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Montenegro Priorities Report 2013

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PRIORITIES

MONTENEGRO MAY 2013

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2013-2020 SIGMA COUNTRY PRIORITIES FOR PUBLIC ADMINISTRATION REFORM – Explanatory note

Aim and structure of proposals

SIGMA has identified the following country priorities for public administration reform (PAR), which are a continuation of the 2013 SIGMA assessments and part of a longer-term programme of work. Priorities cover the overall PAR needs of the country, including areas which were not covered by the assessments. Priorities in areas outside the scope of SIGMA assessments are based on other analytical sources and SIGMA's practical experience of working with the country.

SIGMA proposes priority 2020 targets for the countries, sub-targets when needed, and sequenced priority activities in 1-2, 3-5 and 5+ year time perspectives. The EC may wish to use the identified priorities to feed into the planning of EU assistance, in particular for IPA II, and to inform discussions with the country on public administration reform priorities.

MONTENEGRO

2013-2020 SIGMA COUNTRY PRIORITIES

The following priority targets are proposed for Montenegro for 2020:

- 1. The policy making and co-ordination system is in place, with a coherent medium-term outlook, established practices and capacities for policy development, and regular analysis and monitoring of implementation, including mechanisms and capacities needed for transposing the European Union (EU) *acquis* and handling the EU accession process.
- 2. An optimal public sector organisation is in place with professional civil service and adequate human resource management (HRM) practices across the public administration, public employment gradually shifted to priority areas, and sound administrative procedures, in line with EU principles, followed by all public services.
- 3. Fiscal sustainability is ensured by the systematic implementation of medium-term expenditure planning, improved capacities of line ministries to plan finances over a medium-term period, with financing decisions determined by good quality fiscal estimations and supported by clear accountability arrangements for budget planning and implementation, in line with EU rules and good international practice.
- 4. The public procurement system, including public-private partnerships (PPPs)/concessions, is in place and fully operational, in accordance with EU rules and good international practice, making full use of e-procurement, framework agreements and, as appropriate, centralised purchasing. The system provides value for money and is considered fair by most economic operators and civil society organisations.

STATE OF PLAY

Montenegro has established a basic policy management system, comprising a legal framework and the bodies necessary to perform the required planning and policy co-ordination tasks. The Rules of Procedure of the Government are well designed and easy to follow, and these rules were routinely implemented in 2012. The institutions at the centre of government each have a clear role in ensuring sound policy planning. The main weaknesses include the lack of formal, medium-term horizontal planning and the absence of requirements to ensure that policy implementation is followed up by monitoring and analysis.

Policy development structures in ministries are notably small, but they have proved to be flexible, through working groups, in terms of mobilising resources for the particular analytical or preparatory work required prior to the elaboration of new policies. Interministerial and public consultation largely works as a routine, but often the application of this tool is technical and comes at a fairly late stage in the drafting process. The formal rules and practices focus on policy development, without sufficient attention being given to the rigorous implementation of new regulation, and an analysis of the actual implementation is mostly not ensured. The relative strengths of policy development practices in Montenegro are the frequent use of informal networks between ministries and the development, to a large extent, of European integration (EI) capacities on the basis of existing policy capacities in ministries used for national purposes. Full and thorough application of regulatory impact assessment (RIA) as a tool for policy analysis, including for EI-related matters, remains a challenge. In addition, the capacity of ministries to ensure well-prepared drafts of regulation is weak and often challenged by the Secretariat for Legislation.

TargetThe policy making and co-ordination system is in place, with a coherent medium-term outlook, established practices and capacities2020for policy development, and regular analysis and monitoring of implementation, including mechanisms and capacities needed for
transposing the EU acquis and handling the EU accession process.

1-2 Years	 Ministry of Foreign Affairs and European Integration (MFAEI) to prepare a new strategic plan for EU accession, simplify the coordination structures for EI, and align the arrangements for monitoring of the new strategic plan with EI co-ordination structures; General Secretariat, in co-operation with the Ministry of Finance (MoF), to prepare an options paper for simplifying and streamlining the system of strategic planning by ministries; decide on the lead institution for developing the strategic planning framework in Montenegro; MoF to design and implement a co-ordination mechanism to monitor the implementation of the National Development Plan, linking it with the future Medium-Term Budgetary Framework (MTBF) and IPA planning; Parliament to elaborate a procedure whereby it starts to define priority laws, for which the Government is asked to prepare specific reports on actual implementation.
3-5 Years	 Parliament to initiate a procedure whereby it starts receiving and discussing reports received from the Government about the actual implementation of key regulations; General Secretariat, in co-operation with the MoF, to simplify and streamline the system of strategic planning by ministries; General Secretariat, in co-operation with MoF and MFAEI, to establish a system for the adequate incorporation of new commitments and policy plans (including those resulting from the accession process) into the work plans of ministries and into budget proposals (with the lead institution identified); General Secretariat and the MoF to improve the relevance and use of performance information in the Government's work planning and reporting; General Secretariat to analyse and draft proposals for the establishment of a reporting system of the Government on implementation of sectoral strategies as an integral part of the Government's work planning and reporting on medium-term strategic documents; General Secretariat to review policy co-ordination practices, with a view to identifying further needs for adjusting the system.

The Government is capable of carrying out policy development, which is characterised by regular interministerial discussions and dialogue with non-governmental stakeholders that enable implementation aspects and potential impacts to be taken into account when developing policies and drafting legislation.

- 1. MoF to review the operation of the RIA process to determine whether and which amendments are necessary two years after its introduction¹, under the guidance of the Regulatory Council; review how the interministerial dialogue takes place between ministries and at the centre of government; consider the results and adjust guidelines and rules for the implementation of any necessary changes;
- 2. MoF to strengthen the capability of line ministry staff to undertake high quality regulatory impact assessments through the identification of examples of good analytical documents, which would then be shared across the Government through training sessions and guidance;
 - 3. MoF to improve the quality control and oversight of RIAs within the centre of government by making them a regular agenda item at relevant forums, such as meetings of the Regulatory Council and the Government, as necessary;
 - 4. MFAEI to review and update the guidance materials for EU acquis transposition and completion of the tables of concordance;
 - 5. Secretariat for Legislation to analyse the gaps in implementation of technical legal rules established by the Government.

¹ The review has two aspects: 1) A working group should be established, headed by the Ministry of Finance's Sector for Financial Systems and Improvement of the Business Environment and with participants representing ministries and stakeholders; 2) An in-depth study of the process should be undertaken in five line ministries: Ministry of Internal Affairs, Ministry of Foreign Affairs and European Integration, Ministry of Transport and Maritime Affairs, Ministry of Economy, and Ministry of Sustainable Development and Tourism.

3-5 Years	 Parliament to ensure that their members are able to use the outputs from the policy development process, such as RIAs and details of relevant public consultations, to inform their scrutiny capacity; MoF to prepare the rules and guidelines and launch <i>expost</i> evaluation of policy initiatives and laws; report systematically on the progress of these initiatives and laws after implementation; MoF to amend the RIA process to include implementation as a mandatory section of the analysis; General Secretariat and MoF to ensure that the policy making and legislative development process is being informed by the views and participation of the public and by sharing information from "Citizens Voice – e-Petitions" with existing relevant forums, such as meetings of the Regulatory Council; MoF to build analytical capacity in ministries to enable the proper evaluation of implementation issues related to a new policy or legislative proposal; undertake a pilot in two line ministries to assess the analytical needs of staff and develop a training package;
	10. MoF to build analytical capacity in ministries to enable the proper evaluation of implementation issues related to a new policy or legislative proposal; undertake a pilot in two line ministries to assess the analytical needs of staff and develop a training package;
	legislative proposal; undertake a pilot in two line ministries to assess the analytical needs of staff and develop a training package; 11. MoF to develop the capability to carry out a true assessment of the overall cost of policy and legislative proposals in comparison to the
	cost estimated in a RIA; develop a training package for ministries; develop an additional aspect of the cost estimate methodology to address implementation costs, e.g. the cost of enforcement;
	12. Secretariat for Legislation to strengthen the capacity of ministries to prepare high-quality legal provisions, through detailed guidance, job profiles and training.

STATE OF PLAY

Montenegro is currently facing a challenging period regarding public employment. The Government is focusing primarily on meeting its fiscal objectives, which includes limiting spending on public employment. At the same time, the new Law on Civil Servants and State Employees (Civil Service Law) came into force on 1 January 2013 and still needs to be fully implemented, with its numerous new elements. The changes introduced by the Law present a genuine opportunity to improve public sector human resources management. The institutional reform capacities for the implementation of the Civil Service Law are mostly in place and are co-ordinated at the central level (Ministry of Interior (MoI) and Human Resource Management Authority - HRMA). However, central bodies have not established any specific new working arrangements or temporary capacities (with the exception of a planned EU-funded technical assistance project) to meet the challenge of implementing the new rules.

The key objectives for Public Administration Reform (PAR) are set out in the PAR Strategy for the period 2011-2016, in which a core priority is to reorient the public sector towards a less costly and more effective public service. The underlying analysis for planning public sector reorganisation has been thoroughly prepared, but significant gaps in data still need to be filled before decisions can be taken on well-targeted structural changes in public employment and in the organisation of the public administration.

A new Law on General Administrative Procedures (LGAP) will be adopted in 2013, with a date of application of 1 January 2015. Technical assistance has been programmed to ensure basic training for the implementation of the new Law, but a number of preparatory activities for the implementation of this assistance are still pending, including an analysis of the laws containing special administrative procedures and institutional arrangements for proper oversight.

The implementation of these laws constitutes an immediate challenge for public administration reform in Montenegro, as it represents a precondition for the further development of an effective public administration. By advancing the planned changes in these areas also in practice, the basic conditions will be created for concentrating efforts on improving the quality of the delivery of public services to citizens. Today the overall focus of public administration development has not yet advanced to the delivery of public services.

Supervision over administrative procedures and civil service management is entrusted to the Administrative Inspection services. Their capacity is weak, however, and they lack strategic direction in their work. The Administrative Court has a well-established working routine but, based on the indications of a number of stakeholders, the decisions of the Court are not systematically implemented. The Ombudsman institution has increased its capacity, but so far it has not prioritised the general monitoring of the public administration and the control of maladministration.

An optimal public sector organisation is in place with professional civil service and adequate HRM practices across the public Target 2020 administration, public employment gradually shifted to priority areas, and sound administrative procedures, in line with EU principles, followed by all public services.

An adequate public sector organisation and public employment structure are in place, and capacities have shifted gradually to priority areas of the public administration.

- 1. Government, through the Regulatory Council, to decide, clarify and communicate PAR co-ordination responsibilities throughout the government institutions and bodies, whereby the Mol is confirmed to take the lead, supported by the MoF and other state authorities;
- 2. Mol to allocate additional analytical staff resources for the co-ordination of PAR in Montenegro;
- Mol to gather and analyse further data on employment in each state authority and comparisons from other countries; 3.
- Mol to prepare the analysis on the functions and positions of agencies and other administrative bodies; 4.
- Years Mol to develop techniques and criteria regarding reorganisation and downsizing, through training and best practices on contracting 5. 1-2 out, abolition and merger of public bodies, analysis of the internal efficiency of public bodies, and management of redundant staff ("internal market of civil servants");
 - 6. Mol to conduct an assessment, under the guidance of the PAR Special Group, to measure the implementation and impact of the PAR Strategy; analyse the effectiveness of national implementation and co-ordination structures;
 - 7. Mol to consider the preparation of a new, updated PAR Strategy and respective Action Plan to enable multi-annual programming of IPA funds in the PAR sector, e.g. for the period 2015-2017.

serv	vices,	sional civil service is in place, the adopted legislation is implemented, and adequate HRM tools are supported by the central HR , which have increased the capacity to ensure common standards of civil service management across the whole public tration
aun	1.	tration. Mol to finalise and adopt the secondary legislation still pending to enable full implementation of the Civil Service Law; develop
1-2 Years	1.	guidelines and other non-binding instruments;
	2.	HRMA to prepare detailed training plans and materials on the new public sector HRM procedures and carry out extensive training for specific target groups in the public sector;
	3.	MoI and HRMA to support and supervise the creation of HRM units in state authorities and strengthen their capacities through guidelines, regular networking and training;
	4.	HRMA, in co-operation with MoI and MoF, to analyse and prepare a plan for more systematic data management for public sector HRM analyses;
	5.	Ministry of Justice, Directorate for Anti-Corruption Initiative, to support the preparation and implementation of integrity plans by state authorities through guidance and training.
	6.	MoI and HRMA to monitor the implementation of the Civil Service Law and continue regular training for state authorities to support good quality HRM;
3-5 Years	7.	HRMA to strengthen the level of data management and analyses of public sector HR and start regular, targeted publication and dissemination of the relevant information;
	8.	MoI to conduct a mid-term assessment of the implementation of the Civil Service Law;
	9.	MoI and HRMA to take steps to professionalise the management positions in the administration, introducing a senior civil service capacity building scheme and considering the feasibility of a separate structure for recruitment and management of top officials.

	Sound administrative procedures, in line with EU principles, are followed by all public services, and the public administration is accountable to and effectively overseen by relevant oversight bodies.		
1-2 Years	 Mol to finalise and adopt a new LGAP, including preparation of the RIA of the new law; review other laws containing provisions on administrative procedures; Mol to prepare secondary legislation as needed and a commentary version of the LGAP; Mol to prepare action plans to ensure LGAP implementation; Mol to conduct a specific training needs analysis and prepare training materials for specific target groups; Mol to provide training as necessary for all target groups; Ombudsman to prepare a plan for intensifying its capacities and work in the area of good administration and protection of citizens from maladministration. 		
3-5 Years	 Mol to harmonise laws containing provisions on administrative procedures; Mol to provide regular training for state authorities to support the implementation of administrative procedures; Mol to conduct a specific and detailed review of the level and quality of implementation of the LGAP and revise the implementation as necessary; Mol to analyse the effectiveness of administrative inspection services and propose adjustments to the work of these services aimed at obtaining more added value in the supervision of public bodies; Ombudsman to implement the plan to raise its capacity in the area of good administration and protection of citizens from maladministration; 		

STATE OF PLAY

Returning to a more sustainable path for public finances is among the key objectives of the Government and is likely to remain so over the medium term. The overall legal framework for budget management is in place, with plans under preparation to establish a formal Medium-Term Budgetary Framework (MTBF) and strengthen fiscal rules. The focus in the planning of public finances is primarily on one calendar year. The capacity for macroeconomic estimations is satisfactory, as demonstrated by the Pre-Accession Economic Programme. The key concern is related to weak capacities for budget planning and fiscal analyses in line ministries. Practices and capacities for analysing the costs of current and proposed policies are inadequate for ensuring fiscal sustainability. Montenegro does not currently meet all of the requirements of the 2011 EU Directive on Requirements for Budgetary Frameworks of the Member States².

Developments in public internal financial control (PIFC) are in the early stages of development, supported by a Central Harmonisation Unit (CHU) within the Ministry of Finance (MoF). Internal audit units are being created, and capacities are gradually increasing, although the overall arrangements for ensuring accountability for the implementation of public funds are not clear and do not support proactive management. Delegation to lower levels of management within budget organisations is allowed but not consistently applied in the public sector. The supreme audit institution, the State Audit Institution (SAI), has a recently adopted plan for institutional development that sets the direction for capacity building. More focus is needed to ensure proper oversight of the work of the Government, including analysing the ways of ensuring value for money in public spending.

Preparations for the decentralised management of the IPA programmes are in a mature stage, where the European Commission (EC) is verifying national management systems. Donor assistance is co-ordinated by the Ministry of Foreign Affairs and European Integration (MFAEI), with no apparent system for ensuring linkages with national budget planning.

TargetFiscal sustainability is ensured by the systematic implementation of medium-term expenditure planning and improved capacities of2020line ministries to plan finances over a medium-term period, with financing decisions determined by good-quality fiscal estimations
and supported by clear accountability arrangements for budget planning and implementation, in line with EU rules and good
international practice.

² Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States.

	Medium-Term Budgetary Framework (MTBF) is in place and is fully implemented, in accordance with the requirements of the 2011 EU ctive on Requirements for Budgetary Frameworks of the Member States.
	1. MoF to finalise and the Parliament to adopt the Law on Budget and Fiscal Responsibility to enable the establishment of legal conditions for the MTBF;
	2. MoF to prepare and the Government to adopt (April 2014) the first MTBF with sectoral ceilings for the years 2015-2017;
	3. MoF to develop its capacities to analyse the quality of fiscal impact estimations provided by ministries with new policy proposals;
LS	4. MoF to establish basic capacities in all state authorities (including recruitment in many organisations) for budget analysis and planning;
2 Years	5. MoF to define in more detail the responsibilities within line ministries for ensuring adequate fiscal impact estimations of new policy proposals and for preparing specific financial plans that support the work planning and implementation of the ministry;
1-2	6. MoF to organise training for policy and co-ordination staff in ministries in the preparation of cost estimations; provide basic training for sectoral financial planning and management;
	7. MFAEI and MoF to clarify co-ordination in planning donor funds and establish regular procedures for discussion of IPA programming in the context of medium-term policy planning;
	8. MoF to analyse the extent to which fiscal data in Montenegro enables the fulfilment of requirements established for EU Member States (including the 2011 EU Directive on Requirements for Budgetary Frameworks).

	The PIFC environment has improved to meet the requirements of Chapter 32 of the EU accession process through adequate incentives and tools to ensure, managerial accountability, sound financial planning and value for money in implementation.		
1-2 Years	 MoF, in co-operation with other institutions, to define more precise ways of improving the conditions and rules for managerial accountability (including other areas as well, such as RIA and civil service); MoF to define options for improving commitment controls at all stages of financial management, including optimal controls to ensure the smooth management of public finances; MoF to prepare a specific training syllabus and training programme for various key target groups in state authorities; MoF to analyse and adjust the overall set-up of the internal audit function, with a view to aligning public sector reorganisation efforts; MoF and other government authorities to start the implementation of decentralised management of EU funds; consolidate the rules and procedures in regular practices, adjusting the decentralised management system and the national procedures as necessary; SAI to implement its Strategic Development Plan. 		
3-5 Years	 MoF to develop the capacities of internal audit further as an advisory service to management, with a clear focus on ensuring that financial management and control (FMC) systems are operational and effective; MoF to ensure the implementation of a financial management training programme for the relevant public sector employees; adjust the financial management training programme according to the most recent rules and arrangements in the public sector as needed; MoF to build capacities for internal control within the EU funds' management and control systems, with a view to preparing for an extended decentralised implementation system; MoF to expand good practices of the management and control systems for IPA to the wider management rules for budget execution and adjust the rules for IPA programmes to meet the needs of the overall framework for FMC in Montenegro; SAI to organise a review of its work, including its contribution to good financial management and more transparent accountability within the state authorities in its operationally and financially independent role as a support to the Parliament. 		

PUBLIC PROCUREMENT, INCLUDING PPPS AND CONCESSIONS

STATE OF PLAY

Since the introduction of the new Law on Public Procurement (PPL) on 1 January 2012, the public procurement system in Montenegro is broadly aligned with the EU *acquis* as far as the classical sector is concerned; however, no distinction is made for utilities and the EU Directive on defence procurement has not yet been transposed. Procurement of public-private partnerships (PPPs)/concessions is still regulated by a law only covering concessions in the 'traditional' sense. The key functions of a public procurement system are matched by the roles and responsibilities of corresponding central institutions, although with some overlap and apparent conflicts of interest concerning control and remedies.

In the implementation of the Law, there is still a strong emphasis on detailed procedural requirements in the individual case, rather than on sustainability and value for money. Although many contracting authorities are quite familiar with the formalities required by the PPL, they are not as competent in planning and preparation or contract management, and they are sometimes unfamiliar with the situation in the market.

TargetThe public procurement system, including PPPs/concessions, is in place and is fully operational, in accordance with EU rules and
good international practice, making full use of e-procurement, framework agreements and, as appropriate, centralised purchasing.
The system provides value for money and is considered fair by most economic operators and civil society organisations.

PUBLIC PROCUREMENT, INCLUDING PPPS AND CONCESSIONS

1-2 Years	1.	Public Procurement Administration (PPA) to prepare and adopt amendments to the regulatory framework as may be required by recent and upcoming changes to the EU Directives and by practical experience; prepare a plan for implementing the changes, including the preparation of guidelines and standard documents;
	2.	PPA to extend public procurement training to cover the remedies system and to include all contracting authorities and economic operators, focusing on best practices for planning and preparation as well as contract management and on the proper use of eligibility, selection and evaluation criteria;
	3.	PPA and the working group on concessions/PPPs in the deputy prime minister's office to elaborate an action plan to allow utilities to benefit from their special status, introducing a basic framework for PPPs/concessions in line with the EU Directives;
	4.	PPA to increase the use of framework agreements for standard specification items and the use of centralised purchasing in sectors such as education and health care, e.g. by preparing the corresponding standard documents and guidelines, carrying out pilot operations, and preparing plans for future development of the above-mentioned practices;
	5.	PPA to identify steps to be taken for the comprehensive introduction of e-procurement and prepare a corresponding action plan;
	6.	PPA and State Commission for the Control of Public Procurement Procedures to release the review body from its current duty to carry out <i>ex ante</i> control (in conflict with its role in reviewing complaints) and harmonise monitoring and inspection activities with those of other authorities.

PUBLIC PROCUREMENT, INCLUDING PPPS AND CONCESSIONS

7.	PPA to carry out the action plan for implementing the changes required by updates to the regulatory framework, including the preparation of guidelines and standard documents;
8.	PPA to develop and put into place a framework for ensuring the sustainable financing and implementation of training activities, updating of materials and guidelines, and quality assurance of trainer skills;
9.	PPA and the working group on concessions/PPPs in the deputy prime minister's office to finalise the regulatory and institutional set- up for managing PPPs/concessions by developing secondary legislation, allocating supervisory and management functions to appropriate bodies, establishing appropriate operational principles and practices, and recruiting and training qualified staff;
10.	In application of the previous plans, PPA and other relevant bodies to institutionalise centralised procurement by revising and adopting policies and practices, allocating key functions to appropriate bodies, setting them up as necessary, and recruiting and training qualified staff;
11.	PPA to implement the action plan for the comprehensive introduction of e-procurement;
12.	PPA to develop the monitoring of public procurement by simplifying procedures for generating and publishing key data covering the whole procurement cycle and the full range of entities concerned and by facilitating their compilation, analysis and dissemination by other parties as well, such as NGOs, educational institutions and the general public.
	 8. 9. 10. 11.