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Creating Change Together

**PUBLIC ADMINISTRATION  
REFORM  
ASSESSMENT  
OF  
MONTENEGRO  
  
APRIL 2014**

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## ASSESSMENT OVERVIEW AND RATIONALE

Montenegro has entered into an intensive stage of the European Union (EU) accession process. In June 2012, formal accession negotiations began with the screening process, which was concluded in 2013. The first negotiation chapters have been opened, and in 2014 it is expected that a number of other chapters will be opened, which will put further pressure on the existing capacities of ministries.

While the EU accession process moves forward, the Government of Montenegro will also need to prioritise the consolidation of public spending and reforms to stimulate economic growth. The public debt has doubled, from 28% of GDP in 2007 to 56% in 2013. Correcting this trend requires structural reforms, including strong financial management arrangements. Faced with the task of meeting all of the desirable standards in public finance management, Montenegro, as a small country, is not able to develop institutions and procedures that can make use of large-scale economies. Pragmatic and innovative administrative solutions therefore tend to proliferate in all spheres of the public administration.

Following discussions with the European Commission (EC), SIGMA gave priority in its 2014 assessment of Montenegro to areas of public administration reform (PAR) and in particular those areas where actual reform is either being implemented or planned. This report covers the period from April 2013 to March 2014.

Each assessment area is presented in a separate thematic report, which includes a brief description of the state of play and recent developments. This overall assessment is followed by a more detailed analysis with conclusions.

SIGMA's 2014 assessment of Montenegro focused on:

- [PUBLIC FINANCE MANAGEMENT](#) – This assessment focused on [Public Expenditure Management System](#), the implementation of [Public Internal Financial Control](#), including internal audit. [External Audit](#) has been assessed against the minimum requirements of a functioning supreme audit institution (SAI), based on the standards developed by the International Organisation of Supreme Audit Institutions (INTOSAI).
- [PUBLIC PROCUREMENT](#) – This assessment covered Legal Assistance and Institution Building, PPPs and Concessions, and Policy Advice and Strategic Framework Development.

SIGMA, working in co-ordination with the EC's Directorate-General for Enlargement (DG ELARG), has developed a draft set of principles of public administration, designed to define key requirements for good public governance and to serve as a basis for measuring progress over the years. The 2014 assessments were used to pilot these draft principles concerning the above topics.

The principles of public administration are due to be released in November 2014.

# **PUBLIC FINANCE MANAGEMENT**

**MONTENEGRO**

**APRIL 2014**

## 1. State of play and main developments since last assessment

### 1.1. State of play

The Government has established a robust annual budget process and has proved that it is able to keep expenditure under control during the budgetary year. The timetable set in the legislation is respected and budget information at aggregate levels is regularly available to the public.

However, the existing public expenditure management system is characterised by a lack of medium-term financial planning; only partial financial estimations when selecting capital projects; a lack of central and timely information on the level of spending commitments; and only a limited timeframe (one month) for the Parliament to debate the annual budget.

Legislation pertaining to Public Internal Financial Control (PIFC) has been in place since 2011, with some revisions to both internal audit and Financial Management and Control (FMC) in 2012 and 2013. The different public sector organisations show significant disparity in implementing the formal requirements of FMC, such as the FMC Action Plans. The development of managerial accountability in the public sector is hampered by a lack of financial information and delegation of authority over finances below the secretary of ministry level. Professional development of internal auditors is systematically ongoing and audit reports are routinely prepared, although the number of staff in posts shows a shortfall compared to the legal requirements in Montenegro.

The constitutional and legal framework of the State Audit Institution (SAI) fulfils international requirements with the exception of some aspects of financial and operational independence, as it does not have full discretion in the use of its funds and recruitment of staff is managed by the Human Resources Management Agency. The SAI uses audit guidelines but they are not applied in the same way by all of its sectors. Individual audit reports are not systematically sent to the Parliament, which so far discusses only the annual audit report of the SAI. The SAI is an institution respected for its professionalism and objectivity. However, this reputation has led to mounting pressure on the SAI to take up roles and functions that are fundamentally not external audit core tasks.

### 1.2. Main developments since last assessment<sup>1</sup>

The main development in public expenditure management has been the drafting and submission to the Parliament of a new organic budget law, the Law on Budget and Fiscal Responsibility<sup>2</sup>. The new draft Law contains elements to enhance the operation of fiscal policy, including improving medium-term resource planning and introducing fiscal rules. The new draft Law also establishes a budget inspection function.

Significant changes in public sector structure and staffing have affected progress on FMC. The number of individual directorates and administrations has dropped from 54 in 2011 to 31 in 2012, largely through consolidation in their parent ministries. While financial services (such as budget preparation and accounting) should also be consolidated, progress in completing the merger process has been inconsistent.

In July 2013 the Constitution was amended, in line with the recommendation of the State Audit Institution (SAI), to secure the functional immunity of the Members of the Senate, the governing body of the SAI. In March 2013, the president of the SAI stepped down and a new president was elected by the Parliament in July 2013.

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<sup>1</sup> March 2012.

<sup>2</sup> Submitted to the Parliament in July 2013 and is expected to be enacted during the second quarter of 2014.

## PUBLIC EXPENDITURE MANAGEMENT SYSTEM

### 2. Analysis

#### Multi-Annual Financial Framework

**1: The Government approves and publishes a Medium Term Budgetary framework (MTBF) on a general government basis, which covers a minimum time horizon of three years.**

Montenegro does not have a well-established integrated system of medium-term planning that is comprehensive and linked to strategic plans. While multi-annual data is published in the annual budget and in the European Union (EU) Pre-Accession Programme, the main medium-term forecast document for budgetary purposes, Directives of Macroeconomic and Fiscal Policy, is produced in April and adopted in May. The document contains revenue and expenditure projections, both on central government and general government<sup>3</sup> basis. It does not link clearly with structural reform efforts or the Government's sector-specific strategic plans. Many of its projections cover the overall economy and the document does not include sectoral or organisational breakdowns of expenditure beyond the budget year.

In addition, spending and revenue projections do not show existing and new costs, nor do they act as an anchor for future budgets. Instead, the projections are renewed each year, rather than acting as a yardstick for measuring corresponding changes in coming years. While the main medium-term forecast document details the likely framework based on macro-economic projections, it does not contain any sensitivity analysis<sup>4</sup>.

Part III of the proposed Law on Budget and Fiscal Responsibility deals with the Government's adoption of a Multi-annual Fiscal Strategy for a four year period and Fiscal Policy Guidelines for a three-year period (renewed each year), guided by the dual objective of staying within a 3% budget deficit target and limiting public debt to 60% of GDP<sup>5</sup>. This is supported by the objective of reaching primary surplus. The Law also requires the Government to take corrective action if it appears targets in any year will not be met. It also envisages three-year spending ceilings, which will be mandatory for the first year of the budget horizon and indicative for the following two years.

***The link between the annual budget and the Multi-annual Fiscal Strategy is weak. The Directives of Macro-economic and Fiscal Policy do not include sectoral spending plans, nor are they used to make the principal revenue and expenditure decisions ahead of the budget process.***

**2: The forecasts that each public sector organisation submits to the Ministry of Finance for compiling the overall MTBF are linked to a strategic plan for the same medium-term timeframe.**

In Montenegro, the linkage between costed sectoral/organisation strategic plans (where they exist) with the medium-term budgetary process is weak. Most current sectoral strategies do not contain estimates of the financing needs or funding sources that will be used to meet the objectives. A SIGMA review of published strategies and action plans showed that only 26 of 59 documents had costings, some of them at a broad level. Furthermore, some of the costings are obsolete, given the time elapsed since the publication of the individual strategy. In some cases where financing needs are outlined, they are not in line with the actual budgetary resource plans. Sectoral strategies are not updated often enough to be genuine planning and co-ordination tools.

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<sup>3</sup> General government includes central government, social security funds and local government.

<sup>4</sup> The only official Government document that includes sensitivity analyses is the Pre-Accession Economic Programme. Sensitivity analysis is also included in the explanatory material for the Budget.

<sup>5</sup> Articles 17–26.

Initiatives are not clearly prioritised. The recently published National Development Plan (titled Development Directions) is not costed in detail and is based on high-level objectives rather than a costed and structured framework that can be realised over time<sup>6</sup>.

Overall, there is a relatively large number of strategies<sup>7</sup> in Montenegro, but a weak detailing of the costs of sectoral/organisational strategies. Strategies (which are by nature multi-annual) are often regarded as high-level aspirations, rather than planning documents on which the Government can base and achieve its policies by provisioning funds in annual budgets and IPA programmes.

***The link between costed sector/organisation strategic plans (where they exist) and the medium-term budgetary process is weak and ministries are not required to submit sectoral financial plans as inputs to medium-term fiscal policy documents.***

### Annual Budget Process

**3: The Budget Process is based on transparent legal provision established in the Constitution, an organic budget law and/or related laws.**

In Montenegro, the current organic budget law (the Budget Law)<sup>8</sup> is the basis of the annual budget. At the time of this assessment, the proposed revision to the Law was being discussed in the Parliament<sup>9</sup>. The Law and its revision clearly set out the required timetable. In 2013, the timetable was met.

**Figure 1. Comparison between the timetables in the current Law and the new draft Law**

Action	Date in current Law	Date in the new draft Law
Technical instruction issued to budget users on capital budget	February	January
Submission of proposals for capital projects to the Ministry of Finance (MoF)	March	15 March
Government priorities set	March	March
MoF presents the medium-term fiscal policy plan to the Government	April	March
MoF issues instruction (budget circular) to budget users based on a the Government decision	May	May
Budget users submit requests	End July	End July
MoF submits draft Budget to the Government	October	October
The Government proposed Budget submitted to the Parliament	November	November
Parliament approves the annual budget as a law	End December	End December

Source: Budget Law – Official Gazette 53/09, 7 August 2009 and the draft Law on Budget and Fiscal Responsibility

The existing Budget Law clearly specifies the role of the Government, the Parliament and the Ministry of Finance (MoF). It also defines public money and requires that income be paid into a single treasury account controlled by the MoF. The Parliament has the power to amend the Budget without specific legally defined limits. In practice the changes included by the Parliament have not been significant compared to the total budget figures.

While the process is well established to develop the Budget during the year, the current timetable does not reflect current good practice as prescribed by the OECD according to which the Budget must be

<sup>6</sup> Montenegro Development Directions 2013-2016.

<sup>7</sup> Towards the end of 2013, Montenegro had more than 60 sector strategies in force plus a number of others that can be considered as sector strategies.

<sup>8</sup> Budget Law – Official Gazette 53/09, 7 August 2009.

<sup>9</sup> Draft Law on Budget and Fiscal Responsibility (discussed by the Parliament in March 2014).

submitted to the Parliament at least three months before its adoption date<sup>10</sup>. The new draft Budget law does not change the timetable, or bring it further into line with EU requirements for Eurozone members – notably the requirement that the draft central government budget for the coming year and the main parameters of the draft budgets for all the other general government subsectors be made public annually no later than 15 October<sup>11</sup>.

The current Law allows the Government to reallocate spending, subject to a 10% limit, between budget programmes. It also allows the Minister of Finance to approve spending units reallocating up to 10% within programmes. Considering the detailed level at which an annual budget is studied and adopted by the Parliament, allowing some flexibility is understandable. However, the number of changes is high, creating an additional administrative burden for the administration<sup>12</sup>. Currently, variations between budget programmes or budget users are not subject to prior parliamentary approval, neither on individual items nor as a composite set of amendments near year-end. During the budget year the Parliament only considers spending changes exceeding the 10% threshold.

**Montenegro observes a well-defined annual budget timetable. The existing legislation also covers aspects of good budgeting practice, including the definition of public money, the use of a single treasury account and the Parliament's role. However, the Parliament has little time to consider the budget and is not involved ex ante in approving spending variations.**

**4: The Budget is based on accurate economic and revenue forecast and includes comprehensive estimates of spending for the coming year that are consistent with the MTBF.**

The lack of a long time series of data in Montenegro contributes to weaknesses in economic forecasting. Future indirect tax revenues in Montenegro are estimated based on a correlation between past tax yield and expected real GDP growth. Together with the factors coming from the small open economy, projections for future years are more tentative.

**Figure 2. Comparison of forecasts for GDP growth by the MoF with similar estimates by other organisations**

Organisation	2011 (forecast)	2011 (outturn)	2012 (forecast)	2012 (outturn)	2013 (forecast)	2013 (outturn)
Government projection for annual budget	2.5% -3%	3.2%	3.5%	-2.5%	2.5%	3.5%
IMF	2.5-3%	3.2%	3.5%	-2.5%	1.5%	3.5%
EU	3.2%	3.2%	4.0%	-2.5%	2.0%	3.5%

Source: EC Spring Forecasts, IMF Article IV Consultation reports, MoF of Montenegro

As shown in the Figure 2, the MoF forecasts do not differ significantly from international economic projections, indicating that the main issue is the lack of data and the size and volatility of the economy, rather than analytical failure.

The annual budget circular from the MoF sets out the overall approach, timetable and underlying assumptions as a framework for budget users to submit their expenditure proposals for the coming year. Following receipt of these budget requests, the MoF holds discussions with budget users, before submitting the draft budget to the Government. During this process, the MoF confers with the

<sup>10</sup> OECD Best Practices for Budget Transparency (OECD, 2002).

<sup>11</sup> Regulation (EU) No. 473/2013.

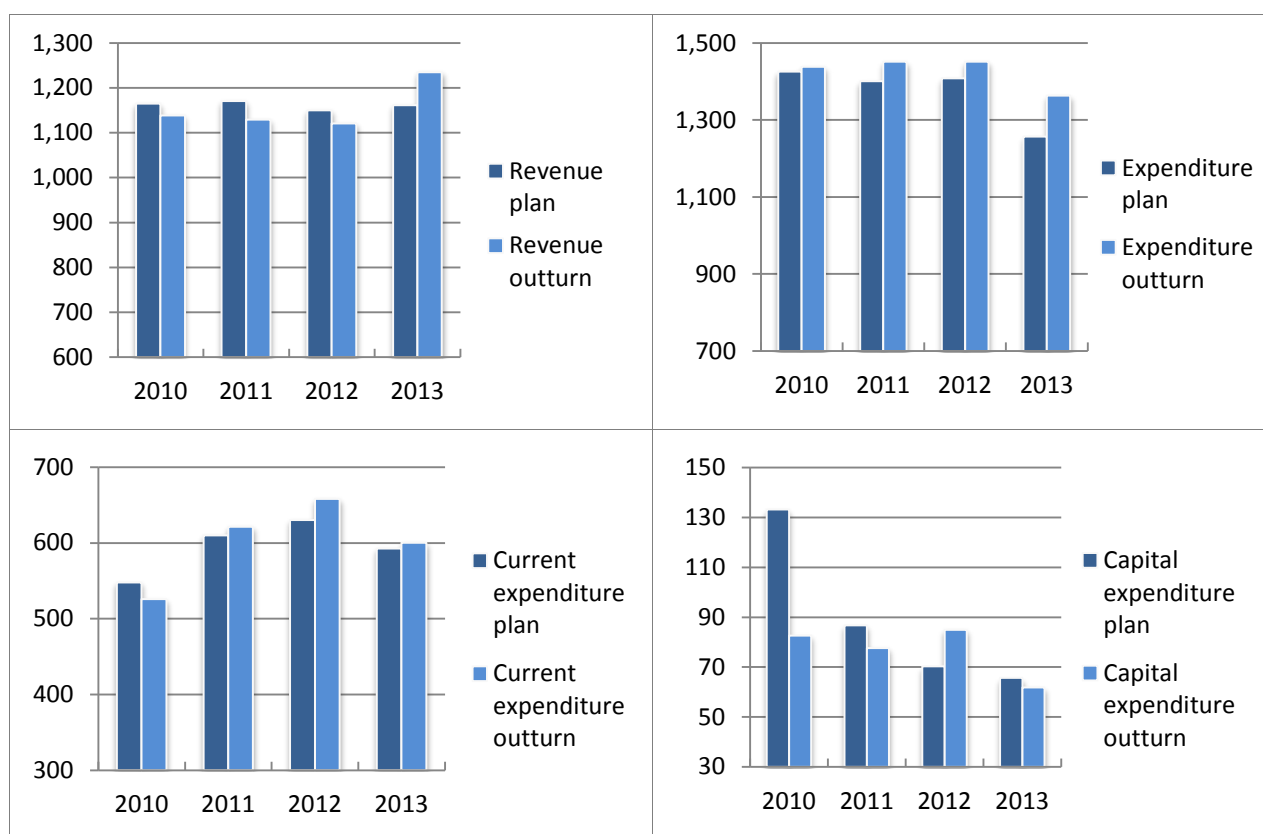
<sup>12</sup> In 2013, there were in total over 900 increases and 900 decreases within these limits. The highest individual increase was over 13 million euros.



Instrument for Pre-Accession Assistance (IPA) co-ordinator on the forecast IPA funds and co-financing requirements for the coming year. This is an additional consultation outside the core budget process, since the specific budget organisation is responsible for including IPA co-financing in its budget request.

Budget documents do not capture contingent liabilities and multi-annual commitments. Recent spending estimates at the sectoral or organisation level are not presented either in the budget or as a separate document. The budget documents currently do not separate the costs of ongoing public services and new services. In addition, even though the MoF discusses with the IPA co-ordinator on the IPA funding position for co-financing needs, IPA funds (except for the national co-financing element) are not included in the budget figures. This is planned to change after management of IPA funds is decentralised.

**Figure 3. Comparisons between budget plans and actual outturns (total revenues, total expenditure, current expenditure excluding social protection, and capital expenditure; millions of euros)**



Source: the MoF of Montenegro

In recent years the actual spending has exceeded the Budget estimate. While in 2012 public spending exceeded Budget in both the current and capital budgets (while revenues did not increase), in 2013 the expenditure hikes were primarily caused by payment of guarantees. There is more variation between planned and actual figures spent in capital budget, but actual spending levels have moved closer to the budget plans in recent years.

Proper prioritisation of capital investment and selection of the most beneficial projects does not take place, since appropriate capital appraisal does not feature regularly in the supporting documentation. In Montenegro, proposals for capital investment to be funded by the capital budget should be accompanied by a cost-benefit analysis as required by the Capital Budget Instruction<sup>13</sup>. This requirement, however, is not always met. When a budget user does perform this appraisal, it is not checked by the

<sup>13</sup> Construction of the Capital Budget Official Gazette of Montenegro, no. 57/10.

MoF or the two bodies – the Ministry of Transport and Maritime Affairs and the Directorate of Public Works – specifically charged with capital investment oversight<sup>14</sup>.

With regard to capital investment, public-private partnerships (PPPs) have not been a significant feature in Montenegro. Even though some PPPs are envisaged in the coming years, no guidelines exist for assessing financial risk.

Fiscal risk is reviewed in Montenegro's submission to the European Commission in the context of the Pre-Accession Economic Programme, as well as in the mid-year Directives for Macroeconomic and Fiscal Policy. Information on fiscal risk is also provided as part of the explanatory material for the annual budget.

***The annual budget includes comprehensive estimates of spending for the coming year. However, the actual budget outturns have not been in line with its forecasts. This is due to the impact of economic factors and the realisation of guarantees that became due for payment.***

**5: All public sector organisations that form part of the general government balance calculations provide the Ministry of Finance with comprehensive and accurate estimates for the forthcoming year.**

Line ministries and other budget users generally observe the deadlines set by the MoF in their circular on preparing the Budget<sup>15</sup>.

The spending estimates submitted to the MoF in the initial phase are not always aligned with the submitting body's strategic plan, either because there are no costed strategic plans or the financial estimates have not been updated. In addition – as is common in most EU countries – the sum of requests from individual budget users exceeds the guidelines in the budget circular, creating a need for further negotiations between the MoF and spending units. Since spending bodies are not required to detail their multi-annual commitments, they focus on the budget year ahead. They break down salaries and non-pay expenditure in the budget submission and provide details on the number of staff employed. The preparation of capital budget follows a separate procedure and is not included in the spending estimates together with the rest of the financial plans. Capital budget is merged with the rest of the state budget only at the end of the process.

The MoF establishes limits for each first-level budget organisation at the beginning of the budget process without a Government decision. The limits were not effective in 2013. While changes occurred during the budget process in both directions, most of the variations in 2013 (for the 2014 budget) were increases, sometimes exceeding 20% of the original ceiling.

The budget user is not required to estimate the forecast budget out-turn for each spending heading for the current year or to list any potential fiscal risk or contingent liability.

Fiscal risk is not captured in the budget circular responses, even though guarantees are subject to separate authorisation procedures. Municipality guarantees are also subject to a separate approval procedure.

The final budget presented to the Parliament does not include municipalities' budgets (which is not unusual), although it does include most extra-budgetary funds (with the exception of the small Development Fund). Municipal budgets are submitted for opinion to the MoF and adopted by the relevant municipal assembly.

The State Statistical Office and MoF are developing systems to report budget figures based on Eurostat standards (ESA95), with assistance from an IPA technical assistance project.

***Public sector organisations provide the MoF with comprehensive estimates for the forthcoming year, with the exception of IPA funds, which are not currently part of the budget requests. These requests***

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<sup>14</sup> Part of the Ministry for Sustainable Development and Tourism.

<sup>15</sup> It should be noted that the process for deciding the capital budget is conducted as a separate exercise.

***are based on limits established only by the Ministry of Finance, without a decision of the Government. Montenegro does not publish budgetary data in line with ESA95 standards. Additionally, capital budget is not fully integrated in the same budget process as the current budget.***

### Cash and Debt Management

**6: The Ministry of Finance, or authorised central treasury authority, has timely and accurate information on cash flows during the year so that disbursement of funds from the Treasury Single Account is centrally controlled and cash liquidity is ensured.**

Cash management is done through a single Treasury account, which is part of the MoF and underpinned by legal provisions under the Budget Law. This Treasury account is held at the Central Bank. All taxes and other income are paid into it, except in cases where some bodies (e.g. schools and hospitals) are allowed to manage income under their own procedures. Under the draft Law on Budget and Fiscal Responsibility, public institutions that generate revenues from their own activities and are not included in the single Treasury account may use those revenues with the consent of the Minister of Finance, based on a submission to the Minister before the year begins<sup>16</sup>.

The Minister of Finance is the only authorised person to open government bank accounts, which are reconciled daily.

While the MoF compiles cash-flow projections, these tend to be used as a spending control mechanism, where a spending unit's annual allocation is simply split into 1/12<sup>ths</sup>. Spending units do not undertake an analysis, at the beginning of the year, to project their real spending needs, which they would negotiate with the MoF and manage accordingly. Each month, where a spending unit applies for funds and the 1/12<sup>th</sup> allocation does not meet its needs; it can apply to the MoF for changes in the monthly cash-flow plans. This can lead to a build-up of arrears at year-end, since it is easier for budget organisations to postpone payments to the following month than to start formal procedures to amend the monthly allocations. According to MoF information, the total amount of arrears at the central government level is about 3% of the annual budget (1% of GDP), which is broadly comparable to a number of EU countries<sup>17</sup>.

It is notable that in December 2012 and December 2013, capital spending was a multiple of spending in other months. This indicates that spending was driven by the need to spend, either due to uncertainty about allocations in the coming year or because payments were meeting arrears from previous months.

The Treasury uses a SAP system to monitor spending. While this can capture both the level of spending and commitments, it can do so only upon receipt of an invoice and does not capture commitments at the contracting level. These commitments are reported separately by spending units on a quarterly basis. The MoF is currently amending the SAP system to enable capturing commitments at the moment of contracting.

Neither the Treasury management system nor the Budget Law allows unauthorised excess spending. Under the Budget Law, the Government has the power to reallocate approved spending up to a limit of 10% of the total amount planned for that unit but is prohibited from reallocating IPA co-financing funds or transferring funds from the capital budget to the current budget<sup>18</sup>.

***Cash management is basic and focuses on too many detailed budget lines rather than anticipating actual expenditure needs. Cash-flow projections based on a realistic assessment of needs in each spending unit throughout the year are not currently prepared. Capturing and reporting on commitments is underdeveloped.***

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<sup>16</sup> Article 41 of the draft Law on Budget and Fiscal Responsibility.

<sup>17</sup> Eurostat data on stock of liabilities of trade credits and advances by Member States.

<sup>18</sup> Articles 35 and 35a of existing Budget Law and Articles 44 and 46 of the draft Law on Budget and Fiscal Responsibility.

**7: There is a clear debt management policy and a monitoring mechanism to ensure that the country's overall debt target, as set out in the annual budget, is not exceeded.**

Montenegro has seen an increasing level of public sector indebtedness in recent years. The central government debt rose from 27.5% in 2007 to 51.2% in 2012. According to the 2014 Budget, the state debt will increase in coming years. Standard & Poors rate Montenegrin Debt as 'BB-' and in 2013 reduced the outlook from stable to negative.

**Figure 4. Projection of debt and debt-to-GDP ratio**

	2013	2014	2015	2016
Amount	EUR 1 870 million	EUR 2 011 million	EUR 2 064 million	EUR 2 074 million
% of GDP	56.5	56.9	55.3	52.3

Source: 2014 Budget of Montenegro

The 2014 Budget notes, however, that inclusion of the EUR 100 million needed to finance the Smokovac - Matesevo highway construction would increase total debt to 59.6% of GDP.

A more elaborate table was produced by the International Monetary Fund (IMF) in its 2013 Article IV consultation on a general government basis<sup>19</sup>.

**Figure 5. Comparison of public debt level with or without loan guarantees provided by the Government (percentage of GDP)**

	2008	2009	2010	2011	2012	2013	2014	2015
General government gross debt	29.0	38.2	40.9	46.0	51.9	55.3	54.1	55.0
General government gross debt, including loan guarantees	31.0	43.2	52.4	57.8	62.9	65.0	62.7	63.6

Source: IMF 2013 report on Article IV consultation

The debt levels in 2010 and 2012 increased well above the forecast (partly due to the granting of guarantees)<sup>20</sup>.

The MoF is in charge of debt management, in co-operation with the Central Bank. Most public debt is foreign (EUR 1 444 million in 2013) and about a quarter is domestic (EUR 427 million). The Debt Management Department of the MoF, in consultation with the Central Bank and foreign technical assistance, are examining whether there would be a market for domestic bonds to allow some reduction in foreign borrowing and rebalance the debt portfolio. The MoF is also reviewing options to refinance existing debt as market conditions change. Treasury bills are issued through the Central Bank as a normal part of liquidity management and are normally issued on a six-month maturity. The Treasury's debt management division records issued and outstanding guarantees.

The Government has a clear debt management strategy<sup>21</sup> and the MoF is preparing a new strategy for 2014-2016. The backing documents for the annual budget (Section III – Medium-term Framework for

<sup>19</sup> IMF Article IV Consultation May 2013, Table III.

<sup>20</sup> The manner of giving guarantees was criticised by the State Audit Institution in April 2013 in the document "State Guarantees issued in 2010 and 2011".

<sup>21</sup> Debt Management Strategy 2011-2013, Ministry of Finance 2010.

2014-2016) include debt projections for this year's Budget. In 2013, the MoF published a Debt Sustainability analysis<sup>22</sup>.

The Budget Law sets borrowing powers and the Annual Budget sets an annual borrowing limit. Under the draft Law on Budget and Fiscal Responsibility, state guarantees may only be given for capital projects, the level of guarantees in any one year will be set within the context of the Annual Budget and the total level of guarantees may not exceed 15% of GDP<sup>23</sup>.

The Government must give its prior consent before any borrowing by municipalities and state-owned bodies, which have an obligation to report quarterly to the MoF on the level of borrowings and guarantees. The annual report on debt management is compiled and audited each year.

***Debt management is well structured and planned and is not a cause for concern (as opposed to the absolute levels of debt which are rising). This area has a medium-term strategy, including a sensitivity analysis. There are nonetheless considerable risks due to the high amount of guarantees issued by the Government.***

### Financial Reporting

**8: The Ministry of Finance receives a regular and timely financial report in a common reporting format for each public sector organisation and total government financial reports are published at least monthly.**

The MoF prepares monthly reports (based on Treasury information) on the evolving budgetary position. These reports do not record future spending commitments separately or provide any explanations for variations. Spending bodies are only required to submit quarterly reports to the MoF in a common format. On a quarterly basis a more detailed analysis is published by the MoF, including data on local government and general government finances.

In most cases the MoF publishes monthly tables showing the outturn for the main revenue areas, plus expenditure on an aggregated basis, as well as the debt and deficit for the previous months to date. However, these tables do not give detailed explanations for positions at the level of sectoral budgets and budget organisations or for any variations that might have arisen. Monthly expenditure projections based on accurate estimates of likely cash flows in the year are not available. Hence, it is not possible to judge accurately whether spending is deviating from a predicted trend.

***The MoF has a system to ensure it has regular reports from spending units to monitor spending and the evolution of the Budget, although the lack of a monthly budget profile at the beginning of the year makes it hard to see if the budget evolution is in line with expectations. Monthly publications include only aggregate central government figures.***

**9: The Ministry of Finance publishes an annual financial report, the presentation of which mirrors the presentation format of the Budget.**

Under the current Budget Law<sup>24</sup> and the draft Law on Budget and Fiscal Responsibility,<sup>25</sup> the MoF is required to issue guidelines for the end-year accounts of spending units. In addition, the MoF will prepare year-end accounts of the State Budget and submit them to the Government by 1 June the following calendar year. The Government will then draft a law and submit it to the State Audit Institution, which will submit a report to the Parliament by the end of September. This timetable, as established in the current Budget Law, was observed in 2013.

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<sup>22</sup> Analysis of Public Debt sustainability – May 2013 – MoF website.

<sup>23</sup> Article 52 of the draft Law on Budget and Fiscal Responsibility. Currently the level of guarantees is below that limit (see Figure 5).

<sup>24</sup> Articles 48-53 of the Budget Law OG 53/09.

<sup>25</sup> Articles 64-69 of the draft Law on Budget and Fiscal Responsibility.

The format of the reports closely matches that set forth in the Budget documentation. In current expenditure, the projection and outturn for each item is shown with the same coding used in the Budget.

However, the report does not explain changes between planned spending and outturn, nor what – if anything – was done to correct any overrun. Information on variations is provided among the explanatory material, which is sent to the Parliament but is not published in the Official Gazette. The format of the report is the same format used by individual line ministers and is therefore consistent.

The report does not list State assets or their valuation. In addition, the report does not contain any supplementary information based on Europe (Eurostat) standards.

***The annual financial report is presented to the Parliament very late in the next calendar year and important supplementary information (such as explanations for changes in spending) is presented only in the explanatory material that is not public.***

## PUBLIC INTERNAL FINANCIAL CONTROL

### 2. Analysis

#### Financial Management and Control

**1: The operational framework for FMC is prescribed in legislation that defines roles, responsibilities and powers, and is consistent with the legislation governing public financial management and public administration in general.**

Both the PIFC Law and the Financial Management and Control Manual (July 2011) refer to the five elements of the COSO framework<sup>26</sup>. The manual explains in some detail the five COSO elements (control environment, risk management, control activities, information and communication), together with monitoring<sup>27</sup>. Other legislation does not specifically support FMC, e.g. the Budget Law makes no specific reference to delegation. Where other legislation does impact on FMC, inconsistencies relate to terminology rather than substance. As an example, there are references to the FMC manager<sup>28</sup>, Chief Finance Officer<sup>29</sup> and Authorising Officer appointed to execute the budget<sup>30</sup>, while in practice these roles are often the responsibility of the secretary of ministry.

Changes to the PIFC Law are currently being developed by the MoF, albeit mostly focusing on details (in respect to FMC). The FMC Manual predates the current FMC legislation and implementation phase. It has not been reviewed by the MoF to determine whether it needs further refining to reflect experience, either in terms of approaches that work best in Montenegro or areas requiring further guidance.

The PIFC Law permits delegation of decision making authority based on the internal systematisation and organisation acts<sup>31</sup>. In practice, the systematisation acts are not used to delegate specific decision making authority to other managerial positions in the ministries. Without further delegation (including some authority to manage both financial and personnel resources), as well as relevant objectives (with quantifiable measures of achievement) and management information (covering relevant financial and operational performance), these arrangements do not foster managerial accountability.

The Parliament sets budgets at a very detailed level and the Treasury information system records receipts and payments on the same basis. This means that budgets are also controlled in detail. Even though ministries are permitted variations of up to 10% within their budgets, all require MoF approval. This limits the flexibility available for managing budgets and creates unnecessary procedural steps.

Although IPA funds are managed by the EU Delegation, arrangements for indirect management are in place and decentralised management will gradually begin in 2014. Most of the IPA programmes are to be managed by the Central Financing and Contracting Unit through special budget lines<sup>32</sup>. This centralised way of management is necessary to carry out specific specialised tasks, but could complicate accountability lines for programme management.

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<sup>26</sup> Committee of Sponsoring Organisations of the Treadway Commission. These principles were originally drafted for application to private sector companies.

<sup>27</sup> The Manual was developed with support of the IPA project "Strengthening the management and control systems for EU financial assistance in Montenegro".

<sup>28</sup> Appointed under the Law on the Public Internal Financial Control System.

<sup>29</sup> FMC Manual, page 26.

<sup>30</sup> Treasury Instructions, Official Gazette of Montenegro number 80/08.

<sup>31</sup> Article 13 states that based on the internal systematisation and organisation act, the head of the entity may delegate individual duties and responsibilities or authorizations to other employees. These systematisation acts define the role and staffing of structural units within organisations and are formally approved by the Government.

<sup>32</sup> Other implementing bodies for IPA programmes are the Directorate of Public Works and an agency in the Ministry of Agriculture.

The Anti-fraud Co-ordination Service (AFCOS) was set up as an independent office within the MoF primarily to cover the financial interests of the EU. The AFCOS network involves relevant organisations, but anti-fraud co-ordination is not yet operational<sup>33</sup>. Overall responsibility for collecting and reporting information about irregularities within IPA-funded programmes rests with the National Fund, which belongs to the AFCOS network.

A comprehensive PIFC Strategy for 2013-2017, approved by the Government, embraces FMC developments. The current Strategy deals with each element of foreseen tasks in PIFC implementation and sets out the necessary actions. It is supported by a series of two-year action plans outlining detailed implementation. Steps in the 2013-2014 Action Plan have been largely completed and a plan for 2014-2015 is being finalised. The action plans are in line with the PIFC strategy. However, the current documentation does not demonstrate how all the planned actions will contribute to achieving the objectives of the Strategy.

The central harmonisation unit (CHU) is established under the PIFC Law for both FMC and internal audit and has the power to initiate legislation and regulation for FMC<sup>34</sup>. The Head of the CHU has an appropriate status to fulfil the role and maintain good relationships within the MoF. For instance, as one of the directors general of the MoF, the Head of the CHU is regularly present at the weekly top management meetings<sup>35</sup>.

Systematisation for the CHU has been set at eight staff members to cover both FMC and internal audit. In total six staff are in post and two of them are assigned to FMC development. Given the work still required to implement FMC (including managerial accountability), the FMC side of the CHU is relatively under-resourced; this limits the capacity to trigger development of FMC in individual organisations. The CHU has provided training and seminars to raise general awareness of PIFC and explain how FMC should be implemented, but this work virtually stopped when the related IPA-funded technical assistance project ended at the end of 2012.

The CHU reviews progress of implementation each year by means of a questionnaire about FMC implementation, which all institutions are required to return. The aggregated information is included in the CHU annual report. The CHU relies largely on information provided by the institutions and only takes initial steps (through basic quality control procedures) to verify the information provided.

A Budget Inspection Department has been established within the Planning and Budget Directorate of the MoF as part of the proposed Law on Budget and Fiscal Responsibility. More detailed regulations on the precise operation of Budget Inspection are still being developed, but the Department is expected to primarily fulfil a compliance role in dealing with suspected cases of fraud and corruption. These current plans do not conflict with the work of internal audit. However, several levels of legislation, regulation and rulebooks exist in Montenegro, meaning that the control framework is detailed and complex. The financial penalties potentially proposed by the Budget Inspection Department are likely to discourage staff from taking on the additional delegated responsibilities envisaged as part of managerial accountability to support FMC. In addition, further emphasis and control over the detailed procedures is likely to focus managers' attention on the letter of the rules rather than the purpose of their work and value for money.

***Regulation covering the operational framework required for FMC implementation is in place. The Government has approved a strategy and action plan for FMC and the action plan is largely implemented. The CHU is well placed in the MoF, but its current staff resources focus more on internal audit than FMC, where the challenges are greater.***

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<sup>33</sup> Co-ordinating body for monitoring and managing the policy of prevention and suppression of irregularities aiming to protect the EU financial interests, established by the Government in 2013.

<sup>34</sup> Article 38, Law on the Public Internal Financial Control System, 2012.

<sup>35</sup> These Collegium meetings are attended regularly by the Minister of Finance, the Secretary of the Ministry and all the directors general (including directors general in charge of the CHU for PIFC, budget and treasury).



## 2: Each public organisation has a process for implementing FMC in line with the overall FMC policy documents.

In Montenegro, commitment to FMC is largely demonstrated by the appointment of an FMC manager and the development and implementation of an FMC action plan (both of which are required by Article 14 of the PIFC Law). The FMC manager role is normally assigned to the Secretary of Ministry or equivalent with the appropriate status to drive through FMC developments. The Minister normally delegates financial and human resources issues to the secretary of ministry. They are also assigned co-ordination functions by the Law on State Administration<sup>36</sup>. This means that the Secretary of Ministry is well placed to perform the role of FMC manager.

Information compiled by the CHU for their annual reports found that not all organisations are committed to implementing FMC:

**Figure 1. Implementation of FMC by key measures**

	Central level	Local level
Total number of entities <sup>37</sup>	66	18
Number of entities in with FMC manager appointed <sup>38</sup>	71	14
Number of entities with FMC action plan developed	28	2
Number of entities with books of procedures prepared	43	5

Source: the MoF

Only 24 institutions at the central level have completed all three of these formal requirements.

The anticipated commitment to FMC partly consists of a managerial structure alongside arrangements for delegation and accountability. While delegation from the head of entity – a minister – is permitted under the PIFC Law, the only delegation in practice is to the secretary of ministry.

Throughout the central government administration, a gap can be seen between the responsibilities for policies and finances. Operational managers (directors general in the ministries) are responsible for the substance of the policy, but have no direct responsibility for financial management. Alignment between budget and management structures is limited. Ministries often have one programme budget for administrative activities and one or more for operational activities, meaning that budgets are unlikely to be aligned with the responsibilities of managers below minister or secretary of ministry level. Budget submissions from some Ministries to the MoF include the names of staff responsible for individual programmes rather than the name of the head of organisation only.

The Treasury information system does not provide information on a sub-programme or organisational unit basis that would enable managers to monitor budgets and take responsibility for finances. Furthermore, the system does not yet capture information on commitments, reducing the value of information for management decision making purposes. Some institutions maintain their own information systems to provide greater details for management purposes, even though this carries the overhead of having to input information in both their own system and the Treasury system.

Individual payments are subject to control by relatively high levels of management, with every transaction requiring authorisation by a secretary of ministry or even a minister.

<sup>36</sup> Article 42 of the Law on State Administration.

<sup>37</sup> Based on the organisations involved in the 2013 data collection exercise by the CHU.

<sup>38</sup> Based on the organisations involved in the 2012 data collection exercise by the CHU, some of which no longer exist as separate entities after a re-organisation of government.

Second-level organisations have the same FMC obligations under the PIFC Law as ministries and are included in the table above. The Decree on the State Administration Organisation and the Manner of Working (December 2011) merged 13 administrations into the ministries, strengthening relationships between ministries and their second-level organisations. While this change has enabled some ministries to consolidate administrative services, it has resulted in backward steps in delegation, as the minister and/or secretary of ministry now takes financial management decisions that the administrations previously dealt with.

A number of agencies are still separate organisations steered by their parent ministry. As an example, the National Employment Agency has a Director General of the Ministry of Labour and Social Welfare on its board; the Ministry and the Agency co-ordinate daily.

State and municipally owned enterprises have the same FMC obligations under the PIFC Law as government ministries. However, due to their different accounting and auditing requirements, they are not implementing FMC legislation systematically<sup>39</sup>.

Manuals of procedures are being developed in a number of organisations as part of the FMC rollout. These help ensure that staff are familiar with the procedures to be followed. However, the rigidity of the detailed regulations on which they are based, means that they are often seen as an additional element of bureaucracy that does not need to be followed consistently.

As part of the budget preparation process, ministries hold discussions (typically through the Collegium, the top management meeting) on costs and policy options, which the MoF may challenge prior to agreement of the final government budget. Fiscal impact assessments are required as part of the Regulatory Impact Assessment process, but the costings involved are often superficial and have failed to identify actual future costs<sup>40</sup>.

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

## Internal Audit

**3: The operational framework for internal audit is prescribed in legislation which is consistent with the legislation governing the arrangements for public administration and public financial management in general.**

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

The PIFC Law goes on to say that internal audit should be carried out in accordance with the International Standards of the Institute of Internal Auditors<sup>41</sup>. The PIFC Law is supported by decrees consistent with the Law. The PIFC Law prescribes the operational framework for internal audit governing the role, independence and standards for internal audit, as well as steps for performing individual internal audits<sup>42</sup>. Internal audit activities are broadly defined to support operational performance<sup>43</sup>,

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<sup>39</sup> Law on Accounting and Auditing, amended 2008 (Official Gazette No. 80/08 of 26 December 2008), prescribes accounting, external audit and internal audit requirements for different types of companies.

<sup>40</sup> The SIGMA analysis is based on six sample RIA documents.

<sup>41</sup> The International Standards for the Professional Practice of Internal Auditing (ISPPA) laid down by the Institute of Internal Auditors. The standards are widely used in other countries and meet EU requirements.

<sup>42</sup> Articles 16 to 37 of the PIFC Law set out the role, independence and methodology for internal audit.

which is consistent with FMC, in contrast with the more limited traditional focus on regulatory compliance.

One current provision of the PIFC Law stipulates that “the number of employees in the internal audit unit shall be at least three internal auditors, including the head of the internal audit unit”<sup>44</sup>. One of the planned changes to the Law is to delete this section and replace it with text that will enable the Government of Montenegro to regulate this matter. Even the larger government organisations are small and while this revision may therefore be justified, the small size of the internal audit units entails risks in terms of technical quality, e.g. no internal review of work undertaken. More sector-based consolidation of internal auditors, combined with some flexibility in the rule establishing a minimum number of auditors in an internal audit unit, can be a solution providing there continues to be a generally favourable environment for professional development and networking with other internal auditors.

The requirement for external quality assurance reviews of the work of internal audit units is covered in the Internal Audit Manual. Presently, this requirement is met by reviews undertaken by CHU staff<sup>45</sup>. These arrangements, however, do not fully meet the international requirement for an external quality assurance review every five years.

The CHU is established under the PIFC Law for both FMC and internal audit and has the right to initiate legislation and regulation for developing internal audit<sup>46</sup>. Three of the six staff in post at the CHU are assigned to internal audit support and development. Since progress with internal audit is more advanced than with FMC, the staffing level can be considered sufficient. Furthermore, based on SIGMA interviews, all four individual internal audit units are satisfied with the level of support they receive from the CHU.

The core document guiding the work of the internal auditors is the Internal Audit Manual, which is divided into two parts: i) standards, policies and planning, and ii) performing an audit. This has provided a basis for developing internal audit. An update of the Internal Audit Manual is planned for 2014. The CHU continues to enforce the national certification scheme for internal auditors, which is complemented by the international Chartered Institute of Public Finance and Accountancy<sup>47</sup> training scheme, initially organised by the Centre for Excellence in Finance<sup>48</sup> in Slovenia.

To monitor development, the CHU sends institutions a questionnaire on internal audit units. These units are also required to submit both quarterly and annual reports to the CHU. This level of formal reporting adds to the burden of organisations implementing internal audits and may not be as effective as more informal arrangements.

***In terms of the operational framework required to implement internal audit, laws and regulations are consistent with international standards and specify the operational arrangements for internal audit. The PIFC Law requires internal audit coverage for all public sector organisations. The CHU has the necessary legal authority and its strategy and action plans for internal audit are endorsed by the Government.***

**4: Each public organisation has a process for implementing internal audit in line with the overall internal audit policy documents, taking account of the size, objectives and complexity of the organisation.**

Statistics gathered by the CHU show that 30 organisations (including 14 municipalities) are required, by virtue of their size, to set up their own internal audit units; 24 (including 9 municipalities) have met this

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<sup>43</sup> Article 16, PIFC Law.

<sup>44</sup> Article 18, PIFC Law.

<sup>45</sup> CHU reviewed the Ministry of Finance Internal Audit Unit in December 2013.

<sup>46</sup> Article 38, PIFC Law.

<sup>47</sup> The Chartered Institute of Public Finance and Accountancy is a UK based professional accountancy body specialising in the public sector.

<sup>48</sup> Centre for Excellence in Finance is a regional development institute based in Ljubljana, Slovenia.

obligation. However, staffing levels are a bigger issue, as only four organisations have staffing at the level of their systematisation and three institutions have a systematisation of two posts, below the minimum currently set out in the PIFC Law. A further six organisations have established internal audit units even though they were not specifically obliged to do so. The table below summarises the overall position:

**Figure 2. Overview of the implementation of internal audit**

	Internal audit unit required	Internal audit unit set up	Audit Charter in place	Posts – systematisation	Posts – staff recruited
Central Government	16	15	15	51	27
Central Government – Other	Not required	6	5	16	6
Municipalities	14	9	6	23	13
<b>Total</b>		<b>30</b>	<b>26</b>	<b>90</b>	<b>46</b>

Source: the MoF

While many smaller organisations in Montenegro are required to provide internal audit coverage, they can do so by reaching an agreement with an existing unit rather than setting one up themselves<sup>49</sup>. CHU records show that while 21 organisations have responded in this manner, 57 organisations have yet to make any arrangements for internal audit. These are mostly small budget organisations, except for some, such as the Inspection Administration and Prosecution Office.

The above table shows that an Internal Audit Charter is generally in place where an internal audit unit has been set up. Charters are signed by the head of internal audit and the minister or other head of organisation. However, the three examples reviewed show that not all charters have identical text, e.g. the charter of the Employment Bureau of Montenegro does not mention the role of the head of organisation<sup>50</sup>. The charters otherwise cover the areas required for such documents, particularly with regard to independence and reporting arrangements.

Many of the current internal auditors have trained together and have started regular meetings and experience sharing. They have established their own informal networks. More formal networking arrangements guided by the CHU do not yet exist.

The PIFC Law requires both strategic and annual audit plans<sup>51</sup>. The returns received by the CHU for 2012 (the latest complete data available) indicate that only 2 out of 28 internal audit units completed strategic audit plans, whereas 17 out of 28 completed annual internal audit plans.

SIGMA's review of a sample of plans revealed variations in the information provided<sup>52</sup>. Some strategic plans provided detailed calculations to support the risk analysis, while others just provided lists. A common problem was that the range of processes subject to audit and the amount of time required to complete the audit required significantly more audit days than were available from the staff employed.

Within annual plans, some indicated that audit activity was limited by the available resource rather than flowing from the strategic plan. They displayed varying levels of detail about the internal audit work required. Some respondents did not indicate how many audit days were allocated to particular tasks.

<sup>49</sup> Article 18, PIFC Law permits reaching agreements that internal audit shall be performed by the internal audit unit of another entity.

<sup>50</sup> Audit Charters from the Ministry of Finance, Employment Bureau and MONSTAT.

<sup>51</sup> Article 23, PIFC Law.

<sup>52</sup> Strategic and annual plans for the Ministries of Finance, Labour and Social welfare and Transport and Maritime Affairs and an annual plan from the Employment Bureau.

Most of the plans use a standard number of days for the different levels of risk, e.g. a high-risk audit requires 35 days, a medium-risk audit requires 30 days and a low-risk audit requires 20 days. These standard days are used instead of a more detailed assessment of the time required to complete the audit based on the system's scale and complexity. All plans set out detailed calculations showing the actual number of days available from the staff at their disposal.

The plans focus on business processes rather than business risks specifically associated with achieving the organisation's objectives. The public sector does not systematically set and monitor the achievement of objectives and risk management, which can therefore not be used as a basis for internal audit planning.

The head of internal audit has the right to report to the head of organisation<sup>53</sup>. Audit charters set out processes, including drafts and discussions with auditees, to be followed when finalising audit reports. While they set processes to implement internal audit recommendations, implementation can be slow in some organisations. The returns received by the CHU for 2012 indicate that most (16 out of 20) internal audit units maintain a database of recommendations to enable them to monitor their implementation more effectively. Of 269 recommendations reported for 2012, 30 were partly implemented and 81 were not implemented at all.

Audit reports generally meet the requirements established in the Internal Audit Manual, although there are variations in the style and quality of reports<sup>54</sup>. Most of the analysed audit reports dealt with weaknesses in internal control systems, but only a few considered means to achieve more value for money.

***A key issue with each public organisation implementing internal audit is the significant shortfall in the number of staff in post compared with the systematisation. In addition, many small organisations have not made arrangements for internal audit. Some organisations prepare strategic and annual internal audit plans, which vary considerably and do not always meet the guidelines. Audit reports are routinely prepared, but there are variations in the style and quality of the reports.***

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<sup>53</sup> Article 26, PIFC Law.

<sup>54</sup> Based on a sample of ten reports reviewed by SIGMA.

## EXTERNAL AUDIT

### 2. Analysis

#### Independence and mandate of the external audit

##### **1: The independence of the Supreme Audit Institution and of its members is established and protected by the constitutional and legal framework.**

The Constitution establishes the State Audit Institution (SAI) as the Supreme Audit Institution, and asserts its independence as an institution<sup>55</sup>. It designates the Senate as the body managing (or leading) the Institution, but does not detail composition or term of office. The Parliament of Montenegro appoints and dismisses the President and Members of the Senate<sup>56</sup>. The Constitution was amended on 31 July 2013, introducing a provision which guarantees the functional immunity of the President and the Members of the Senate in exercising their duty<sup>57</sup>. This strengthens the independent position of the Members of the Senate.

The Law on the SAI (SAI Law) regulates the composition and indefinite term of office of the five members of the Senate. The President is appointed by the Parliament from among the Members for a non-renewable term of nine years. Removal from office by the Parliament is only possible if the Member has been sentenced to imprisonment or exercises his duties in an unprofessional or unscrupulous manner. Since the Senate has to inform the Parliament if such a circumstance arises, there is a safeguard against potential arbitrary political decisions.

The Constitution stipulates that a Senate member cannot be a member of a political party<sup>58</sup>, and the SAI Law adds that membership of the Senate is incompatible with holding any other public office or carrying out any other professional activity<sup>59</sup>. Members should also refrain from participating in decision making or activities of the SAI if there are doubts about their impartiality and objectivity, for instance if they themselves or relatives are involved in a matter the Senate has to decide upon. This helps protect the independence of the Institution as a whole.

To secure financial independence, the current SAI Law has a provision which defines the procedure for adopting the budget of the SAI: the SAI prepares a draft budget and proposes this directly to the competent committee in the Parliament, which submits the proposal to the Government for inclusion into the draft state budget, with a separate budget chapter<sup>60</sup>.

Apart from the procedure for approving the budget in the SAI Law, there are no other exceptions to the general legal framework. This implies that laws with a general character like the Budget Law, the Civil Service Law and the Law on Salaries of Civil Servants and State Employees all apply to the SAI. Consequently, the SAI does not have full discretion in the use of the budget allocated to the institution. Also, recruitment of staff is managed by the Human Resource Management Agency. While it remains with the SAI to take the selection decision of staff, it depends on the time management of the HRM

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<sup>55</sup> Article 144: "The National Audit Institution of Montenegro shall be an independent and supreme authority of the national audit. The National Audit Institution shall audit the legality of and success in the management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created through the use of state property. The National Audit Institution shall submit an annual report to the Parliament. The Senate shall manage the National Audit Institution. *The President and members of the Senate of the State Audit Institution shall enjoy functional immunity and shall not be held responsible for the opinions expressed or decisions made during the exercise of their functions, unless in the case of criminal offence.*"

<sup>56</sup> On the basis of Article 82 (14) of the Constitution.

<sup>57</sup> See last sentence of the above-mentioned article in italics.

<sup>58</sup> Article 54 of the Constitution.

<sup>59</sup> Article 35 of the SAI Law.

<sup>60</sup> Article 51 of the SAI Law.

Agency for the recruitment process. Moreover, the Ministry of Finance has to agree before a recruitment procedure can be initiated, even if the post and the budget are available.

Attempts made since 2011 to amend the SAI Law, aimed at further strengthening the financial and operational independence of the SAI, bringing the law more into line with the international standards of the International Organisation of Supreme Audit Institutions (INTOSAI), and harmonising the text with the provisions in the Constitution, have proved difficult for legal reasons. An inter-institutional working group, formed in September 2013, submitted its suggestions for amendments to the law on SAI to the parliamentary Committee on Economy, Finance and Budget in March 2014.

The draft new organic budget law, the “Law on Budget and Fiscal Responsibility”, has a provision which foresees the Senate of the SAI functioning as Fiscal Council, responsible for assessing whether fiscal responsibility criteria have been met<sup>61</sup>. The provision also allows the SAI to assess whether a draft annual budget law meets the fiscal responsibility criteria. The latter provision is potentially risky, since it conflicts with the *ex-post* control role of the external auditor: the auditor should not be brought into a position of auditing him/herself. More generally, a SAI is not naturally equipped to carry out such assessments, although such capability can be built up.

***Overall, the constitutional and legal framework guarantees the independence of the SAI, with the exception of some aspects of financial and operational independence as the SAI does not have full discretion in the use of its funds and recruitment of staff is managed by the Human Resources Management Agency.***

**2: The audit mandate is exhaustive: all public finance areas can be subject to all relevant types of audit work.**

The Constitution sets the mandate of the SAI as encompassing all financial operations of entities in the public sphere, including entities either financed by the State or created using state property<sup>62</sup>. The SAI Law further details this mandate, in which a precise definition is given of all entities that fall within the remit of the SAI<sup>63</sup>. This includes local self-government entities and companies in which the State has a share, and all entities that receive a state subsidy, grant or guarantee. For grants and guarantees, the scope of the audit is restricted to the question of whether these entities have taken appropriate measures to avoid negative financial effects for the State<sup>64</sup>.

The SAI has the right to carry out all types of audit work<sup>65</sup> - regularity audit (which covers both financial and compliance audits), and the audit of efficiency and effectiveness, equivalent to performance audit. This is reflected in the “Instruction on the methodology of work in the State Audit Institution (2005)”, and in the plans for the development of audit manuals for the different types of audit according to the “Strategic Development Plan (SDP) 2012-2017”.

***The legal mandate of the SAI covers all entities and areas in the public sphere, and allows the SAI to carry out all types of audit recognised in the international auditing standards.***

**3: The Supreme Audit Institution has full discretion in the discharge of its responsibilities, i.e. programming of the audits, choice of the methodology for carrying them out.**

The SAI Law clearly states that the SAI is independent in defining the work programme, both in selection of entities to be audited and in scope, timing and type of audit<sup>66</sup>. The only mandatory task according to the SAI Law is to annually audit the financial statement of the Republic. This is in line with the normal

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<sup>61</sup> Article 26 of the Draft Law on Budget and Fiscal Responsibility

<sup>62</sup> Article 144 of the Constitution of Montenegro

<sup>63</sup> Article 4 of the SAI Law.

<sup>64</sup> Article 8.

<sup>65</sup> On the basis of Article 5 of the SAI Law.

<sup>66</sup> Article 9 of the SAI Law.

role of any SAI. However, since 2011 the law on financing political parties has a provision which obliges the SAI to audit all political parties and election campaigns, taking up a substantial amount of resources. These audits are purely financial audits, on financial statements with volumes ranging from 1 500 to 1 700 000 euros in 2012<sup>67</sup>. In total, the budgets audited in 2011 and 2012 were 4.2 and 6.5 million euros respectively<sup>68</sup>, a small amount compared to the state budget of approximately 1.5 billion euros for the same years. The annual obligation to audit the finances of all political parties implies a restriction of the independence of the SAI to select audit subjects on the basis of objective criteria, such as financial importance and risk.

The SAI Law does not explicitly foresee a possibility for either the Parliament or the Government to suggest an audit topic or subject; however, there have been examples of suggestions for potential audits made during discussion on audit reports in the Parliament which have led to the inclusion of specific audits in the SAI's work programme, for instance the audit on state guarantees published in 2013<sup>69</sup>. This does not impair the independence of the SAI to decide its work programme. The freedom for the SAI to decide its method and approach is also guaranteed in article 9. The Rules of Procedure<sup>70</sup> and the Instruction on Methodology<sup>71</sup> give further details on the annual audit planning exercise. These rules and instructions are followed in practice, as was confirmed in interviews during this assessment.

According to the SAI Law, the SAI has unlimited access to all documentation and information necessary for carrying out audits<sup>72</sup>. This is repeated in the more detailed provisions of the Instruction on Methodology, which also describes the internal procedure on how to handle situations of denied access. However, there is no legal recourse when necessary information is refused, apart from the penal provisions that set a fine on non-co-operation with the SAI, both for the audited entity and the person(s) involved<sup>73</sup>. The legal provisions do not explicitly mention the right of SAI auditors to access premises if needed, although this might be construed from the unrestricted right to have access to all information, including information (data, records, physical assets, cash, etc.) held at the premises of the auditee.

Apart from one case in 2012/13, when during the audit of state guarantees the Ministry of Finance and the Ministry of Economy were reluctant to provide the requested information, the SAI reported in SIGMA interviews that it has no difficulty in receiving the information it needs for its audits. Even in the case mentioned, the Ministries of Finance and Economy eventually provided most of the documents requested, which was mentioned in the report. The provision in the SAI Law<sup>74</sup> to fine an auditee when it refuses co-operation has never been used.

The SAI is obliged to keep information and findings gathered during an audit confidential<sup>75</sup>. There is no specific procedure in place in case an audited entity uses the confidentiality of information requested by the SAI for an audit as a pretext for not submitting that information.

***The SAI has full discretion in the discharge of its responsibilities, although the obligation to audit the finances of political parties implies a restriction of its freedom to select audit subjects on the basis of professional criteria, and curtails its resources.***

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<sup>67</sup> SAI, statistics on audits carried out, 2011-13.

<sup>68</sup> Ibid.

<sup>69</sup> Audit report on "State guarantees of the Government of Montenegro for 2010 and 2011", published on the SAI website: [www.dri.co.me](http://www.dri.co.me).

<sup>70</sup> Article 19, "Rules of procedure of the state audit institution", published on the SAI website.

<sup>71</sup> Article 6, "Instructions on the methodology of work of the State Audit Institution", published on the SAI website.

<sup>72</sup> Article 10 of the SAI Law.

<sup>73</sup> Articles 52 and 53 of the SAI Law.

<sup>74</sup> Article 52 of the SAI Law.

<sup>75</sup> Article 11 SAI Law.



#### 4: The Supreme Audit Institution has the right to report publicly on its findings.

As required by the Constitution, the SAI reports annually to the Parliament<sup>76</sup>. On the basis of the SAI Law, this annual report is also submitted to the Government<sup>77</sup>. The annual report contains a chapter on the audit of the draft final accounts (financial statement) of Montenegro, a chapter with reports of individual audits carried out during the year, and a chapter reporting on the activities of the SAI itself<sup>78</sup>. According to the SAI Law, these elements are compulsory in the annual report, but the SAI is free to report on other topics. The SAI Law<sup>79</sup> permits the SAI to submit reports to the Parliament at any time. It even foresees the possibility to report before the audited entity has given its comments on a draft, in cases where a delayed submission might cause financial loss<sup>80</sup>. Apart from the Annual Report<sup>81</sup>, the SAI is not legally obliged to report publicly but has the right to do so.

*The SAI has the right to report publicly on its findings.*

#### Resources, management and support structures

#### 5: The Supreme Audit Institution has the resources necessary to perform its mandate and has the capacity to manage them.

The provisions in the SAI law<sup>82</sup> should guarantee that the SAI receives the resources necessary for its work. The figures for the years 2011-13 demonstrate substantial underspending by the State Audit Institution (see table below). However, according to the complement (systematisation), the SAI has 80 posts, against a real number of 56 employed by the end of 2013. In the Government's plan for restructuring the public sector, it is even foreseen that the SAI will have to reduce its number of staff by six before the end of 2016<sup>83</sup>. Also, the specific reasons for not spending the whole budget were largely related to delays in recruiting staff and a later start of activities in the context of the SDP than anticipated.

**Figure 1. Approved budget and realised expenditure of the SAI, 2011-2013**

	2011	2012	2013
Total budget in euros	1 074 250	1 172 956	1 442 878
Expenditure in euros	965 136	994 875	1 086 678
Difference in euros	109 114	178 081	356 200
Difference in %	10.2	15.2	24.7

Source: SAI and SIGMA calculations

It is difficult to judge to what extent the overall budget of the SAI is sufficient with respect to its audit duties. The SAI budget is approximately 1/1 000 of the total State Budget, which is similar to, for instance, the budget of the European Court of Auditors in relation to the total budget of the European Union<sup>84</sup>, and is slightly less than the budget of the Netherlands Court of Audit in relation to the central

<sup>76</sup> Article 144 of the Constitution of Montenegro.

<sup>77</sup> Article 18 of the SAI Law.

<sup>78</sup> See, for example, "Annual Report on Performed Audits and Activities of the SAI for the period October 2012 – October 2013", published on the SAI website.

<sup>79</sup> Articles 18 (2) and 20 of the SAI Law.

<sup>80</sup> Article 15 of the SAI Law.

<sup>81</sup> Article 50 of the SAI Law.

<sup>82</sup> Article 51.

<sup>83</sup> Ministry of Interior, Ministry of Finance, Plan for Internal Restructuring of Public Sector, Podgorica, July 2013, Table 9.

<sup>84</sup> European Commission, DG Budget, Budget on-line, 2013: Total expenditure budget of the European Union 2013, 132.8 billion euros; budget of the European Court of Auditors 2013, 142.8 million euros.

government budget of the Netherlands (1.6/1 000)<sup>85</sup>. But differences e.g. in audit mandate and in the functioning of internal controls and accountability arrangements make comparisons complicated. The responsibility for auditing local self-government and the existence of a huge number of often relatively small auditees make the overall resource situation somewhat strained.

A human resource management strategy has not yet been developed. The SDP foresees this to be finalized by the end of October 2014.

The SAI establishes a training programme each year. From the 2013 training programme, which listed five topics, only two were actually organised - one-day events with presentations<sup>86</sup>. Apart from those, English language training was organised, attended by 20 staff. It appears to be impossible to submit data on the average number of training days per auditor. Given the small scale of the institution, substantial professional development occurs through on-the-job training, with more senior and experienced auditors guiding junior ones. There is no clear training strategy with an explicit vision for professional development that would include this type of rather informal training.

The SAI has difficulties with providing its entire staff with office space in the existing premises and meeting rooms are lacking. The SAI recognises the need to solve this problem<sup>87</sup>. So far, however, no strategic solution within the scarce government premises has been found.

***The institution is not autonomous in the management of its resources. Human resource management is still in its infancy, and annual training programmes are not yet based on an overall human resource management strategy.***

## **6: The Supreme Audit Institution has adequate management and support structures in place.**

According to the law, the SAI is organised in five sectors. Each of the five Senate members, including the president, supervises one of these sectors. In reality, however, the Senate has only had four members for some time. A vacancy that had existed since 2010 was only filled in July 2013 and, with the resignation of the previous President, a new vacancy arose in March 2013 which has not been filled yet. The Administrative Committee in the Parliament, responsible for selecting a candidate, has so far not reached agreement on a suitable one.

During the vacancy of a Senate member, the supervision of the sector is divided among the other members. The Senate as a collegial body decides on all institution-wide issues, including the annual report, but not on individual audit reports, which are the responsibility of an audit board comprised of two members. Each sector has both audit responsibilities and some horizontal responsibilities. The organisational structure of the institution has the disadvantage of making the sectors isolated from each other, and the Senate is burdened with administrative matters. This temporary practical solution to divide horizontal matters over the five sectors has the disadvantage of an imprecise division of responsibilities between the Secretary of the SAI and some of the staff functions exercised in the audit sectors.

The SDP recommended, as one of the activities to improve the internal organisation of the institution, an assessment of the horizontal tasks of sectors against the background of improving the efficiency of the institution. This led to a decision by the Senate on 6 February 2014 to modify the internal organisation<sup>88</sup>, introducing, among other changes, separate divisions for horizontal tasks within the five sectors. The potential advantage is that the horizontal functions can receive more structural attention. However, an organisation with 56 staff, including the Senate, now has five sectors and the secretariat under which there are 15 divisions. Even with the full complement of 80 staff (also including the Senate), 28

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<sup>85</sup> Ministry of Finance, Miljoenennota 2014, The Hague 2013: Total budget of the central government 2013, 187.3 billion euros; budget of Algemene Rekenkamer 2013, 30.1 million euros.

<sup>86</sup> Implementation training plan 2013, document provided by SAI.

<sup>87</sup> See Strategic Development Plan.

<sup>88</sup> SAI organisational chart resulting from the decision.

hierarchical superior functions may be considered a quite heavy structure. At the same time, the restructuring does not ensure that audit practices will become more harmonised across the sectors.

The SAI reports annually on activities other than its audit work in chapter 4 of the annual report, which is comparable to an annual activity report. It does not contain precise data on numbers of staff, budget, training, and audit coverage as a percentage of the state budget, so its informative value is limited. On the basis of the budget figures provided by the SAI, it can be established that administrative and support services take approximately 23% of the total budget of the institution, leaving 77% for audit work. This percentage has been stable during the period 2011-2014.

***The SAI is collegially organised but has had a vacancy since 2010 of one out of the five members of the senate. It has recently taken measures to improve its organisational efficiency and effectiveness and give more attention to horizontal matters. However, these measures do not address the need for more coherence between audit sectors.***

### **The audit work and its impact**

#### **7: The Supreme Audit Institution uses standards and a risk-based approach in its audit work, so that it performs high quality audits in a neutral and objective manner.**

In practical terms, the SAI covers the whole state budget in its mandatory annual audit of the final account, leading to the issuance of an audit opinion. This audit has the characteristics of a mixed financial and compliance audit, called a "general audit". The SAI audits a number of spending units in more depth at the central level (ministries, agencies, etc.), plus some public funds, public enterprises and municipalities, also in general audit format.

On average, two municipalities out of the total 21 are covered by SAI audits each year. The law on financing local self-government dictates that external audits be carried out by commercial auditing firms, but the SAI is unsatisfied with the quality and scope of those audits. The SAI covers compliance issues besides the reliability of accounts, and its audits result in more critical reports related to local self-governments. In terms of budget, the SAI audited 7.9% of the total budget of all municipalities in 2011, and 4.7% in 2012. This gap can only be closed if either SAI receives more resources, or if the existing legal obligation for municipalities to organise external audits is extended with criteria for scope and methodology. A proposal in that direction has been put forward, but has been rejected by the municipalities.

Performance audit is still in its infancy, with a first such audit carried out in 2008 and a second one in 2012. In between, in four audits of a general nature, specific attention was paid to elements of performance. The 2012 performance audit started as a compliance audit, and was turned into a performance audit to focus on the potential economic losses. This led to a rather restricted interpretation of performance audits, although this can be justified as part of the development process. In February 2014, a new division for performance audits was created, so far with two staff, to stimulate the development of performance audits.

Through its membership with INTOSAI and the adoption of its SDP, the SAI is committed to applying the International Standards of Supreme Audit Institutions (ISSAIs) from INTOSAI. It is part of the draft amendments to the SAI Law proposed by the SAI. The SDP and the corresponding actions in the Action Plan state that the SAI will develop audit manuals in compliance with the ISSAIs, and that the relevant ISSAIs will be translated into Montenegrin. The current manual for financial and compliance auditing<sup>89</sup> is generally in compliance with the INTOSAI auditing standards. Not all sectors apply the risk analysis model that is included in the manual, as some auditors consider it to be too complicated<sup>90</sup>. There exists a

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<sup>89</sup> "Audit preparation and planning", approved by the Senate in February 2012.

<sup>90</sup> SIGMA interviews.

certain risk that different approaches and practices may lead to different conclusions and audit opinions in comparable cases, for instance because different materiality thresholds are applied.

A separate manual has been developed for the audit of public enterprises<sup>91</sup>, with the assistance of an external expert. A manual for performance audits is in preparation, a draft manual for auditing the final accounts was finalised in December 2013, and guidelines for auditing political parties, for IT-audit and for environmental auditing are included in the Action Plan.

Developing proper arrangements for quality control and quality assurance will be the subject of a Twinning Light Project that is due to start in April 2014. Currently, review and supervision in the hierarchy are used to ensure professional quality, but without strict procedures and without documentation. Nevertheless, audit findings are hardly contested, and the SAI auditors enjoy a good professional reputation. The development of strategic audit programming and planning is covered in the Action Plan, but with a time horizon extending to 2017, to be based on sectoral risk analysis on a continuous basis. However, for the time being, programming remains on an annual basis, through a largely bottom-up process, on the basis of relevant considerations but without institution-wide strategic direction.

The following table gives an overview of the audit reports published over the last three years. It shows the huge increase in number of reports issued due to the obligation to audit political parties and election campaigns. It also demonstrates the relatively low coverage of municipalities and public enterprises.

**Figure 2. Overview of audit reports published by the SAI, 2011-13**

Category of auditees	Number of reports published per year		
	2011	2012	2013
Year-end budget report/final accounts	1	1	1
Governmental bodies/spending units	9	6	12
Funds	1	2	-
Public enterprises	1	1	-
Municipalities	2	2	2
Other	1	1	1
<b>Subtotal</b>	<b>15</b>	<b>13</b>	<b>16</b>
Political parties	-	12*	36**
<b>Total</b>	<b>14</b>	<b>25</b>	<b>52</b>

\* Published in one consolidated report, without separate conclusions/opinions.

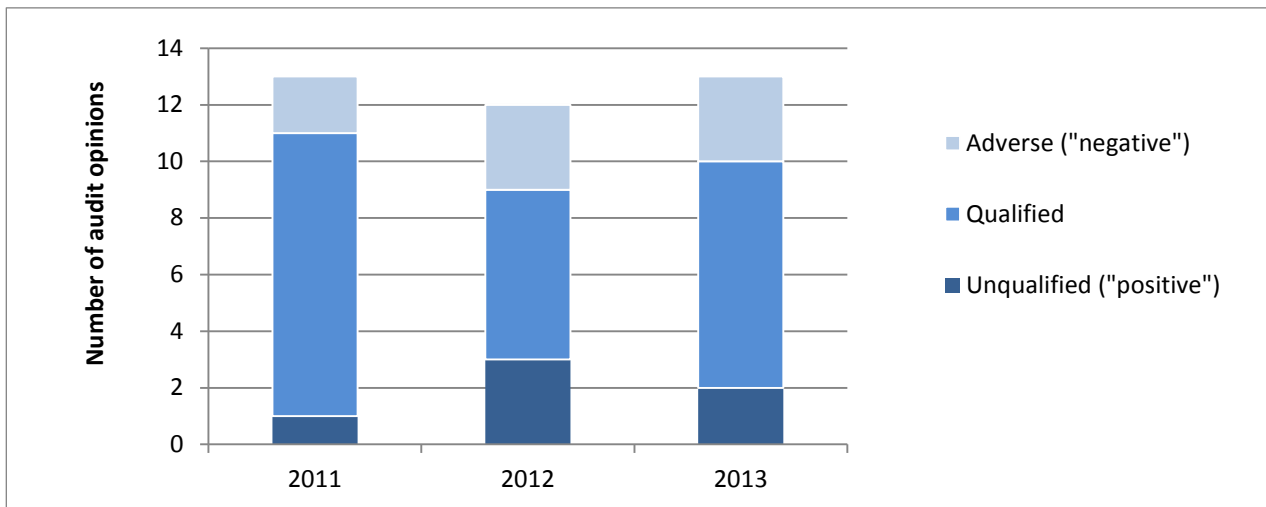
\*\* Separate reports on the financial statements of 22 political parties, with individual audit opinions, and 14 election campaigns of political entities participating in the 2012 parliamentary elections.

Source: SIGMA calculation based on SAI statistics on audits carried out.

Not all audits result in an audit opinion. Follow-up audits do not result in formal audit opinions, and the same is true for performance audits. The graph below gives an overview of the number and type of audit opinions issued, excluding the opinions on the finances of political parties for better comparison. The 22 audit reports on political parties issued in 2013 resulted in 8 unqualified, 12 qualified and 2 adverse opinions.

<sup>91</sup> 'Accounting and audit of public enterprises', adopted in 2012.

**Figure 3. Audit opinions issued in general and financial audits per year, 2011-2013\* excluding political parties**



\* In cases where separate opinions for reliability of financial statements and compliance with regulatory framework were issued and one of those was adverse, the audit is categorised as resulting in an adverse opinion.

Source: SIGMA calculation based on SAI statistics on audits carried out

***Overall, there are some inconsistencies in the quality of audits. While the SAI is in the process of developing a set of standards and guidelines for auditing on the basis of the ISSAIs, there is not a coherent application of existing audit guidelines by all sectors. Programming is currently not based on systematic risk assessment.***

**8: The Supreme Audit Institution ensures good reporting lines and/or communication with its stakeholders, and that its audit work has impact on the functioning of the public sector.**

As prescribed by the SAI Law, draft audit reports are submitted to auditees with a time frame of 15 days for giving comments. Usually, before a draft report is submitted, a final meeting takes place between the audit team and the staff of the auditee to explain the main findings, to resolve points that remained unclear, and sometimes to discuss possible recommendations to improve the functioning of the auditee or to remove points of non-compliance. The final report is sent to the auditee, and to other (related) entities when the SAI deems it necessary, and is published on the SAI's website. Reports do not all have the same format, individual preferences in sectors are still dominant. Some reports contain executive summaries, others only a concluding section.

The annual report is submitted to the Parliament and to the Government by the end of October. It contains the result of the audit of the final accounts and summaries of the audits carried out in the year before; it is also posted on the SAI's website. Individual audit reports are not sent to Parliament, but they are published on the SAI's website. So far, the parliamentary Committee on Economy, Finance and Budget has only discussed the annual report, apart from one or two exceptions when a debate was organised for a special report during the year. The committee discussion, which is attended by SAI representatives, leads to the adoption of conclusions that are submitted to the plenary for approval. Usually, the conclusions underline the recommendations from the SAI.

In 2012 the Parliament demanded from the Government an Action Plan to set out how it would act on the recommendations of the SAI and report back to the Parliament on its implementation. A discussion in the Parliament in November 2013 on the SAI annual report 2012 and the Government's action plan made it clear that the SAI's and the Government's assessments of the state of implementation of recommendations varied substantially. The Parliament has demanded an updated action plan from the Government, which has so far resulted in a Government decision<sup>92</sup> to form a co-ordination team

<sup>92</sup> February 2014.

comprised of all ministers and heads of state bodies for monitoring the implementation of the Action Plan. The Parliament is also planning to introduce a new instrument in 2014, the control hearing, for cases where an audited entity has received an adverse audit opinion. The head of the audited entity will be invited to explain to members of the Committee for Economy, Finance and Budget what measures have been taken to rectify errors and to improve management and control systems. This instrument will put additional pressure on all auditees to take audit recommendations seriously.

Another parliamentary initiative is to amend the draft Law on Budget and Fiscal Responsibility to bring forward the date of submission of the final accounts and the corresponding SAI report. This will make it possible to have the debate in the Parliament in the summer, creating more time for discussion on the draft budget in the autumn.

It was confirmed during SIGMA interviews that the recommendations in the audit reports are considered very useful by the auditees; this increases the chances of their implementation. Systematic monitoring of implementation of audit recommendations by the SAI follows a standard procedure, starting with requesting a report from the auditee on the implementation of recommendations within 6 months or a year. Although there is no legal obligation for auditees to supply a report, according to SIGMA interviews, the experience with their co-operation is good. In cases of serious problems (for instance, when an adverse opinion has been given), the auditee will be marked for a control (follow-up) audit to verify the state of implementation of previous recommendations. Another instrument is a horizontal audit covering a number of entities, in which the focus is on implementation of recommendations only. In addition, the annual audit of final accounts allows for inspection of the implementation of recommendations by entities covered previously in separate audits. All instruments are used by the SAI.

Active communication to the media does not take place - there are no press briefings organised and there is no press alert system to actively announce the publication of reports. The SAI has, however, organised a workshop for journalists on how to read and understand audit reports. In general, the media have a positive picture of the SAI as being a professional organisation with a high level of integrity. This prompts however the unrealistic expectation of the general public that the SAI could do more to fight corruption and to prosecute people who are responsible for the mismanagement or abuse of public funds. A communication strategy to address this expectation gap, planned in the context of the SDP, is not yet developed.

***The SAI has procedures in place for reporting to auditees and for following up on recommendations, although a communication policy is lacking. Recommendations of the SAI are considered useful and their implementation is monitored by the SAI. The annual report of the SAI is discussed in the responsible parliamentary committee. So far, individual audit reports are subject to parliamentary discussions only on exceptional occasions.***

# **PUBLIC PROCUREMENT**

**MONTENEGRO**

**APRIL 2014**

## 1. State of play and main developments since last assessment

### 1.1. State of play

The current Public Procurement Law of Montenegro (PPL 2011) is for the most part aligned with the EU public procurement directive (2004/18/EC). Specific provisions for utilities and defence procurement are still missing.

Apart from concessions, the institutional set-up of the public procurement system is complete and in line with the *acquis*. The Public Procurement Administration (PPA) is playing an active role in implementing the Government's public procurement strategy and co-ordinating work in public procurement. A separate, independent body (the State Commission for the Review of Public Procurement Procedures) is in charge of reviewing complaints, with the possibility to appeal its decisions to the Administrative Court.

The operation of the public procurement system remains characterised by a strong emphasis on formal, procedural requirements. Budget and public expenditure regulations are applied in a way that leads to a focus on the current year rather than longer term procurement needs. An increasing use of framework agreements is only partly alleviating this phenomenon. There is no centralised purchasing body, although some authorities, e.g. in education, carry out joint procurement on an ad-hoc basis.

The new public procurement portal has facilitated access to guidance documents, regulations, statistics and other information. Procurement plans and tender documents are available for download but there are not yet any facilities for systematic submission of tenders by electronic means, nor for their subsequent evaluation. The requirement to publish contract notices for most forms of procurement has increased transparency. Decisions of the review body are also published on-line. However, there are no facilities for searching for decisions on a particular topic, so it is difficult for contracting authorities and economic operators to find guidance from past decisions that would be applicable in a particular case.

### 1.2. Main developments since last assessment<sup>93</sup>

A co-ordinating body for monitoring and implementation of the Government's procurement strategy for 2011-2015 was set up on 25 February 2013 and held its first meeting on 17 December 2013.

A decision to seek accession to the plurilateral Agreement on Government Procurement (GPA) was taken in mid-2013. After close consultations with the EU Commission, Montenegro's initial offer was presented in late 2013. It is expected that accession will take place before the middle of 2014.

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<sup>93</sup> March 2012.



## 2. Analysis

### Policy, regulatory and institutional framework

**1: There is a focal point at ministerial level with designated responsibility for public procurement policy making and co-ordination, internally and externally, with a clear mandate and the authority and resources necessary for the task.**

The Ministry of Finance has the formal responsibility for public procurement policy making and co-ordination and has appointed a person at Director-General level for this task. Overall policies were set out in a Strategy for the Development of the Public Procurement System in Montenegro for the Period 2011-2015 (the Strategy), which was adopted by the Government in December 2011. A corresponding Action Plan was intended to be overseen by a Co-ordination Body for Strategy Implementation and Monitoring (Co-ordination Body). In practice, the PPA plays the leading role in the implementation of the Strategy and co-ordinates work in the field, as evidenced by the PPA Director heading the Co-ordination Body, the working groups on PPL amendments and on GPA accession, and the larger group for EU accession negotiations on Chapter 5.

The general goals of the public procurement Strategy include the following: further improvements in integration; increased efficiency; reduction of irregularities; further harmonisation with EU directives and other EU acts; encouraging sustainable economic growth of Montenegro; and improvement of living standards. The Strategy contains references to policy development for specific “green” or social goals. The PPA and contracting authorities are clearly aware of environmental issues and the need to engage with small and medium enterprises (SMEs) — reflected, for example, in the preparation of specifications with reference to environmental obligations. The Strategy also refers to the need for measuring efficiency in the implementation of the Strategy, requiring specific systems for measuring public procurement performance. The public procurement portal will be part of these.

The role of the Co-ordination Body includes monitoring the implementation of the Strategy and improving delivery of the related Action Plan, as well as strengthening international co-operation and enhancing educational programmes<sup>94</sup>. Although it is required to meet on a quarterly basis, there has been only one meeting of the Co-ordination Body so far, on 17 December 2013. The report issued after the meeting gives an overview of the progress in implementing the Strategy. The Co-ordination Body is chaired by the Director of the PPA with the Director General (formerly Assistant Minister) in charge of public procurement policy at the Ministry of Finance as Deputy Chair. In addition, there are ten members representing various Ministries, the Supreme Public Prosecutor, the Commission for Control of Public Procurement Procedures, the Parliament and the Chamber of Economy.

The Ministry of Economy is currently responsible for policy making and co-ordination on concessions in the traditional sense, while the responsibility for PPP-style operations is spread among the ministries depending on the subject matter and the applicable law. However, responsibility for the preparation of a new, unified concessions and PPP law has been given to an ad-hoc working group led by advisers in the office of one of the Deputy Prime Ministers with responsibility for economic affairs<sup>95</sup>. Work has been ongoing since early 2012 and a draft text is being finalised.

***The Ministry of Finance has formal authority on public procurement policy, except for concessions and PPPs, complemented by a high-level co-ordination role for the Co-ordination Body. In practice, policy making and co-ordination are carried out mainly by the PPA.***

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<sup>94</sup> Decision establishing the Co-ordinating Body for Monitoring and Implementation of the Strategy for Public Procurement No. 03-12509/3 dated 29.12.2011, Official Gazette 80/08. Decision confirming the names of the original members (since revised) issued by the Ministry of Finance no. 2968/1 dated 25 February 2013. Rules of Procedure adopted 24 December 2013. Activity Report dated December 2013 and available from PPA website.

<sup>95</sup> See further comment, under Principle 2, on the lack of progress on proposals relating to concessions and PPPs.

**2: The regulatory framework is aligned with the *acquis*, includes areas covered by the fundamental Treaty principles and EU case law, and also regulates areas of national interest, such as value for money in public procurement.**

The PPL 2011 is substantially but not yet fully aligned with the *acquis*. Positive developments arising from the introduction of the PPL 2011 include: electronic publication of contract notices and concluded contracts; introduction of the use of Common Procurement Vocabulary (version 2008); increased minimum time periods for tender submission; and improved record keeping. A complaints review system is in place, in compliance with the remedies directives. The principles of cost effectiveness, competition, transparency and equality are set out in the PPL and contracting authorities are required to conduct public procurement in a manner ensuring compliance with these principles. Areas not fully aligned include: the lack of provisions for competitive dialogue; electronic auctions or dynamic purchasing systems; the provisions on framework agreements; and a specific procedure for consultancy services. Utilities are covered by the same rules as the public sector and there are no provisions aligning the PPL 2011 with the defence and security Directive 2009/81/EC.

The lack of full alignment with the *acquis* is acknowledged. Proposals for the amendment of the PPL 2011 have been prepared and were the subject of a formal public consultation on 17 March 2014. They include: simplification of the qualification requirements; the introduction of flexibilities available to utilities under Directive 2004/17/EC; provisions covering the award of contracts in the fields of defence and security, leading to alignment, for the most part, with Directive 2009/81/EC; removal of the control function for contracts over EUR 500 000 from the remit of the State Commission; and transfer of this function to the General Inspector.

The introduction of the requirement to fully advertise contracts on the PPA Portal, including low-value contracts using the shopping method, has increased transparency and encourages more competition and better value for money outcomes. There is, however, a lack of transparency in relation to the award of contracts by direct agreement, which requires no public advertisement or competition<sup>96</sup>. In 2012, expenditure by direct agreement amounted to EUR 19.7 million<sup>97</sup>, or 6.1% of all public procurement by value, an increase from the 2011 figure of 5.1%. The State Audit Institution (SAI) reports contracting authorities which exceed the permitted percentage for awards using the direct agreement method and also has identified the practice of splitting contracts<sup>98</sup>.

Concessions remain regulated mainly by the 2009 Law on Concessions. Its scope is largely limited to the exploitation of natural resources and other common goods. Other forms of public-private sector co-operation are variously covered by specific provisions spread out in a total of some 30 different laws. The drafting of a new PPP Law, which would also cover public works and public service concessions, is still ongoing, and thus the provisions of the *acquis* regarding concessions are not yet transposed.

***The PPL 2011 is, for the most part, aligned with the EU public sector Directive and the remedies directives. Specific provisions for utilities and defence procurement are ready to be adopted while regulation of concessions is still under preparation.***

**3: Central institutional and administrative capacity is in place to support and co-ordinate the continuous development, implementation and monitoring of public procurement regulations and practices.**

The organisational structure for central public procurement-related functions in Montenegro is clearly defined and consists of: the Ministry of Finance - public procurement; the Ministry of Economy - PPP and concessions; the Public Procurement Administration (PPA); the Commission for the Control of Public

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<sup>96</sup> Article 30, PPL 2012. Contracting authorities are permitted to award 7% to 10% of their budgeted expenditure by direct agreement. The permitted percentage varies according to the budget of the contracting authority.

<sup>97</sup> PPA Report 2012, p. 53, section 5.4, Table 6.

<sup>98</sup> Confirmed in SIGMA interview with the SAI.

Procurement Procedures (State Commission) which provides enforcement through a well-established complaints review mechanism; and the General Inspector of Public Procurement. Other relevant bodies include: the Administrative Court; the Misdemeanours Council; the State Audit Institution; the Commission for Prevention of Conflicts of Interest; the Directorate for Anti-Corruption Initiative; the Police Directorate; and the Judicial Council. However, in the absence of procurement regulations matching the provisions of the Directives concerning concessions, there is no corresponding institution in place, apart from the working group mentioned under Principle 1.

The PPA, which is an autonomous body, has a total of 18 positions, of which 16 are filled at present. It is organised into four sub-divisions for monitoring the implementation of regulations and inspection control; monitoring public procurement procedures and managing electronic public procurement; professional training and education and international co-operation; and general affairs and finances<sup>99</sup>.

The competences of the PPA are extensive. They include monitoring the implementation of the procurement system; prior approvals; providing advice and assistance to contracting authorities; maintenance of the public procurement portal; publication of procurement documentation; annual lists of contracting authorities; technical literature as well as the organisation and conduct of professional development and training; and the professional procurement examination. In addition, the PPA plays an active role in policy development. The PPA also co-operates with other state bodies, universities, NGOs, and international organisations and agencies.

There is uncertainty relating to the interpretation and application of the PPL 2011 in practice. There are concerns that the way in which the law is applied is unnecessarily bureaucratic and formalistic, with rules and practices that are too prescriptive. Several interviews during this assessment indicate that a number of the provisions are found to be difficult to apply in practice. In some cases, this is due to a lack of understanding of the provisions, in other cases it stems from inconsistencies between the key institutions concerning the interpretation of the legal provisions. There is concern, again expressed in a number of SIGMA interviews, that the process has become more, and unnecessarily, bureaucratic and formalistic<sup>100</sup>.

There is a significant emphasis on approvals, inspection and control of public procurement procedures. Prior approval for the conduct of a public procurement procedure is required from the PPA prior to commencing certain procurement processes<sup>101</sup>. Where a contracting authority has conducted a procurement process for a contract over the value of EUR 500 000, it must seek approval from the State Commission prior to the award of the contract<sup>102</sup>. In 2012 the State Commission undertook 41 controls and cancelled 10 procedures<sup>103</sup>. In 2013 it undertook 60 controls and cancelled 2 procedures<sup>104</sup>. The General Inspector of Public Procurement undertakes inspections of contracts under EUR 500 000 in response to requests for an inspection<sup>105</sup> and, in 2013, undertook 38 inspections. The control functions exercised by the State Commission and the General Inspector relate primarily to administrative and formal requirements rather than substantive issues, and procedural errors are the most common reason for a cancellation. However, data indicates that contracting authorities are improving their implementation of the regulations gradually.

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<sup>99</sup> A new Rulebook on internal organisation and systemisation of the PPA was adopted in 2013, the Government session of 11 April 2013, No. 01-2148.

<sup>100</sup> Institut Alternativa (2013), *Procurement in Montenegrin Municipalities*, Centre for Civic Education and Institute Alternative, Chapter 4.

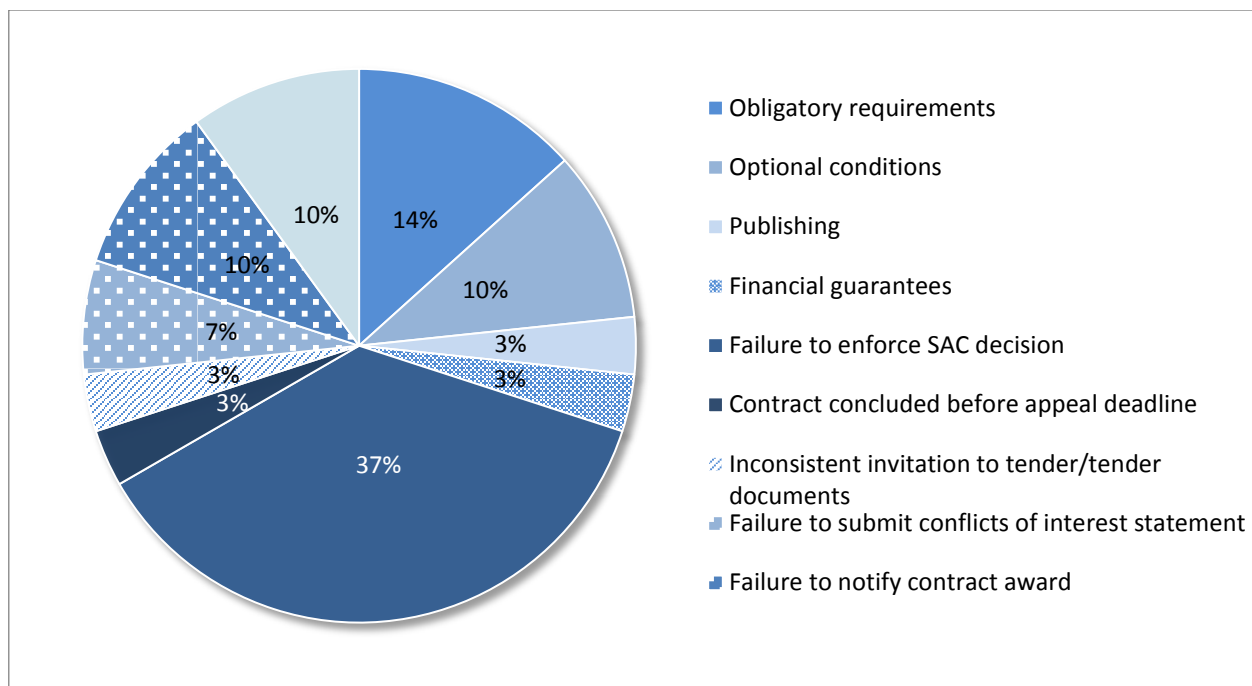
<sup>101</sup> Article 31, PPL 2011. Prior approval is required when a contracting authority wishes to conduct a negotiated procedure (with or without prior publication of a contract notice, including cases of extreme urgency), when establishing a framework agreement and when procuring consulting services.

<sup>102</sup> For further details, see Articles 144 to 146, PPL 2011. This provision creates a conflict with the role of the State Commission in hearing complaints. The proposed amendments to the PPL will eliminate this conflict.

<sup>103</sup> State Commission 2012 report, section 5.

<sup>104</sup> Preliminary 2013 figures provided by the PPA.

<sup>105</sup> Articles 147 and 148, PPL 2011. Preliminary 2013 figures.

**Figure 1. General Inspector 2013: Distribution of main issues raised in inspections**

Source: General Inspector's Office

The SAI carries out general audits of some 15 institutions per year which include the audit of the planning and conduct of public procurement procedures as well the execution of public contracts. The auditors use a standard checklist which includes separate sections for different types of procurement process and checks compliance against statutory requirements. The general audit may cover all public procurement procedures conducted by a particular institution, or may use a sampling approach. Irregularities identified include: failure to publish public procurement plans; scope of public procurement reports; exceeding the permitted percentage for awards using direct agreements; and splitting contracts to avoid the application of the procurement rules. The SAI has a formal co-operation agreement with the PPA.

***The fields currently regulated by the PPL 2011 benefit from support and co-ordination by corresponding institutions with largely adequate resources. However, the monitoring of public procurement focuses on formal requirements more than on economy, effectiveness and efficiency.***

#### Reviews and remedies

**4: There is a system for dealing with complaints that is aligned with *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.**

The State Commission is an independent body reporting to the Parliament, although the President and the four other Members are appointed by the Government, for a five-year term<sup>106</sup>. In October 2013, the Government approved an increase in staff numbers from three to eight, in addition to the five Commissioners.

Complaints can be made by bidders and other interested persons and are made directly to the State Commission. Decisions taken by the State Commission are final and are published promptly on the Commission's website, with reasons for the decisions. However, it is not possible, for example, to search the decisions by reference to a key word and the current software makes data collection and analysis

<sup>106</sup> Established by Article 137, PPL 2011. The Commission in its current composition was appointed by the Government in its session of 23 February 2012 and was operational with effect from 1 March 2012.

difficult. Contracting authorities are obliged to act upon the decisions and to notify the State Commission on actions taken within the time specified. If the contracting authority fails to follow the decisions within the specified time, the State Commission informs the Government or relevant local authority and propose that appropriate action be taken. In its 2012 annual report, the State Commission raised concerns about the failure of contracting authorities to implement its decisions<sup>107</sup>. Over a third of irregularities identified by the General Inspector in 2013 related to the failure to implement decisions made by the State Commission<sup>108</sup>.

There has been a steady and marked increase in the number of complaints: 641 in 2012 and 750 in 2013<sup>109</sup>. This is despite the PPL 2011 introducing a complaint fee and strict time limits for making complaints. The view was expressed to SIGMA by both the State Commission and other interlocutors that the reasons for the increase in the number of complaints include a lack of understanding of the new law (the PPL 2011), an increasing number of procurement complaints relating to the General Administrative Procedure Law (GAP Law) and also a perception of deliberate and tactical use by tenderers of the appeals procedures to delay or prevent contract awards.

In 2012 the State Commission made decisions on average within 17 days of submission of complete documentation<sup>110</sup>. Appeals against the decisions of the State Commission can be made to the Administrative Court. In 2012, 83 decisions were appealed to the Administrative Court; in 2013, 67 decisions were appealed<sup>111</sup>. The appeals process can be lengthy, taking several months or years. In 2012, 32 of the appeals considered by the Administrative Court were rejected<sup>112</sup>. In 2012, there were 60 referrals by the Administrative Court back to the State Commission for repeat procedures to be undertaken due to the existence of formal and procedural issues (typically related to the provisions of the GAP Law more than to those of the PPL 2011), rather than substantive issues such as the quality of the procurement process or outcomes<sup>113</sup>. Thus, the Administrative Court often requires the State Commission to reconsider its own decisions, which undermines confidence in the remedies system.

There is a further right of appeal to the Supreme Court. In 2012, the Supreme Court received seven requests for review of judgments by the Administrative Court in relation to decisions of the State Commission. Of these appeals, three were rejected, one dismissed and three accepted<sup>114</sup>.

Whereas the appeals system is formally aligned with the *acquis*, there are practical problems with its operation which create significant uncertainty in the day-to-day conduct of procurement processes. The problems arise from a combination of factors including strict interpretation by the State Commission and Administrative Court of formalistic rules; the inconsistency between the PPL 2011 and the current GAP Law; the increased use of arguments relating to non-compliance with the GAP Law; the repeat procedures process; and delays in hearing appeals against State Commission decisions by the Administrative Court. Some contracting authorities and other interlocutors criticised the State Commission for inconsistent decisions on very similar issues.

***There is a system for dealing with complaints that is generally aligned with the *acquis* standards, but the PPL 2011 is not harmonised with the GAP Law. This is occasionally reflected in rulings of the appeals body (the Administrative Court) that require the review body to reverse its decisions.***

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<sup>107</sup> State Commission 2012 Report, section 9.

<sup>108</sup> Preliminary 2013 figures.

<sup>109</sup> 2013 figures: *These are currently unofficial figures*: The State Commission made 820 decisions in 2013, including control decisions for contracts over EUR 500 000.

<sup>110</sup> State Commission 2012 Report, section 4.8. This included cases inherited from the previous Commission on 1 March 2012.

<sup>111</sup> State Commission 2012 Report, section 7. Figures for 2013: *These are currently unofficial figures*.

<sup>112</sup> State Commission 2012 Report, section 6.7.

<sup>113</sup> Repeat procedures undertaken pursuant to Article 57 of the Law on Administrative Disputes (*Official Gazette* No. 60/03). See State Commission 2012 Report, section 6.4.

<sup>114</sup> State Commission 2012 Report, section 6.9.

## Procurement related horizontal issues

### 5: A horizontal legal and institutional environment supportive of public procurement is in place.

The GAP Law has a number of procedural requirements which are commonly interpreted by contracting authorities, the State Commission and the Administrative Court as requiring considerably more formalities than normal in EU public procurement practice. As an example, after tender opening, each page of every tender submitted is registered and referenced in a ledger of incoming documents before the tender committee can start evaluating the tenders. The publication of notices is also complicated by the level of detail required by the GAP Law and the PPL such as, for example, explaining the reasons behind a contract award.

The various regulations in force, including the PPL 2011, allow for the conclusion of multi-year contracts<sup>115</sup>. However, in practice, the interpretation by contracting authorities of budget rules and planning procedures prescribed by the Ministry of Finance means that most public procurement contracts are awarded to tie in with the budget year, sometimes leading to a perceived urgency to carry out procurement before the end of the year. At the same time, procurement cannot start at an early stage, since both the procurement plans and the budget (itself as detailed as many procurement plans) have to be approved first. This leads to a focus on the short term in planning and preparation of public procurement as well as in contract management, neither of which is conducive to transparency and efficiency. Long-term framework agreements are increasingly being used to help overcome the issue of annual contracting, but their use still requires prior approval by the PPA.

Another problem is that the expenditure budget is often detailed month by month by dividing the annual allocation into twelve equal parts. This creates restrictions on how and when money can be spent on public procurement and complicates both the preparation and award of contracts and their execution and payment.

***The horizontal legal and institutional environment is not fully supportive of public procurement, for example budget rules and practices do not match the needs for longer term procurement planning and implementation of public contracts.***

### 6: A regulatory and institutional framework to ensure integrity in public procurement is in place and is working.

Increased transparency in procurement is one of the ways in which integrity can be improved and the requirements of the PPL 2011 do increase transparency requirements, with the notable exception of contracts awarded by direct agreement (see Principle 2). The PPL 2011 includes requirements relating to integrity, covering anti-corruption rules and conflicts of interest<sup>116</sup>. Contracting authorities are required to reject bids where they find or reasonably suspect corrupt practices. All members of tender committees as well as tenderers are required to submit conflict of interest statements for each tender process and are to be excluded from the process if there is a conflict of interest. Where corrupt practices or conflicts of interest are identified, the contracting authority is required to report this to the competent authorities, including the PPA<sup>117</sup>. A failure to do so is a misdemeanour. The PPA also operates an open phone line for members of the public to report irregularities or corruption. However, in recent years very few reports have been received by the PPA in this way<sup>118</sup>.

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<sup>115</sup> Article 39, PPL 2011.

<sup>116</sup> Articles 15 to 18, PPL 2011.

<sup>117</sup> Only five such reports were received in 2012 (PPA annual report 2012, p. 80); the PPA indicates that "It is evident that a small number of contracting authorities submitted the required report to the PPA."

<sup>118</sup> As stated by the PPA, in 2011, one corrupt practice was reported by phone; in 2012, there were five anonymous reports by phone, and one report received via e-mail.

Whilst the basic structures and processes for transparent and fair procurement are in place, the outcomes of a public opinion survey undertaken by Ipsos in April 2012 reveals ongoing problems with the public perception of public procurement. 59% of respondents were not satisfied with the control of public procurement: “Citizens describe public procurement in Montenegro as a process that takes place under a political or party’s influence.... Only one in five respondents believes that public procurement in Montenegro is implemented in accordance with public interest, law, objective criteria, transparent and impartial manner”<sup>119</sup>.

Public officials are required to provide extensive personal information relating to their interests and assets to the Commission for the Prevention of Conflict of Interest (Conflicts Commission), which then cross-checks the information supplied. The Conflicts Commission has signed a formal co-operation agreement with the PPA, and PPA representatives regularly participate in delivering conflict of interest training organised by the Conflicts Commission. It should be noted that the checking of interests and assets does not apply to all members of the tender commissions.

***A basic regulatory and institutional framework to ensure integrity in public procurement does exist. The small number of integrity related reports that have been issued does not allow any firm conclusions about how the system works in practice.***

## **Operations and practices**

### **7: Procurement transactions are carried out using modern approaches and methods, including e-procurement, framework agreements and centralised purchasing.**

E-procurement is being developed in stages. The new PPA portal facilitates electronic publication of notices. Registration on the Portal is mandatory for contracting authorities and economic operators. Contracting authorities are required to publish contract notices for all procurements, apart from direct agreements, on the Portal and to publish contract award notices. Contracting authorities are also required to submit other documents for publication on the Portal, including their annual public procurement plans and copies of concluded contracts and annual reports. The Portal also contains other information such as: relevant primary and secondary legislation; standard documents and guidance; the list of contracting authorities; CPV codes; and information on training and seminars. However, not all information is easy to find. Full tendering processes are not carried out electronically. The next step in the development of e-procurement is to make tender documents available on-line. The full cycle of e-notices, e-access, e-evaluation and e-awards is intended to be introduced in the medium to long term.

Many contracting authorities do not use framework agreements due to a lack of understanding of the PPL and of clear guidance about what is and is not permitted. In 2012, only 29 prior consents for frameworks were sought. The use of frameworks amounted to only 1% of the value of public contracts in 2012<sup>120</sup>. However, according to preliminary data indicated by the PPA, the use of framework agreements increased significantly in 2013, particularly in fields like health and education, and now amounts to around 15-20% of total procurement value.

There is no public agency for centralised purchasing. Some centralised purchasing is undertaken in the form of “horizontal” arrangements where purchasing is undertaken centrally for a number of independent institutions, such as purchasing by the Health Insurance Fund, and also “vertically” within Ministries. For example, in 2012, the Ministry of Transport and Maritime Affairs centralised procurement planning and certain categories of procurement for several contracting authorities within its control. A

<sup>119</sup> Reported in Institut Alternativa (2012), *Corruption and Public Procurement in Montenegro*, Institute Alternative, pp. 12-13.

<sup>120</sup> PPA 2012 Report, p. 64 (prior consent); p. 66, graph 13 (value of framework contracts awarded).

recent Public Administration Reform Strategy progress report identified centralised procurement in certain areas as “among the single most important goals in the area of finance”<sup>121</sup>.

***The basic regulations for modern public procurement approaches and methods, including e-procurement, framework agreements and centralised purchasing, are in place. E-procurement currently covers publication of guidance notices and other reference materials, notices, tender documents and official reports, framework agreements are in regular and increasing use, but centralised purchasing is only done on an ad-hoc basis.***

**8: Contracting entities manage the procurement process professionally from the stage of defining the needs until the closing of the file and generate value for money.**

The status and working conditions of procurement officials reflect the general characteristics of staff management in the public sector at large. The use of tender committees takes away most of their authority while leaving them with the legal responsibility for good procurement. Despite needing a university degree and a professional exam, managed by the PPA, to become a procurement officer, they receive no additional benefits, are subject to penalties for administrative mistakes and yet remain subject to strict controls such as having to seek approvals from senior managers.

The focus on professional development of public procurement officers has increased recently, with the formal adoption of a programme for basic professional education and training, which focuses on the procedures covered by the PPL, and the introduction of new professional examinations organised by the PPA. In 2012, 90 public procurement officers passed the professional examination.<sup>122</sup> Preliminary data provided by the PPA indicate that 211 officials passed the examination in 2013.

The PPL sets out the steps which need to be followed in the conduct of procurement processes, from advertisement to contract award. There are standard documents available on the PPA Portal as well as guidance, although all contracting authorities interviewed desire more documents and more detailed practical guidance. Few contracting authorities plan more than 12 months ahead, mainly due to the annual planning cycle and budget requirements (see under Principle 5). The internal system for procurement approvals can hinder efficient procurement, in that decision making on even quite minor procurements remains at a very high level within an organisation, such as with a minister or a secretary of ministry (the most senior civil servant position in the ministry), resulting in delays in the procurement process pending approval.

As evidenced in various SIGMA workshops, there is a clear lack of detailed knowledge at the contracting authority level about two key parts of the procurement cycle: procurement planning and contract management. Procurement planning is regulated by the Budget Law<sup>123</sup>. In practice, as evidenced in SIGMA interviews, it tends to be formulaic, focused on the annual planning cycle rather than longer-term needs and wider considerations such as value for money, and is not always accurate. This view is supported by the PPA in their Annual Report 2012 and by others<sup>124</sup>. Contracting authorities often have little knowledge about the supply market and of the various options available, and often conduct weak analysis of the needs and appraisal of the alternatives. Even if not regulated by the EU directives or otherwise part of the *acquis*, contract performance has duly been identified as an area of risk by the PPA<sup>125</sup>. However, the concept of contract performance was described in rather limited terms in SIGMA’s interviews with contracting authorities. Procurement officers most frequently referred to standard

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<sup>121</sup> Ministry of Interior Progress Report on the 2011-13 Action Plan for Implementing the Public Reform Strategy with the Draft 2014-2015 Action Plan, December 2013.

<sup>122</sup> PPA Report 2012, pp. 14 and 15 for information on the Rulebook and Programme adopted in 2012, and p. 17 for statistics on the professional examination.

<sup>123</sup> Budget Law – Official Gazette 53/09, 7 August 2009.

<sup>124</sup> PPA Annual Report 2012, pp. 84-85 and 87, and Institut Alternativa (2013), *Procurement in Montenegrin Municipalities*, p. 25, footnote 41 for reference to State Audit Findings.

<sup>125</sup> PPA Annual Report 2012, p. 86.



three-way financial checks rather than pro-active contract management to deal, for example, with poor vendor performance.

***In the professional management of the procurement process, the time horizon is mostly limited to the current year. The focus still remains mainly on the formalities of the procedures for notification, evaluation and award, rather than on economy and efficiency, while needs evaluation, market analysis, procurement planning and contract management are carried out only to a limited extent.***

#### **9: The public procurement market is open and competitive.**

The openness of the public procurement market is supported by a range of notification requirements, which are normally met by the contracting authorities. The annual public procurement plans of each contracting authority must be published on the PPA Portal by 31 January of each year. Contract notices, including requests for bids under the shopping method, must be published on the PPA's public procurement portal using a standard form<sup>126</sup>. Any subsequent material changes to the notice must also be published on the portal and the tender deadline must then be extended. Contracting authorities must also publish contract award notices. The specified content of contract notices includes the subject matter of the contracts (using CPV 2008 codes), estimated value of the contract, conditions for participation, evidence required for suitability, evaluation criteria to be applied and price for purchase of tender documents (where used). Full tender documents do not yet need to be published on the portal. Concluded contracts must be submitted to the PPA within three days of award and published on the portal. The transparency of the system is heavily dependent on compliance by contracting authorities although failure to submit required information is formally an administrative misdemeanour<sup>127</sup>.

Public procurement as a percentage of the GDP has decreased (11.43% in 2011; 9.72% in 2012)<sup>128</sup>. The number of recorded contracts concluded in 2012 (including direct agreements) was 58 793, which is less than in 2011 when 63 992 contracts were recorded<sup>129</sup>. In 2011 the share of low-value contracts was 9.18%, rising slightly to 10.41% in 2012. The average number of tenderers participating in public procurement processes has declined since a peak in 2010, with the average number of bidders in 2010 being 4.57 per bid, down to 4.09 per bid in 2012<sup>130</sup>.

The internal market is small, with relatively few enterprises in many sectors and none in others, which by itself may have a limiting effect on competition. Licensing requirements limit the range of enterprises eligible for supplying the national market, including the public sector, especially in construction and engineering and medical supplies. PPA reports do not allow the market share of foreign companies in public procurement to be fully analysed.

***The basic requirements for ensuring the openness of public procurement are in place, although the small size of the country inevitably leads to limited domestic competition in many fields.***

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<sup>126</sup> Other notices, such as notification of shortlisting or discontinuing a procurement process, must also be published on the portal.

<sup>127</sup> Article 149, PPL 2011; see also comment and footnote referring to the PPA Portal under Principle 3.

<sup>128</sup> PPA Report 2012, p. 50, Table 4 (sets out figures for 2007 to 2012).

<sup>129</sup> PPA Report 2012, p. 69, Table 17.

<sup>130</sup> PPA Report 2012, p. 70, Table 19.