015<sup>568</sup>. There is no information on the total number of BPFs required to have an FMC system in place<sup>569</sup>.

<sup>564</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-17=4, 18-20=5.

<sup>565</sup> Articles 1 and 2 of the PIFC Law establish the principles of internal financial control for the entire public sector. This, which refers to: users of the Budget of Montenegro, the budgets of municipalities, state funds, independent regulatory bodies, shareholder's companies and other legal entities in which the Government or municipalities have a controlling stake.

<sup>566</sup> CHU Annual Consolidated PIFC Report 2015, Section 3.1, FMC.

<sup>567</sup> CHU data.

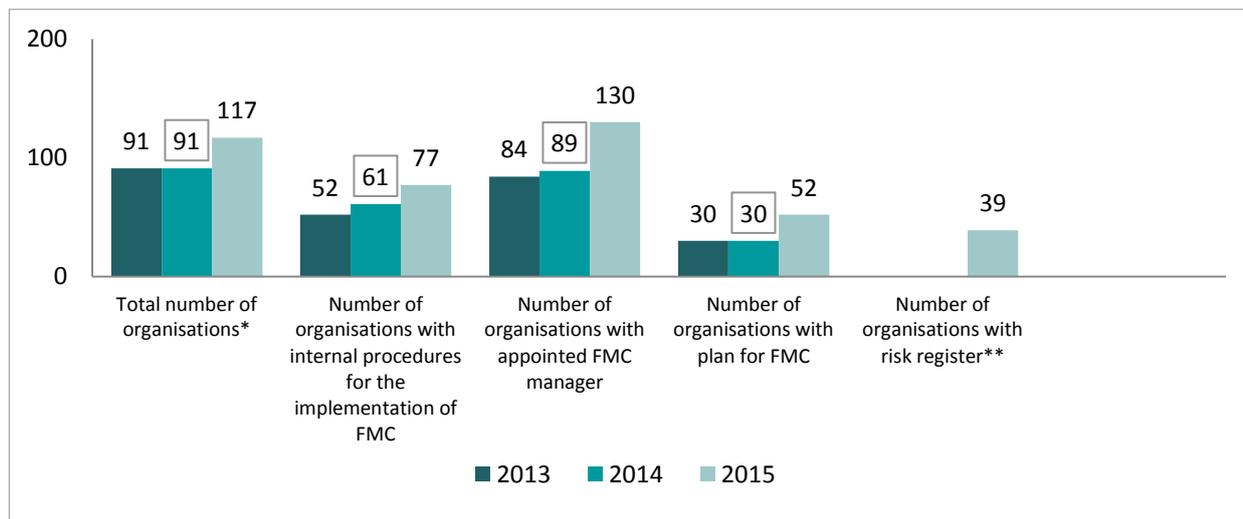
<sup>568</sup> Consolidated PIFC Report for 2015.

<sup>569</sup> In accordance to the PIFC Law all budget users are required to implement FMC. The number of users changes with the amendments of the Decree on Organisation and Manner of Work of the Public Administration and the Budget Law for each year.

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Implementation of FMC at the institutional level is lagging behind the progress in the policy and operational framework, although more and more bodies are gradually implementing various elements of FMC (Figure 2). The number of organisations where internal procedures, FMC managers and FMC plans are in place has increased in comparison to previous years. However, data shows that not all BPFs follow the legal obligations and the 2015 Government decision. According to the Consolidated Report on the PIFC System for 2015, lack of managerial accountability is considered to be the core reason for poor FMC in the institutions.

**Figure 2. Basic data on implementation of FMC in Montenegro in BPFs, 2013-2015**



Note: \*Number 117 refers to central and local level BPFs who have obligation to report annually to the CHU in the MoF about FMC. Independent regulatory bodies, shareholders companies and other legal entities in which the government or municipalities have a controlling stake, submit their annual reports to the competent authorities of the Parliament.

The other data for 2015 relating to the number of organisations with appointed FMC managers, internal procedures etc., relate to the entire public sector. There is no information on a total number of BPFs required to have an FMC system in place.

\*\* There is no information on the number of bodies which had risk registers in place in 2013 and 2014

Sources: For 2013 and 2014, the 2015 Baseline Measurement Report; for 2015, the Consolidated PIFC Report for 2015.

Montenegro switched to programme-based budgeting in 2009 to enhance transparency of expenditure and allow better allocation of responsibilities. However, according to CHU analysis<sup>570</sup>, only 13 out of 45 first-level budget beneficiaries (29%)<sup>571</sup> have alignment between management and budget structures. Managerial accountability measures expected to be implemented in line with the PIFC Strategy aim to improve results-based planning, budget allocation and the reporting scheme.

The basic accountability mechanisms between ministries and subordinate bodies are in place. The Law on State Administration<sup>572</sup> specifies the managing organs of administrative bodies and key instruments of ministerial oversight of the administrative bodies subordinated to the ministries. A more detailed management scheme for each body is set individually in the regulations establishing respective institutions.

While bureaucratic mechanisms for planning, budgeting and reporting on the activities of central government bodies are in place, transition towards results-based management has not progressed. Annual plans and reports of bodies subordinated to the ministries are process-oriented and overloaded with statistical data about actions planned and executed. They are not linked to specific and

<sup>570</sup> CHU data.

<sup>571</sup> In accordance with the BFR Law 2014, first-level budget users are the President of Montenegro, the Parliament, law enforcement authorities and the Government (General Secretariat of the Government and the ministries, independent budget units and state funds).

<sup>572</sup> Official Gazette No. 38/03, 27 June 2003.

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measurable objectives, performance indicators and targets. As a result, the accountability mechanisms in place do not support effective management of bodies subordinate to ministries and therefore the value for the respective sub-indicator is 0.

The management culture in the ministries in the Government is heavily centralised. Twenty-two institutions have the status of an administrative body within a ministry, where the managerial autonomy of the head of institution is narrow. Despite formal separation from the ministries, heads of bodies within the ministries cannot decide independently on key aspects of internal management (e.g. human resource management issues, financial management, and contractual relations). The decision-making processes within the departments of ministries are largely centralised as well, as the vast majority of decisions of a technical nature with regard to staff management and finances are made by the minister. The secretary of the ministry (top-level civil servant) and heads of units within the ministry may take decisions autonomously solely in matters delegated by the minister and, in practice, the ministers are reluctant to transfer their powers to the lower-level officials. This arrangement distracts the ministers from focusing on policy-making functions and hampers managerial accountability of the senior civil servants. The value for the sub-indicator measuring delegation of decision-making authority is therefore 0.

The Treasury system in which commitments are recorded does not allow recording of the date that the payment is due. The definitions of arrears vary between institutions and there is no formal system to monitor them. The system for monitoring and reporting on total cost and physical progress of major investments by the Ministry of Transport and Maritime Affairs (MoTMA) is largely limited to reporting on budget implementation. According to the Decree on Organisation and Operation of the Public Administration<sup>573</sup>, the MoTMA is required to submit an annual report on the work and situation in particular administrative areas for the previous year. These reports provide an overview of the budget and loan allocation, but do not give information on physical progress.

As the result of these shortcomings, no points are awarded for the respective sub-indicators.

The system for reporting and monitoring of irregularities is in place under the EU-funded programmes, but the rules are not yet in place for reporting and monitoring of irregularities under the national system. No irregularities have been reported to date.

In light of the circumstances described above, the value for the indicator 'Functioning of internal control' is 1.

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<sup>573</sup> Decree on Organisation and Operation of the Public Administration, Article 52, Official Gazette Nos. 05/12, 25/12, 44/12, 61/12, 20/13, 17/14, 06/15, 80/15, 35/16, 41/16, 61/16, 73/16, 03/17, 19/17 of March 27, 2017.

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Functioning of internal control						
This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies.						
Overall indicator value	0	<b>1</b>	2	3	4	5

Sub-indicators	Points
1. Number of first-level budget organisations that are neither ministries nor constitutional bodies	2/3
2. Alignment between organisational and budget structures (%)	0/3
3. Credibility of controls for avoiding commitments above the expenditure ceilings	0/2
4. Availability of reporting of total cost and physical progress of major investment projects	0/2
5. Effectiveness of basic managerial accountability mechanisms for central government bodies	0/4
6. Delegation of decision-making authority within ministries	0/4
7. Regularity and completeness of risk management practices	1/3
8. Existence of reporting on irregularities	1/2
<b>Total<sup>574</sup></b>	<b>4/23</b>

**Although implementation of internal control requirements has gradually improved over the years, not all BPFs follow the legal obligations in appointing FMC managers and putting in place FMC plans, internal procedures and a risk management system. The framework is yet to be developed for managerial accountability, reporting on major investment projects and irregularities.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The MoF should ensure that responsible entities have sufficient capacity to carry out the action plans of the PIFC and PFM strategies in a timely manner.
- 2) The CHU should revise the FMC Manual, as planned. The revision should include analysis of the coherence of PIFC legislation with other horizontal legislation, among other things, and should ensure introduction of managerial accountability principles, taking into account the system of programme budgeting.
- 3) The CHU, working with the Ministry of Public Administration, should establish a managerial accountability framework to ensure wider introduction of FMC and further implementation of programme-based budgeting.
- 4) The MoF should improve the system for monitoring commitments and put in place a system for monitoring arrears.
- 5) The MoF, working with the MoTMA, should establish a reporting system on major investment projects.

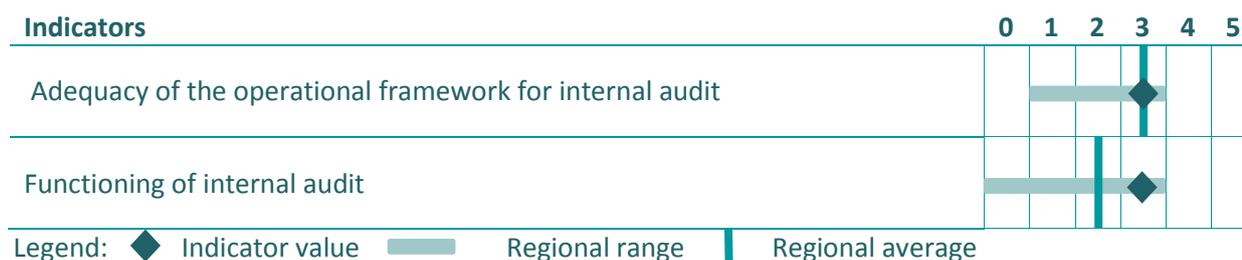
<sup>574</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

### Medium-term (3-5 years)

- 6) The MoF should ensure that the good practices that apply to the management and control of IPA funds are introduced to the management of all budgets and to irregularity management.

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

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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 legal basis for establishing the IA function and carrying out IA is in place, established by Articles 16-37 of the PIFC Law<sup>575</sup>, supported by rulebooks and decrees<sup>576</sup>. IA is organised on a decentralised basis, with the CHU within the MoF tasked with harmonisation and co-ordination of IA<sup>577</sup>.

The reform actions concerning IA are established in both the PFM Reform Programme 2016-2020<sup>578</sup> (focusing on training and improvement of IA), as well as in the Action Plan 2016-2017 of the PIFC Strategy<sup>579</sup>. As the main reform document for IA, the Action Plan 2016-2017 sets out detailed actions for strengthening IA capacities at central and local levels for both national and EU funds. Of the 11 action items in the 2016-2017 Action Plan, 5 items have been implemented to date (including 1 of the 3 action items with a deadline in 2016). Work is ongoing in all other areas.

In co-operation with the Human Resource Management Authority (HRMA), the CHU started implementation of the programme of Continuing Professional Education for certified internal auditors in the public sector. A total of 20 workshops were organised in 2016 for internal auditors at both central and local levels, and the third round of the training and certification programme continued for 33 internal auditors in the public sector. An analysis of the existing methodology of IA was carried out<sup>580</sup>.

<sup>575</sup> PIFC Law, Official Gazette Nos. 73/08, 20/11, 30/12 and 34/14.

<sup>576</sup> Including the Decree on Establishment of IA in the Public Sector, Official Gazette, Nos. 50/12 and 07/17 and the Rulebook on the Internal Audit Method and Procedure, MoF of May 2009.

<sup>577</sup> PIFC Law, Article 38.

<sup>578</sup> PFM Reform Programme 2016-2020, Annex 2, Action Plan, Measure C.1: PIFC Development.

<sup>579</sup> Action Plan for the Implementation of the Strategy of Further Development of the PIFC of Montenegro for the period 2016-2017, Section 2, IA.

<sup>580</sup> Report on Implementation of the PFM Reform Programme 2016-2020, for 2016 (March 2017), Section 2, Area C, Development of PIFC.

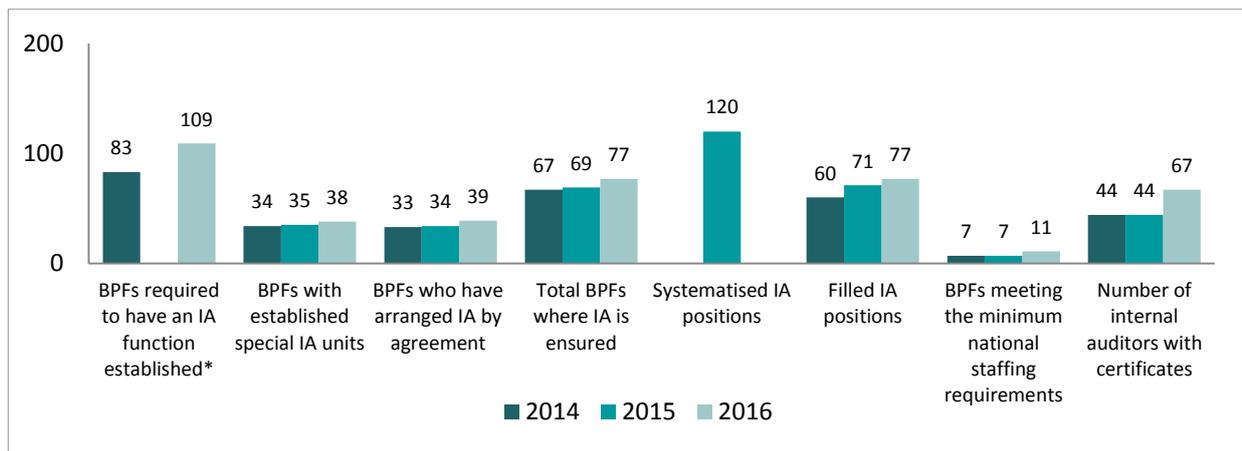
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Pursuant to Article 32 of the PIFC Law, and in line with the methodology established by the MoF<sup>581</sup>, BPFs are required to submit mandatory annual self-assessment questionnaires (i.e. IA reports) to the CHU. On the basis of those reports, the CHU prepares annual consolidated reports on the system of internal financial controls, of which one part deals with IA. According to the CHU Annual Consolidated PIFC Report (2015), the main challenges in the field of IA have been the staffing of the IA units and improving the knowledge and skills of internal auditors, especially with regard to formulating recommendations.

By the end of 2016, a total of 109 BPFs were required to introduce IA functions (including 86 central budget users and 23 municipalities)<sup>582</sup>. The PIFC Law allows establishing IA either by setting up independent organisational IA units or by delegating the IA function to another institution by signing an agreement. In 2016, 71% of BPFs had actually ensured the IA function: 38 BPFs had set up a special IA unit, and 39 BPFs had signed an agreement with other institutions. This represented 96% of the budget<sup>583</sup>. Within the 38 BPFs that established a special IA unit, there were 77 internal auditors in place by the end of 2016, of which 67 (87%) had obtained IA certificates<sup>584</sup>.

There has been steady improvement in IA capacities since 2014 with regard to ensuring the IA functions in BPFs and to increasing staffing and certifications among internal auditors, but only 11 BPFs where an IA unit has been established meet the national requirement of a minimum of three internal auditors per IA unit<sup>585</sup> (Figure 3).

**Figure 3. Comparison of IA capacities, 2014-2016**



Note: \* The CHU Consolidated PIFC Report for 2015 does not provide information on the total number of BPFs required to have the IA function established.

Sources: For 2014 data, 2015 Baseline Measurement Report; for 2015 data, the CHU Consolidated PIFC Report for 2015; for 2016, data provided by the CHU.

Extensive guidance material is available for internal auditors, including a manual<sup>586</sup> and templates (including a model charter). The IA manual dating from 2014 was prepared in accordance with the International Standards for the Professional Practice of Internal Audit (IIA Standards). It provides the audit approach and procedures for conducting system-based audits. There is no analysis yet available on alignment of the manual with the new IIA Standards released in January 2017. The PIFC Law<sup>587</sup>

<sup>581</sup> MoF, Instruction on the content of the report and reporting method for internal audit work.

<sup>582</sup> CHU data.

<sup>583</sup> Ditto.

<sup>584</sup> Ditto.

<sup>585</sup> PIFC Law, Article 18 states that the number of employees in the internal audit unit shall include at least three internal auditors, including the head of the IA unit.

<sup>586</sup> MoF Internal Audit Manual, Version 4, December 2014, Part I: Internal Audit Standards, Policies and Planning, and Part II: Performing an Audit.

<sup>587</sup> PIFC Law, Article 17.

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establishes five types of IA: 1) system audit; 2) compliance audit; 3) successful operation audit (performance audit); 4) financial audit; and 5) information technology audit. However, the current manual is mainly applicable for performing system audits. The Action Plan 2016-2017 of the PIFC Strategy foresees updating of the manual. The initial deadline of 2016 was not achieved, but the IA manual is now expected to be revised by the end of 2017.

Article 4 of the PIFC Law defines IA as an “independent objective assurance and advisory activity”, and Article 20 defines the rules for organisational and functional independence. The legislation determines IA reporting arrangements, and the certification system is in place, with 67 out of 77 internal auditors possessing the certificate. The audit charters and COE are in place, as is the IA manual. However, there appear to be various instances where independence of the IA function is not ensured. In its January 2017 report on Efficiency of Internal Audit in the Public Sector<sup>588</sup>, the SAI established irregularities in 8 out of 11 entities audited having actual or potential impact on the independence and objectivity of the performance of IA. These instances varied from not being operationally independent to internal auditors not being independent in their planning or implementation of performed IA.

Although there is no Quality Assurance and Improvement Programme in place or executed (as required under the IIA Standards), the CHU is performing quality assessments of the IA units on a sample basis using their own methodology<sup>589</sup>. Each year, the CHU assesses at least five IA units.

In light of the circumstances described above, the value for the indicator ‘Adequacy of the operational framework for internal audit’ is 3.

Adequacy of the operational framework for internal audit						
This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms.						
A separate indicator measures the implementation of the framework and the results achieved.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for internal audit	4/5
2. Organisational capacity for internal audit	2/5
3. Co-ordination, development and guidance of the internal audit system	4/5
4. Existence of a system for quality assurance for internal audit	2/3
<b>Total<sup>590</sup></b>	<b>12/18</b>

**The operational framework required to implement IA in Montenegro is in place, although the methodological guidance should be revised in line with the new IIA Standards and to ensure guidance for all types of IA. While the number of IA units and internal auditors is increasing steadily from year to year, the CHU data shows that only 70% of the BPFs required to establish IA units have actually done so, and only 29% of them meet the legal requirement for a minimum number of three internal auditors.**

<sup>588</sup> Montenegro State Audit Institution, Performance Audit Report, Efficiency of Internal Audit in the Public Sector. SAI No. 40116/17-023-72, 17 January 2017.

<sup>589</sup> Rulebook on Methodology for Reviewing Internal Audit Quality in the Public Sector (Official Gazette Nos. 73/08, 20/11 and 30/12).

<sup>590</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

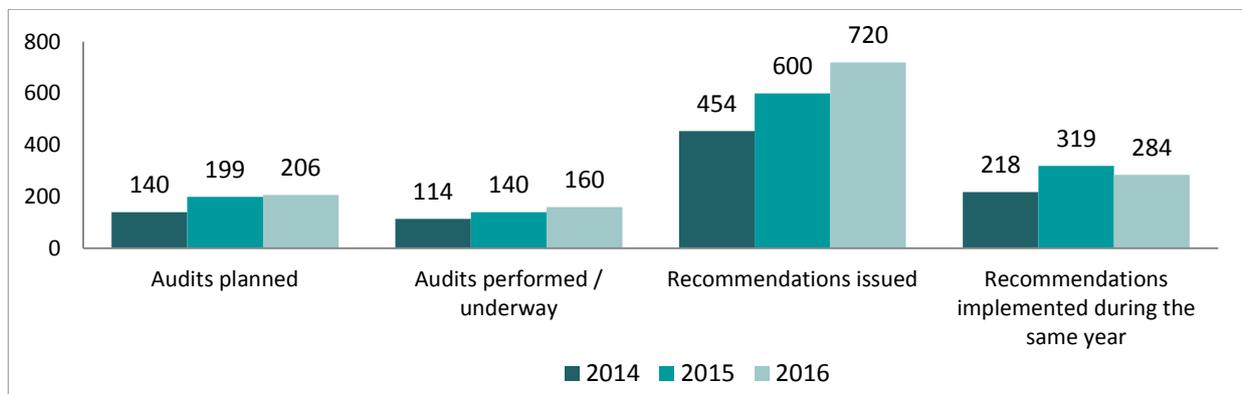
**Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.**

The PIFC Law states that internal auditors shall, in performing their functions, apply the legislation governing IA and international IA standards, and adhere to the IA Charter, COE and the IA working methodology, directions and instructions<sup>591</sup>.

The Law specifies that IA work is to be set out in the strategic plan (which covers a three-year period), the annual plan and the individual audit plan<sup>592</sup>. The strategic plan is adopted by the end of each year for the upcoming three-year period, while the annual plan is adopted by the end of each year for the next year. The strategic plan is to be based on risk assessment and endorsed by the head of the entity.

In 2016<sup>593</sup>, 28 of 29 IA units (96.6%) reported that they had drafted the strategic plan (all stating that their plan was based on a risk assessment) and 28 of the 29 IA units reported that they had an annual plan in place. In total, 206 audits were planned of which 160 were carried out (77.7%). If these numbers reflect the audits of the 29 BPFs that means each IA unit performed an average of five audits. This relatively small number of audits per IA unit appears to reflect the limited resources of IA units rather than the actual needs of the institutions. However, in addition to this, the IA units reserved resources for *ad hoc* audits (most units reserved resources for up to three *ad hoc* audits, one unit for more than seven). This number of *ad hoc* audits may imply issues related to the independence of IA units or annual audit planning. The number of planned and performed audits, as well as the number of recommendations, increased in comparison with previous years indicating the improved IA capacities (Figure 4).

**Figure 4. Output of IA work, 2014-2016**



Source: CHU Annual Consolidated PIFC Report 2015, CHU data for 2016 .

The Heads of the IA units are required to present the IA reports to the heads of entities and to follow the contradictory procedure described in the IA Rulebook. Compared to 2014, the number of recommendations increased by 32% in 2015 and by an additional 20% in 2016. The overall implementation rate is growing every year, with 61% implemented in 2016<sup>594</sup>, 53% in 2015 and 48% in 2014. According to the CHU<sup>595</sup>, most of the recommendations that were not implemented the same year were followed up in 2015-2016. Most of the recommendations issued in 2015 were related to

<sup>591</sup> PIFC Law, Article 22.

<sup>592</sup> *Idem*, Article 23.

<sup>593</sup> CHU data.

<sup>594</sup> 284 out of 463 recommendations with the 2016 as a deadline for implementation.

<sup>595</sup> CHU data.

compliance with regulations (66%), followed by improvement of the internal control system (30%) and value for money (4%)<sup>596</sup>.

The CHU Consolidated PIFC Reports provide feedback on the results of those quality assessments. The 2015 Report noted specifically the differences in the level of quality of the reports of different IA units, and in response, the CHU included relevant training in its 2016 training programme. Based on the sample of IA reports reviewed during the assessment, the reports follow the methodological guidance material referred to above.

In light of the circumstances described above, the value for the indicator 'Functioning of internal audit' is 3.

Functioning of internal audit						
This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations.						
Overall indicator value	0	1	2	<b>3</b>	4	5

Sub-indicators	Points
1. Strength of planning of internal audit in budget organisations	4/7
2. Quality of audit reports	3/6
3. Follow-up and implementation of audit recommendations	2/3
<b>Total<sup>597</sup></b>	<b>9/16</b>

**Planning of IA is based on strategic and annual plans. The broad mandates of IA units are disproportionate to the limited resources in these units, resulting in a low number of annual audits. The number of IA recommendations issued has increased and the implementation rate is growing. The IA reports follow the methodological guidance but vary in quality.**

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The CHU should perform an analysis of the IA procedural framework and manual with a view to compliance with the new IIA Standards, released in January, 2017.
- 2) The CHU should implement measures to enforce the independence of IA units and to ensure appropriate staffing.

#### **Medium-term (3-5 years)**

- 3) The CHU should work with the heads of BPFs to ensure that they understand the relevance of IA.
- 4) The CHU should work with the IA units to develop capacities enabling them to carry out their statutory role as an advisory service to management, with clear focus on ensuring that FMC systems are operational and effective.
- 5) The MoF should establish quality assurance arrangements in accordance with international standards, building on the current IA quality assurance exercise carried out by the CHU.

<sup>596</sup> CHU Annual Consolidated PIFC Report 2015, Section 3.2.3.

<sup>597</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

## Public procurement

**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.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### ***Analysis of Principles***

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

The public procurement legislative framework consists of the PPL, which covers procurement in the public sector and the utilities sector, and a set of implementing regulations, adopted by the MoF or the PPA<sup>598</sup>. The PPL defines the main principles of public procurement: cost-effectiveness and efficiency, competition, transparency, non-discrimination and equality of bidders.

The current PPL was adopted in 2011 and became applicable as from 2012. Amendments to the PPL, which entered into force on 4 May 2015, increased the level of compliance with the *acquis*, especially regarding utilities and defence procurement, and facilitated the establishment of framework agreements and joint procurement. However, the recent set of new amendments has reduced the level of compliance with the EU Directives and the Treaty on the Functioning of the EU.

In particular, defence procurement is no longer regulated by the PPL; instead, the PPL requires the Government to adopt special procedures for defence-related procurement before the end of 2017. Defence-related contracts below EUR 20 000 for goods and services and EUR 40 000 for works are completely exempted from the PPL, without any obligation so far to follow the basic principles set out in the Treaty on the Functioning of the EU.

<sup>598</sup> Rulebook on More Detailed Contents and Methodology of Electronic Procurement Procedures, Official Gazette No. 61/11; Rulebook on Procurement Procedure Records, Official Gazette No. 63/11; Rulebook on Methodology and Contents of Records on Violations of Anti-corruption Rules, Official Gazette Nos. 63/11 and 56/15; Rulebook on Contents and Methods of Taking the Professional Examination for Procurement Officers, Official Gazette No. 28/12; Rulebook on Methodology for Determining Energy Efficiency in Public Procurement, Official Gazette No. 57/14; Rulebook on More Detailed Criteria for Setting up Tender Opening and Evaluation Commissions, Official Gazette No. 24/15; Rulebook on Forms Used in Public Procurement Procedures, Official Gazette Nos. 23/15 and 31/15; Rulebook on Methodology of Determining Calculation Errors in Tenders in Procurement Procedures, Official Gazette No. 24/15; Rulebook on the Methodology of Expressing Sub-criteria for Selection of the Most Advantageous Tender in Procurement Procedures, Official Gazette Nos. 24/15 and 29/15; Rulebook on the Procurement Risk Assessment Methodology, Official Gazette No. 80/15.

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Until the latest changes, the PPL applied to the award of contracts both above and below the relevant EU thresholds, but now it applies only for contract values of EUR 15 000 or above for goods and services and EUR 30 000 or above for works. Below these values, the PPL does not apply. Instead, contracting authorities have to adopt and publish their own rules for low-value procurement.

Several procedures and tools provided for in the EU Directives have not yet been implemented, such as the competitive dialogue, the innovation partnership, electronic auctions, and dynamic purchasing systems, and the approach for procurement in cases of extreme urgency remains unaligned with the EU Directives. Some exceptions in the application of the PPL are not allowed according to the EU public procurement directives<sup>599</sup>. The definitions of public works contracts and public services contracts do not fully reflect the terms of the relevant EU Directives. Thus, the scope and coverage of the PPL has not yet been fully aligned with the *acquis* resulting in zero points awarded for sub-indicator 2.

Special provisions focusing on the prevention of corruption and conflicts of interest are included in the PPL.

The application of the negotiated procedure, with or without publication of a call for tenders, requires the prior approval of the PPA, something that is beyond the requirements of the EU Directives and dilutes the responsibility of the contracting authorities for the application of the PPL. Furthermore, in those cases in which factual circumstances (such as the objective lack of competition or duly determined urgency) preclude or render meaningless the application of competitive procedures, the *ex-ante* approval requirement is a costly and time-consuming burden for contracting authorities<sup>600</sup>.

The legislative framework also covers some areas that are not part of the *acquis*. On the other hand, the PPL does not include rules concerning the management of concluded contracts. Some elements of contract management, however, are addressed in the Rulebook on Methodology of Risk Analysis in Performing Control over Public Procurement Procedures<sup>601</sup>.

With regard to concessions and PPPs, the relevant legislation is spread out between approximately 30 sector laws that regulate various forms of co-operation between the public and private sectors in the provision of public services. The Law on Concessions<sup>602</sup> only deals with the preconditions, methods and procedures for the award of “concessions” in the sense of licences for the exploitation of natural resources or sites. A draft PPP law has been developed but has not yet been adopted. The EU Concessions Directive has thus not been transposed, resulting in zero points awarded for sub-indicators 11 and 12.

Mainly due to the lack of legislation on PPPs/concessions and because of exclusions from the PPL, shortcomings in the definitions of personal scope and the lack of some public procurement procedures, the value for the indicator ‘Quality of legislative framework for public procurement and PPP/concessions’ is 3.

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<sup>599</sup> One such exception is provided in Article 3, paragraph 2, of the PPL: “This Law is not applied for the procurement of the consultancy services (legal, financial and technical) in process of privatisation”.

<sup>600</sup> As stated in SIGMA’s meetings with contracting authorities.

<sup>601</sup> Official Gazette No. 80/15.

<sup>602</sup> Official Gazette No. 08/09.

Quality of legislative framework for public procurement and PPP/concessions						
This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of SMEs in public procurement are assessed, as well as whether practical measures are taken to allow for proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
<b>Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds</b>	
1. Level of alignment of public procurement legislation with the EU Directives	3/6
2. Scope of public procurement legislation	0/6
3. Public procurement procedures	2/4
4. Publication and transparency	5/5
5. Choice of participants and award of contracts	4/5
6. Availability of procedural options	3/4
<b>Public procurement procedures below EU thresholds</b>	
7. Advertising of public procurement procedures	3/3
8. Contract award procedures	6/7
<b>Opportunities for participation of SMEs in public procurement</b>	
9. Opportunities for participation of SMEs in public procurement	2/5
<b>Availability of measures for the practical application of the legislative framework</b>	
10. Availability of measures for the practical application of the legislative framework	4/5
<b>Quality of legislation concerning PPPs/concessions</b>	
11. Coverage of legislation on PPPs/concessions	0/2
12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions	0/8
<b>Total<sup>603</sup></b>	<b>32/60</b>

The PPL is largely harmonised with the *acquis*, although concessions and PPPs have not been regulated in line with the EU Directives, and a few inconsistencies in the PPL persist. The current public procurement legal framework establishes conditions for increasing transparency in public procurement and for reducing corruption.

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

The current institutional set-up for the management of public procurement policy meets the requirements of the *acquis* with regard to public contracts and performs the basic tasks that it has been assigned, with the exception of concessions and PPPs.

The MoF has formal responsibility<sup>604</sup> for public procurement policy making and co-ordination, as well as for submission of draft legislation to the Government and monitoring of its implementation.

<sup>603</sup> Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-60=5.

<sup>604</sup> Decree on State Administration Organization and Manner of Work, Official Gazette Nos. 5/12 and 3/17.

On 28 December 2015, the Government adopted the new Strategy<sup>605</sup> prepared by the PPA. The Strategy identifies the main problems of the public procurement system and defines the priorities for the coming period. Although the Strategy itself is comprehensive and can serve as a basis for the development of the procurement system in the coming years, the accompanying multi-annual Action Plan is very general, in particular with regard to allowing the measurement of the progress of implementation: action points are set out in terms of activities (e.g. “Organization of expert training”) rather than outcomes and no intermediate results are indicated for actions to be implemented over several years.

The time frame available to stakeholders for sending comments on the draft Strategy was shorter than the 40-day public consultation period required<sup>606</sup>. The only presentation of the Strategy to the public occurred during workshops organised by the Chamber of Economy and local non-governmental organisations. The latest amendments to the PPL adopted by the Parliament on 29 June 2017 were also prepared without public consultations.

The PPA is the authority in charge of monitoring the public procurement system and its compliance with EU rules, drafting procurement regulations, issuing prior approval for the application of negotiated procedures with or without the publication of calls for competition, maintaining the lists of contracting authorities, conducting activities related to the professionalisation of procurement and electronic procurement (e-procurement), and co-operating with international organisations and other organisations. According to the Rulebook on Internal Organisation and Job Classification<sup>607</sup>, the PPA has a total staff of 20 employees<sup>608</sup> and is divided into four sub-divisions.

The PPA’s official website gives instructions on how to publish various documents on the PP Portal. Public procurement notices must also be published at the same time in at least one daily newspaper. Data can be searched by the subject of the procurement, by contracting authority, and by the type of procurement procedure, but not by bidder or by the contract registration number. However, the information is primarily sorted by publication date rather than by category. Due to the absence of a unified naming policy for documents, any advanced search is unreliable.

In addition to the PPA’s monitoring of public procurement, the legal compliance of public procurement procedures is verified by the public procurement section of the Administration for Inspection Affairs (AIA). The AIA was established in 2012 and currently has three inspectors dealing with public procurement. With only three inspectors, this service appears to be understaffed when compared with the number of contracting authorities (624)<sup>609</sup> and public procurement procedures (7 291 in 2016). The AIA’s public procurement section is also underequipped (no vehicles or laptop computers) to travel and conduct inspections across the country. The inspections of contracting authorities are carried out on the basis of annual and monthly inspection plans, in accordance with the Law on Inspection Control.

The State Audit Institution (SAI) conducts regular audits of procurement procedures, the results of which are published in the SAI’s annual reports<sup>610</sup>.

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<sup>605</sup> The Strategy for the Development of the Procurement System 2016-2020 is available at: <http://www.ujn.gov.me/strategija-razvoja-sistema-javnih-nabavki-u-crnoj-gori-za-period-2016-2020-godine/>

<sup>606</sup> Articles 10 and 12 of the Decree on the Procedure and Manner of Public Debate Implementation in the Preparation of Laws, adopted by the Government on 20 February 2012.

<sup>607</sup> The Rulebook was adopted by Government Decision 08-2445 of 5 November 2015 and is published at: <http://www.ujn.gov.me/sistematizacija/>.

<sup>608</sup> The number of positions authorised by the Rulebook; however, the current number of employees is only 17 (as listed in <http://www.ujn.gov.me/sistematizacija/>).

<sup>609</sup> At the beginning of 2017, as reported in the “2017 List of Entities Obligated to Apply the Public Procurement Law” published at <http://www.ujn.gov.me/me/lista-obveznika-za-2017-godinu/>. According to the PPA, the number was 616 on 30 June 2017.

<sup>610</sup> During SIGMA’s interviews with the SAI, the auditors highlighted that public procurement procedures were too formalistic and did not focus on the main principles and objectives of public procurement.

Despite some gaps in capacity and monitoring, the value for the indicator 'Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently' is 3.

<b>Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently</b>						
This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies are open and transparent.						
Overall indicator value	0	1	2	<b>3</b>	4	5

Sub-indicators	Points
<b>Quality of the policy framework for public procurement</b>	
1. Quality of the strategy for development of public procurement and PPPs/concessions	2/5
2. Quality of the operational action plan	3/5
3. Implementation of the strategy and the action plan	3/5
4. Monitoring of strategy implementation	3/5
<b>Capability of central procurement institutions and their performance</b>	
5. Adequacy of the legal framework to ensure capable institutions	8/10
6. Clarity in definition and distribution of central procurement functions in the legislation	8/10
7. Performance of the institutions involved, their capacity and resources	10/20
<b>Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement</b>	
8. Presence and quality of monitoring and data collection	4/10
9. Accessibility of public procurement data	8/10
<b>Total<sup>611</sup></b>	<b>49/80</b>

**An institutional framework for public procurement is in place, but weaknesses are observed in the performance by responsible institutions of the tasks required by the PPL. The resources of the PPA allow the normal functioning of this institution. On the contrary, the resources of the AIA remain very limited and are insufficient for the effective and timely performance of its statutory duties.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should strengthen the financial and administrative capacity of the PPA, in particular by improving their information technology capacities and skills. Greater capacity would allow them to take full advantage of the planned EU support for the development of e-procurement software.
- 2) The Government should finalise the preparatory work on the draft PPP law and submit it to the Parliament, and it should establish a review system in the area of PPPs and concessions, in accordance with the requirement of the *acquis*.

<sup>611</sup> Point conversion ranges: 0-12=0, 13-25=1, 26-39=2, 40-53=3, 54-67=4, 68-80=5.

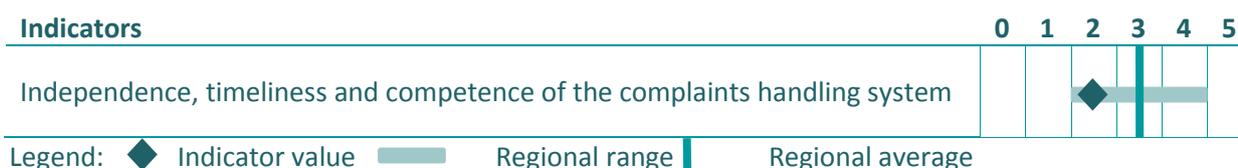
- 3) The Government should review the PPL and its implementing legislation, with a view to completing the transposition of the EU Remedies Directives and to implementing the 2014 EU Directives on public procurement.
- 4) The PPA should ensure appropriate and full public consultation, including the participation of representatives of economic operators and non-governmental organisations (NGOs) in the public consultation process for new legislation and strategic documents.
- 5) The PPA should modernise and expand the functionalities of the PP Portal so that increased data processing and analysis may lead to the establishment of a comprehensive system for monitoring.

**Medium-term (3-5 years)**

- 6) The Government should improve the data collection and reporting system on public procurement, with a view to providing ready access to data on public procurement operations.

**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.**

The values of the indicators assessing Montenegro’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



**Analysis of Principles**

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

The mechanisms and the institutional set-up are in place for handling complaints concerning public procurement, with the exception of operations falling under the Concessions Directive (hence, the value of sub-indicators 14-16 is set to 0). Chapter VI of the PPL regulates the protection of the rights of economic operators in public procurement procedures. The review and remedies system is not fully compliant with the EU remedies directives, e.g. the provisions on legal standing in review procedures and mechanisms for the ineffectiveness of a contract and the imposition of alternative penalties. Finally, as a result of the PPL amendments adopted on 29 June, there are no longer any provisions for remedies in the case of low-value procurement.

The SC, which is in charge of the review of complaints of economic operators against the decisions of contracting authorities, is composed of a President and four members, all of whom are appointed by the Government. Their term of office is five years, with the possibility of reappointment. The SC submits annual reports to the Parliament, in accordance with the PPL, by no later than the end of June of the current year for the previous year, and it publishes these reports on its website.

In 2016, a total of 1 017 complaints were lodged. This large number of complaints constitutes a heavy burden for the public procurement system, especially when taking into consideration that 7 291 competitive procurement procedures were published in 2016. The SC does not have a full complement of staff and lacks suitable premises and administrative systems, all of which leads to delays of several months in its decision making.

Contrary to the Directives, the right to file a complaint against a decision of a contracting authority is provided only to tenderers, not to candidates, i.e. economic operators that sought admission to certain procedures<sup>612</sup>. However, the practical consequences are marginal at present, considering the low number of contracts that are affected by the failure to include candidates.

Since the entry into force of the amendments to the PPL in May 2015, complaints have to be submitted through the contracting authority concerned. The amended PPL also provides a clear definition of the decisions of a contracting authority against which a complaint may be lodged. The complaint must be submitted during the particular stage of the procedure in which the challenged decision is taken by the contracting authority concerned.

According to the PPL<sup>613</sup>, a complaint must be accompanied by the payment of a fee. The fee is equivalent to 1% of the estimated value of the procurement concerned but cannot be more than EUR 20 000.

The submission of a complaint results in the automatic suspension of the entire procurement procedure until the SC has made its decision<sup>614</sup>. Complaints against tender documents can be made until just before the deadline for submission of tenders, with the result that the tender opening session has to be cancelled with little or no previous notice.

The rulings of the SC should be adopted within a statutory time limit of 15 days as from the date of receipt of the complete documentation. However, because of staff shortages and further increases in the number of complaints during 2016, the average processing time increased to 46 days<sup>615</sup>.

The decisions of the SC are clear, and the SC provides the reasons for its decisions. In each case, the SC takes a formalistic approach towards the review and remedies procedures and accepts complaints for formal breaches in the procedure that do not have any effect on the procurement procedure itself or on the award.

Decisions taken by the SC are published promptly on its website, although only as a non-searchable PDF file; the website does not have functional search tools. The decisions of the SC are final and can be implemented immediately upon their adoption. Contracting authorities may therefore sign a contract without having to wait for the ruling of the Administrative Court.

Appeals against the decisions of the SC can be made to the Administrative Court. In 2016, decisions were issued on a total of 85 administrative appeals and in 42 cases the court changed or returned the ruling of the SC. Although the Law requires an “urgent procedure”<sup>616</sup>, it takes 6 to 12 months to resolve such cases, with an average of 8 months in 2016. None of the Administrative Court judges is specialised in public procurement.

The various institutional and operational shortcomings mentioned lead to an overall value of 2 for the indicator ‘Independence, timeliness and competence of the complaints handling system’.

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<sup>612</sup> PPL, Article 4, paragraph 1, sub-paragraph 17.

<sup>613</sup> *Idem*, Article 125, paragraph 3.

<sup>614</sup> *Idem*, Article 124.

<sup>615</sup> Annual report of the SC for 2016, accepted by Parliament on 31 July 2017 (<http://zakoni.skupstina.me/zakoni/web/app.php/akt/1472>).

<sup>616</sup> PPL, Article 136, paragraph 3.

### Independence, timeliness and competence of the complaints handling system

This indicator measures the effectiveness of the system for handling complaints on public procurement. First, the quality of the legislative and regulatory framework is assessed, specifically in terms of compliance with the EU Directives. Then sub-indicators measure the strength of the institutions set up for handling complaints. Next, the actual performance of the review system is measured using a combination of qualitative and quantitative indicators. Finally, the performance of the remedies system for PPP/concessions is evaluated.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
<b>The legislation sets out the mechanisms for handling complaints in compliance with EU Directives</b>	
1. Right to challenge public procurement decisions	2/5
2. Time limit for challenging decisions taken by contracting authorities/entities	2/2
3. Transposition of mechanisms to avoid ineffectiveness of contracts and impose penalties	1/3
4. Mechanisms to ensure implementation of the review body's resolutions	2/2
5. Right to challenge decisions of the review body	3/3
<b>The institutional set-up for handling complaints</b>	
6. Legal provisions establishing the review body ensure independence of the institution and its members	4/7
7. Adequacy of the organisational set-up and procedures of the review body	1/4
8. Public availability and timeliness of data on the review system	3/4
<b>Performance of the review system</b>	
9. Fairness of fee rates for initiating review procedures	0.5/3
10. Actual processing time of complaints	1/3
11. Complaint submission in practice	3/4
12. Quality of decision making by the review body	3/4
13. Cases changed or returned after verification by the court (%)	1/2
<b>Performance of the remedies system in PPPs/concessions</b>	
14. Right to challenge lawfulness of actions/omissions in PPP/concessions procedures	0/5
15. Legal provisions ensure independence of the review body for PPPs/concessions and its members	0/5
16. Timeliness and effectiveness of complaints handling system for PPPs/concessions	0/5
<b>Total<sup>617</sup></b>	<b>26.5/61</b>

The legislation regarding the remedies system broadly complies with the *acquis*, but a few provisions of the EU Remedies Directive 2007/66/EC have not yet been transposed. The remedies system covers the traditional and utilities sectors, but not concessions and PPPs. The provisions of the PPL on legal protection and the way in which these provisions are applied have resulted in a large number of complaints, causing delays in the decision-making process of the SC and significantly blocking the entire public procurement system.

<sup>617</sup> Point conversion ranges: 0-8=0, 9-19=1, 20-30=2, 31-41=3, 42-52=4, 53-61=5.

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should ensure that the SC has the resources necessary for carrying out its statutory responsibilities, especially with respect to staff, premises and equipment.
- 2) The SC should continue to build the capacity of its members and staff in a way that corresponds to EU practices in the field of public procurement, including ways of addressing minor administrative errors.
- 3) The Administrative Court should ensure the greater participation of its members in training activities that are specific to public procurement or otherwise improve their skills in handling procurement-related cases.
- 4) The SC should develop its website and prepare practical search tools for the database of SC decisions.
- 5) The review and remedies system for concessions and PPPs should be established in line with the EU directives.

**Medium-term (3-5 years)**

- 6) The SC should analyse the types of errors made by contracting authorities and give feedback to policy makers and contracting authorities.
- 7) The SC should analyse the reasons behind the Administrative Court’s decisions on appeals against SC decisions and adjust its approach accordingly.
- 8) The SC and the Administrative Court should continue to build the capacities of their members and of the judges, respectively, on EU practices in the area of concessions and PPPs.

**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.**

The values of the indicators assessing Montenegro’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



**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.**

The PPL has explicit provisions that are intended to ensure the observation of basic principles of good

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public procurement<sup>618</sup>. However, the widespread perception of public procurement procedures as a mechanistic process detracts contracting authorities from the effective and efficient use of public funds. As evidenced in meetings held with SIGMA and as confirmed by the PPA, contracting authorities demonstrate weak planning skills and a typically formalistic approach to the evaluation of tenders. Contracting authorities need to obtain prior approval from the MoF for their procurement plans<sup>619</sup> and for amending them, before they can begin any tender procedure. However, the MoF rarely addresses substantive issues in the plans and approvals tend to mainly reflect the availability of funds<sup>620</sup>.

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

The open procedure is by far the most common procedure. Other competitive procedures were used far less often. In terms of contract value, 94% of public funds were spent in 2016 by following transparent and competitive procedures. The share of the negotiated procedure without prior publication of a notice remained low (1.1%<sup>621</sup>).

The average number of tenders submitted per tender procedure was notably lower in 2016 (2.21)<sup>622</sup> in comparison with 2015 (2.84), which was already low in comparison with the EU average.

The PPL provides for two possible award criteria, i.e. the lowest price and the most economically advantageous tender (MEAT)<sup>623</sup>, but the lowest price was the dominant criterion in 2016.

The rules for the award of framework agreements are stricter than those required by the *acquis*<sup>624</sup>. The total value of procurement awarded in framework contracts in 2016 was 4.2%<sup>625</sup> of the total value of contracts. Figures on joint procurement were not available.

Parts of the public procurement process can be carried out electronically, and contracting authorities are obliged to publish certain documents on the PP Portal. No progress has been achieved in using e-tools such as e-submissions, e-auctions, dynamic purchasing systems, and e-evaluations.

The PPL does not include any provisions regarding contract management by the contracting authorities<sup>626</sup>, except for the obligation to publish notices of contract amendments<sup>627</sup>, so the value of sub-indicator 12 is 0. *Ex-post* evaluation of public procurement is not regulated and little practised<sup>628</sup>.

In December 2015, the MoF issued a new Rulebook on the Procurement Risk Assessment Methodology of Performing Control over the Public Procurement Procedure. Contracting authorities started to apply this rulebook in 2016. The PPA has its own integrity plan<sup>629</sup>, adopted on 29 March 2016. Public procurement officers are required to apply the general COE<sup>630</sup> for public officials.

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<sup>618</sup> In accordance with the principles set out in Articles 53(1), 62 and Article 114 of the Treaty on the Functioning of the European Union.

<sup>619</sup> PPL, Article 38.

<sup>620</sup> This information was collected during interviews by SIGMA.

<sup>621</sup> PPA Annual Report for 2016, Table 20, p. 74.

<sup>622</sup> PPA Annual Report for 2016, Table 30, p. 87.

<sup>623</sup> Articles 93-95 of the PPL.

<sup>624</sup> Article 26 of the PPL states that "Framework agreement with more tenderers can be concluded with minimum three tenderers".

<sup>625</sup> PPA Annual Report for 2016, Table 20, p. 74.

<sup>626</sup> Article 148 of the PPL only requires the public procurement inspector to control the "conclusion and implementation of public procurement contracts".

<sup>627</sup> PPL, Article 19, paragraph 1, sub-paragraph 8.

<sup>628</sup> This information was collected during SIGMA interviews with contracting authorities.

<sup>629</sup> Published at <http://www.ujn.gov.me/wp-content/uploads/2016/03/Plan-integriteta-2016.pdf>

<sup>630</sup> Also published on the PPA website at <http://www.ujn.gov.me/wp-content/uploads/2013/02/Eticki2013.pdf>

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Despite the dominance of competitive procedures and the attention to integrity issues, because of weaknesses in planning, preparation and contract management, the value for the indicator 'Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations' is 1.

### Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations

This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded.

Overall indicator value 0 **1** 2 3 4 5

Sub-indicators	Points
<b>Planning and preparation of the public procurement procedure</b>	
1. Due attention is given to the planning process	3/5
2. Presence and use of cost estimation methods and budgeting	2/2
3. Perceived quality of tender documentation by contracting authorities and economic operators (%)	1/4
<b>Competitiveness and transparency of conducted procedures</b>	
4. Perceived fairness of procedures by businesses (%)	1/4
5. Contracts awarded by competitive procedures (%)	5/5
6. Contracts awarded based on acquisition price only (%)	1/5
7. Average number of tenders submitted per competitive procedure	1/3
8. Contracts awarded when one tenderer submitted a tender (%)	0/2 <sup>631</sup>
<b>Use of modern procurement methods</b>	
9. Adequacy of regulatory framework for and use of framework agreements	0/5
10. Adequacy of regulatory and institutional framework and use of centralised purchasing	0/5
11. Penetration of e-procurement within the procurement system	3/5
<b>Contract management and performance monitoring</b>	
12. Presence of mechanisms requiring and enabling contract management	0/6
13. Contracts amended after award (%)	0/4 <sup>632</sup>
14. Extent of <i>ex-post</i> evaluation of the procurement process and of contract performance	0/6
<b>Risk management for preserving the integrity of the public procurement system</b>	
15. Existence of basic integrity tools	4/4
<b>Total<sup>633</sup></b>	<b>21/65</b>

Contracts are awarded, even for relatively modest values, in predominantly competitive and transparent procedures. However, the practical application of the PPL still needs to be improved. Publication on the PP Portal is mandatory for all types of notices, tender documents, procurement plans, and modifications of the initial value of contracts. The PPL does not regulate e-auctions, dynamic purchasing systems or the competitive dialogue. Centralised procurement and framework contracts are used to a limited extent. A regulatory framework for integrity management is included in the PPL, and risk management guidance is provided.

<sup>631</sup> No data provided.

<sup>632</sup> Ditto.

<sup>633</sup> Point conversion ranges: 0-12=0, 13-23=1, 24-34=2, 35-45=3, 46-56=4, 57-65=5.

**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 rather comprehensive set of guidelines, manuals and models of tender documentation for the various types of procedures, evaluation and report formats, and other tools to help contracting authorities carry out the procurement process in line with the prescribed procedures. Secondary legislation prescribes the compulsory use of all of these templates<sup>634</sup>.

Following the 2015 amendments to the PPL, the guidelines and standard forms supporting the planning and conduct of procurement procedures were updated<sup>635</sup>. These templates and guidelines focus mainly on the formal aspects of procedures, and little attention is given to promoting performance-oriented practice. The most recent amendments to the PPL<sup>636</sup> require contracting authorities<sup>637</sup> and, in the case of defence procurement<sup>638</sup>, the Government, to adopt their own procedures for low-value and urgent procurement. However, no guidance has been issued on this subject.

With 624 contracting authorities at the beginning of 2017 (roughly one contracting authority per 1 000 inhabitants), most of the smaller contracting authorities are short of resources for handling more elaborate procurement approaches and procedures, and their procurement officials often have to carry out procurement as a part-time task in addition to their normal duties. This problem is compounded by the low incidence of joint procurement or centralised purchasing, which would have potentially remedied the shortage of education and skills.

Another problematic aspect for small contracting authorities has been the strict limitation<sup>639</sup> of direct agreement procedures to a small percentage of the total procurement budget. For any other procurement during the year, the small contracting authority was obliged to use one of the procurement procedures provided in the PPL. This restriction has now been abolished<sup>640</sup> by exempting low-value procurement from the procedural requirements of the PPL.

Contracting authorities lack skills in procurement planning and needs assessment, as well as drafting technical specifications and tender evaluation. This problem is especially apparent with regard to the definition of the required quality based on MEAT criteria rather than on the price alone and the application of these criteria during the evaluation. The lack of skills of contracting authorities appears to be one of the main reasons why the lowest price is used as the award criterion in 93%<sup>641</sup> of all published tender notices. Similar reasons may lie behind the fairly high level of cancelled procedures, almost 20%<sup>642</sup>.

The training provided by the PPA is intended to address this problem. Professional training and education are mandatory for procurement officials<sup>643</sup>. However, at present only the PPA delivers this mandatory training, and its scope is currently limited, with relatively little attention paid to planning, preparation and contract management-related issues<sup>644</sup>. There are only 12 certified trainers, who are mainly employees of the PPA or the AIA, as well as former employees of the SC.

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<sup>634</sup> Rulebook on Forms Used in Public Procurement Procedures, Official Gazette Nos. 23/15 and 31/15.

<sup>635</sup> Ditto.

<sup>636</sup> Adopted by the Parliament on 29 June 2017 and published in the Official Gazette of Montenegro 42/17 on 30 June 2017, with entry into force on the date of its publication. PPL, Article 48.

<sup>637</sup> Within 30 days from the entry into force. *Idem*, Article 47.

<sup>638</sup> Within six months from the entry into force. *Ibid*, Article 47.

<sup>639</sup> PPL, Article 30 (before amendment).

<sup>640</sup> Through the amendments to the PPL adopted on 29 June 2017.

<sup>641</sup> PPA Annual report for 2016, Table 28, p. 85.

<sup>642</sup> 1 439 out of 7 291 announced procedures were cancelled in 2016, or 19.7% (PPA annual report 2016, Table 31, p. 87).

<sup>643</sup> Article 61 of the PPL.

<sup>644</sup> This information was provided during interviews by SIGMA with contracting authorities.

The PPA also provides advisory assistance to contracting authorities, economic operators and other interested parties on request through its help desk<sup>645</sup>. However, as often only one PPA employee provides assistance to interested parties in response to incoming calls, end-users often cannot reach the help desk as the phone line is busy<sup>646</sup>.

The shortcomings in the support to a relatively large number of contracting authorities and to economic operators lead to a value of 3 for the indicator 'Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations'.

<b>Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations</b>						
This indicator measures the availability and quality of support given to contracting authorities and economic operators to develop and improve the knowledge and professional skills of procurement officers and to advise them in preparing, conducting and managing public procurement operations. This support is usually provided by a central procurement institution.						
This indicator does not directly measure the capacity of contracting authorities and entities. The assessment is of the scope of the support (whether all important stages of the procurement cycle are covered), its extent, and its quality and relevance for practitioners (whether it provides useful, practical guidance and examples). Surveys of contracting authorities and economic operators are used to gauge the relevance and practical applicability of the support.						
Overall indicator value	0	1	2	<b>3</b>	4	5

Sub-indicators	Points
<b>Availability and quality of manuals, guidelines, standard tender documents and other operational tools</b>	
1. Availability and quality of manuals and guidelines	2/5
2. Availability and quality of standard tender documents, standard forms and standard contract models	3/5
<b>Availability and quality of training and advisory support</b>	
3. Access to quality training for procurement staff	4/5
4. Availability of advice and support for contracting authorities and economic operators	3/5
<b>Procurement procedures cancelled</b>	
5. Procurement procedures cancelled (%)	2/5 <sup>647</sup>
<b>Total<sup>648</sup></b>	<b>14/25</b>

**Manuals and guidelines are available to assist contracting authorities and economic operators in complying with procedural regulations, except for low-value procurement. Templates for standard tender documentation and for the opening and evaluation of tenders are prescribed by the Regulation on Templates in Public Procurement<sup>649</sup>. Training organised by the PPA is available for both contracting authorities and economic operators. The PPA, through its Help Desk service,**

<sup>645</sup> Brief information on the help desk is published on the PPA home page.

<sup>646</sup> This information was provided during interviews by SIGMA with contracting authorities and economic operators.

<sup>647</sup> 1 439 out of 7 291 announced procedures were cancelled in 2016, or 19.7% (PPA annual report 2016, Table 31, p. 87).

<sup>648</sup> Point conversion ranges: 0–4=0, 5–8=1, 9–12=2, 13–16=3, 17–20=4, 21–25=5.

<sup>649</sup> Official Gazette Nos. 23/15 and 31/15.

**provides limited advice and support for the interpretation of legal provisions and for practical matters.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The Government should reduce the number of contracting authorities so that procurement management in the remaining authorities may become more effective and efficient.
- 2) The PPA and other authorities concerned should examine ways of raising the professional status of procurement officials.
- 3) The PPA should continue to take measures for building the staff capacities of contracting authorities and economic operators so as to correspond to EU practices in the field of public procurement, and this capacity building should also focus on ways of addressing minor administrative errors.
- 4) The PPA and other authorities concerned should improve access to basic education in the field of public procurement. The PPA should also review its approach to the training of procurement officials and economic operators. Its goal should be to ensure that training becomes comprehensive (i.e. that it includes procurement planning and preparation as well as contract management), useful (in particular, for increasing economy and efficiency), and sustainable.
- 5) 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 may be taken on the right approach for the future.
- 6) The PPA should start the implementation of e-procurement, in line with the principles set out in the 2014 EU Directives.

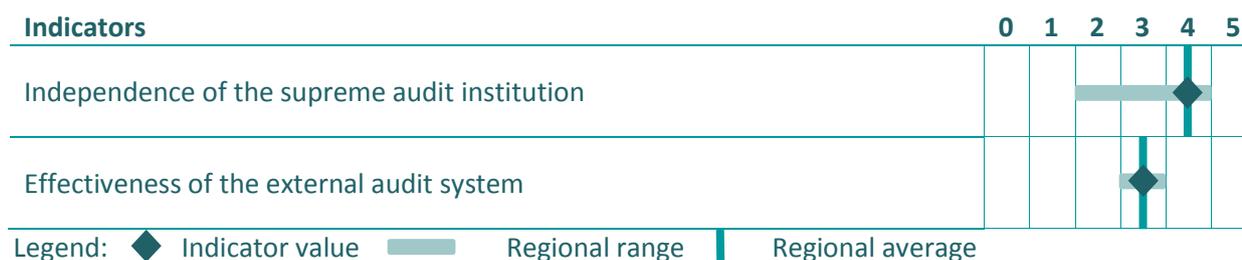
**Medium-term (3-5 years)**

- 7) The PPA should complete the introduction of e-procurement.
- 8) The PPA should manage the introduction of centralised purchasing on a voluntary basis.

## External audit

**Key requirement: The constitutional and legal frameworks guarantee 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.**

The values of the indicators assessing Montenegro's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### ***Analysis of Principles***

***Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.***

The Constitution of Montenegro establishes the SAI, asserts its independence as an institution, designates the Senate as the body leading the Institution, and provides its members with functional immunity in exercising their duty<sup>650</sup>. The Law on the SAI (SAI Law)<sup>651</sup> further clarifies the independence, mandate, rights and responsibilities of the SAI, conforming with international standards. The financial and managerial<sup>652</sup> independence of the SAI is relatively strong. There is no undue interference from the legislator or the executive in the organisation and management of the SAI and use of its budget. The SAI's budget proposal is sent directly to the Parliament's Committee on Economy, Finance and Budget. After review and approval of the budget, the Committee sends the budget proposal to the Government for integration into the overall budget. The Government must provide a written explanation to the Parliament if the SAI's budget is modified<sup>653</sup>. In 2016, the share of the planned SAI's budget in the overall state budget was 0.2%, of which the SAI spent only 36.4%, mainly because of the unsuccessful large-scale public procurement to enlarge its office space<sup>654</sup>.

The President and Members of the Senate enjoy functional immunity and cannot be held responsible for opinions expressed or decisions made while discharging their duties, except in the case of criminal offenses.

<sup>650</sup> Article 144, Constitution of Montenegro.

<sup>651</sup> SAI Law, Official Gazette Nos. 28/04 of 29 April 2004; 7/06 of 27 April 2006; 78/06 of 22 December 2006; 17/07 of 31 December 2007; 73/10 of 10 December 2010; 40/11 of 8 August 2011; 31/14 of 24 July 2014.

<sup>652</sup> Article 48 of the SAI Law grants the right to determine the agreements, rights, duties and responsibilities of the employees to the Senate; Article 2 prohibits influencing Members of the Senate; Article 34 guarantees permanency of the office.

<sup>653</sup> SAI Law, Article 51, supported by Minutes No. 112 of the meeting of the Committee on Economy, Finance and Budget, July 31, 2015.

<sup>654</sup> Report on Implementation of the Public Financial Management (PFM) Reform Programme 2016-2020, March 2017, Ministry of Finance (MoF), Montenegro (procurement for new office space).

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The SAI has the authority to undertake financial, compliance and performance audits<sup>655</sup>, performed in accordance with International Standards of Supreme Audit Institutions (ISSAI) and the professional COE. The audit mandate is exhaustive and, among other responsibilities, includes auditing municipalities, SOEs, EU funds and the funds of other international organisations<sup>656</sup>. The SAI sets its own annual audit plan<sup>657</sup> according to its internal rules<sup>658</sup>. However, so far, the SAI has not established a multi-annual system to prioritise its audit work, taking into account the need to pursue strategic goals and audit directions.

The SAI Law ensures access by the SAI to all information, documents and other material evidence to carry out audit work. This includes documents of a confidential nature<sup>659</sup>.

In 2016, the SAI adopted and published 41 audit reports, of which 34 were financial/compliance (regulatory) audits, 3 performance audits and 4 follow-up audits.

**Table 10. Number and types of audits performed by SAI in 2014-2016**

	2014	2015	2016
Financial/compliance	46	29	34
Follow-up	1	2	4
Performance	1	1	3
Total	48	32	41

Source: Annual Reports on Performed Audits and Activities of the SAI of Montenegro

The SAI reports to the Parliament on its audit work<sup>660</sup> and other activities in its annual report<sup>661</sup>, while submission of individual audit reports to the Parliament is an exception. In 2016 only 5 out of 41 audit reports (including the FBA audit report) were submitted to the Parliament<sup>662</sup>.

Mandatory audits, including the FBA audit<sup>663</sup> and the audits of financial statements of political parties<sup>664</sup>, take up the majority of the SAI's resources. While the obligation to carry out the mandatory FBA audit is well justified by ISSAIs as a regular task of SAIs, the audits of annual financial statements of political parties, which are also required of the SAI as mandatory audits, consume a large share of the SAI's resources, leaving it little room to call for audits at its own discretion.

The SAI has management and support structures in place, despite the fact that during the assessment period, there were only four members of the Senate, and for some periods as few as three (of five provided for under the SAI Law). The SAI's institutional capacity continues to be an issue of concern, and the situation in 2016, by comparison to 2015, has not improved. In 2016, the SAI had 62 staff

<sup>655</sup> Article 5 of the SAI Law defines the audit types in accordance with ISSAIs.

<sup>656</sup> SAI Law, Article 4.

<sup>657</sup> *Idem*, Article 9. The annual audit plan must now be adopted by the end of the current year for the following year.

<sup>658</sup> Instructions on Methodology on Financial and Regularity Audits, and Performance Audits of the SAI of Montenegro, approved by the Senate on 26 January 2015, Official Gazette, No. 07/15, of 17 February 2015.

<sup>659</sup> SAI Law, Article 10; Article 40 of Rules of Procedure of the State Audit Institution, Official Gazette No. 03/15.

<sup>660</sup> The Annual Report, among others, includes excerpts of individual audit reports.

<sup>661</sup> Annual Report on Performed Audits and Activities of the SAI of Montenegro for the period October 2015-October 2016, No. 4011/16-06-1733, Podgorica of 27 October 2016.

<sup>662</sup> One following the internal rule that the SAI should submit to the Parliament audit reports that conclude with an adverse opinion; two follow-up audit reports, at the request of the Parliamentary committee; and one in compliance with provisions of the Law on Parliamentary Oversight of Security and the Defence Sector.

<sup>663</sup> SAI Law, Article 9.

<sup>664</sup> Law on Financing Political Parties and Election Campaign, Articles 43 and 50, Official Gazette, No. 52/2014.

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members out of which 43 are auditors<sup>665</sup> which results in limited capability of the SAI to undertake audits based on its own risk assessment.

The SAI holds an examination for state auditors to ensure that audit staff has the theoretical qualifications for the audit work<sup>666</sup>. A human resource management strategy, including a clear training strategy with an explicit vision for professional development, has, however, not yet been developed. The SAI establishes a training plan each year, which appears to be demand-driven, rather than based on a horizontal and impartial training needs assessment. The SAI widely uses the opportunities for training and exchange of experience offered by regional and international co-operation.

The SAI has a published Strategic Development Plan for the period 2012-2017<sup>667</sup>. A review of the strategic goals and activities that are implemented or in the process of implementation is presented within the Annual SAI Report on performed audits and activities. It is planned that the Report on monitoring of the implementation of strategic goals and activities will be prepared in July 2017.

The SAI publishes all audit reports but does not communicate actively with the media. Although Montenegrin NGOs generally consider the SAI one of the country's most reliable public institutions, and use SAI reports as reference documents<sup>668</sup>, the 2017 Balkan Barometer survey indicates that the share of the population that believes that the SAI is independent of political influence is still low (37%).

The low perception of SAI independence decreases the overall value for the indicator 'Independence of the supreme audit institution' and sets it at 4.

Independence of the supreme audit institution						
This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice.						
Overall indicator value	0	1	2	3	<b>4</b>	5

Sub-indicators	Points
1. Constitutional and legal independence of the SAI	4/4
2. Organisational and managerial independence of the SAI	5/5
3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs)	3/3
4. Access to information and premises	1/1
5. Perceptions of SAI independence by population (%)	1/3
<b>Total<sup>669</sup></b>	<b>14/16</b>

**The SAI's independence, mandate and organisation are set up and protected by the constitutional and legal framework, and are respected in practice. However, the SAI's exhaustive audit mandate and insufficient staffing limits its capacity to undertake regular audit work, and performance audits in particular. The SAI publishes all individual audit reports but is not active in communicating with the public. The proportion of citizens who consider the SAI to be free of political independence is low.**

<sup>665</sup> The SAI is conducting a procedure for hiring additional staff: three state auditors, one head of Department for legal affairs and one state audit assistant.

<sup>666</sup> Annual Report on Performed Audits and Activities of the SAI of Montenegro for the period October 2015-October 2016, No. 4011/16-06-1733, SAI of Montenegro.

<sup>667</sup> Available at: <http://www.dri.co.me/1/doc/Strateski-Plan-Razvoja.pdf>

<sup>668</sup> SIGMA meeting with Montenegrin NGOs on 12 April 2017.

<sup>669</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

**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.**

The SAI fully exploits its mandate to undertake financial audits, annually ensuring 100% of the mandatory financial audits. These include the FBA audit and the audits of financial statements of political parties. Additionally, a number of financial audits of individual institutions are performed as non-mandatory audits. Financial audits are conducted as combined financial and compliance audits, resulting in two separate audit opinions. The SAI is in the process of improving the FBA audit methodology.

At the same time, the SAI conducts a limited but increasing number of performance audits. In 2016, 3 performance audits, of a total of 41 audits, were carried out compared with 1 out of the 32 in 2015.

The SAI Law requires that the SAI perform its audits under procedures that comply with the established framework of the auditing standards of the International Organisation of Supreme Audit Institutions (INTOSAI) and its professional COE<sup>670</sup>. In 2015, the SAI adopted Instructions for financial, compliance and performance audits (Audit Instructions)<sup>671</sup>, which are generally in compliance with Level III ISSAIs. Detailed methodologies (manuals) or guidelines for auditors, at a level of detail comparable to Level IV ISSAIs, have not been published<sup>672</sup>. The SAI plans to use external expertise and to finance this task under the IPA II project to be launched in the spring of 2018.

The SAI has developed and adopted the Guideline for Audit Quality Control and Assurance<sup>673</sup>, a manual creating preconditions that can reasonably assure that the quality control arrangements are adequate and operational<sup>674</sup>. In practice, only *ex-ante* internal reviews by the superiors of state auditors at different levels are being performed. *Ex-ante* external reviews and *ex-post* reviews or monitoring arrangements are not being applied. This limits the SAI's opportunities to learn from mistakes and continually improve audit methodologies and techniques.

Audited entities are legally obliged to submit a report on the implementation of the recommendations in an audit report within the timeframe set by the SAI<sup>675</sup>. The SAI monitors the progress of implementation<sup>676</sup>. If the audited entity fails to submit a report on implementation of the recommendations in the audit report within the established timeframe, the SAI may decide to carry out a follow-up audit<sup>677</sup>. The audited entities generally accept the SAI's recommendations, although only 50% of recommendations made in 2015 audits were implemented by the end of 2016.

There are no formal written procedures for handling SAI reports in the Parliament. The Committee of Economy, Finance and Budget acts as the main counterpart of the SAI by conducting control hearings and reviewing the reports before submission to the plenary, while other committees review the

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<sup>670</sup> SAI Law, Article 5.

<sup>671</sup> Instructions on Methodology on Financial and Regularity Audits, and Performance Audits of the State Audit Institution of Montenegro, approved by the Senate on 26 January 2015, Official Gazette of Montenegro, No. 07/15 of 17 February 2015).

<sup>672</sup> Instruction on methodology for performance auditing was accepted by the Senate of SAI on 29 June 2017 but was published and entered into force on 12 July 2017, thus its compliance with ISSAIs has not been analysed.

<sup>673</sup> Adopted by the Senate of the State Audit Institution in a meeting held on 26 January 2015.

<sup>674</sup> Article 29, Guideline for Audit Quality Control and Assurance, adopted by the Senate of the State Audit Institution in a meeting on 26 January 2015.

<sup>675</sup> Article 15 (4) of the SAI Law.

<sup>676</sup> Article 85, Instructions on Methodology on Financial and Regularity Audits of the State Audit Institution of Montenegro, approved by the Senate on 26 January 2015, Official Gazette of Montenegro, No. 07/15 of 17 February 2015.

<sup>677</sup> Article 48, Rules of Procedure of the State Audit Institution, Official Gazette of Montenegro, No. 03/15 of 21 January 2015.

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reports if they are interested. After discussion on the FBA audit report and Annual Report, the Parliament adopts the recommendations of the SAI as its own conclusions<sup>678</sup> and obliges the Government to develop an Action Plan to implement the recommendations of the SAI. The MoF is accountable for providing quarterly reports to the Government on implementation of the Action Plan<sup>679</sup>. It should be noted that the Parliament ensures follow-up of the FBA audit recommendations only, while other recommendations arising from individual audits do not benefit from a real enforcement mechanism from the Parliament or the relevant committee.

All requirements under this Principle are fulfilled to an intermediate degree which leads to a value of 3 for the indicator 'Effectiveness of the external audit system'.

Effectiveness of the external audit system						
This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits. (e.g. through its manuals and quality assurance system).						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Coverage of mandate by external audit	4/6
2. Compliance of audit methodology with ISSAIs	3/6
3. Quality control and quality assurance	5/6
4. Implementation of SAI recommendations	3/6
5. Use of SAI reports by the legislature	3/6
<b>Total<sup>680</sup></b>	<b>18/30</b>

**The SAI ensures that mandatory financial audits are carried out as required by the legal framework, though the number of performance audits is low. The audit methodology needs further development. The Parliament uses the SAI report in a limited manner, but contributes by requiring the Government to report on implementation of the SAI's recommendations.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The SAI should adopt ISSAI-compliant financial, compliance and performance audit manuals to provide practical guidance to auditors.
- 2) The SAI should 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 decisions and strengthen its communications with external stakeholders.
- 3) The SAI should develop and adopt the Strategic Development Plan 2018-2023 by the end of 2017.

<sup>678</sup> Information provided by SAI.

<sup>679</sup> Ditto.

<sup>680</sup> Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-21=3, 22-25=4, 26-30=5.

**Medium-term (3-5 years)**

- 4) The SAI should initiate modifications to the legal framework and establish operational practices in the Parliament, by envisaging regular submission of the SAI's individual audit reports to the legislature, and provide for their timely review, follow-up and efficient use by the Parliament.
- 5) The SAI should develop a multi-annual audit strategy to prioritise its work, taking into account the need to maintain quality.

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