

Montenegro:

**Frame is Here,
The Picture is Missing**

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Montenegro started the EU accession negotiations in 2012 with a total of 20 chapters opened with two provisionally closed so far. In accordance with the new EU's approach, the most challenging chapters relating to the rule of law were opened at the beginning of the process to be closely monitored until the very end of the negotiations. So far, the most significant progress has been made on improving the legislation in these chapters, with a whole set of new laws that were passed in the last three years. However, progress on the ground is limited. This year's report again notes the lack of results in the prosecution of high-level corruption, the lack of progress in the implementation of the electoral legislation and the creation of conditions for fair and democratic elections. Highly politicized public administration, and its slow reform and rationalization remain a significant obstacle to the implementation of other reforms. Finally, there is still no media friendly environment, while attacks on journalists remain a cause for concern.

"The pace at which the rule of law reforms in Montenegro produce tangible results, will have an impact on the overall pace of the accession negotiations."

Johannes Han

Johannes Han, commissioner for European Neighbourhood Policy & Enlargement Negotiations, has noted the progress made in Montenegro, namely opening of the eight negotiating chapters. He once again reiterated the progress made with regards the legal and institutional frameworks, but also highlighted limited track record on corruption and organized crime. Hence, ***the rule of law reform will be the key determinant of the pace of Montenegro's EU accession, together with the two other fundamentals – public administration reform and economic governance.***

Nonetheless, in the discourse of the both commissioner and representatives of the EU Delegation, the recent political turmoil, resulting in street protests and boycott of the Parliament by the largest opposition formation – Democratic Front, also found significant place.¹ "I would like to also take this opportunity to recall the need for constructive and inclusive dialogue between government and opposition – dialogue that has to take place in parliament!", commissioner Han firmly stated, suggesting that despite technical nitty-gritties of the membership talks with the EU, ***the political developments are not of less significance.***

Montenegro's officials more focused on the positive side of the report. They have also linked the assessments presented in the report with another country's foreign policy priority – and that is joining the NATO, which is expected in early December. The report itself highlights ***the rule of law as a priority inter-linking the Montenegro's bid to join both NATO and the EU.*** In this context, Milo Đukanović, country's prime minister, said that the 2015 report, being "the most positive report" so far, will have an impact on invitation for joining the NATO to be delivered to the country. Aleksandar Andrija Pejović, chief negotiator, highlighted that the continuous progress is being made within the two thirds of negotiation chapters. Igor Lukšić, foreign affairs minister and vice prime minister, praised the new methodology of the report, which gives clear directions on the focus of Government efforts in the upcoming period. ***Government rhetoric, largely focused on the more favorable assessments by the European Commission, is an integral part of Montenegro's pre-accession process.*** IA has recently issued a paper on lack of transparency of accession negotiations² and launched an initiative in front of the European Commission, asking it to proactively publish expert opinions on Montenegrin draft laws, reports of TAIEX experts, together with the reports drawn upon within the Twinning Projects and Peer Review Missions. This would be, in IA's view, strong impetus to democratization of the country. On the other hand, it would prevent the Government to manipulate the findings on its progress (or lack of progress).

In accordance with the European Commission's assessments, most opposition parties have criticized the shortcomings of the electoral process and reminded once again the urgent need for establishing electronic identification of voters and updating the electoral register. Civil sector is unique in recognizing that effective punishment of the human rights violations, strengthening the independence, accountability and efficiency of the judiciary in general, and in particular the results of investigations, prosecution and final convictions for corruption at the high level are required.³

¹ Protests have started on September 27 by gathering of Democratic Front leaders and their supporters in front of the Parliament building in Podgorica. Their main request is fulfillment of preconditions for free and fair elections, although some speculations linked protests with anti-NATO campaign in the country, which is expecting invitation to join the NATO. In mid-October, with the license expiring for organization of the protests, they have turned into clashes between protesters and the police and radicalized the country's political scene, with the DF warning of boycott of the elections, which are due in 2016, if its requests are not met.

² Jovana Marović and Stevo Muk, Negotiations Between Montenegro and the EU: Data Access for the Privileged Only, Institute Alternative, October 2015, Available at: <http://institut-alternativa.org/crnogorski-pregovori-informacije-samo-za-odabrane/?lang=en>

³ See: The EC's Report on MNE Progress, Monitor, November 2015, Available at: http://www.monitor.co.me/index.php?option=com_content&view=article&id=6437:izvjetaj-evropske-komisije-o-napretku-crne-gore-za-2015-godinu-evropsku-trojku-dpsdp-ita-kao-peticu&catid=4425:broj-1308&Itemid=5758

Key Findings

1. Political Criteria

1.1 Democracy

Elections and electoral legislation continue to be the most pressing issues. This year's report highlights that the electoral legislation adopted in 2014 must be fully implemented, including, and in particular, **the electronic identification of voters**. However, its establishment is slowly progressing. The report further criticized the non-existence of progress in resolving and establishing political responsibility for cases which indicate the election irregularities, and leading thus promoting confidence in the electoral process. When it comes to Parliament, report once again underlines the high degree of transparency of the institution, but also criticizes the lack of procedures for acting on citizens' petitions, what is already stated in the civil sector's analysis.⁴ Regardless of the further strengthening of legislative, **oversight function remains limited**, especially in the capacity to monitor the conclusions and recommendations. Capacities of the parliament for both functions remain limited. Commenting on the recent protests, the European Commission reiterates that the parliament is the only place for dialogue among political parties on fair and democratic elections, and encourages its initiation. As for the part of the report on governance, it specifically highlighted **the financial problems of local governments** while the national government approved the restructuring of tax arrears for 14 out of 23 municipalities at the beginning of the year. Finally, this year's report criticized the system of financing civil society projects from public funds and poor institutional framework in this area. The need for improving **the role of civil society in public policy making is again highlighted**.

1.2 Public Administration

Although it is noted that Montenegro has made some progress under 2011-2016 Strategy for Public administration reform (PAR) and overall in this field, European Commission noted that not all of the strategy's objectives were met and the country is only moderately prepared.

With regards to **human resource management and public services**, the report follows the findings of the Baseline Measurement of Public Administration Principles, which were issued by the SIGMA on November 13, 2015,⁶ as well as previous findings by the IA in the field.⁷ In other words, it is concluded that despite the

"Results in ensuring merit-based recruitment and tackling politicisation are uneven."

legal framework being aligned with international standards, Montenegro's track record in ensuring merit-based recruitment is uneven and that current remuneration system in public sector is not transparent enough and does not follow the principle of equal pay for equal work. With regards to **the policy development and coordination**, the main noted problems are the under-developed medium-term planning and incoherent sectorial strategies, which lack costing. Montenegro has been also criticized for lack of systematic approach towards public consultations, which "do not necessarily include all the relevant stakeholders and often come too late in the process". **Accountability of public administration is undermined** by the non-adequate organization of state administration, a rather low number of Ombudsman recommendations and passive and non-responsive administration, in terms of access to information. One of the key recommendations is also for Montenegro to adopt multi-annual **public financial management** programme. Despite Montenegro's commitment towards **user-oriented public services**, major challenge ahead is simplification of administrative procedures, which is expected by the new legislation. Nonetheless, it is especially highlighted that nearly 150 special procedures will need to be either abolished or brought into line with the new law on administrative procedures. Country report also reiterates the importance of adoption of the new 2016-2020 PAR Strategy, which is expected to eliminate to overcome the previous weakness of **the strategic framework of PAR**, such as focus merely on output-level indicators and not on outcomes or impacts.

⁴ Institute Alternative, Committee for Anticorruption: Cure or Placebo?, November 2012, Available at: <http://institut-alternativa.org/kuca-gradanskog-drustva-tema-sjednice-savjeta-za-razvoj-nvo/?lang=en>

⁶ SIGMA Programme, Baseline Measurement Report: The Principles of Public Administration, Montenegro, April 2015, Available at: http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf

⁷ See: Institute Alternative, Monitoring Report: Recruitment and Promotion In State Authorities In 2014, May 2015, Available at: <http://institut-alternativa.org/monitoring-izvijestaj-zaposljavanje-i-napredovanje-u-drzavnim-organima-u-2014-godini/?lang=en>; Institute Alternative, Montenegro's Senior Civil Service: Between State and Politics, December 2014, Available at: <http://institut-alternativa.org/profesionalizacija-rukovodnog-kadra-u-crnoj-gori/?lang=en>

1.3 Rule of Law

In the rule of law field many questions require urgent improvement, while progress is noted mainly in the legislative part. The European Commission has identified a number of priority activities in this area including **strengthening the independence and professionalism of the judiciary by fully implementing the new recruitment, professional appraisal and promotion systems**. The same applies when it comes to reduction of length of the trial and the number of pending cases. Moreover, Montenegro still needs to strengthen the accountability of the judiciary and the capacity of the Judicial and Prosecutorial Councils, as well as to eliminate political influence on the work of these bodies. The lack of transparency in the work the Prosecutorial, as well as lack of financial resources for the operation of the Judicial Council stands out still as problematic. This year's assessment criticizes the delay in disposal of random assignment of cases to judges "overnight".

"Corruption remains prevalent in many areas and continues to be a serious cause of concern."

Corruption continues to be a central issue in efforts to strengthen the rule of law. EC criticized **the lack of a track record in prosecution of low and medium corruption, and especially for high-level cases**. The report underlines progress in improving the legislative and institutional framework, but further efforts are still needed particularly in **the establishment of the functional Agency for Prevention of Corruption by 1 January 2016**. Additional activities are particularly encouraged in **improving track records and the prevention of corruption, including effective penalties for irregularities**. Poor results were noted in the areas of conflict of interest, asset declarations as well as financing of political parties and electoral campaigns (especially in the prevention of abuse of state resources for electoral purposes), as well as the application of penalties. Capacity of prosecutors, judges and police to fight corruption remains insufficient.

As regards the fight against organized crime, report consider that **consolidating track records in this area is essential, especially when it comes to final decisions, permanent seizure of assets acquired through criminal activity, as well as the determination of suspicious transactions**. As priority actions, the European Commission further states stepping up intelligence-led investigation on anti-money laundering and financial cases, and on cases of trafficking in human beings, and ensuring stronger, proactive inter-agency cooperation among the established

1.4 Human Rights and the Protection of Minorities

Despite the improvements in legal framework, it is noted that institutions tasked with protection of human rights and minorities remain weak and that low penalties and lack of uniform approach create legal uncertainty. Roma minority is the most discriminated, while the impunity for abuses in prisons and pre-trial facilities is also particularly worrisome.

Freedom of expression is at the very centre of the European Commission's focus on the human rights. Nonetheless, it is **one of the areas receiving the lowest score**, with no progress made, and only some level of preparation. Repetition of earlier remarks illustrates that the country has been stagnating in the field. Despite the decrease in number of physical attacks against journalists, it is highlighted that **recommendations of Commission for investigation of attacks against journalists has not been sufficiently followed up by the Government**. It is particularly highlighted that the full **resolution of the most serious case of the 2004 murder of editor-in-chief of daily Dan** is still pending.

Full alignment with the case law of the European Court for Human Rights is also needed. **The insufficient independence of the public broadcaster and divided media community** remain persistent problems, while this year's report particularly highlights ongoing smear campaign by one tabloid newspaper, implying the Serbia-based Informer, targeting prominent civil society activists and some politicians.

"Montenegro is gradually shifting from incorporating EU standards into its legal framework to establishing an institutional framework with the potential to effectively protect and enforce human rights in practice."

1.5 Regional Issues and International Obligations

EC criticised that Montenegro still maintains a 2007 bilateral immunity agreement with the United States, granting exemptions for US citizens from the jurisdiction of the International Criminal Court, which will pose a problem in the **accession negotiations**.

Although the number of **missing persons** resulting from the conflicts in the '90s is low compared to the overall number for the region (61 out of 10880), EC still warned that revealing their fate is „vital for reconciliation and stability in the region“.

It is stated that Montenegro maintains good relations with all other enlargement countries and neighbouring EU Member States. However, the troubles arising from the demarcation agreement with **Kosovo**, now pending parliamentary approval, have not been mentioned.⁸ No developments concerning the constitutional recognition of the Montenegrin minority in Kosovo were made either. Also, as problems Border demarcation between Montenegro and **Croatia**, as well as Montenegro and **Serbia** is still ongoing. No progress with issues related to citizenship rights was achieved with Serbia.

3. Political Criteria

Existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union are equal to other Copenhagen criteria, although this is often not emphasised as much by either the EC or Montenegro in the discourse on EU integration. However, the significance of economic governance in the enlargement process has grown over the time and has resulted, among else, in this year's obligation of enlargement countries to prepare Economic Reform **Programmes** (ERP),⁹ that were then the basis of the specific, country tailored recommendations jointly adopted by the EU and WB countries and Turkey, at the Economic and Dialogue Meeting in May 2015.¹⁰

Montenegro received 8 recommendations related to diverse topics, ranging from commitment to fiscal discipline (including the municipal level), reforms of the pension system, common policy for public sector wages, to voluntary financial restructuring and amending the labour legislation to increase market flexibility. Regarding the second part of the programme, that is related to structural reforms of a sectoral nature (such as transport, energy, education, etc.), Montenegro received recommendation to continue education reform so it is better aligned with labour market needs, strengthen transport development and connectivity, regulatory guillotine enforcement as well as progress in implementing EU food safety and sanitary and phytosanitary standards.

After some dwindling during the last year, the economy has started showing some progress due to the big capital investments in 2015, but macroeconomic stability is hampered by low consumer spending, high unemployment, low wages and tight bank credit conditions among others. EC is particularly worried about the 17.7% unemployment rate on national average that goes from 6.7% in the south to the stunning **39% in the north**.

One of the major concerns is the tempo in which the public debt has grown, doubling from 2008 to reach 60.3% of GDP in June 2015. Although some fiscal consolidation measures that were undertaken did have an impact on curbing the budget deficit (from 5% of GDP to about 1.3% in 2014) and the Law on Budget and Fiscal Responsibility (adopted in April 2014) has introduced some strict thresholds on budget deficit and public debt. However, **the big investment projects are excluded from deficit calculations**, such as the construction of highway whose costs (with other capital projects)¹¹ amounted to 9.2% of GDP in 2015.

⁸ Read more at: <http://www.reuters.com/article/2015/10/23/us-kosovo-opposition-teargas-idUSKCNOSH21G20151023>

⁹ In January 2015, Montenegro submitted its first Economic and Reform Programme (ERP) covering the period 2015-2017

¹⁰ Read the full text of the joint conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey: <http://www.consilium.europa.eu/en/press/press-releases/2015/05/12-ecofin-joint-conclusions/>

¹¹ Read more about the (non) transparency of capital budgets <http://institut-alternativa.org/ia-na-raspravi-o-prijedlogu-budzeta-za-2013-godinu/?lang=en>

Municipal debts are also a growing concern for the stability of public finance, now with the newly approved raising of limits for state guarantees in order to enable them to service their debts. With no improvement to trade deficit, the net financial inflows consist mainly of foreign direct investments (10% of GDP).

With the size of the non-banking sector remaining modest (in 2014, 3.2% of GDP, which is the highest level in years), the banking system's recovery is also very slow — this causes the interests rates on loans to be still as high as 8.93% on average and the non-performing loans ration to be 16.4% of the total loans. Licensing, contract enforcement, access to credit and cumbersome tax administration procedures are the **main obstacles for the business community**, although the previous year has seen a rise in establishing new companies (3179 in 2014).

4. Ability to Assume the Obligations of Membership

4.1 Progress

First striking fact about the assessment of progress made, is that no chapter can boast that *substantial progress made*. Also, in one chapter, *Freedom of movement for workers*, no progress was made, after last years *limited progress*. There are six chapters where good progress was made, two financial (public procurements and financial control) and the rest sectoral. Among them, particularly important is the Fishers, in which previous report, no progress was recorded, or Free movement of goods, where last year limited progress was recorded. The remaining majority of 26 chapters fall into the broad and ambivalent category of some progress. Especially important is that this label was given to chapters like *Financial and budgetary provisions*, where for the past three years no or *limited progress* was reported. The same goes for *Environment and climate change*, another chapter where now, after many years, some progress was reported.

Assessment	Chapters
No progress (0)	2 - Freedom of movement for workers
Some progress (1)	3 - Right of establishment and freedom to provide services Free movement of capital 6 - Company law 7 - Intellectual property law 8 - Competition policy 9 - Financial services 10 - Information society and media 12 - Food safety, veterinary and phytosanitary policy 14 - Transport policy 15 - Energy 16 - Taxation 17 - Economic and monetary policy 18 - Statistics 19 - Social policy and employment 20 - Enterprise and industrial policy 21 - Trans-European networks 23 - Judiciary and fundamental rights 24 - Justice, freedom and security 25 - Science and research 26- Education and culture 27- Environment and climate change 28 - Consumer and health protection 29 - Customs union 30 - External relations 31 - Foreign, security and defence policy 33 - Financial and budgetary provisions
Good progress (2)	1 - Free movement of goods 5 - Public procurement 11 - Agriculture and rural development 13 - Fisheries 22 - Regional policy and coordination of structural instruments 32 - Financial control
Substantial progress (3)	

Table 1. Negotiation chapters and level of progress.

4.2 Preparedness

In terms of the assessment of Montenegro's preparedness for membership, all stages of preparedness are represented. Preparations are most advanced in the chapter relating to intellectual property law, while four chapters are in an early stage.

Assessment	Chapters
Early stage of preparation (1)	2 - Freedom of movement for workers 13 - Fisheries 27 - Environment and climate change 33 - Financial and budgetary provisions
Some level of preparation (2)	11 - Agriculture and rural development 12 - Food safety, veterinary and phytosanitary policy 18 - Statistics 19 - Social policy and employment
Moderately prepared (3)	1 - Free movement of goods 3 - Right of establishment and freedom to provide services 4 - Free movement of capital 5 - Public procurement 6 - Company law 8 - Competition policy 9 - Financial services 10 - Information society and media 14 - Transport policy 15 - Energy 16 - Taxation 17 - Economic and monetary policy 20 - Enterprise and industrial policy 21 - Trans-European networks 22 - Regional policy and coordination of structural instruments 23 - Judiciary and fundamental rights 24 - Justice, freedom and security 28 - Consumer and health protection 29 - Customs union 32 - Financial control
Good level of preparation (4)	25 - Science and research 26 - Education and culture 30 - External relations 31 - Foreign, security and defence policy
High level of preparedness (5)	7 - Intellectual property law

Table 2. Negotiation chapters and their level of preparedness.

With a **moderate level of preparation** sustained in the vast majority of chapters, as the table above shows, the corresponding average numerical grade for the level of Montenegro's preparation for accession would be 2.8.