

## Conclusions on Montenegro

(extract from the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2011-2012", COM(2011)666 final)

Montenegro has made good progress in meeting the **political criteria** for membership of the EU, achieving overall satisfactory results, in particular in addressing the key priorities identified in the Commission Opinion released in 2010<sup>1</sup>. The legislative and institutional framework has been improved with a view to strengthening the work of the parliament, the electoral framework, the professionalism and de-politicisation of public administration, the independence and accountability of the judiciary, anti-corruption policy, media freedom and cooperation with the civil society. Montenegro has stepped up efforts to develop its track record in combating corruption and organised crime. Steps have been made to improve the implementation of anti-discrimination policies and to guarantee the legal status of displaced persons and ensure that the respect of their rights. Yet, vulnerable groups still face discrimination in practice. Montenegro continued to play its constructive role in the region and to implement smoothly the Stabilisation and Association Agreement.

As regards **democracy and rule of law**, legislation on minority rights and freedoms and on elections was harmonised with the Constitution.

The legislative and institutional framework for *elections*, an Opinion key priority, has been considerably enhanced, in line with the main recommendations made by OSCE/ODIHR and Venice Commission. The new election bill implements the constitutional commitment to authentic representation of minorities by introducing affirmative action for representation in parliamentary elections for all minorities. It also improves administration and strengthens the transparency of the election process. Progress has been made in strengthening *parliament's* legislative and oversight role, also an Opinion key priority, through enhanced support to parliamentary committees, better planning of parliamentary work and closer oversight, particularly in the areas of defence and security. Parliament's overall capacity and means to scrutinise draft legislation against the EU *acquis* remain to be improved. Further efforts are needed to consolidate parliament's oversight role and to enhance its administrative capacity.

The EU integration process is given high priority by the new *government*. Coordination of Government work and policy-making have further improved, particularly the quality of consultations with civil society. Government work on the action plan on addressing the key priorities set out in the Commission Opinion has been systematic and efficient. The capacity of ministries to ensure consistency and monitor the effective implementation of laws has improved to a certain extent, but remains to be further developed. The administrative capacity involved in European integration coordination, including on financial assistance, needs to be substantially strengthened. Legislative amendments with a view to establishing a transparent, efficient and accountable administration at local level are still pending.

Montenegro has taken important steps to address the main challenges posed by the *public administration reform*, which is a key priority identified in the Opinion. The Government has adopted and started to implement a public administration reform strategy aimed at introducing European standards on recruitment and promotion and enhancing efficiency. An improved legal framework in the area of civil service and state administration aiming at efficiency, de-

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<sup>1</sup> The key priorities concern the following areas: legislative framework for elections and Parliament's legislative and oversight role; public administration reform; judicial reform; fight against corruption; fight against organised crime; media freedom and cooperation with civil society; implementation of the anti-discrimination framework and the situation of displaced persons. For the full text of the key priorities, please see COM (2010) 670.

politicisation and merit-based recruitment has been adopted. Legislation regulating administrative procedures has been amended and a further comprehensive reform has been launched. The Human Resources Management Authority has been strengthened. Preparations for implementation of the adopted legislation have to be stepped up and focus on ensuring in practice the de-politicisation, professionalism, effectiveness and impartiality of the administration, including through merit-based recruitment and promotion. The implementation of this strategy needs to take due account of the need to rationalise administrative structures and strengthen administrative capacity, notably in areas related to European integration, while ensuring the financial sustainability of public administration. The capacity of the Ombudsman office and the State Audit Institution is to be further enhanced.

As regards the *judicial system*, Montenegro has made progress in reinforcing the independence, autonomy, efficiency and accountability of judges and prosecutors, which is one of the key priorities set out in the Opinion. The legal framework has been improved at sub-constitutional level regarding the independence of the judiciary and the autonomy of public prosecution, and the process of constitutional reform has advanced. Provisions on the accountability of judges and prosecutors have been strengthened. Significant efforts will be needed in the period ahead to ensure completion of the legal reform and effective implementation of the newly adopted legislation, including through convincing results on corruption and organised crime cases at all levels. A country-wide single recruitment system based on anonymous tests for first-time judicial appointments remains to be established. Systematic training for all judges and prosecutors, in particular on new legislation and EU law, has yet to be put in place. Efforts to reduce the case backlog before courts have been stepped up, but the methodology used needs to become more consistent. The lack of adequate infrastructure and equipment continues to hinder judicial efficiency. Full publicity of court rulings needs to be ensured.

In the field of *anti-corruption policy*, progress has been made in the implementation of the government's anti-corruption strategy and action plan, which is one of the key priorities set out in the Opinion. The strategic and legislative framework on anti-corruption has been strengthened in the key areas of political party financing, conflict of interest, incriminations, protection of whistleblowers and public procurement. Risk analysis in vulnerable areas has been completed with a view to further refining prevention policies. Technical and administrative capacity for preventing and combating corruption has been upgraded, and several investigations of corruption cases have been carried out. Steps have been made to establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all efforts, which is part of the Opinion key priority on anti-corruption. Yet, efforts need to be stepped up to further develop it. The number of final convictions, in particular for high-level corruption cases, remains low. Use of special investigative measures continues to be impeded by the lack of adequate equipment and specialised human resources. Inter-agency coordination and, in particular, cooperation between prosecutors and the police need to be further improved. Implementation of the legislative framework is uneven. The newly enacted provisions in the areas of conflict of interest and political party financing need to be implemented with determination. There continues to be a need for stronger monitoring of corruption and conflicts of interest in the judiciary. Corruption remains prevalent in many areas and continues to be a serious problem.

Respect of *human rights and protection of minorities* in Montenegro is broadly ensured. Efforts were made to further improve the relevant legal and institutional framework. Effective implementation of existing legislation and strengthening of administrative capacities need to be ensured.

As regards *promotion and enforcement of human rights*, limited progress has been made. The authority and influence of the Protector of Human Rights and Freedoms (Ombudsman) Office

have been considerably enhanced: the new Law on the Ombudsman, establishing the latter as the national mechanism for protection against torture and discrimination, was adopted in July. However, the Ombudsman's Office continues to face shortcomings regarding its financial and administrative capacity to carry out its tasks efficiently. Some limited progress has been made as regards *ill-treatment and fight against impunity*. Relevant staff have undergone further training. Occasional cases of violence continue to be reported, in particular in police stations. Processing of reported cases is still slow. As regards the prison *system*, the legal and regulatory framework for the establishment of a system for alternative sanctions and implementation of criminal sanctions has been developed. Prison conditions still need to be further aligned with international standards, in particular as regards provision of medical treatment and family rooms. The issue of effective implementation of sanctions also needs to be addressed.

Progress was made in the area of *freedom of expression*, one of the key priorities set out in the Opinion. Defamation and libel were fully decriminalised. The Supreme Court adopted guidelines sent to the national Courts regulating the level of pecuniary compensation in defamation cases against the media, in line with European standards and the case law of the European Court of Human Rights. However, previous cases of violence and current threats against journalists have still not been properly investigated and prosecuted.

*Freedom of assembly and association* is broadly respected. Very good progress has been made in the cooperation of State institutions with *civil society* organisations, one of the key priorities set out in the Opinion. The Law on NGOs was adopted in July. The highest State authorities have maintained regular contacts with NGOs and overall open and constructive cooperation with relevant stakeholders. Efforts have also been undertaken to improve cooperation with civil society at local level.

Montenegro made progress as regards *anti-discrimination* policies, which is one of the key priorities set out in the Opinion. The Law on the Ombudsman was passed in July; the Ombudsman has now responsibility over cases of anti-discrimination. An advisor on anti-discrimination was appointed in September in the Prime Minister's office. Roma, Ashkali and Egyptians, persons with disabilities as well as lesbian, gay, bisexual and transgender (LGBT) persons continue to face discrimination, including by public entities. Effective implementation of the anti-discrimination law needs to be demonstrated by enhancing the capacity of the Ombudsman Office and of law enforcement bodies to properly process discrimination cases. Progress has been made with regard to the enforcement of rights of *persons with disabilities*. The Law on anti-discrimination against persons with disabilities and the Law on Professional rehabilitation and employment of persons with disabilities have been adopted. Inclusive education activities have been launched and some efforts have been made to promote their employment. However, the legal framework presents shortcomings, notably regarding positive action and sanctions mechanisms, and these persons continue to face discrimination notably as regards employment and access to public places. Conditions in the Komanski Most remain a cause of concern. Some progress has been made with regard to the promotion of the respect of *women's rights*, but the enforcement of these rights, in particular as regards protection of victims of domestic violence, remains limited. Access of women to decision-making positions needs to be improved.

Limited progress has been made as regards *property rights*. The process of restitution continues to be very slow and needs to be accelerated. Due to several cases of forgery of property documents, measures have been taken to strengthen control over the cadastre offices. The Parliament adopted in July amendments to the law on state survey and immovable property cadastre; yet, functioning of the cadastre system remains to be further improved, in particular as regards the completeness and accuracy of data, and its national coverage.

Interethnic relations have remained stable in Montenegro. Efforts have been made to improve minority political representation, amending the Law on minority rights to harmonize it with the Constitution. Progress in the economic, social and political inclusion of *Roma, Ashkali and Egyptian* persons is still rather limited, despite the continuing efforts of the authorities at national and local levels. Limited progress has been achieved in terms of improving the situation of *displaced persons*, one of the key priorities set out in the Opinion. Despite efforts by the authorities to provide these persons with legal status, the cumbersome procedures mean that only a small number of persons have so far obtained legal resident status.

Regarding **regional issues and international obligations**, Montenegro continues to satisfy the conditionality of the Stabilisation and Association Process on cooperation with the ICTY and regional cooperation. Montenegro pursued its active participation in regional cooperation initiatives, including the South East European Cooperation Process (SEECP), the Regional Cooperation Council (RCC) and the Central European Free Trade Agreement (CEFTA). In 2010-2011, it held the chairmanship of the Central European Initiative (CEI), the South-East European Cooperation Process (SEECP) and the Adriatic-Ionian Initiative (AII). The country continues to be strongly committed to regional cooperation and to playing a constructive regional role. Outstanding bilateral issues remain to be resolved.

Significant progress was made in relation to the *Sarajevo Declaration Process*. Following the meetings of June and September 2011, Bosnia and Herzegovina, Croatia, Montenegro and Serbia agreed on a number of issues, including on the text of a joint declaration to be signed at a ministerial conference in November 2011 in Belgrade.

As regards the International Criminal Court, the 2003 bilateral immunity agreement with the United States does not comply with the EU Common Positions and guiding principles. Montenegro needs to align with the EU position.

The **economy** of Montenegro started to recover in 2010 from the effects of the crisis which challenged the country's economic policy framework. The absence of standard monetary policy tools<sup>2</sup> left fiscal policy with the difficult mission of striking a balance between restoring growth and proceeding with consolidation. Nevertheless, the country managed to improve overall macroeconomic stability and the quality of public finances, and kept up the pace of reforms. The recovery process of the Montenegrin economy is still fragile. The competitiveness of the economy remains limited with low diversification across the sectors. Shortcomings remain concerning the rule of law, public administration, human resources and infrastructure.

As regards the **economic criteria**, Montenegro has made further progress towards a functioning market economy as a result of progress in stabilising the banking sector and maintaining a relatively prudent fiscal stance, thus reinforcing macroeconomic stability. Montenegro should be able to cope with competitive pressures and market forces within the Union in the medium-term, provided that it addresses existing structural weaknesses through the implementation of its reform programme.

The recovery of export-oriented industries stimulated economic growth and, together with subdued domestic demand and positive developments in tourism, contributed to a reduction of the still high external imbalances. The economic policy remained consistent and some structural reforms advanced. The reform of public pensions is a step towards a higher quality and sustainability of public finances. Market entry and exit mechanisms, contract enforcement as well as business and property registration procedures were further improved. Financial legislation was developed with a view to improving the resilience of the sector.

However, the financial intermediation role of banks remained subdued as banks pursued the consolidation of their balance sheets. The very high share of non-performing loans remains a

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<sup>2</sup> Montenegro unilaterally uses the euro as the sole legal tender.

serious concern for financial stability. Businesses continue to be confronted with tight and expensive credit conditions. Unemployment is high. Budget financing needs led to the expansion of public debt while contingent liabilities from state guarantees and budget arrears increased significantly. The privatisation process suffered from the negative global environment. Besides tourism and exports of commodities, economic activity remains concentrated on non-tradable sectors. The informal sector remains an important challenge. Persisting weaknesses in the rule of law negatively affect the investment and business environment.

Montenegro has made good progress in improving its ability **to assume the obligations of membership**, in particular in the areas of public procurement, company law, statistics, financial services, judiciary and fundamental rights, science and research, education, youth and culture. Progress has been limited in other areas such as free movement of workers, freedom to provide services, agriculture, environment, regional policy and coordination of structural funds. Overall, Montenegro continued to smoothly implement the obligations under the Stabilisation and Association Agreement (SAA). However, some gaps remain as regards State aids and transit traffic, where further efforts towards alignment are needed.

In the field of *free movement of goods*, there has been some progress in standardisation, accreditation, metrology and market surveillance. Alignment of the horizontal legal framework with the *acquis* is not very advanced, and transposition of the product specific *acquis* has not yet fully started. There was little progress in the area of *freedom of movement of workers*, mainly in the field of coordination of the social security systems. Alignment of the legislative framework with the *acquis* is still in the early stages. Little progress has been made in the area of the *right of establishment and freedom to provide services*, in particular in relation to the issuance of construction permits. Full independence of the Agency for Electronic Communications and Postal Services is not ensured. Efforts to align with the EU Services Directive need to be strengthened. There was some progress in the area of *free movement of capital*, more particularly on combating money laundering, action to counter financing of terrorism and cooperation between the financial supervisory authorities and enforcement agencies. Administrative and supervisory capacities remain weak. Good progress can be reported in the area of *public procurement*. Administrative capacity has been strengthened and transparency of the procedures has improved. The overall institutional set-up for public procurement raises some concerns. Montenegro has made good progress in the field of *company law*. There were advances in the alignment of the legislation on business organisation, accounting and auditing and takeover bids with the *acquis*.

Some progress was made in the area of *intellectual property law*, in particular regarding alignment of the legislation with the *acquis* in the fields of Copyrights and Related Rights, trademarks and protection of industrial designs. Additional strengthening of administrative capacity is vital for further progress in this area.

In the field of *competition policy*, some progress was made in aligning national legislation with the *acquis*. Yet, challenges remain on the administrative capacity of the Competition Protection Administration and the State aid bodies. Furthermore, the alignment of the legal framework on State aid control to EU rules has not been completed. The lack of full respect of the State aid commitments under the Stabilisation and Association Agreement remains a cause for concern. The operational independence of the State aid authority needs to be further guaranteed. As regards the metal industry, authorities need to ensure full transparency on the amount of State aid provided to the aluminium and steel companies. Decisions about the ownership of the steel company which was declared bankrupt need to be taken without delay. Montenegro made uneven progress in the field of *financial services*, particularly in banking. Cooperation between the three regulatory institutions has been strengthened. Legislative alignment in the areas of insurance, financial infrastructure, securities markets and investment

services is still at an early stage, and the situation of the occupational pension funds needs to be addressed.

As regards *information society and media*, there has been further progress in terms of legislative alignment. In the area of electronic communications and information society, independence of the regulatory authority improved but remains endangered. Efforts remain to be made to implement the legislation fully and to introduce competitive safeguards ensuring level playing field for all operators. In the area of audiovisual policy, the Agency for Electronic media has been strengthened, but its capacity to monitor the market effectively remains inadequate.

There has been some progress in the area of *agriculture and rural development*. A basis for accurate agricultural statistics is being established. Progress on policy development and on using the available financial assistance in the field of rural development has been fairly limited.

Some progress was made in the area of *food safety, veterinary and phytosanitary policy*, on strengthening capacity in the field of food safety and alignment with the *acquis* in the field of phytosanitary and veterinary policy. Some progress was made in the area of *fisheries*, mainly with regard to upgrading administrative capacity, enhancing inspection and monitoring of marine fishery resources and in collecting data in a more systematic manner. Management and inspection capacity of the fisheries administration remain weak.

Some progress was made in the field of *transport policy* in terms of aligning with the *acquis*, particularly in the areas of road and air transport. Further efforts are to be made in order to fully align the transport *acquis*, in particular with the third railway package. Decisions to abolish discriminatory road charges towards EU vehicles have been adopted. Yet, they need to be fully implemented. Montenegro has made some progress in the field of *energy*, in particular in the field of renewable energy. A new strategy on energy policy until 2030 was adopted. Further efforts should be made towards adopting legislation concerning oil stocks and setting up a regulatory environment that would foster the increased use of renewable energy sources in all the sectors. Administrative capacity is still limited.

Montenegro made some progress in the field of *taxation*, principally through the development of a computerised registration and collection system. Administrative capacities in the field of information technologies (IT) and effectiveness of the data systems in the fields of administrative cooperation and internal control remain weak.

Further progress was made in the field of *economic and monetary policy*, consisting mainly of an improvement of the legal framework, with the adoption of detailed provisions on reserve requirements, on the credit registry and on the withdrawal, replacement and destruction of worn out banknotes and coins.

Good progress was made in the area of *statistics*. Montenegro successfully carried out the population and housing census in April 2011 and published the first complete results in July. Yet, further considerable efforts are needed to address identified weaknesses and to improve statistical infrastructure in view of reaching a satisfactory level of alignment with the *acquis* in statistics.

Little progress has been made with regard to alignment with the *acquis* in the area of *social policy and employment*, in particular in the area of health and safety at work, social inclusion and social protection. Some progress has been made on social dialogue. Efforts have been made in the area of anti-discrimination, particularly through the adoption of Law on the Ombudsman and awareness raising activities. Both the capacity of the Public Employment service and active labour market measures remain weak when it comes to addressing low activity and employment rates, and the mismatch between needs and the skills available. Overall, the situation of public finance negatively affects reforms in the social area.

There has been some progress in the field of *enterprise and industrial policy*, particularly as regards policy development in favour of SMEs. However, efforts to develop industrial policy and policy in strategically important manufacturing sectors need to be intensified.

There has been little progress in the area of *trans-European networks*. Regarding TEN-T infrastructures, further work remains to be done on improving road and rail links. Progress regarding the TEN-E network was mainly linked to the improvement of electricity interconnection lines.

Little progress has been made in the field of *regional policy and coordination of structural instruments*, mainly towards the establishment of relevant implementation structures for IPA components III and IV. These structures need to be completed as a matter of urgency. Appropriate administrative capacity needs to be developed, notably in areas such as strategic planning, project development, project management and financial management and control.

In the area of *judiciary and fundamental rights*, Montenegro has made some progress, in particular in addressing the relevant key priorities set out in the Commission Opinion. Further sustained efforts will be needed to align with the *acquis* in this chapter, in particular to implement and enforce it effectively in the medium term. The track record in combating serious crime, notably high-level corruption, has to be further developed. As regards fundamental rights, although some progress has been made in reinforcing the legal and institutional framework, the existing legal guarantees need to be fully enforced and administrative capacities strengthened.

As regards *justice, freedom and security*, good progress has been achieved on strengthening judicial cooperation, particularly in criminal matters. Some progress has been made in the field of migration and asylum. Progress has been also made in the area of border management. A new strategy was adopted for fighting terrorism. Progress has been made on addressing challenges in the fight against organised crime, in particular in the form of closer international and regional cooperation. The number of related investigations and arrests, notably in the area of drugs trafficking, increased slightly. Financial investigations in two major cases led to the temporary seizure of assets of significant amount. Yet, the overall number of financial investigations and confiscations of criminal assets remains low. Intelligence-led policing and inter-agency cooperation need to be improved. Investigation and prosecution mechanisms have to be strengthened, in particular in the areas of trafficking in human beings and money laundering. Amendments to the laws on internal affairs and on preventing money laundering are still pending. Visa policy requires further alignment. Further efforts are needed to ensure proper reception conditions for asylum-seekers and irregular migrants.

Good progress was made in the area of *research and innovation*. The institutional and legislative framework for scientific research activities has been strengthened and several measures have been taken to improve the mobility of researchers. Preparations for the Innovation Union need to be duly considered.

Some progress can be reported in the areas of *education and culture* in particular in aligning with the *acquis*. Further efforts are still necessary to ensure inclusive education for vulnerable groups and children with special needs.

Montenegro has made little progress with alignment and implementation of the *acquis* in the field of *environment and climate change*. Progress is mainly a result of the adoption of implementing legislation in waste management and nature areas and the ratification of international environmental agreements. The administrative capacity of the Environmental Protection Agency (EPA) has improved, but still needs considerable strengthening in particular in the field of inspections. Montenegro needs to speed up its strategic planning in all sectors, integrate more systematically environment in other sectors to find sustainable funding for implementation. The capacity of the administration for environment and climate change at local and national level requires strengthening responsible.

In the field of *consumer and health protection*, Montenegro is making progress towards alignment with the EU consumer policy and the EU health strategy. However, further efforts are required to align national legislation with the *acquis* and build up administrative capacity. Support for consumer organisations and awareness-raising activities remains low.

Some progress has been achieved in the area of *Customs Union*, especially in aligning the combined nomenclature and abolishing customs fees that are not in line with the *acquis* and SAA obligations. Further efforts remain necessary in areas such as management of quotas, security-related provisions and alignment with the EU Customs Code.

Some progress has been made in the area of *external relations*. Strengthening of institutional and administrative capacity is needed as regards commercial, development and humanitarian policies. Montenegro has continued to make progress regarding *foreign, security and defence policy*. In particular, it has continued to make a strong contribution to regional stability.

Montenegro has made progress in the field of *financial control*, in particular in the fields of internal and external audit. However, the country's implementation capacities in fields related to financial management and control still need strengthening in order to implement the legislation fully and effectively. In the field of *financial and budgetary provisions*, there are no major differences between the systems in Montenegro and the EU in terms of the basic principles and institutions in the policy areas underlying the application of the own resources rules, however, the administrative framework for the application of the own resources rules is not yet in place.