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***ANALYTICAL REPORT***

*accompanying the*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**Commission Opinion on Montenegro's application for membership of the European  
Union**

{COM(2010) 670}

## TABLE OF CONTENTS

A.	Introduction.....	4
a)	Application for membership .....	4
b)	Relations between the EU and Montenegro.....	5
c)	Contents of the Analytical Report.....	8
B.	Criteria for membership .....	8
1.	Political criteria .....	8
1.1.	Democracy and the rule of law .....	9
1.1.1.	Parliament.....	10
1.1.2.	The executive .....	12
1.1.3.	Public administration.....	14
1.1.4.	Judicial system .....	16
1.1.5.	Anti-corruption policy.....	20
1.1.6.	Civilian oversight of security forces .....	22
1.2.	Human rights and the protection of minorities .....	23
1.3.	Regional issues and international obligations.....	31
1.4.	General Evaluation.....	33
2.	Economic Criteria .....	36
2.1.	Economic Developments .....	36
2.2.	Assessment in terms of the Copenhagen Criteria .....	38
2.2.1.	The existence of a functioning market economy .....	38
2.2.2.	The capacity to cope with competitive pressure and market forces within the Union...	45
2.3.	General evaluation .....	49
3.	Ability to assume the obligations of membership.....	49
3.1.	Chapter 1: Free movement of goods .....	50
3.2.	Chapter 2: Freedom of movement for workers.....	52
3.3.	Chapter 3: Right of establishment and freedom to provide services .....	55
3.4.	Chapter 4: Free movement of capital.....	56
3.5.	Chapter 5: Public procurement.....	58
3.6.	Chapter 6: Company law.....	60

3.7.	Chapter 7: Intellectual property law.....	61
3.8.	Chapter 8: Competition policy.....	63
3.9.	Chapter 9: Financial services.....	65
3.10.	Chapter 10: Information society and media.....	68
3.11.	Chapter 11: Agriculture and rural development.....	70
3.12.	Chapter 12: Food safety, veterinary and phytosanitary policy.....	73
3.13.	Chapter 13: Fisheries.....	75
3.14.	Chapter 14: Transport policy.....	77
3.15.	Chapter 15: Energy.....	79
3.16.	Chapter 16: Taxation.....	81
3.17.	Chapter 17: Economic and monetary policy.....	84
3.18.	Chapter 18: Statistics.....	85
3.19.	Chapter 19: Social policy and employment.....	87
3.20.	Chapter 20: Enterprise and industrial policy.....	90
3.21.	Chapter 21: Trans-European networks.....	92
3.22.	Chapter 22: Regional policy and coordination of structural instruments.....	94
3.23.	Chapter 23: Judiciary and fundamental rights.....	96
3.24.	Chapter 24: Justice, freedom and security.....	102
3.25.	Chapter 25: Science and research.....	106
3.26.	Chapter 26: Education and culture.....	107
3.27.	Chapter 27: Environment.....	109
3.28.	Chapter 28: Consumer and health protection.....	113
3.29.	Chapter 29: Customs Union.....	116
3.30.	Chapter 30: External relations.....	118
3.31.	Chapter 31: Foreign, security and defence policy.....	120
3.32.	Chapter 32: Financial control.....	121
3.33.	Chapter 33: Financial and budgetary provisions.....	124
3.34.	General evaluation.....	125
	Statistical Annex.....	128

## A. INTRODUCTION

### a) Application for membership

Montenegro presented its application for membership of the European Union on 15 December 2008. Subsequently, on 23 April 2009, the Council of the European Union requested the Commission to submit its opinion on this application, in line with the procedure laid down in Article 49 of the Treaty on European Union, which states: *‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.’*

Article 2 states that *‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’*

This is the legal framework within which the Commission submits its Opinion<sup>1</sup> and the present analytical report.

The Feira European Council in June 2000 had acknowledged that Western Balkan countries participating in the Stabilisation and Association Process were 'potential candidates' for EU membership. The European perspective of these countries was further confirmed by the Thessaloniki European Council in June 2003 which endorsed the "Thessaloniki Agenda for the Western Balkans". This agenda remains the cornerstone of the EU policy towards the region.

The European Council of December 2006 renewed the EU's commitment *"that the future of the Western Balkans lies in the European Union"* and reiterated that *"each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process. A country's satisfactory track-record in implementing its obligations under a Stabilisation and Association Agreement (SAA), including trade related provisions, is an essential element for the EU to consider any membership application"*. At the Sarajevo EU-Western Balkans ministerial meeting on 2 June 2010, the EU reiterated its unequivocal commitment to the European perspective of the Western Balkans and that the future of these countries lies in the European Union.

In line with the Treaty requirements, the current assessment is made in terms of the conditions of eligibility laid down by the European Council. In Copenhagen in June 1993, the European Council concluded that:

*"Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required."*

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<sup>1</sup> COM(2010)670 of 09.11.2010.

*Membership requires:*

*that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*  
*the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;*  
*the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union".*

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.

In December 1995, in Madrid, the European Council referred to the need *"to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment"*.

The Stabilisation and Association Process (SAP) conditionalities were defined by the Council on 31 May 1999 and included co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and regional co-operation. These conditions are a fundamental element of the SAP and are integrated into the Stabilisation and Association Agreement (SAA) with Montenegro, which entered into force in May 2010.

In December 2006, the European Council agreed that *"the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement"*.

In the present Opinion, the Commission analyses Montenegro's application on the basis of the country's capacity to meet the criteria set by the Copenhagen European Council of 1993 and the conditionality of the Stabilisation and Association process. Montenegro's track-record in implementing its obligations under the Stabilisation and Association Agreement (SAA), including trade related provisions, is also being examined.

In line with the renewed consensus on enlargement, this Opinion also identifies key policy areas likely to require particular attention in the event of the accession of Montenegro and provides initial impact estimates with regard to the policies and sectors concerned. The Commission provides more detailed impact assessments for these policy areas at later stages of the pre-accession process. In addition, an accession treaty for Montenegro would involve a technical adaptation of the EU institutions in the light of the Treaty on the European Union.

## **b) Relations between the EU and Montenegro**

Montenegro declared its independence on 3 June 2006, following a referendum held on 21 May 2006. In June 2006 the EU decided to establish relations with Montenegro as a sovereign and independent state. All EU Member States recognised Montenegro's independence.

In October 2007 a **Stabilisation and Association Agreement** between the European Communities and their Member States and Montenegro<sup>2</sup> and an Interim Agreement on trade and trade-related matters were signed. The Interim Agreement entered into force in January

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<sup>2</sup> OJ L 108, 29.4.2010, p. 1.

2008 and the Stabilisation and Association Agreement in May 2010 after its ratification by the parties.

Political dialogue meetings at ministerial level between the EU and Montenegro have been held since February 2007. Policy dialogue between the European Commission and Montenegro has been taking place since the country's independence. Annual inter-parliamentary meetings between representatives of the European Parliament and the Parliament of Montenegro have been held since 2006.

The entry into force of the Stabilisation and Association Agreement entails significant new obligations and engagement for the country in the areas of justice, freedom and security, free movement of workers, right of establishment, free movement of capital and services as well as on transport, audiovisual and telecommunications. Many of these commitments have already been part of the European Partnership with Montenegro. Furthermore, the Stabilisation and Association Agreement provides for close cooperation between the EU and Montenegro in a number of EU policy areas. In most cooperation areas Montenegro has committed to gradually introduce EU *acquis* in its legislation and cooperate with the EU on joint policy objectives.

Montenegro has overall smoothly implemented obligations under the Stabilisation and Association Agreement, including its trade-related provisions and has contributed to the sound functioning of the various joint institutions under the agreement. Two meetings of the Interim Committee took place in February 2008 and May 2009. Meetings of its Subcommittees were held in 2008, 2009 and 2010. The Stabilisation and Association Council met in June 2010 in Luxembourg. The first meeting of the Stabilisation and Association Parliamentary Committee was held in September 2010 in Brussels<sup>3</sup>.

Montenegro participates in the economic dialogue between the Commission, EU Member States and potential candidate countries. This dialogue aims at preparing potential candidate countries for participation in the multilateral surveillance and economic policy co-ordination currently in place in the EU as part of the Economic and Monetary Union. In this framework, since 2006, Montenegro presents an annual Economic and Fiscal Programme (EFP).

**A European Partnership** with Montenegro was adopted by the Council in January 2007<sup>4</sup>.

Visa liberalisation for Montenegrin citizens was granted by the Council after consultation of the European Parliament, as of 19 December 2009. It applies to holders of biometric passports travelling to the Schengen area. This decision was based on substantial progress in the areas of justice, freedom and security and fulfilment of the specific conditions set out in the roadmap for visa liberalisation. An agreement on readmission between the European Union and Montenegro is in force since January 2008.

Montenegro signed the Energy Community Treaty in October 2005 subsequently becoming a full member of the Energy Community of South East Europe. Montenegro signed the European Common Aviation Area (ECAA) agreement in June 2006.

In June 2008 the Government of Montenegro adopted the National Programme for Integration of Montenegro in the European Union for the period of 2008-2012. This document represents

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<sup>3</sup> The rapporteur for Montenegro is Mr. Charles Tannock.

<sup>4</sup> OJ L 020, 27.1.2007, p. 1.

a national plan for the adoption of the *acquis*, providing for short-term and medium-term priorities.

The EU is, with CEFTA, the main trading partner of Montenegro. In 2009, the international crisis reduced the openness of the country from 100 to 64% of GDP ratio. Trade integration with the EU, however, remained high.

40% of Montenegrin imports worth €533 million, came from the EU (45% from CEFTA), mostly consisting of road vehicles, petroleum and refined petroleum products, electrical machinery, industry machinery, textiles, meat and meat products and electricity. 48 % of Montenegrin exports worth €130 million, went to the EU (46% to CEFTA), mainly made up of non-ferrous metals, iron and steel, cork, and wood, and textiles. The trade deficit of Montenegro with the EU amounted to €520 million in 2009.

The share of EU investments to Montenegro stood high, reaching in the same year a pick of almost 80% of total FDI.

Montenegro has been a CEFTA member since 2007 and the negotiations for its accession to WTO are in a final stage.

Montenegro has received **EU financial assistance** since 1998. Overall, between 1998 and 2010 the EU committed over €408.5 million to Montenegro. From 1998 to 2006, Montenegro benefited from EU CARDS assistance worth €277.2 million. Since 2007, CARDS has been replaced by the Instrument of Pre-Accession Assistance (IPA), under which Montenegro has received assistance worth €131.3 million from 2007 to 2010.

The CARDS programme in Montenegro focused on development and infrastructure, institutional building and technical assistance to comply with the priorities of the European Partnership. Reconstruction assistance and emergency and humanitarian relief was also provided.

The IPA programme focuses on key political criteria such as judicial reform, public administration reform and institutional building, fight against corruption and organised crime. Financial support is also being provided to civil society. As regards the economic and other membership criteria the IPA programme concentrates on supporting reforms and strengthening the administrative capacity in areas such as the internal market, environment, transport, statistics, education, employment and social inclusion. Montenegro participates in four cross-border cooperation programmes with neighbouring Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia and Serbia). It also participates in the IPA Adriatic cross-border programme with Member States and the trans-national cooperation programmes: "South-East Europe" and "Mediterranean" under the European Regional Development Fund.

IPA assistance is currently centrally managed by the EU Delegation. Montenegro is preparing for decentralised management of IPA funds. IPA assistance builds on a number of strategic documents, such as the European Partnership and the SAA priorities; these are reflected in Multi-annual Indicative Planning Documents and the Multi-annual Indicative Financial Frameworks.

The Stabilisation and Association Agreement opened up Montenegro's participation in EU programmes. Montenegro actively participates in three EU programmes: the 7th Framework Programme for research and technological development, in the Entrepreneurship and



Innovation Programme (EIP) and the Culture Programme. IPA funds are used to meet part of the costs of participation in the three programmes.

### **c) Contents of the Analytical Report**

The analytical report takes account of the conclusions of the European Council in Copenhagen in 1993 and subsequent European Council conclusions. The report:

Describes the relations between Montenegro and the Union;

Analyses the situation in respect of the political conditions established by the European Council (democracy, rule of law, human rights, protection of minorities);

Assesses the country's situation and prospects in respect of the economic conditions established by the European Council (functioning market economy, capacity to cope with competitive pressure);

Addresses the question of the capacity of the country to adopt the obligations of membership, i.e. the total body of EU legislation as expressed in the Treaty, the secondary legislation, as well as the policies of the Union (*acquis* of the European Union);

In line with the December 2006 European Council conclusions, provides initial impact estimates in the fields of freedom of movement for workers (chapter 2), agriculture and rural development (chapter 11), regional policy and coordination of structural instruments (chapter 22), and financial and budgetary provisions (chapter 33). These have been identified as the main policy areas likely to require particular attention in case of Montenegrin accession.

In assessing Montenegro's situation in respect of the economic criteria and its capacity to assume the obligations of the *acquis*, the Commission has also estimated the progress which could reasonably be expected in the years ahead, before possible accession, taking account of the fact that the *acquis* itself will continue to develop.

The Commission has drawn on a number of information sources: answers given by the Montenegrin authorities to a detailed questionnaire and additional follow-up questions, consultations with the EU Delegation in Montenegro, reports of expert missions, reporting by the Member States' Embassies in Podgorica, assessments by international organisations (including the Council of Europe, OECD, OSCE, IMF, World Bank), as well as local and international non-governmental organisations.

This Opinion has been prepared following a methodology similar to that used in previous Opinions with some adaptations reflecting the elements included in the 2006 'renewed consensus on enlargement'. The Commission organised a number of expert missions in Montenegro concentrated mainly in the fields covered by the political criteria. This approach allowed for an assessment of the administrative capacities of Montenegrin institutions and of the way legislation is implemented. It also helped to better identify remaining challenges and priorities for future action. The Commission has analysed both the present situation and the medium-term prospects. For the purpose of this Opinion and without prejudging any future date of accession, the medium-term perspective has been defined as a period of five years.

## **B. CRITERIA FOR MEMBERSHIP**

### **1. POLITICAL CRITERIA**

The European Council in Copenhagen in 1993 set a number of political criteria for accession to be met by applicant countries. A country must have achieved 'stability of institutions

guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'. In the case of the Western Balkans the conditions defined by the Stabilisation and Association Process are also a fundamental element of EU policy, which will be assessed in this report. These include regional cooperation, good neighbourly relations and compliance with international obligations, such as cooperation with the UN International Tribunal for the former Yugoslavia (ICTY).

The political criteria established in Copenhagen are derived from the fundamental values on which the EU is founded, as set out in Article 2 of the Treaty on European Union. These principles are emphasised in the Charter of Fundamental Rights of the European Union. Article 6(1) of the Treaty states that: *'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties'*.

The assessment set out below examines the main ways in which public authorities are organised and operate and the situation with regard to protection of fundamental rights. It is not confined to a formal description but seeks to ascertain the way in which democracy and the rule of law actually function in practice.

### **1.1. Democracy and the rule of law**

Montenegro declared its independence on 3 June 2006, following a referendum held on 21 May 2006, in line with the Constitutional Charter of the State Union of Serbia and Montenegro. The result exceeded the 55%<sup>5</sup> threshold needed to validate a positive result as decided by political consensus in Montenegro, in line with recommendations by the European Union.

The **Constitution** was adopted by parliament in October 2007. It defines Montenegro as a civic state, establishes the framework for parliamentary democracy and guarantees the independence of the judiciary. It sets out the rules for respect of human and minority rights and prohibits capital punishment. It provides means to guarantee civilian control over the armed and security forces and intelligence services.

Alignment of Montenegro's legislation with the Constitution has almost been completed. However, the deadline set by the Law on implementation of the constitution for adopting legislation harmonising the legal system with the new constitution was extended for a fourth time in April 2010 until the end of 2010. Harmonisation of legislation on election of municipal councillors and Members of Parliament is still pending.

The Constitution is broadly in line with European standards. However, in a number of areas the legal framework allows for political interference by parliament, notably in the judiciary and prosecution and election of the Ombudsman. Implementing provisions of these laws are still needed. Furthermore, the constitutional provision on 'proportionate representation' of national minorities in public services needs to be clarified.

*Overall*, establishment of the legal and institutional set-up required for an independent country is almost complete. Ratification in Montenegro of international instruments to which the State Union of Serbia and Montenegro acceded has been completed. Political consensus

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<sup>5</sup> In this referendum, 55.5% supported independence and 44.5% voted against.

on state-building is becoming stronger. The Constitution is, overall, in line with European standards.

### *1.1.1. Parliament*

**Parliament** is made up of a single chamber with 81 members elected by direct, universal suffrage for four years. The Law on election of councillors and Members of Parliament provides for proportional representation (following the d'Hondt method, with candidates drawn from ranked lists of coalitions). Montenegro is regarded as a single constituency.

The last parliamentary **elections** held in March 2009 were assessed by OSCE-ODIHR as having met almost all international standards, however, some shortcomings remained. The Law on election of municipal councillors and members of parliament is not yet harmonised with the Constitution. The electoral framework provides for free and fair elections. However the legal framework has inconsistencies and ambiguities while the mechanism in place for processing election-related complaints is deficient. Allegations of election-related criminal activity are not properly followed up by law enforcement bodies. As a result broad public confidence in the election process remains limited. Electoral registers are overall accurate. However there is a need for their audit in a transparent and consensual manner. The constitutional requirement of 2-year residence of citizens to obtain the right to vote in general elections raises concerns from the point of view of universal suffrage. Financing of electoral campaigns is covered by the 2008 Law on Financing of Political Parties. While this brought about an improvement over the former law as regards reporting and auditing, issues relating to transparency and accountability remain. Amendments and supplements to the law on election of municipal councillors and members of parliament have been drafted but they have not been adopted yet. These amendments aim to implement the constitutional commitment to authentic representation of minorities. A two-thirds majority vote in parliament will be needed to adopt them.

The Speaker of Parliament is elected for a four-year mandate during the first session of the newly elected parliament. The parliament can dissolve itself by a majority of all its members. Members enjoy parliamentary immunity. There are 11 standing parliamentary committees. A temporary committee has also been established to monitor the privatisation process. Two of the committees are chaired by a Member of Parliament from the opposition, the remainder by members from the ruling coalition.

Each Member of Parliament, like the government, has the right to make legislative proposals. Laws are normally adopted after three readings. The first reading is in the relevant committees, while the second and third are before the plenary, comprising, respectively, a general debate on the rationale, objectives and essential elements of the proposed legislation and a detailed debate, article by article, before final adoption. There is a fast-track procedure for urgent bills, which may also be applied to adopt legislation aiming at harmonisation with the EU *acquis*. Laws are generally adopted by a simple majority vote of the Members of Parliament present. More than half of the total number of MPs must be present.

Since independence, parliament has shown increasingly intensive legislative activity which has allowed Montenegro to put in place a modern legislative and institutional framework in line with European standards. However, parliament's capacity to ensure high quality legislation compatible with EU *acquis* has generally remained limited and needs to be enhanced.

A total of 24 political parties took part in the parliamentary elections of March 2009, eight of them individually and the other 16 in seven pre-election coalitions. Ten political parties are currently represented in parliament.

Parliament is strongly committed to European integration, on which there is political consensus in Montenegro. In particular, in December 2007 it unanimously adopted a resolution on fulfilment of obligations under the Stabilisation and Association Agreement followed, in October 2008, by a resolution on acceleration of Montenegro's integration into the EU which paved the way for Montenegro's application for EU membership. In March 2008, parliament set up a National Council for European Integration (NCEI) as a strategic advisory body with broad participation of civil society, government, the judiciary and the opposition. This body's role is to monitor the European integration process, including implementation of the Stabilisation and Association Agreement (SAA). The NCEI is chaired by an opposition Member of Parliament. It is the body where the country's consensus on EU integration is most often expressed. However, the NCEI does not meet regularly and its administrative capacity remains limited. The NCEI's role needs to be further developed.

Parliament is assigned with ensuring the compatibility of new legislation with the EU *acquis*. These checks fall under the responsibility of the Committee for International Relations and European Integration, which also has overall responsibility for relations with the EU. A Department for European Integration has been set up in parliament's administration to support the committee in this role. However, the department has not yet been appropriately staffed and does not yet fulfil its tasks. Parliament therefore follows the statements of compatibility of new legislation with the EU *acquis* provided by the government. Impact assessments of new legislation and of the means available to the government to implement and enforce it should be examined more systematically when passing laws.

Parliament's role of oversight and control of the government is exercised mainly by means of parliamentary questions addressed to the government, to one or more ministers and to the Prime Minister. The Prime Minister appears in the Parliament and replies to oral questions on a monthly basis. Regular reporting on progress in the European integration process is ensured at both committee and plenary level. Interpellations, votes of confidence and establishment of committees of inquiry are also allowed. However, despite recent trends to improve the situation, the full array of oversight tools is not used.

Administrative capacity and other resources required for professional, efficient and transparent work by parliament, including expert support are overall very limited. There is a lack of office space and other facilities, including for MPs. Staff and expert support for committees are rudimentary, often comprising just one staff member as committee secretary. Efforts have recently been made to strengthen parliament's administrative and expert capacity. There is strong commitment, notably by the Speaker and parliament's Secretary-General, to upgrade parliament's administration. A Rulebook on Internal Organisation and Systematisation of the Parliament Administration was adopted in July 2010 with the aim to reduce overlapping and streamline parliament's work, notably on EU-related matters. Parliament's research centre has already started to offer information and analysis to MPs. However, financial and other constraints need to be addressed. Training of existing staff and recruitment of competent new staff needs to be given priority.

Parliament's working methods are based on its rules of procedure. The current rules were adopted in December 2009 to take into account adoption of the Constitution. While these

rules are broadly respected, the possibilities for government oversight they offer are not fully used.

*Overall*, electoral standards in Montenegro are broadly satisfactory. The last parliamentary elections held in March 2009 met almost all international standards, but some shortcomings remained. Outstanding OSCE/ODIHR recommendations on how to improve the electoral framework and its implementation need to be followed up. These include harmonising the electoral framework with the Constitution and improving it by means of codification and addressing the existing gaps and ambiguities, clarifying the powers of the State Election Commission and strengthening its professionalism by establishing a secretariat and a legal department. At the same time, the issue of voter rights and voter lists needs to be addressed in a transparent manner, taking into account the inconsistency of data on citizenship. Issues related to limitation of voter rights to citizens with at least two years residence in Montenegro also need to be addressed, while mechanisms for processing election-related complaints and investigating allegations of election-related criminal activity need to be strengthened. The mechanisms to control the financing of electoral campaigns need to be enhanced.

Since the country's independence in 2006 there have been significant improvements in the functioning of parliament. The overall commitment of parliamentary parties to respect parliamentary rules and to hold constructive policy dialogue, in particular on EU integration, remains a solid basis for further democratic development. However, further efforts are needed to make parliament more effective as a legislative and oversight body and to strengthen its administrative capacity. Parliament's capacity to scrutinise draft legislation against the EU *acquis* and the means available to implement it need to be further developed. There is a need to reform and depoliticise electoral administration. The National Council for European Integration has yet to achieve its full potential. Parliament can play a stronger role in European integration, notably by developing information and communication activities. It plays a key role in the dialogue between the state and civil society. This role can be further developed.

### *1.1.2. The executive*

The **President** of Montenegro is elected by direct, universal suffrage for a five-year term of office, renewable once. The President represents Montenegro nationally and abroad, calls parliamentary elections, proposes to parliament the Prime Minister-designate, the President and judges of the Constitutional Court and the Ombudsman, appoints and dismisses ambassadors and other diplomatic representatives upon government proposal and grants amnesty and performs other duties laid down by the Constitution. The President is Commander-in-Chief of the armed forces on the basis of decisions of the Defence and Security Council (which consists of the President as chair, the Prime Minister and the Speaker of parliament). The President is impeachable for any violation of the Constitution in exercising his duties. Impeachment procedures are initiated by parliament (by at least 25 members) and decided upon by the Constitutional Court. If the Constitutional Court establishes a violation, parliament may impeach the President.

The current President is Filip Vujanović, elected in February 2003 (as President of the Republic of Montenegro within the State Union of Serbia and Montenegro) and re-elected in February 2008 as President of Montenegro.

The decision on appointment of the Prime Minister is taken by parliament on a proposal by the President. Parliament approves the composition of the government and its programme, on

a proposal by the Prime Minister-designate. All government members, including the Prime Minister, enjoy functional immunity but are accountable to parliament.

The current **government** is led by Prime Minister Milo Đukanović. Following the March 2009 early parliamentary elections, the current government was appointed by parliament in June 2009. It has three Deputy Prime Ministers and 15 ministers, one of whom is female. They include a new Minister for EU Integration and one Minister without Portfolio.

The government's powers, internal organisation and working procedures are regulated by the Constitution, the Law on public administration, the Decree on the government and the rules of procedure of the government. The government, like all other state bodies, is under the obligation to provide access to information on its work pursuant to the Law on free access to information.

The government holds executive power in the country. It is responsible for implementation of Montenegro's internal and foreign policy and implements legislation. It plays a key role in adopting policy guidelines and strategy papers and in steering the country's reforms.

The Ministry for European Integration (MEI), which replaced the Secretariat for European Integration in June 2009, is responsible for coordination on European integration matters. In line with the rules of procedure adopted by the government in July 2009, all laws proposed by the government and sent to parliament have to be accompanied by a statement and table of conformity with the EU *acquis*. The statement and table of conformity are established by the lead ministry responsible for the draft law in question. The MEI has the role of verifying them both.

The EU integration process is given high priority by the government, as shown by the prominence of EU-related legislation in the proposals presented to parliament. Overall coordination falls under the responsibility of the Minister for European Integration. Individual ministries have specifically designated officials responsible for European integration. Overall government policy and the main strategic directions regarding European integration are decided by the government *collegium* for European integration headed by the Prime Minister, while day-to-day coordination takes place within the Commission for European Integration headed by the Minister for European Integration. Seven inter-disciplinary groups are responsible for coordination on SAA- and *acquis*-related issues. The Ministry of Foreign Affairs coordinates the political aspects of the European integration process, including ministerial political dialogue. Coordination of EU affairs within the government is strong.

Montenegro has two levels of government — central and municipal. There are 21 municipalities. The Constitution stipulates that the right to **local self-government** is one of the basic rights of the citizen. Municipalities are autonomous legal entities. All municipalities are members of the Union of Municipalities. This body contributes to the decentralisation process under a memorandum of cooperation signed with the government at the end of 2006. However, local governments remain weak.

The Committee for Coordination of Local Self-Government Reform (CCLSGR) was established in February 2007. It is made up of representatives of the Ministry of Finance, Ministry of the Interior and Public Administration, Union of Municipalities and five selected municipalities (a rotation system is applied). This committee facilitates institutional dialogue and cooperation and coordination between central and local governments. Under the umbrella

of the CCLSGR, three commissions have been established: for international cooperation, for fiscal decentralisation and for administrative decentralisation.

The government work programme is the main strategy paper for planning and monitoring purposes. There are also sectoral strategies and work programmes as well as ministries' work programmes. The legislative programme is part of the government work programme. When preparing new legislation, the government generally involves stakeholders, including civil society and international organisations. However, new legislation has not always been based on a clear identification of priorities and needs. Cost-benefit analyses, impact assessments and systematic preparations for implementation of legislation are rarely carried out.

Government decisions, including on submission of legislative proposals to parliament, are taken in weekly sessions. Government sessions are prepared by two government commissions, one covering economic policy, financial affairs and the political system, the other internal and foreign policy. There is also an Executive Council consisting of the Prime Minister and the three Deputy Prime Ministers and attended by the Secretary-General of the government and other ministers responsible for the items on the agenda. The Executive Council decides on policy priorities of the government and arbitrates in cases of conflicts between ministers. Central coordination of decision-making is becoming increasingly effective. The quality of consultations with stakeholders, including civil society, needs to be improved and the cross-sectoral consistency of legislative proposals strengthened. Further efforts will be needed to improve the quality of legislation and increase legislative drafting capacity.

*Overall*, Montenegro has an institutional system of government institutions that functions overall smoothly. A good system for planning the work of the government and inter-ministerial consultation is now in place. The activities linking the annual work plan with strategic priorities are particularly useful. Decision-making by the government is, overall, adequate, as is inter-ministerial coordination. However, the capacity in ministries to develop policies and draft laws remains insufficient and there is not always a link with budget estimates and impact assessments on new legislation. The quality of consultations with all stakeholders, including civil society, needs to be improved and the cross-sectoral consistency of legislative proposals strengthened. Further efforts will be needed to improve the quality of legislation and increase legislative drafting capacity. The government should further develop its capacity to ensure consistency and monitor implementation of laws closely.

With regard to local self-government, adoption of the Law on territorial organisation and of the amendments to the Law on local finances and to sectoral laws is still pending. Altogether, decentralisation is at an early stage. There are serious concerns about the lack of administrative capacity, corruption and inefficiency at municipal level. Establishing transparent and fully accountable administrations at local level, capable of managing their new powers, in particular the new fiscal competences, remains a key challenge.

### *1.1.3. Public administration*

A comprehensive legal framework for the public administration has been largely put in place. Public administration in Montenegro is under the responsibility of the Ministry of the Interior and Public administration. Since 2009, the Deputy Prime Minister responsible for the political system has been charged with the coordination of public administration reform. A Government Council for Administrative Reform was established in 2010. A strategy aiming to introduce European principles and standards is being prepared.

The current set-up of the public administration consists of 17 ministries, 16 independent authorities, 2 secretariats, 10 institutes, 6 directorates and 2 agencies. These 53 bodies have a total of 11,625 posts<sup>6</sup>. While strengthened, the overall capacity of the administration remains weak.

The Law on civil servants and state employees regulates issues related to the status of civil servants and state employees including recruitment and termination employment, function, rights, obligations and duties, performance appraisal, promotion and evaluation and professional training.

Civil servants and state employees are recruited following public announcements of vacancies. However, a merit system for recruitment and promotion is neither clearly enshrined in the legislation, nor applied in practice. There are no clear, uniform criteria for selecting candidates. There is no recruitment panel involved in the final stages of selection and heads of administrative bodies empowered to take the final selection decisions are not required to give reasons for their choice. The Appeal Commission's control over the recruitment decisions is very limited. Tests are inadequate and examination requirements are waived regularly. This allows for political interference and nepotism in the appointments and promotions and undermines the quality and efficiency of the public administration.

The procedures to ensure the accountability, openness and transparency of the public administration include administrative inspections and financial and judicial checks by courts. They also allow recourse and appeals to higher administrative bodies such as the Ombudsman and the Administrative Court. Inspections are supervised under the responsibility of the Administrative Inspectorate in the Ministry of the Interior and Public Administration. Its capacity needs to be significantly improved in order to perform its control function adequately.

The Administrative Court functions well. It has full jurisdiction to review administrative acts, including by the central state administration and municipalities, but no jurisdiction to review acts by the government. However, administrative justice must be strengthened, including by improving enforcement of decisions by the Administrative Court.

The Constitutional Court may evaluate the constitutionality and legality of administrative decisions.

On the basis of the **Ombudsman**'s recommendations, the government adopts binding conclusions which public administration bodies are required to implement. The recommendations are broadly followed.

The basic principles of political neutrality and impartiality, a code of ethics for civil servants and the principle of liability in the event of misconduct are set out in the legislation. Civil servants bear disciplinary responsibility in case of violation of the standards and rules laid down in the code of ethics. However, disciplinary provisions are inefficiently implemented in practice.

There is no comprehensive, regulatory framework to monitor corruption and conflict of interest through consistent internal controls. The legal and institutional framework needs to be

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<sup>6</sup> This figure does not include local self-government, the education and health sectors and some public enterprises which are financed partly or fully from the national budget.



significantly improved, so as to strengthen accountability and respect for rule of law within the public administration, in particular in areas such as tax administration, public procurement, urban planning and licensing in local administration and customs.

The Human Resources Management Authority (HRMA) is responsible for monitoring implementation of public administration legislation, publishing vacancies and administering the human resources registry. However, its legally binding decisions are often ignored by public administration bodies. Its legal mandate and capacity need be strengthened in order to allow it to fulfil its role of monitoring implementation of the legislation and ensuring consistent human resources management across the administration. Training programmes under the responsibility of the HRMA have improved. However, training must intensify in order to strengthen the efficiency and overall capacity of the public administration.

External auditing has a sound legal basis in Montenegro, where its independence is provided for by law. The State Audit Institution (SAI) was established in 2004 and became a member of the European Organisation of Supreme Audit Institutions (EUROSAI) in 2008. It has started to contribute to sound public finance management and to enhance the public administration's accountability. Capacity for auditing budget execution and internal financial control must be improved. In the long term, the SAI needs to develop its capacity further. This would enhance its role as an institutional driver for improvements in the public administration.

In line with the principles of openness and transparency, the Law on free access to information stipulates that legal and natural persons have the right to access to information held by state authorities and entities exercising public functions. This law provides a good basis for transparency, but its implementation needs to be considerably improved.

*Overall*, the public administration remains weak and highly politicised. The general administrative framework, including the Law on general administrative procedure and the Law on civil servants and state employees needs to be reviewed and adapted to European standards and principles. Administrative procedures are cumbersome and time-consuming and must be simplified. Transparency needs to be improved by facilitating access to public information including on economic governance and allocation of public assets.

Significant efforts are still necessary by Montenegro to establish a sound and accountable public administration free of politicisation. The quality of legislation and of decisions and acts produced by the public administration needs to be considerably improved. This is inextricably linked to improving the quality, capacity and expertise of public servants, with the aid of merit-based recruitment and promotion and continuous training. Further considerable efforts to strengthen administrative capacity to deal with future EU accession obligations are needed.

#### *1.1.4. Judicial system (See also Chapter 23 – Judiciary and fundamental rights)*

The judicial system is organised as a three-instance court system. It consists of 15 basic courts, two **High Courts**, an **Appellate Court** and a **Supreme Court**. It also includes two Commercial Courts and an Administrative Court. Judicial power is exercised by 252 judges supported by 49 bailiffs and 1 073 administrative staff.

The basic courts act as first instance and have jurisdiction over criminal, civil and labour matters and also over enforcement proceedings. The High Courts act as first instance on criminal offences punishable by imprisonment of more than ten years and on cases of organised crime and corruption. They act as second instance on appeals against decisions by

the basic courts. The Commercial Courts act as courts of first instance on commercial matters, including disputes between Montenegrin and foreign companies.

The Appellate Court has jurisdiction over the whole territory of Montenegro to decide on appeals against first-instance decisions by the High Courts and the Commercial Courts and resolve conflicts of jurisdiction between basic courts, High Courts and Commercial Courts. The Administrative Court has jurisdiction to decide on administrative disputes and on extraordinary legal remedies in misdemeanour proceedings.

The Supreme Court is the highest court in Montenegro. It ensures uniform application of the law by the courts. It acts as the third-instance court on appeals against decisions by the High Courts, the Appellate Court and the Administrative Court. It decides on extraordinary legal remedies against decisions by other courts and on issues of territorial jurisdiction. It is made up of a President and 22 judges. The President of the Supreme Court is elected by parliament for five years. The President of the Supreme Court is *ex officio* the President of the Judicial Council.

The Constitutional Court consists of seven judges who are elected by parliament by simple majority for a period of nine years. It decides on the conformity of laws with the Constitution and with ratified international agreements and on whether the President has violated the Constitution.

The Judicial Council is the body administering the judiciary. It has a President and nine members. The President of the Supreme Court is the President of the Council. Four of its members are judges elected by the Conference of Judges, two are eminent lawyers nominated by the President of Montenegro, and two are members of parliament appointed by the parliament. The Minister of Justice is also a member. The Judicial Council is the body responsible for selection, appointment, promotion, dismissal and disciplinary measures concerning judges.

The public **prosecution** broadly follows the structure of the court system. Each Public Prosecution Office is headed by a public prosecutor assisted by one or more deputy prosecutors. A Special Prosecution Office for fighting organised crime, corruption, financing of terrorism and war crimes has been established within the Supreme Public Prosecutor's Office. There are a total of 86 prosecutors, of whom 17 are public prosecutors and 69 deputy public prosecutors.

Public prosecutors, including the Supreme Public Prosecutor, are appointed by parliament, acting on a non-binding recommendation by the Prosecutorial Council.

The Prosecutorial Council is appointed by parliament on a proposal by the Supreme Public Prosecutor's Office. It has a President and ten members. Six of its members are chosen from among public prosecutors and deputy public prosecutors, one is a professor of law, two are eminent lawyers in Montenegro and one is a representative of the Ministry of Justice. The Supreme Public Prosecutor is President of the Prosecutorial Council. The Council is responsible for appointment, promotion, dismissal and disciplinary measures concerning deputy prosecutors.

All parliament decisions on appointments in the judiciary are taken by simple majority.

Montenegro has pursued judicial reform steadily, resulting, overall, in some sound achievements. The Strategy on Judicial Reform covering the period 2007-2012 provides for

actions aiming to improve the performance of the judiciary in the light of the constitution of 2007. Efforts for its implementation must be intensified.

The independence of the judiciary, the autonomy of public prosecution and the principle of the natural judge are provided for in the Constitution. However, serious concerns exist over the independence of the judiciary, as the legal framework leaves room for disproportionate political influence. Although judges are appointed by the Judicial Council, the majority of its members are appointed by parliament and the government. All Public Prosecutors are elected by parliament. Deputy Public Prosecutors are nominated by the Prosecutorial Council, which itself is elected by parliament. Legislation also provides for excessive accumulation of authority in the persons of the President of the Supreme Court and of the Supreme Public Prosecutor who are also appointed by simple majority in parliament. The President of the Supreme Court combines the presidency of the Judicial Council and of the three-member Commission on Judicial Appointments with the authority to manage and schedule the work of the Conference of Judges. Appointment of the Supreme Public Prosecutor by parliament raises additional concerns due to the hierarchical structure of the prosecution service.

The selection and appointment procedure for judges and prosecutors is under the responsibility of the two corresponding councils. The criteria for selection of new entrants to the judicial system leave room for discretion by the Judicial Council and thus undermine transparency in the selection process. No unified selection procedure exists for entry into the system. There is no legal obligation to apply written, anonymous tests and no weighting of individual criteria, including of written exams. Both the independence and the quality of the judiciary are weakened by the absence of a fully-fledged merit-based career system.

Prosecutors are appointed by parliament for a term of five years with the possibility of re-election. They are also dismissed by parliament. The Prosecutorial Council, whose members are likewise appointed by parliament, decides on the appointment, promotion and dismissal of deputy public prosecutors. The criteria for dismissal and disciplinary proceedings are not transparent, creating a risk of discretionary implementation.

The accountability of the judiciary is ensured by means of the monitoring role of the Judicial Council and its role in disciplinary proceedings. A code of ethics was adopted by the Conference of Judges in 2008. The Judicial Council has set up a commission to monitor compliance with the code of ethics for judges in particular. No disciplinary proceedings have been initiated so far for breaching the code. For prosecutors, disciplinary proceedings are carried out by parliament, on a proposal by the Prosecutorial Council, while for deputy prosecutors the proceedings are conducted by the Prosecutorial Council. The system needs to be strengthened to increase transparency and to ensure proper implementation of the code of ethics. An Office for reporting of corruption has been set up within the Judicial Council. A track record on fighting corruption in the judiciary has started to be established. However, corruption and conflict of interest rules are not sufficiently monitored. As a result, corruption in the judiciary is perceived as widespread. Accountability in the judiciary needs to be improved.

Impartiality of judges is ensured by random allocation of cases and by conflict of interest rules and disqualification provisions established by law. However, the rules for random allocation are not sufficiently sound and do not guarantee genuinely random allocation of cases, especially in small courts.

Both judges and prosecutors enjoy functional immunity. The lifting of immunity for judges and deputy prosecutors falls within the competence of the Judicial Council and of the Prosecutorial Council respectively, while parliament can lift the immunity of public prosecutors. The President of the Supreme Court has full immunity which can be lifted only by parliament.

The efficiency of the judiciary has improved since 2008. This includes the adoption of major amendments to criminal procedures and substantive legislation as well as capacity upgrading and reductions in the backlog of unresolved cases.

Implementation of the new Criminal Procedure Code (CPC) and of the amendments to the Criminal Code will contribute to a more effective administration of justice. The new criminal legislation simplifies pre-trial proceedings and introduces plea bargaining, summary proceedings and instruments such as reverse burden of proof for property of suspicious legal origins and extended confiscation of criminal assets. However, the new Criminal Procedure Code entered into force in August 2010 only as regards organised crime and corruption as well as war crimes. Its general use has been postponed by one year. The capacity of public prosecutors to implement the new legislation and to ensure guidance and coordination of police and other law enforcement agencies will be critical to improve efficiency. Montenegro must fully engage in sound implementation of the CPC and provide the necessary means to ensure it.

Montenegro has taken measures to reduce the backlog of cases. Data presented by the Montenegrin authorities suggest a year-on-year reduction of over 75% at the beginning of 2010. Yet, there are concerns regarding the soundness of the approach and the transparency of the methodology used.

The Constitution guarantees access to justice, the right to a fair and public trial within a reasonable time and the presumption of innocence. Support for victims is provided for in the Criminal Procedure Code and the Penal Code. The Law on the right to trial within a reasonable time is not being implemented effectively, as almost all complaints are rejected on procedural grounds. Long duration of court proceedings remains a cause for concern. The constitutional provision on the right to legal remedy does not fully comply with Article 13 of the ECHR. Enforcement of both civil and criminal decisions is weak. Additional measures to improve enforcement are required.

The logistical and administrative capacity of the Montenegrin judiciary is broadly adequate for normal administration of justice. Lack of infrastructure and equipment has hindered the judiciary's efficiency, but efforts are being made by the authorities to remedy the situation. These need to be stepped up. The budget allocated to the courts has risen over the last few years, but the overall allocations remain low in comparison with the needs, in particular for investment.

A Judicial Training Centre provides both initial and continuous training for judges and prosecutors. However, there are no permanent mandatory courses and no set curricula. In addition, the centre is dependent on scarce financing from the central budget and from international donors. Training with set curricula for all members of the judiciary needs to be established. Enhanced training for prosecutors on the implementation of the new CPC is also indispensable.

*Overall*, Montenegro has pursued reforms in the judiciary since its establishment as a sovereign state. It set up new institutions such as the judicial and prosecutorial councils and adopted other measures aimed at strengthening the independence and the efficiency of the judiciary. However, the country lacks a tradition of judicial independence. Serious concerns remain over the role of the parliament in judicial appointments. The majority of the members of the Judicial and the Prosecutorial Councils are directly or indirectly elected by parliament with simple majority and by the government, while all state prosecutors are elected by parliament. As a result, selection, promotion and dismissal of judges and prosecutors leave room for political interference. This raises concerns regarding the respect of separation of powers as regards the judiciary. Monitoring corruption and conflict of interest for judges and prosecutors needs to be tightened up.

The capacity of the prosecution needs to be strengthened, in particular in view of its leading role under the new CPC. Cooperation with judicial and prosecutorial services of neighbouring countries should be further developed, including on extradition. Systematic training should be put in place, in particular on new legislation and EU law, for all judges and prosecutors. Delivery of results in complex cases will depend on sound implementation of the new legislation.

Administrative capacity of the judiciary is still weak. There is a positive trend towards improving efficiency. Yet many of these reforms are at an early stage. Lack of high-quality infrastructure and equipment as well as courtrooms continue to hinder the judiciary's efficiency. The reorganisation of the court network in the light of the criminal justice and misdemeanour reforms requires improved judicial statistics. The judiciary still has to demonstrate its independence, accountability and efficiency, notably by producing convincing results, including final decisions on corruption and organised crime cases at all levels.

#### *1.1.5. Anti-corruption policy (See also Chapter 23 – Judiciary and fundamental rights)*

Montenegro has made significant efforts to put in place the legal and institutional framework needed for combating corruption. However, corruption is prevalent in many areas and remains a particularly serious problem.

Important legislation has been adopted, such as the new Criminal Procedure Code (CPC), amendments to the Criminal Code, the Law on prevention of conflicts of interest, the Law on the financing of parties and the Law on civil servants and state employees.

A first strategic framework was provided by the 2006-2009 strategy and action plan on combating organised crime and corruption. A mechanism to monitor its implementation was put in place in 2007. However, results so far have been uneven. A new improved strategy and an action plan for the period 2010-2014 have been adopted. They are more detailed and explicit in their objectives, actions and division of competences between key institutions with a focus on implementation. However, there is no satisfactory risk assessment.

The current institutional framework for preventing and repressing corruption needs to be streamlined and properly coordinated. Funding needs to be ensured. There is no single authority with clear legal powers and the capacity to monitor and enforce commitments and obligations of government bodies or to follow up complaints on corruption from the public. There is no clear division of competences between the different agencies. The National Commission monitors implementation of the strategy papers. The Directorate for Anti-Corruption Initiatives (DACI), to which 54 other institutions report on corruption, has mainly

a consultative role focusing on soft prevention measures such as education and awareness-raising. It is however responsible for screening new legislation from an anti-corruption perspective, following fulfilment of anti-corruption commitments, conducting surveys, training and awareness-raising and centralising complaints about corruption.

Integrity plans are envisaged for a number of state institutions. Municipalities and health care and educational institutions have been encouraged to develop anti-corruption plans. The DACI and the Human Resources Management Authority have conducted anti-corruption training and awareness-raising campaigns. However, the impact of these activities has been limited so far. Amendments made to the Law on civil servants and State employees in 2008 introduced provisions to protect whistle-blowers, but this has not encouraged reporting of corruption in practice. Efforts should be stepped up to ensure active and systematic reporting of corruption.

A new Law on prevention of conflicts of interest in exercising public functions has been in force since 2009, but it is not in line with European standards. In particular, the law remains ineffective against Members of Parliament and politicians taking up duties as members of managing or supervisory bodies. In addition, the Conflict of Interests Commission performs its supervisory role inadequately, as it has no powers to verify the declarations of assets by public officials and its sanctioning powers remain limited.

An internal control department operated within the police force until the end of 2009. It dealt mainly with the legality of the work and conduct of police officers and with complaints from members of the public, with no focus on detecting and prosecuting corruption. In 2010, the internal control department was moved outside the police force to the Ministry of Interior and Public Administration. Monitoring of conflicts of interest in the judiciary and the prosecution – which, in the broad sense, is one of the disciplinary tasks of the Judicial Council and the Prosecutorial Council – has been of limited effect. Furthermore, the potential for direct political interference in the appointment of prosecutors and indirectly, of judges limits the capacity for objective investigations into high-level corruption.

A Law on financing of political parties and a Law on financing the campaign for election of the President of Montenegro, mayors and the presidents of municipalities set the framework for transparent state budget funding; these cap electoral campaign expenditure and ban anonymous donations. However, the supervisory capacity for both laws is inadequate. The Ministry of Finance collects financial report forms from the parties but no verifications or follow-up measures are carried out. Financing of electoral campaigns is to be supervised by the State Electoral Commission whose related powers have yet to be established. As a result of deficient controls, potentially illicit financing can remain undetected.

Parliament needs to significantly strengthen its role in fighting corruption by further improving the scope and quality of the legal framework (for example, the Law on the prevention of conflicts of interest exempts members of parliament) and by stepping up supervision of the executive. Civil society and non-governmental organisations are very active in awareness-raising, research and watchdog activities. Cooperation between the government and civil society in this area has improved, including participation of civil society in formulation of policies and legislation. However, this cooperation needs to be further strengthened.

In Montenegro, construction, inspection, supervision and urban and spatial planning, including the land register, are high risk areas for corruption. The risk for corruption is also

high in the tax administration and customs, within the judicial system, the police and local self-government, while public procurement, health, education and privatisation are further areas of concern.

The track record of investigations, prosecutions and final convictions in corruption cases at all levels remains low. Although, operational and investigative capacities of the law enforcement authorities have been strengthened, it remains weak..

Montenegro has strengthened mechanisms to fight corruption by allocating human resources, funds and equipment to the relevant bodies. The Police Directorate, the Public Prosecution Office and the Administration for prevention of money laundering and terrorism financing (the FIU) have sufficient operational skills to investigate and prevent corruption. However, their capacity must be strengthened. The lack of expertise in modern financial investigations is still a serious impediment to tackling corruption. There are serious gaps in coordination between law enforcement agencies, including in the initial phases of investigations, collection of evidence and, beyond that, in the prosecution and trial phases. The capacity to investigate corruption remains very limited and the link between corruption, money laundering, tax evasion and organised crime is rarely made. Threat assessment and risk analysis are not used to guide investigations.

*Overall*, Montenegro has advanced in its efforts to establish the strategic, legislative and institutional framework for fighting corruption. However, the strategic framework is not yet based on risk analysis and this has a negative impact on its effectiveness. Key legislation needs to be amended to improve its scope and implementation. The institutional framework for fighting corruption needs to be streamlined and strengthened in order to scrutinise and rigorously enforce commitments and obligations of government bodies.

The independence and capacity of supervisory authorities need to be enhanced in order to ensure compliance with legislation on conflicts of interest and financing of political parties and campaigns and to monitor that rule of law, transparency and accountability are applied in areas such as public procurement, privatisation, spatial planning, construction permits and local self-government. Administrative capacity for both prevention and repression of corruption needs to be strengthened. Law enforcement statistics need to be substantially improved. Track record of investigations, prosecutions and final convictions in corruption cases at all levels need to be improved. Politicised appointments of prosecutors and judges and limited investigation capacities notably in the area of financial crime undermine law enforcement effectiveness. Strong political will is needed to significantly improve performance in combating corruption.

#### *1.1.6. Civilian oversight of security forces*

Civilian control over the armed and security forces and intelligence services is regulated by a comprehensive legal and policy framework<sup>7</sup> guaranteeing development of the security sector.

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<sup>7</sup> This consists of the relevant parts of the Constitution (2007), the Law on the police (2005), the Law on the National Security Agency (2005), the Law on the armed forces (2007), the Criminal Procedure Code (2009), the draft strategy and vision for the police (2005), the strategy and action plan for the fight against corruption and organised crime for 2005-2008 (which was extended until the end of 2009), the national security strategy, the defence strategy (2008) and the strategy for reform of the judiciary for 2007-2012. A counter-terrorism strategy is currently being developed.

Security forces in Montenegro include the police, the armed forces and the national security agency. The police service (5,566 staff) is in charge of internal security, with the tasks of preventing and suppressing all forms of crime. It also assists civil authorities during natural or man-made disasters. Within the police service at national level, the Criminal Police Department (the special section for the fight against organised crime and corruption and the section for the fight against economic crime) and the Border Police Department play a key role in combating serious crime. Apart from the police service at national level, there are eight regional units, eleven local units and a special anti-terrorist unit. While the capacity of the police force has been strengthened, a further review of its structure and capacity is needed, in particular to deal with the threats posed by organised crime and corruption. A review of the overall numbers of the police service, which are among the highest *per capita* in the region, is necessary to ensure efficiency in the medium term. Further development of cooperation with the prosecution and other law enforcement agencies is important. In this context, further development of the strategic framework for police reform could be needed in the medium term. The armed forces (2,090 staff), under the command of the Minister of Defence, are responsible for defence and cooperate with civilian authorities during natural or man-made disasters. They can also provide support to the police in the fight against terrorism.

The National Security Agency (NSA – 391 staff), which was previously part of the Ministry of the Interior, has become a separate state authority pursuant to the Law on national security of May 2005. It is in charge of collecting and analysing data of interest to national security and conducting national security operations. It is accountable to the government and subject to parliamentary control. The government appoints the NSA director and exercises regular internal control over its operations through an inspector general. The parliament receives annual reports from the NSA and can conduct inspections.

In addition to these services, internal security issues are also dealt with by the Defence and Security Council which consists of the President of Montenegro, as chair, the speaker of the parliament and the Prime Minister. The Defence and Security Council analyses and assesses the security situation in Montenegro and decides on measures implying deployment of the armed forces.

Parliament oversees defence and security bodies. It directly appoints the chief of the police. The Committee for Security and Defence organised hearings of the directors of the police and the security services. Enquiries and hearings held on specific cases demonstrated the commitment of the committee members across the political spectrum to exercise their duties in an independent and professional manner. Amendments made to the Law on confidentiality of data to give parliament wider access to relevant data improved the conditions for oversight.

*Overall*, the existing framework guarantees the basic principles for ensuring the civilian control of security forces. The role of the parliament has been strengthened. Yet there is room for further strengthening oversight of security and defence structures, notably by adopting a dedicated law on parliamentary oversight over the defence sector and the security forces and by strengthening the capacity of the committee.

## **1.2. Human rights and the protection of minorities** (*See also Chapter 23- Judiciary and fundamental rights*)

*Observance of international human rights law*



Montenegro's constitutional and legal framework on human rights is well developed and generally in line with EU standards. Montenegro has ratified the European Convention on Human Rights (ECHR) together with its main additional protocols and other important international **human rights instruments**. However, application of the ECHR to the period before independence has not yet been fully clarified. The Constitution (Article 20) needs to be aligned with Article 13 of the ECHR to safeguard the right to an effective remedy before national authorities for violations of rights under the convention. Direct implementation of international human rights standards still remains restricted to cases of conflicts with domestic legislation.

Individuals may bring cases before the **European Court of Human Rights (ECtHR)**. As of mid-September 2010, 622 cases against Montenegro are pending before the ECtHR, mostly related to non-implementation of court decisions, non-alignment of domestic jurisprudence with the case law of the court, freedom of information, access to justice and length of procedures. Three decisions have been given against the country, based on violation of Protocol 1 to the Convention relating to the protection of property rights.

As regards **promotion and enforcement of human rights**, the Ombudsman is the main institution. It is responsible for monitoring protection of human rights and freedoms. The anti-discrimination law establishes the Ombudsman as the national protection mechanism against discrimination. This is expected to be confirmed in a forthcoming new Law on the Ombudsman, which will also define the Ombudsman as the national protection mechanism against torture. The recommendations made by the Ombudsman are almost always followed up by the relevant institutions, although with some delay. However, the current financial and human resources are not sufficient to carry out the tasks of the Ombudsman efficiently. There is no other independent body dealing with fundamental rights. The Ombudsman is currently competent only for discrimination occurring in cases involving the public sector. The independence of the Ombudsman could raise concerns, as he is elected by a simple majority of parliament. The Ombudsman's activities are currently mainly related to the functioning of the judiciary. The number of measures taken on his own initiative is low (below 2.3%) and he is not sufficiently involved in improving the legal framework regulating human rights. Despite recent improvements, awareness of the Ombudsman's role needs to be further strengthened, in particular at local level. Cooperation of the Ombudsman with NGOs on monitoring respect of fundamental rights and freedoms and improving the legal framework is still weak.

A Committee for Human Rights and Freedoms has been set up within parliament but its activities need to be further strengthened. The Ministry for Human and Minority Rights focuses predominantly on promotion of rights of ethnic minorities and gender equality, but lacks sensitivity to other areas of human rights, notably regarding the rights of lesbian, gay, bisexual and transgendered (LGBT) persons. Judges are not yet fully aware of human rights standards and do not refer to the case law of the ECtHR in national proceedings.

### *Civil and political rights*

The Constitution guarantees **access to justice**. However, the long duration of court proceedings and the backlog of court cases, even though it has been reduced, remain causes for concern. The Law on the right to trial within a reasonable time is not being implemented effectively, as almost all complaints are rejected on procedural grounds. A law on free legal aid is still pending. Long delays in court proceedings, combined with difficulties faced by detainees in meeting bail conditions, frequently lead to lengthy pre-trial detention.

The Constitution prohibits the **death penalty**. Montenegro has ratified Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, which entered into force in 2006.

Conditions in the **prison system** are being improved. Video surveillance has been installed to prevent ill-treatment and efforts are currently underway to improve internal rules. However, while, a Deputy Minister post exists in the Ministry of Justice, it remains vacant. This potentially weakens political accountability for the supervision of sentenced detainees and the implementation of alternative sanctions and the operation of the probation system. The Law on execution of criminal sanctions, along with internal rules governing the penitentiary system, need to be aligned with European standards, including on access to education, adequate healthcare and the length of isolation measures. Prisons and, specifically, pre-trial facilities are still overcrowded. Living conditions in older parts of the detention facilities are inadequate. To overcome the problem of poor prison conditions, alternative sanctions and rehabilitation activities need to be developed. The length and frequency of visits to prisoners need to be aligned with European standards.

The Constitution prohibits **torture and ill-treatment**. Montenegro has ratified European and UN conventions for the prevention of torture and inhuman or degrading treatment as well as the optional protocol to the UN convention. It has adopted an action plan for the prevention of torture. The Criminal Procedure Code provides for prohibition and punishment of any use of violence against detainees and prisoners. The police are more actively involved in preventing torture and ill-treatment. The number of incidents in prisons has started to decrease. However, the establishment of the National mechanism for the prevention of torture and ill treatment is still pending. Cases of ill-treatment in the penitentiary system and more particularly cases of excessive use of force by the police continue to be reported. Penal sanctions and disciplinary procedures for abuse of office and exceeding official powers are inadequately deterrent and rarely applied. There is a lack of consistent training of prison officers on human rights. The procedure for recording injuries is still not satisfactory. Proper implementation of the right to compensation is necessary.

Montenegro remains a transit country for **trafficking in human beings**. However, to address this issue, a national strategy against human trafficking and a corresponding action plan have been defined. Montenegro has ratified the Council of Europe Convention on action against trafficking in human beings. An anti-trafficking working group, which includes representatives of several ministries, the Office of the State Prosecutor, two NGOs, the International Organisation for Migration (IOM) and the OSCE, coordinates government efforts to combat trafficking. The appointment of a new national anti-trafficking coordinator led to more energetic efforts to deter, identify and prosecute traffickers. The coordinator is also focusing more on trafficking of children, particularly Roma children and orphans. Montenegrin authorities are actively involved in regional cooperation in this field. The government is continuing its policy of making temporary visas and shelter available for victims of trafficking who agree to testify against traffickers. The government has funded one shelter in Podgorica, which is operated by a local NGO. The Police Directorate and judiciary are actively prosecuting traffickers.

The **protection of personal data** is enshrined in the Constitution, the Criminal Procedure Code and the Law on protection of personal data. Legal remedies grant individuals the right to damages for violations of privacy. The Agency for the protection of personal data is still being established. However, the legislation in this field has yet to be fully aligned with the EU

*acquis* and the independence of the Agency for the protection of personal data needs to be fully ensured. There are cases of disrespect of children's right to privacy in the media.

**Freedom of expression (including the media)** is guaranteed by the Constitution and broadly applied in practice. The media landscape is diverse and pluralistic, although the financial sustainability of media outlets is often weak. The new Law on electronic media, together with the amendments to the Law on electronic communications lays a good legal basis for developing and regulating the public broadcaster and, more broadly, for independent and professional media. The independence of the audiovisual regulator and proper implementation of the above-mentioned laws need, however, to be confirmed. The capacity and independence of the public broadcaster need to be further strengthened. A better balance needs to be struck between the Information Secrecy Act, the Law on protection of personal data and the Law on free access to information, in order to prevent undue restriction of access to information which needs to be made public and to consolidate the monitoring role of civil society.

In the past there have been incidents of severe violence against journalists in Montenegro, which have not always been satisfactorily investigated and followed up. Investigative journalists still face intimidation.

Prison sentences for libel cases have been abolished and courts may now decide not to impose criminal sanctions in cases where they find that the journalist acted in line with professional standards and ethics. Nevertheless, law suits for defamation and hefty fines, although less frequent, are still used to exert pressure on media. Montenegro does not consistently comply with ECtHR case law<sup>8</sup>.

Compliance of journalists with professional ethics and standards still needs to be strengthened. The media self-regulatory body is currently divided and does not play its role of promoting high professional standards properly, as the main media outlets are not part of it. The code of ethics for journalists needs to be strengthened.

The Constitution guarantees the **right to vote** to all Montenegrin citizens over 18 years of age, but on condition of at least two years' permanent residence in Montenegro prior to polling day.

**Freedom of assembly and association** is guaranteed by the Constitution and generally respected. The Constitution prohibits political activity in state bodies and political activity by foreigners and political organisations with their headquarters abroad. This is not in line with the Venice Commission's recommendations. As regards **civil society organisations**, NGOs can be established freely in line with the particularly liberal Law on NGOs. NGOs in Montenegro are very diversified and several of them play a significant public and political role. The government provides financial support to NGOs from the state budget and funds from the national lottery. NGOs' activities and premises are exempted from tax up to a certain threshold. The government decided in June 2010 to establish the Council for Cooperation with NGOs. However, it is not yet functioning. In some cases the most critical NGOs have been exposed to political and administrative pressure. The procedure for selection of NGO representatives on the National Council for European Integration needs to be improved, as do the transparency and monitoring of state financing and tax relief for NGOs. State financial

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<sup>8</sup> ECtHR case law rules out greater protection for public figures, establishes that the amount of financial compensation must not endanger the viability of the defendant media and emphasises that statements or allegations made in the public interest should not be punishable.

support to NGOs dealing with socially vulnerable groups is often insufficient compared to the social importance of their action. There is a need for regular updating of the register of NGOs. The cooperation of the government with NGOs, in particular in the course of the legislative process and on definition of major public policies and projects, remains insufficient. The Law on volunteer work sets very restrictive conditions on volunteer activities in NGOs.

**Freedom of religion** is guaranteed by the Constitution and is respected. Restrictions are allowed only in the cases provided for by the Constitution. Respect of religious rights is regulated by the Law on the legal status of religious communities and the Law on celebrating religious communities. There is no state religion in Montenegro. The state financially assists some activities of the main religious communities. Inter-faith relations are overall smooth, but there are tensions between the Serbian (SOC) and Montenegrin (MOC) Orthodox Churches over canonical recognition and property issues. Tensions also stem from the historical and cultural background of the Orthodox Church in Montenegro. Despite the constitutional division of state and church, there have been cases of involvement of authorities in the dispute between the Serbian and the Montenegrin Orthodox churches, in particular on property issues. No progress was reported on restitution of property taken from religious communities after 1945. Claims have been submitted by the two Orthodox Churches, the Catholic Church and the Islamic and Jewish communities.

Montenegro has improved its legislation regulating access to **citizenship** in the framework of state succession by amending the Law on citizenship and ratifying the European Convention on nationality and the Convention on the avoidance of statelessness in relation to state succession. However, the legal framework (the Law on citizenship and the Law on foreigners) needs to be fully aligned with the European standards. Around 1500 of domiciled Roma, Ashkali and Egyptian persons, in particular children, are at risk of statelessness due to the lack of personal documents. The electronic central population register, the electronic database of all the population, citizens and foreigners, is not yet fully operational. Procedures for checking data during civil registration need to be improved. Judges' awareness of the European conventions regulating citizenship is insufficient. The new Law on citizenship contains strict naturalisation criteria, which restricts the opportunities for displaced persons from Bosnia and Herzegovina and Croatia to obtain citizenship. Displaced persons<sup>9</sup> from Kosovo<sup>10</sup> are not eligible for naturalisation under this law. Negotiations on dual citizenship with neighbouring countries, in particular Serbia, need to continue. The Law on citizenship provides that a person can acquire Montenegrin citizenship through admission because of a special contribution to the economic and cultural development of Montenegro. A government decision adopted in May 2010, which establishes criteria for the implementation of this provision of the Law on citizenship, raises concerns about possible misuse as regards the acquisition of citizenship through admission due to special contribution to the economic interest of Montenegro. The implementation of this provision has been put on hold.

### *Economic and social rights*

As regards **anti-discrimination policies**, the Constitution prohibits direct or indirect discrimination on any ground. This prohibition is specified by several pieces of legislation, including the July 2010 general Law on prohibition of discrimination, which bans discrimination on any grounds, including sexual orientation and gender identity. This law constitutes an important step forward; however it is not fully in line yet with the EU

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<sup>9</sup> In Montenegro the displaced persons from Kosovo are referred to as "internally displaced persons".

<sup>10</sup> Under UNSCR 1244/1999.

standards, notably as it permits justifications of direct discrimination in some cases. Discrimination is defined as a criminal offence in the Penal Code. However, the implementation of mechanisms for preventing, monitoring, sanctioning and prosecuting discrimination cases still needs to be strengthened, including through the adoption of the law on the Ombudsman and the provision of sufficient means to the Ombudsman's Office. Roma, Ashkali and Egyptians, persons with disabilities as well as lesbian, gay, bisexual and transgendered (LGBT) persons are still subject in practice to discrimination, including on the part of state authorities. Several cases of violence against LGBT persons have been reported, but no complaints have been presented to the police; a reason for this is fear on the part of the victims to have their sexual orientation revealed. Awareness-raising campaigns against discrimination are insufficient.

As regards **women's rights**, gender equality is guaranteed by the Constitution. It is regulated by the Law on gender equality (2007) and promoted by the relevant action plan (2008). Implementation is monitored by parliament, the government and the Ombudsman. Montenegro has ratified the Convention on the elimination of all forms of discrimination against women. Awareness-raising campaigns are regularly conducted within the public administration. Six municipalities have adopted local action plans on gender equality. However, further efforts to raise awareness of gender equality are necessary, particularly in rural areas. The Law on gender equality provides for only limited sanctions and does not clearly address the principle of equal pay. The action plan on gender equality has not been properly implemented. Women are severely under-represented in parliament, top government posts and in decision-making positions in the local administration and public undertakings. The protection of women against all forms of violence remains insufficient. Sexual harassment at work and rape cases are not adequately prosecuted. In rural areas women cannot always exercise their right to control property and husbands occasionally direct their wives' voting.

Domestic violence against women (who are the most affected), children and elderly is a cause for concern, despite improvement of the legal framework and some efforts to raise awareness and improve attitudes amongst the police. Considerably greater efforts are needed in order to protect women and other victims against all forms of violence. The Law on protection from violence in the family was adopted in July 2010. The strategy and the action plan for its implementation are pending. There are no comprehensive statistics on domestic violence. The monitoring mechanism of this phenomenon needs to be improved. Only three police stations have an officer in charge of domestic violence and only one municipality has a specialised social service to protect children and women who are victims of such violence. Judges remain lenient towards perpetrators of domestic violence. Coordination between the Ministry of Justice and the Ministry of Labour and Social Welfare is poor. Support provided to victims by the authorities and social care centres is very limited, as are awareness-raising efforts. There is no regular budgeting for shelters for victims of domestic violence. Protection and shelter of victims, including children, are ensured by NGOs, which lack financial support from the state.

As regards **children's rights**, Montenegro ratified the UN and European conventions on the rights of the child and adopted a national action plan for children for 2004-2010. Efforts have been made to harmonise the national legal framework with international law, in particular as regards juvenile justice. However, the definition of 'child' is not enshrined in the Constitution, nor is there a definition of child in the implementing legislation. The Law on child and social protection has still to be aligned with the UN Convention on the rights of the child. Implementation of the national plan for children has been inadequate. There is a need for higher level of political support and inter-ministerial coordination in this area. The

Council for Children's Rights, the main body for coordinating implementation of the national plan, is not operational. Its capacity remains weak and its mandate is not clearly defined. The mandate of the deputy Ombudsman for children's rights, appointed in 2009, is not explicitly and legally defined. Resources assigned specifically to children's issues within the Office are insufficient. Despite some recent improvements, children with disabilities face considerable discrimination, in particular those in the Komanski Most institution for persons with mental disabilities. Alternatives to institutionalisation need to be developed, including for preventing segregation of children with special educational needs. An overall multi-sectoral reform of the child and social protection system, in line with UNICEF standards, is needed.

The right to **education** under equal conditions is guaranteed by the Constitution. Primary education is compulsory and free. The Bologna reform process is underway. However, the quality of education needs to be improved in order to meet the requirements of the labour market better. Roma, Ashkali and Egyptian children's right to education is not properly safeguarded. Structural reforms limiting corruption risks and strengthening the monitoring and evaluation system are needed in order to enhance the efficiency and quality of education. Montenegro has to improve access to primary education. The right to education for children with disabilities needs to be respected, including by means of proper implementation of the strategy for inclusive education.

The rights of **persons with disabilities** are protected by the Constitution. Montenegro ratified the UN Convention on the rights of persons with disabilities and its Optional Protocol. The government adopted the strategy for integration of persons with disabilities for 2008-2016 and several laws addressing their specific needs. However, the level of implementation of this legislation remains low. Authorities do not actively prosecute infringements against the rights of persons with disabilities and court decisions are not adequately implemented by public administration. Unemployment remains a serious problem for persons with disabilities, notably due to the lack of institutional network for rehabilitation. Very few buildings and premises, even new, or courts and public facilities, have access for persons with disabilities.

Social inclusion of persons with disabilities (access to social services, employment, aid to dependent persons and proper health care) remains unsatisfactory and they continue to face discrimination in society. Persons with mental disabilities, including children, are the most vulnerable and discriminated group, including when it comes to access to appropriate health care. Efforts have been made to improve living conditions and treatment of adult patients in the Komanski Most facility for persons with mental disabilities. However conditions of their institutionalisation remain a matter of serious concern, in particular regarding the lack of adequately trained staff and sub-standards facilities.

As regards **labour and trade unions rights**, freedom to join trade unions is guaranteed by the Constitution and further regulated by the Labour Law. Only persons serving in the armed forces are not allowed to join trade unions. The newly adopted Law on trade union representativeness opens up the possibility of pluralistic representation of trade unions at national level. Montenegro has ratified the 8 core labour rights conventions of the International Labour Organisation (ILO), as well as the revised European Social Charter. Labour inspection launched recently a free phone line for complaints on illegal labour and other irregularities in labour relations. However, social dialogue has been limited. Transparency and effectiveness of the Social Council needs to be improved. There is only one employers' organisation with social partner status. Representatives of the social partners need to be involved in the process of integrating the country into the EU. Labour rights of disabled persons are not fully respected. (*See also Chapter 19 — Social policy and employment*)

**Property rights** are guaranteed by the Constitution. A Law on private property relations provides for equal treatment of foreign citizens and Montenegrin citizens. A Law on expropriation stipulates that ownership may be restricted when it is required in the public interest, in return for fair compensation. A Law on state property clearly defines the property belonging to the state and municipalities. However, there are no precise statistics on nationalisation of property by the Communist regime. The government established special committees to deal with denationalisation in 2004, but the process has been slow. Out of 10,738 demands for restitution, only 2,791 (i.e. 26%) have been examined. 1,205 applications were found eligible for restitution, but property has been returned in only 142 cases so far (i.e. 5% of all cases eligible). There are cases where property subject to restitution was in the meantime privatised. Particular efforts are needed to solve such cases. A law regulating property confiscated from religious communities has not yet been adopted. The land register system needs strengthening, in particular at municipal level.

#### *Respect for and protection of minorities, cultural rights*

Respect for and protection of **minorities** is enshrined in the Constitution. It is regulated by a broad legal framework, including a strategy, guaranteeing protection of minorities, in particular in the fields of education, culture, access to information and use of minority languages. Montenegro has ratified the Framework Convention for the protection of national minorities and the European Charter on regional and minority languages. The Ministry for Protection of Human and Minority Rights and the Ombudsman, with a deputy for minority rights, form the core of the institutional framework. The country enjoys good inter-ethnic relations. Minority Councils (Albanian, Bosnian, Croat, Muslim, Roma and Serbian) are the official channel for communication between minorities and the government. The state provides financial support to the Minority Councils from the state budget for administrative functioning and the Minority Fund for minority-related projects, in proportion to the size of the minority.

However, the Law on minority rights and freedoms defines minorities on a citizenship basis. This is not in line with the general principle of the Convention for the protection of national minorities, according to which no distinction should be made between citizens and non-citizens as regards the rights of persons belonging to minorities. The Law on Election of Parliament and Committee Members remains to be aligned with the Constitution to ensure authentic representation of minorities in parliament and local assemblies. The Constitutional provision on 'proportionate representation' of national minorities in public services, state authorities and local self-government bodies needs to be clarified and implemented. Minority representatives, supported by some NGOs, claim under-representation in the administration, judiciary and police. Cooperation between the government and the Minority Councils needs to be improved, in terms of the legal framework and definition of projects related to minorities. The Minority fund still does not function properly. Amendments to the Law on minority rights and freedoms, which should clarify the functioning of the Fund, are pending. Minority Councils' elected representatives need to be more closely involved in the procedure for allocation of funds from the Minority Fund. Monitoring of the use of allocated financial means by the Minority Fund remains insufficient. As regards cultural rights, while the constitution guarantees to minorities the right to education in their own language and the right to have included in the curricula their history and culture, concerns have been expressed as to the quality of existing textbooks - in particular in the Albanian language. Recently, the issue of amendments to the Law on general education, according to which the Montenegrin language will be used in the education process in Montenegro, is being politicised.

The **Roma, Ashkali and Egyptian** communities remain the most vulnerable and discriminated group. They face very difficult living conditions and frequent discrimination, particularly regarding access to economic and social rights. The government adopted a strategy for 2008-2012 to improve the status of Roma, Ashkali and Egyptian and is financing its implementation. However, this strategy does not take into account in a satisfactory way the gender dimension of the inclusion of these persons. Results of integration of these communities remain insufficient. Efforts have been made to ensure civil registration of Roma, Ashkali and Egyptian, in particular regarding birth registration. However around one third of persons belonging to these communities, domiciled and displaced, mainly children, have no personal documents and are thus impeded from exercise their fundamental rights. The majority of the funds for the Roma, Ashkali and Egyptian strategy are allocated to housing, but in segregated areas. Despite efforts by the state authorities and some progress achieved, access for persons belonging to these communities to education and vocational training remains unsatisfactory and they also face major discrimination as regards access to work, including in public administration. There is no elected Roma, Ashkali and Egyptian representative in parliament and only one at municipal council level.

There are around 17,000 **displaced persons** from Bosnia and Herzegovina, Croatia and Kosovo in Montenegro. Montenegrin authorities adopted in 2009 the action plan for resolution of their status. In July 2010 it reduced all relevant administrative fees to €10 and adopted a Decree which gives displaced persons access to social and economic rights until January 2012. However, the implementation of the Law on foreigners and of the action plan on displaced persons remains insufficient. The Law on social and child welfare, Law on work and employment of foreigners and its by-law, Law on health care, and other relevant laws have not yet been harmonised with the amended Law on foreigners. The access of displaced persons to legal status is also hampered by necessary provision of birth and citizenship certificates. Montenegro's cooperation with Kosovo on facilitation of the access for displaced persons to personal documents remains at an initial stage. Around 2 200 of these persons, vast majority Roma, Ashkali and Egyptian, do not currently have any personal document. Living conditions in the Konik camp, which accommodates the majority of displaced Roma, Ashkali and Egyptian from Kosovo, are very alarming. The case of segregation of children from Konik camp in primary school is a cause for concern. The cooperation of the Coordination Committee with the UNHCR remains limited. The principles of the Sarajevo Declaration process on refugee return need to be properly implemented.

*Overall*, while the legal framework regulating human rights and respect for and protection of minorities is largely in place and broadly corresponds to European standards, implementation is lagging behind, mainly due to insufficient awareness on the part of the authorities (administration, judiciary and municipalities). The main causes for concern are the use of defamation cases to restrict the freedom of media, pressure on journalists and NGOs as well as discriminatory practices against Roma, Ashkali and Egyptian (whether domiciled or displaced), persons with disabilities (including children) and lesbian, gay, bisexual and transgendered persons. Not sufficient respect for gender equality, domestic violence, ill-treatment of detainees by police and sub-standard prison conditions are further problems.

### **1.3. Regional issues and international obligations**

Cooperation with the **International Criminal Tribunal for the former Yugoslavia (ICTY)** is good. Since 2005, Montenegro has received 21 requests for assistance and has complied with them. The ICTY started proceedings against two Montenegrins (both also hold Serbian nationality). No cases were referred from the ICTY back to national authorities for possible



further investigation. There are only a small number of local war crimes cases in Montenegro. Currently two are in the trial phase and two in the pre-trial phase. These cases are being dealt with without any unjustified delays and there is sufficient capacity to deal with them.

Concerning international judicial cooperation in civil and criminal matters, Montenegro concluded (or succeeded into) bilateral agreements with Croatia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia. Montenegro also concluded (or succeeded into) agreements on mutual enforcement of court decisions in criminal matters with Bosnia and Herzegovina, Serbia and Croatia. An agreement was initialled with Bosnia and Herzegovina on legal assistance in civil and criminal matters. The Supreme State Prosecutors signed a memorandum of understanding between Montenegro and Kosovo on jointly fighting terrorism, smuggling and other forms of cross-border crime. Cooperation agreements in the fight against organized crime, trafficking of human beings, trafficking of narcotics and terrorism were signed with Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Albania, Serbia and Italy. However, implementation of agreements on judicial cooperation needs to be strengthened in order to produce better tangible results. Montenegro is also participating in regional police cooperation.

An extradition agreement was signed with Serbia in May 2009. The European Convention on extradition provides the legal basis for extradition procedures with Slovenia, Croatia, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina. In the absence of an international agreement, international legal aid and extradition with Kosovo are regulated by the Law on international legal assistance in criminal matters. However, Montenegro's Constitution stipulates that a Montenegrin national may not be deported or extradited except under an international obligation. Croatia is the only country with which an extradition agreement for own nationals accused of organised crime and corruption, was signed. A similar agreement is under negotiation with Serbia. Extradition in war crime cases is not foreseen by these agreements.

The Sarajevo Process was initially launched through the Sarajevo Declaration of January 31, 2005. Bosnia and Herzegovina, Croatia, Montenegro and Serbia cooperate within this process to find solutions for refugees and other persons which were displaced as a result of the armed conflicts in ex-Yugoslavia 1991 - 1995. Fresh impetus was given to the **Sarajevo Declaration process** on refugees following the ministerial meeting in Belgrade in March 2010. This brought together Bosnia and Herzegovina, Croatia, Montenegro and Serbia, which agreed to work together to clarify refugee statistics. The countries also committed themselves to work towards solutions to a number of outstanding issues by the end of the year.

Montenegro still maintains the 2007 bilateral immunity agreement with the United States, granting exemptions from the jurisdiction of the **International Criminal Court**. This does not comply with the EU common positions on the integrity of the Rome Statute or the related EU guiding principles on bilateral immunity agreements. Montenegro needs to align with the EU position.

**Regional cooperation and good neighbourly relations** form an essential part of Montenegro's process of moving towards the European Union. Montenegro is a constructive regional partner, which plays a stabilising role in the Western Balkans. It is an active member of most regional and sub-regional initiatives. By acceding to the South-East European Defence Ministerial (SEDM), Montenegro has also become a member of all regional defence initiatives and cooperation processes. In 2009-2010, Montenegro held the Presidency of the Central European Free Trade Agreement (CEFTA), the Central European Initiative (CEI) and

the Adriatic-Ionian Initiative (AII). It holds the chairmanship of the South-East European Cooperation Process (SEECP) for 2010-2011. The seat of the Regional School of Public Administration (ReSPA) is in Danilovgrad, near Podgorica. President Vujanović, together with the Chair of the Presidency of Bosnia and Herzegovina and the Presidents of Croatia and Serbia, attended the May 2010 summit of the Igman initiative in Sarajevo, marking the 10th anniversary of the initiative, involving more than 140 NGOs from the region and aimed at promoting and facilitating local and regional cooperation. Montenegro participated in the EU-Western Balkans High-Level Meeting in Sarajevo on 2 June 2010.

Montenegro has good **bilateral relations with other enlargement countries and EU neighbouring state** Italy. Cooperation is particularly well-developed with the Western Balkan countries as regards economic exchanges, tourism, defence, border management, transport and energy. A joint border crossing, the first in the region, was recently opened between Montenegro and Albania. Montenegro also signed a comprehensive border crossing agreement with Bosnia and Herzegovina. However, delimitation of borders with Croatia, Serbia, Bosnia and Herzegovina and Kosovo is still pending. The former Yugoslav Republic of Macedonia is the only country in the region with which an agreement on dual citizenship has been concluded.

A political agreement with *Croatia* on joint submission of the Prevlaka border delimitation issue to the International Court of Justice has not yet been followed up by a formal agreement on the terms of the submission. Nevertheless, the temporary border arrangement, settled by the 2002 Protocol, is functioning smoothly.

There is occasionally friction in Montenegro's relations with *Serbia*, partly due to Montenegro's recognition of Kosovo. The dissolution of the State Union went smoothly. However, some issues remain to be solved, such as finalisation of the distribution of assets (both movable and immovable) and liabilities and citizenship rights (in particular, concerning dual citizenship).

As regards relations with *Kosovo*, they are broadly smooth. Yet, further to the pending issue of border delimitation, Montenegro has raised the issue of the explicit recognition of the Montenegrin minority in Kosovo. It also expects Kosovo to further improve the conditions for the return of displaced persons from Montenegro. The Kosovo response to the above open issues is to a large extent positive.

*Overall*, Montenegro largely satisfies the **Stabilisation and Association Process (SAP)** conditionality on co-operation with the ICTY and regional cooperation. Montenegro is encouraged to continue its constructive engagement in regional cooperation and to strengthen bilateral relations with neighbouring countries. Outstanding bilateral issues need to be solved.

#### **1.4. General Evaluation**

The present assessment is made on the basis of the Copenhagen criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and of the conditionality of the Stabilisation and Association Process.

Montenegro is a parliamentary **democracy** based on a constitutional and legislative framework, which is largely in line with European principles and standards. Montenegro managed smoothly the referendum on its independence in 2006, in line with EU recommendations, on the basis of rules which were adopted by political consensus. Consensus among political parties on state-building is becoming stronger. There is also political

consensus with regard to membership to the European Union. However, while the country's legal and institutional basis is broadly in place, there are deficiencies in the functioning of democratic institutions and shortcomings in implementation of the legislation persist. The parliament's overall capacity to ensure appropriate oversight of the government remains limited. The separation of powers is not fully respected in the case of the judiciary. The public administration remains weak and highly politicised.

Elections in Montenegro have generally been conducted in accordance with international standards for democratic elections. The last parliamentary elections held in March 2009 were assessed by OSCE-ODIHR as having met almost all international standards, but remaining shortcomings need to be addressed. In particular, the election law has not been fully harmonised with the constitution.

Montenegro has in recent years strengthened the legal and institutional framework of **rule of law**. However, implementation is deficient. The main concerns are related to the politicisation of the judiciary and shortcomings in the functioning of law enforcement institutions, in particular in fighting organised crime and corruption.

Reforms in the judiciary are being pursued. Achieved results include the setting up of new institutions such as the judicial and prosecutorial councils and measures adopted to improve independence and efficiency. However, serious concerns remain over the role of the parliament in appointing the judicial and prosecutorial councils and state prosecutors. There are also concerns over the efficiency and accountability of the judiciary.

Montenegro has largely put in place the legal and institutional framework needed for combating corruption. However, corruption remains prevalent in many areas and constitutes a particularly serious problem. Anti-corruption legislation is not consistently implemented. Furthermore, the legal frameworks on prevention of conflict of interest and on financing of political parties and electoral campaigns have important deficiencies. Supervisory authorities lack the full legal powers and the capacity to ensure enforcement of the legislation on prevention of conflict of interest and on the control over the financing of political parties and election campaigns. There are also concerns regarding the supervision of public procurement, privatisation, spatial planning and construction permits. There is no consistent internal control to monitor corruption and ensure accountability and respect of rule of law within the state bodies. This applies in particular in areas such as tax administration and customs, the police and judiciary and local administration. Investigation capacities and law-enforcement co-ordination remain weak. Strong political will is needed to significantly improve performance in combating corruption. The track record of investigations, prosecutions and final convictions in corruption cases at all levels remains low.

In the area of the fight against organised crime, the legal framework developed by Montenegro is generally adequate and capacities have improved. However, organised crime remains a serious problem. Money laundering and drug-smuggling are key areas of concern. Law enforcement capacities and coordination are weak and implementation track records remain limited. Proactive investigative capacities remain inadequate. Threat assessment and the collection and processing of criminal intelligence are unsatisfactory. The prosecution's capacity to fully implement the new Criminal Procedure Code needs to be ensured. Further strengthening of cooperation at the international level is necessary, including with neighbouring countries.

Montenegro's legal and policy framework regulating **human rights and the respect for and protection of minorities** is largely in place and broadly corresponds to European and international standards. The institutional framework is largely adequate. However, there are gaps in implementation of the legislation and existing strategies and action plans. Increased awareness and sensitivity of the administration, police and the judiciary to standards in this field are needed.

Human rights are broadly respected in Montenegro. However there are concerns related to the effectiveness of anti-discrimination policies, freedom of expression and relations with the civil society. The anti-discrimination legal framework has been substantially improved. However, in practice, Roma, Ashkali and Egyptian, persons with disabilities and lesbian, gay, bisexual and transgendered (LGBT) persons are still subject to discrimination, including on the part of state authorities. The implementation mechanisms for preventing, monitoring, sanctioning and prosecuting discrimination cases need to be strengthened. The July 2010 Anti-discrimination law needs to be fully implemented. Gender equality is not fully ensured in practice. As regards freedom of media, intimidation of journalists and disproportionate fines for defamation are a matter of concern. Legislation and practice on defamation needs to be fully aligned with the jurisprudence of the European Court of Human Rights. The independence of media regulator needs to be preserved. As regards relations with civil society, the existing dialogue is not fully satisfactory. In some cases, the most critical NGOs have been exposed to political and administrative pressures. Domestic violence, ill-treatment and sub-standard prison conditions are also issues of concern.

The respect for and protection of minorities are broadly guaranteed. However, cooperation between the government and minority councils as well as the representation of persons belonging to minorities in public services, state authorities and local self-government bodies needs to be improved. The access of Roma, Ashkali and Egyptians to economic and social rights, in particular education and employment, is unsatisfactory. As regards displaced persons from Croatia, Bosnia and Herzegovina and Kosovo, estimated at around 17,000, the Law on foreigners of 2009 allows for their access to the status of resident. The reduction of administrative taxes in July 2010 has created better conditions for their access to this status. Montenegrin authorities have also adopted in July 2010 transitional measures allowing access of displaced persons to social and economic rights in the period prior to acquiring the status of a resident. However the action plan on displaced persons is poorly implemented on the ground. The number of persons who have been granted resident status remains low, notably due to the difficulties they face in providing all documents required. The laws guaranteeing access to economic and social rights need to be harmonised with the Law on foreigners. Living conditions in the Konik camp sheltering mainly displaced Roma, Ashkali and Egyptians from Kosovo are a matter of serious concern.

Montenegro broadly satisfies the **Stabilisation and Association Process** conditions. Cooperation with the International Criminal Tribunal for the former Yugoslavia is satisfactory. The country is strongly committed to regional cooperation and plays a constructive regional role. It participates actively in regional initiatives. Bilateral relations with all neighbours are generally good and developing further. Relations with Serbia, after the dissolution of the State Union, are generally good, however some pending issues remain. Delimitation of borders with neighbouring countries has not been finalised. Building on the political agreement achieved so far, Montenegro needs to finalise together with Croatia the joint submission to the International Court of Justice (ICJ) of the Prevlaka peninsula case. Montenegro is a party to the Rome Statute. However, the country ratified a bilateral immunity agreement with the United States regarding the International Criminal Court which is not in

line with the EU common positions and guiding principles. The country needs to align with the EU position.

## **2. ECONOMIC CRITERIA**

In 1993, the European Council in Copenhagen defined the following economic criteria for accession to the EU:

- the existence of a functioning market economy;
- the capacity to cope with competitive pressure and market forces within the Union;

These criteria are linked. A functioning market economy will better cope with competitive pressure and, in the context of membership of the Union, the market of reference is the internal market.

Following a brief overview of economic developments and policies in a historical perspective, the report goes on to consider the extent to which Montenegro fulfils the two economic criteria established by the Copenhagen European Council.

### **2.1. Economic Developments**

Montenegro is a very small economy, with a population of approximately 630,000 distributed over a mountainous territory of 13,812 square kilometres. The country has natural resources, mainly bauxite, coal and wood, but also significant hydrological potential, and a favourable climate for agriculture and tourism. The country has witnessed a profound transformation of its economic structure in the last decades, from a socialist republic of the former Yugoslavia, dependent on a few heavy industries to an open service based economy. Gross domestic product reached €3 billion in 2009, or 0.02% of EU-27's GDP. In purchasing power parity terms (PPP), GDP per capita amounted to €10,200 in 2009, or 43% of EU-27 average, up from 29% in 2000. Income disparities are significant between the more populated and richer south and the less developed north of the country.

#### *Macroeconomic background*

Montenegro, with a GDP per capita of roughly 75% of the national average, was one of the poorest republics of the former Socialist Federal Republic of Yugoslavia, and highly dependent on the traditional guaranteed Yugoslav market. In the 1990s, the country was hit by the loss of the internal Yugoslav market, and by several years of international embargo, which severely depressed the industrial sector. This resulted in a dramatic contraction of economic activity, hyperinflation and a banking system unable to perform its intermediation functions. The Deutsche-Mark became a *de facto* parallel currency. Illegal practices such as cigarettes and petrol smuggling, bypassing official channels for financial transaction, under-invoicing of exports, informal employment and the grey economy were tolerated and flourished.

In the Federal Republic of Yugoslavia (FRY), established together with Serbia in 1992, Montenegro acquired responsibility for its own monetary policy and customs, but shared with Serbia the federal budget and the currency. The recovery of the economy began only after 2000, when Montenegro started decoupling from Serbia politically and economically, notably in terms of public finance and currency. In 2000 the fiscal deficit was stabilised at over 8% of GDP and fully financed by an emergency post-conflict assistance from the IMF and the EU. It was further reduced in subsequent years, and turned into a significant surplus in 2006 and

2007. Prospects for external sustainability were also enhanced by the Paris Club decision in 2001 to redeem 66% of the FRY's debt. Until 2000, public sector accounts lacked transparency, with a proliferation of extra budgetary accounts with earmarked revenue, and accounting practices at odds with international standards. To remedy this, a set of tax laws was adopted to modernise the administration and the introduction of the VAT shifted the tax burden towards indirect taxation. Social contributions and the personal income tax rates were reduced. All fiscal revenues from customs and indirect taxes, as well as from privatisation were channelled to the state treasury, therefore improving tax collection management and enhancing fiscal transparency.

Since its establishment in 2000 the Central Bank of Montenegro (CBCG) engaged in the reform of the banking sector to reinforce the soundness of the banking system and adopted prudential regulations and supervision in line with international standards. In 2001 the Deutsche-Mark became the only legal tender in Montenegro, unilaterally replaced one year later by the euro (*see Chapter 17, Economic and monetary policy*). The constitution establishing the State Union of Serbia and Montenegro in February 2003 confirmed the existence of different monetary, exchange, customs and tax regimes for both republics.

Severe unemployment was a key problem during the conflict years in the 1990s when wages fell drastically and social programmes collapsed. Over time, labour market indicators improved, benefitting from both labour market reforms and stronger economic growth. The recorded unemployment rate which stood at 32.7% in 2000 decreased to 10.7% in 2008 before reaching 11.9% in mid-2010, as a result of the crisis. However, the activity rate has remained close to 50% over time.

After it had contracted in the 1990s, the economy gradually recovered after 2000, to peak in the period 2006-2008 when it grew on average 8.7% annually. The regained confidence in the banking system, high foreign direct investment inflows, increasing tourism and some key privatisations boosted this growth. However, the rapid expansion of the financial sector rendered Montenegro very vulnerable to the global financial crisis which started in October 2008. The most affected sectors were the metal industry, construction and financial intermediation. As a result, in 2009 GDP declined by 5.7%. The economy showed some signs of recovery in mid 2010, as the banking sector gradually stabilised, and the tourism industry remained resilient during the crisis.

### *Structural change*

Montenegro underwent rapid industrialisation in the 1970s, establishing an aluminium complex and the accompanying large infrastructure (railways, port and electric power plants). In the 1980s, the aluminium industry and related activities accounted for 50% of GDP and exports. After the 1990s, in parallel with the country's transition to a market economy, Montenegro underwent a significant reorientation towards a more service based economy. In the period 2000-2009, the share of industry in gross value added (GVA) declined by 29%, and currently represents some 13.6% of GVA, while construction, services and agriculture accounts for 6.5%, 70% and 10% of GVA respectively.

Price liberalisation, which started in the late 1980s, was largely achieved by 2001. The privatisation of socially-owned assets, launched in 1989, resumed 12 years later, when the government engaged in privatisation through a dual approach: on the one hand, a mass privatisation accomplished via vouchers distribution to citizens; on the other hand, the sale through international tenders of majority shares in 15 large companies. By 2006 some 86% of

total state capital had been privatised. Since then, the government has been slowly selling off the remaining state ownership.

A series of reforms were introduced to strengthen confidence and turn financial intermediation into an important contributor to economic growth. Driven by the completion of the privatisation process, the banking sector expanded very rapidly, and it is currently dominated by foreign capital (81%). Although it remains the most developed component of the financial sector, its structure is highly concentrated and capitalisation is low.

The contribution of domestic capital to growth has always been limited. Following the improvements of the business environment and liberalisation FDI became a major source of investment, averaging very strong levels of over 20% of GDP since 2005. Both road and rail transport infrastructure as well as electric transmission grid have been historically inadequate. Montenegro has started building power stations but the installed capacity is insufficient at present. In the past few years several educational and vocational training reforms were introduced with a view to align the supply side with market requirements. However the skills mismatch remains significant and in a number of low qualified labour intensive sectors the country continues to resort to foreign workers.

## **2.2. Assessment in terms of the Copenhagen Criteria**

### *2.2.1. The existence of a functioning market economy*

The existence of a functioning market economy requires that prices, as well as trade, are liberalised and that an enforceable legal system, including property rights, is in place. Macroeconomic stability and consensus about economic policy enhance the performance of a market economy. A well-developed financial sector and the absence of any significant barriers to market entry and exit improve the efficiency of the economy.

#### *Economic policy essentials*

Montenegro has achieved a broad domestic consensus in the country on the fundamentals of economic policy required by EU membership as well as a track record in the implementation of economic reforms. Since the early 2000s, the coalition government has remained cohesive and strongly focused on economic reforms and EU accession. The country has implemented substantial reforms which continued over time with no policy reversal. Montenegro takes an active part in the Commission fiscal surveillance and reporting arrangements applying to potential candidate countries since 2006. *Overall*, the authorities maintain reform momentum by efforts to establish a business friendly environment, in particular for attracting foreign investment.

#### *Macroeconomic stability*

Since independence, the economy has experienced very strong growth, averaging 8.7% between 2006 and 2008, boosted by strong inflows of FDI and very high credit growth which financed a robust increase in domestic demand. Services, notably tourism, financial intermediation and real estate, remained the main drivers of growth. Moreover, the annual share of investments (GFCF) remained high at 30.8% of GDP on average during these three years. On the demand side, the strong performance of private consumption, with retail sales expanding by 35% in real terms from 2006 to 2008, was supported by increasing household incomes due to rising real wages and bank credit, expanding annually on average by 21% and 105% respectively. However, in 2009 the global crisis affected severely the economy,

revealing vulnerabilities in the growth pattern. GDP declined by 5.7% driven by a sharp contraction in manufacturing and mining but also in investment and private consumption. Only net-exports and public consumption contributed positively to real GDP growth. In the first quarter of 2010, the economy continued to contract in real terms by an estimated 1.5%. After 18 consecutive months of decline, industrial production indices turned positive (8.7% year-on-year) in April 2010, mainly due to positive growth in the metal industry, which benefitted from the rise of commodity prices and the implementation of the restructuring programmes. The recovery of the industrial sector remains nevertheless fragile while demand is constrained by tight credit conditions. *Overall*, until 2008 the economy has witnessed several years of strong growth driven by domestic demand and foreign investment. However, the financial crisis had a significant impact on economic growth.

On the external side, the current account deficit raised mainly due to the merchandise trade gap. Exports have been highly concentrated on a few sectors, in particular metals and tourism. The level of merchandise exports has historically been very low, with a peak of some 30% of GDP in 2006, which decreased progressively towards 10% of GDP in 2009. In general, the level of value added and diversification of exports is low, with aluminium accounting for 50% of total exports of goods and steel for an additional 15%. However, the volume of service exports, in particular tourism, has been growing continuously, reaching some 23% of GDP in 2009. Unlike exports, imports surged (40% annual growth) since independence, as a result of the very strong increase in domestic demand. Subsequently the trade and the current account balances deteriorated strongly. The latter rose sharply, from a deficit of 8.5% of GDP in 2005 to a record high of 51% in 2008, to decline to 30% by the end of 2009 due to the adjustment brought by the crisis. In 2010, exports' growth improved while imports' contraction continued until June, resulting in a further improvement of the trade balance. The current account deficit reached 29% of GDP at the end of June 2010. The drop follows a reduction of 5% year-on-year of the trade deficit for goods which, however, still remains very high (45% of GDP). The balances of services and current transfers improved in the first half of 2010 by 8% and 40% year-on-year, while the income balance remained marginally positive. In the first six months of 2010 the current account deficit was practically financed by net FDI while Central Bank reserves increased by EUR 35 million. *Overall*, external imbalances and the dependence on external financing are still very high.

Net FDI inflows remained buoyant (22% of GDP annually on average) from 2006 until mid-2010. While they significantly contributed to the financing of the current account deficit, their concentration on the non-tradable sector, in particular real estate, the financial sector and tourism, also contributed to increase volatility in real estate prices. The crisis has led to a more sustainable allocation pattern in 2009, less dependent on investment into real estate, which accounted for 47% of total inflows in the period 2006-2008 and dropped to 16% in 2009. Meanwhile investments in domestic companies, notably for capitalisation of banks, privatisation of the electricity company, and for additional investments in telecommunications, increased from 36% in 2008 to 69% of 2009 total investments. *Overall*, while in recent years large FDI inflows and private lending financed the large external imbalances; the sustainability of these inflows is not ensured.

Like the overall economy, the labour market registered accelerated structural change in recent years. Employment in mining and heavy industry has been declining, reaching 14% in 2009, while employment in tourism and construction increased to 15% in 2009. Employment in the public sector represents some 25% of total employment, while employment in agriculture is rather low (6,5% of the labour force in 2009). Currently some 60% of the working age population actively participates in the labour market. Data on unemployment varies strongly,



with registered unemployment rates between 10-15% of the labour force, while Labour Force Survey (LFS) data points to unemployment rates close to 20%. In the pre-crisis period employment increased benefiting from strong economic growth and the positive effects of labour market reforms. Employment expanded by 4.8% annually, with a gradual shift from industry to services. The registered unemployment rate decreased from 14.7% in 2006 to 10.7% in 2008 but rose again to 11.4% end-2009. During the first three months of 2010 unemployment continued to rise to 12.4%, mainly due to the restructuring of the metal and mining sector. The employment rate of women increased from 27.6% in 2005 to 34.4% in 2009. However, according to the labour force surveys, their participation remained stable over time at some 40% of total labour force. In the same period, the unemployment rate of young people (15 to 24 years old) has dropped, from 58% in 2005 to 35.6% in 2009.

Informal employment, which according to estimates by the Employment Agency of Montenegro (EAM) had been around one third of total employment in 2003, declined during the years of strong growth, but appears to have increased again due to the crisis, to some 25% of the labour force in 2009. The persistence of this high level of informal employment suggests some structural rigidities. Furthermore, the reliance on temporary migrant workers for seasonal jobs in agriculture, construction and tourism and high vacancy rates for highly skilled jobs point to a significant mismatch between required and supplied skills. *Overall*, the labour market situation improved in recent years. However, the persistent structural unemployment and the high share of informal employment point to the existence of some structural rigidities.

Since 2002, Montenegro uses the euro as legal tender. This has contributed to anchor inflation expectations, but it prevents the use of a monetary and exchange rate policy as a macroeconomic policy tool to support the economy, especially in the context of an economic crisis. The use of euro led to low inflation rates (averaging 3.6% up to 2007). However, due to the size of the economy and its dependence on imports, inflation depends largely on international prices, particularly for energy and food. Therefore consumer prices increased sharply following the global surge in food and energy prices in 2008, reaching a peak of 11.4% in June. The economic crisis has had a pronounced disinflationary impact and the consumer price index dropped to 1.5% by the end of 2009, and recorded a modest cumulative increase of 0.5% in the first seven months of 2010.

Very rapid credit growth fuelled by low interest rates and strong competition for market shares in the banking sector led to a very rapid expansion of the money supply from 74% of GDP in 2006 to 112% in 2007. After increasing signs of overheating, the Central bank introduced restrictive measures in 2008 based on increased mandatory reserve requirements as well as the introduction of credit ceilings. These administrative limits to credit were removed by year end as the global financial crisis hit. Later in 2009, as the crisis unfolded the central bank was able to smoothen its impact by relaxing reserve requirements on banks. *Overall*, while risks to price stability appear to be low, there are constraints on the monetary policy due to the country's unilateral adoption of the Euro.

Since autumn 2008 the central bank has been very active trying to preserve the stability of the country's financial system. The government and the central bank adopted a set of measures to preserve the stability of the banking system, consisting in a full guarantee for bank deposits and the possibility of government credit support for eventual liquidity shortfalls of troubled banks. The relatively young banking sector which had undergone a very fast process of financial deepening has been a main channel of transmission of the global crisis. In October 2008, the significant fall of the Hungarian OTP Bank shares led to a bank run on its domestic

subsidiary CKB, the largest bank with a deposits market share of 41%. Meanwhile, the second largest bank, Prva Banka CG, delayed payments to its depositors due to liquidity problems resulting from very poor asset quality and large exposure to the falling real estate market. By December 2009, bank deposits contracted further by 8.3% year-on-year and credits by 14.3%, while non-performing loans (NPL) surged from 4.6% end of 2008 to 10.3%. Banks reduced their exposure to credit risk to improve their balance sheets. After 16 months of continuous contraction, deposits growth turned positive in March 2010. However, banks credit activity took some additional time to recover, registering negative growth until July (-11.4% year-on-year). *Overall*, while banks are progressively re-establishing their deposits base, credit activity remains highly constrained.

Public sector revenues and expenditures accounted for some 45% of GDP on average during the last five years. During the economic boom and following reforms to broaden the fiscal base revenues had been increasing. However, public expenditures were also increased, in particular current ones on public administration wages and pensions which increased by 40% during 2006-2008, weakening the long-term sustainability of public finances. As a result, public spending jumped from 42.7% of GDP in 2006 to 50% of GDP in 2008. In 2009, the authorities tried to adjust to the sharp decline of revenues by consolidating spending: net wages of state administration were reduced by 7%, maintenance expenditures by two thirds, and expenditures of goods and services by almost 10%. Capital spending was also used as a buffer, through the reduction of planned works by more than half. These efforts resulted in a consolidated budget deficit of 3.5% of GDP in 2009, financed by foreign borrowing as well as receipts from privatisation. In the first half of 2010, the general government budget execution posted a deficit of 0.4% of GDP as a result of the restrictive fiscal policy that reduced expenditures by 6.3% year on year. *Overall*, fiscal policy has been pro-cyclical in recent years, exacerbating the overheating of the economy in the boom period and the economic downturn when the crisis hit the economy.

In the pre-crisis period public debt declined from 38.6% of GDP in 2005 down to 27.5% of GDP in 2007, notwithstanding previous debt redemption in 2001. The share of external debt remained stable at 70% of the total public debt. As from 2008 the public debt has been rising again, and reached almost 37% of GDP by the end of 2009. Domestic public debt increased faster than foreign public debt as the state assumed liabilities from restitution, pension arrears and restructured public companies. Simultaneously, foreign debt, mostly financed by international financial institutions, has been growing too, to cover infrastructure needs, the restructuring of troubled industries and the financing of the budget. The share of foreign debt represents currently around 60% of total public debt. Public debt fell slightly to 35.8% of GDP during the first half of 2010, rising to close to 40% in early September as the government placed successfully a €200 million Eurobond issue. Part of these funds will be used for the repayment of existing obligations as well as for increasing reserves. *Overall*, while still at a relatively moderate level, the public debt remains exposed to potential contingent liabilities including those deriving from state guaranteed loans.

The global financial crisis has challenged the foundations and sustainability of the recent years' growth model based on only a few cyclical sectors, rapid credit growth and high capital inflows to finance growth. The macroeconomic policy mix strongly relies on fiscal policy. It was used with some success until 2006 as a sizeable fiscal consolidation took place. However, public expenditures considerably increased in 2007-2008, exacerbating the economic overheating. As a result, when the crisis hit Montenegro in late 2008, margins of manoeuvre had been exhausted and the country had to engage in pro-cyclical budget cuts throughout 2009 and state guaranteed loans. Central bank interventions –even though limited to reserve

requirements- contributed to curb down credit growth in the boom period and to dampen the effects of the crisis. The importance of structural reforms has increased with the crisis, leading to the reinforcement of the central bank's supervisory role and industry restructuring to increase competitiveness. *Overall*, given severe limitations on the monetary policy side and the limited fiscal space, the onus of economic adjustment lies to a large extent on structural reforms.

### *Interplay of market forces*

Most price categories had been liberalized by the early 2000s. Since 2005, the Energy Regulatory Agency (ERA) sets electricity prices in relation to production cost thresholds. Only a small number of products are currently subject to administrative price control, including medicines and postal services, while local authorities may control the prices of certain utility services. The consumption of these regulated products (electricity, pharmaceutical products, water supply, sewerage and refuse collection) currently represents about 9% of total spending for an average household. *Overall*, the state influence on price dynamics is limited to some utility services.

By 2006, around 86% of originally state owned property had been privatised. The privatisation process is currently in its final stage. Key sectors like banking, insurance, and telecommunications have been fully privatised. A large majority (73%) of joint-stock companies are completely private. An additional 17% have more than half of private capital, and the remaining 10% have state ownership above 50%. Further progress has been recorded with the partial privatisation (44%) of the electricity company EPCG in 2009. The state still has majority shareholding notably in large networking industries: the local electric power company, the railways, ports, the shipyard, Montenegro Airlines, and the airports. *Overall*, the privatisation process is fairly advanced and state ownership has been reduced to some 14% of total assets.

### *Market entry and exit*

Since 2006, the process of business registration has been improved, reducing the number of procedures from 15 on average in 2006 to 12 in 2009, while the duration declined from 24 to currently 13 days. This might have facilitated the increase in new business registrations, which rose by 26% between 2006 and 2009. However, the time and cost to obtain a license for business operation remains the major constraint. Furthermore, differences in requirements and costs across municipalities create additional distortions. In 2008, the Council for the elimination of business barriers was established, becoming one year later the Council for regulatory reform and improvement of the business environment. One of the major outcomes was the adoption by the parliament in July 2010 of the Law on Improvement of the Business Environment, removing the requirement of annual renewal of companies in the business register, as well as cutting deadlines and fees for several administrative procedures. *Overall*, despite recent progress, business licensing procedures are still lengthy, delaying market entry of new companies.

The weak quality of domestic banks credit portfolio and, lately, the scarcity of foreign financing, have a significant impact on the risk premium and henceforth on persistently high interest rates close to two digits. The high cost of finance remains a major obstacle for setting up and developing companies. *Overall*, businesses are confronted with scarce and expensive financing.

At the time of the adoption of the Bankruptcy Law in 2002, bankruptcy procedures lasted more than one year. To improve the situation, a new law facilitating implementation and amending the Law on Company Insolvency was adopted in 2007. The new legislation helped to reduce the backlog of lawsuit and execution cases. Procedures have been reduced to six months on average, although for the most complex cases it may take up to one year. A total of 2,314 companies were liquidated in 2008 and 2,259 in 2009. *Overall*, market exit procedures have been streamlined and accelerated.

### *Legal system*

The lack of reliable land property ownership was a significant problem for investors in the past. Since 2007, new regulations have been introduced and implemented resulting in the average time required to register a property diminished to 21 days. Additional reforms in 2009 re-defined and clarified concession rights on public properties and resources. The Property Relations Law, and more recently, the entry into force of the Stabilisation and Association Agreement, provides the same treatment to EU citizens as to nationals for acquiring real estate. *Overall*, the registration of property is well advanced.

The two Commercial Courts are the main institutions for contract enforcement. The situation has gradually improved in recent years. In 2008 and 2009, the courts registered some 1000 new cases annually, with a backlog of some 800 cases from previous years. In the meantime the backlog is slowly being reduced. The average length of procedures has declined from 6 months in 2008 to 5 months in 2009. At present, 90% of cases are being resolved within three months. The regulatory framework also improved with the establishment of a mediation centre to facilitate simple resolution of commercial disputes. The Agency for Amicable Labour Dispute Resolution, established in 2010, should enable workers to solve their collective or individual disputes without litigation. Efforts to fight corruption are dispersed as several institutions are engaged in this task at different levels. Furthermore, capacity for financial investigation is still insufficient; especially for using it as a means to fight corruption and organised crime (*see Chapter 23: Judiciary and fundamental rights*). Persisting weaknesses in law enforcement fuel the informal sector. *Overall*, recourse to the judicial system has increased progressively in recent years, as administrative capacity gradually improved. Weaknesses in the rule of law and prevalent corruption continue to negatively affect the business environment.

### *Financial sector development*

The small size of the market has not been an obstacle for the rapid development of a banking industry that became one of the main contributors to growth. Asset expansion has been very rapid. The ratio of banking sector assets to GDP rose from 56% in 2005 to 131% of GDP in 2007. Though the global financial crisis led to a significant decrease, they still represented 95.7% of GDP at the end of June 2010. The structure of assets is dominated by loans (78%), of which the corporate sector subscribed 55%, households 38%, the public sector 2.4%, and financial institutions the rest. Following the reform of the banking sector in 2005, credit soared by 105% on average from 2006 until 2008, but contracted by 14% in 2009 due to the impact of the global crisis. However, lending average real effective interest rates have remained steady at around 9.5% in the whole period (2006-June 2009). Operations with derivatives were introduced in 2009, although they remain marginal (€1.2 million in 2009).

The banking sector in Montenegro is dominated by foreign capital (81.3%), while domestic private capital accounts for 16% and state ownership 2.6%. The sector remains highly

concentrated with four banks accounting for some 75% of assets, of loans and of total deposits. Montenegrin banks have historically been amongst the less capitalised ones in the region. Since 2003, when banks' capital amounted on average to 25% of total assets, the ratio deteriorated along with the surge of credit, reaching 8% in 2007, to slowly recover to 10.4% in mid-2010. *Overall*, the banking system has recorded a very rapid expansion driven by a low initial base and the entry of several major regional players. The sector remains highly concentrated.

The global crisis led to a sharp deterioration in the banking sector starting with a massive deposit withdrawal in late 2008. The authorities reacted quickly through measures aimed at bolstering confidence which, together with the liquidity provided by foreign parent banks, led to stabilisation during 2009. The government provided liquidity through a loan to the domestic ailing bank Prva Banka CG, while nine other banks did recourse to foreign parent banks support. Four banks out of eleven recorded a combined loss of €33.7 million by end 2009. Prudential indicators further deteriorated throughout the crisis. During the fast expansion of loans in the period 2006-2008, the loan portfolio of banks had already deteriorated rapidly and the share of non-performing loans (NPL) remained at 6.7% of total loans on average. By June 2009 the level of NPLs doubled, reaching 14.8%. Following, the deterioration of assets quality due to the high level of NPLs and consequent provisioning, banks return on assets (ROA) dropped from a level of 1% in 2006 down to negative values up to mid-2010 (-3.5%), and return on equity (ROE) dropped more dramatically from levels above 6% in 2006 and 2007 to strong negative values until June 2010 (-34%). The results of the quarterly stress tests of the banking system performed by the CBCG during 2009 and 2010 confirmed the importance of credit and liquidity risks, especially for one large bank, and the need for capital injections. *Overall*, the economic downturn has revealed vulnerabilities and the need for adequate recapitalisation. Moreover, the full magnitude of the impact of the global crisis on the financial sector remains uncertain.

The parliament adopted in July 2010 a legislative package with a view to reinforce the stability of the financial sector and the intervention capacities of the central bank. Several laws were amended: the Central Bank Law; the Law on Banks, now introducing conditions for acquiring qualified participation and for corporate management, and including the possibility for interim administration of a troubled bank; the Law on Bank Bankruptcy and Liquidation, defining the role of interim administration, the protection of the bankruptcy administrators, and including the possibility for the Central Bank to decide to sell the assets of a troubled bank. The new Deposit protection law establishes (progressively) banks deposit guarantees at €50,000 per depositor. *Overall*, the authorities have strengthened the legislative framework to address deficiencies in the financial sector, improving supervision and stability.

Stock exchange market capitalisation reached 272% of GDP in 2007, followed by a significant deterioration in 2008 to 110% of GDP. The stock exchanges showed some signs of improvement in the course of 2009, with market capitalisation rising to 162% of GDP to decrease again in 2010 to 142% of GDP at the end of July. The merger of the two stock exchange companies was approved in August 2010 with the consent of the securities commission. Despite its dynamic development, the role of the capital markets to finance domestic companies remains limited.

The insurance market has gradually expanded, though from a low base, accounting for only 3% of GDP by end-2008. Though there are 11 companies active in the sector in 2010, concentration is very high, with one company holding a 60% market share. The sector is dominated by car insurance, while the life segment, though developing fast from a very low

base, accounts for some 12% of total premiums. The insurance law adopted in 2006 has established a supervisory agency independent from the Central Bank. The Law on Receivership and Liquidation of Insurance Companies in 2007 completed the legal framework, defining the terms and procedure of receivership, voluntary and judicial liquidation of insurance companies and the rights and liabilities of parties.

The adoption of the Law on Financial Leasing in 2005 enabled the fast development of this sector. However, in 2009 the market was severely hit by the crisis, and contracted strongly to 1.1% of GDP compared with 5.5% a year earlier. *Overall*, non-banking financial institutions play a limited role as a source of private sector financing.

### *2.2.2. The capacity to cope with competitive pressure and market forces within the Union*

The ability to fulfil this criterion depends on the existence of a market economy and a stable macroeconomic framework, allowing economic agents to take decisions in a climate of predictability. It also requires a sufficient amount of human and physical assets. Enterprises need to invest to improve their efficiency and innovate to adjust to a globalised and highly competitive external environment. Overall, the more an economy is integrated with the Union before accession, the better will it be able to take on the obligations of membership.

#### *Existence of a functioning market economy*

Montenegro is a small and very open economy with a private sector which currently accounts for some 84% of total shareholding. Prices, foreign exchange and trade regimes are liberalised. Given severe limitations on the monetary policy, the policy mix strongly relies on fiscal policy. However, due to an expansionary stance in the two previous years, margins for manoeuvre were severely constrained when the crisis hit Montenegro in October 2008. Furthermore, large external imbalances built up without being vigorously addressed, and combined with the credit and real estate boom exposed the country as the crisis unfolded. A number of important challenges still lie ahead, such as safeguarding financial sector stability and improving administrative capacities, crowding-in new private sector activities and increasing productivity, in order to improve the sustainability of economic growth, competitiveness and public finances. Overall, Montenegro has achieved a degree of macroeconomic stability allowing economic operators to make decisions in a climate of predictability. However, macroeconomic imbalances have exacerbated the country's exposure to the global economic and financial crisis. To become a functioning market economy Montenegro needs to address these imbalances, as well as existing weaknesses, notably in the financial sector and the functioning of labour markets.

#### *Human and physical capital*

As regards *human capital*, enrolment in education in both primary and secondary schools is relatively high, reaching 89% of the 5-14 years old group and 69% of the 15-19 years old respectively. It has increased over time. The number of university students has been rising even faster, reaching 3.6% of the total population. Overall, public spending on education has remained rather stable at 4.5% of GDP on average since 2006. Yet, improving quality assurance mechanisms and overall strategic approach to education that is connected to labour market needs remain the main challenges (*see Chapter 26: Education and Culture*). Regarding the development of a knowledge based economy, the latest available data indicates that gross domestic expenditures on R&D in Montenegro represented 0.1% of GDP in 2008.

Structural unemployment requires further reform of the education system notably vocational education (VET), and further training of the workforce in line with labour market needs. The proportion of published job vacancies unfilled is rather high (63% in 2009), which points to skill mismatches, but also a persistent lack of mobility, as most of the offers concern works in the coast and central areas. Current unemployment data point to weaknesses in vocational education. A 66% share of those registered as unemployed at the Employment Agency had vocational education, while their share represents only 20% in total employment. Several educational reforms are trying to align labour supply with market demand. A Law on National Vocational Qualifications with a new and wider system of qualifications was approved in 2008. Yet, the VET system continues to face serious problems in delivering high-quality education. The employment agency aims at smoothing the transition from education to work through cooperation with academic institutions, professional guidance, and programmes such as those for young managers having already graduated. Together with the Directorate for Small and Medium-sized Enterprises (SMEDA), it promotes self-employment and vocational training along with a strategy for life-long entrepreneurial learning. It is estimated, that these measures resulted in some 4,000 new employments since September 2009 until June 2010. *Overall*, qualifications and skills mismatch remain important issues.

With reference to *physical capital*, in view of the large savings and investments gap as measured by the current account deficit, the contribution of domestic capital accumulation to growth has been limited. Efforts have thus been focused on improving the investment environment so as to attract FDI which so far remained the major source of investment. The sectors benefiting the most from FDI have been telecommunications, real estate and tourism, followed by financial intermediation, and more recently energy. Gross fixed capital formation (GFCF) has been increasing steadily, reaching 38% of GDP in 2008 but decreased to 26.7% of GDP in 2009. During this period construction accounted for some 24% of capital formation. Hotels, retail trade, transport and communications were responsible for some 20% each of GFCF while manufacturing accounted for around 8%. Public capital spending declined to 3.4% of GDP in 2009 from 8.1% in 2008. *Overall*, while the level of investment has remained high, its contribution to the expansion of the production capacity has remained limited, as a significant share of foreign and domestic investment was directed to the non-tradable sector.

The electricity production and transmission system is underdeveloped and results in power cuts notably during the winter season. The average price of electricity, though 60% lower than in the EU, remains higher than in most neighbouring countries. To address these shortcomings, but also with a view to becoming in the medium-term a net exporter of energy, several projects have been launched recently to build new diversified capacities (hydropower, thermal, windmills) although they will take a few years before completion. Meanwhile the electric company is engaged in a series of activities to reduce transmission losses and to improve distribution efficiency. *Overall*, physical infrastructure remains insufficient to cover domestic energy needs and the country relies on energy imports to satisfy domestic needs.

Transport infrastructure has been historically inadequate and hinders the efficient transport of goods and passengers. The railway company is investing to upgrade the infrastructure after several years of neglect. *Overall*, the transport infrastructure suffers from years of insufficient investment and a difficult topography.

All fixed telephone lines are digitalised. There were three mobile phone operators with a total market penetration just above 200% in 2009 and a fourth mobile operator license has been attributed in early 2010. However, the country only has 25,800 broadband internet subscribers

(or 4% of total population) and internet use by companies is not yet widespread. *Overall*, telecommunications are already fairly developed, but some segments of the market such as broadband are at an early stage of development.

### *Sector and enterprise structure*

The contribution of the different sectors to output has evolved over the last decade. Agriculture represented 12.5% of total gross value added (GVA) in 2000, and despite a sharp reduction of employment over time, still retained 10% in 2009 which points to increased productivity of this sector. Major declines during this period were recorded in activities closely related with metallurgy: mining (from 2.9% down to 0.8% of GVA) and manufacturing (from 10.2% down to 5.9% of GVA). Construction, by contrast, increased its share in GVA from 4.3% in 2000 up to 6.5% in 2009. The share of wholesale and retail has remained stable, but it is still the highest in the economy (14.7% of GVA on average during 2000-2009). Transport accounted for 11.5% of GVA in 2009; financial intermediation for 4.2% on average between 2000 and 2009 and hotels and restaurants increased their share in GVA from 2.8% in 2000 up to 6.2% by 2009. The informal sector, fuelled by weaknesses in tax and expenditure policies, as well as in law enforcement, including the fight against corruption and organised crime, remains large. It reduces the tax base and the efficiency of economic policies. *Overall*, the economic structure shifted markedly towards services over the last decade. The informal sector is an important challenge.

The industrial sector has been historically dominated by the metal industry, with aluminium and steel production together with their associated industries and services (mining, railways, harbour, and energy) accounting for 48.6% of GDP in 2002. Eight years later, the contribution of metals to the national economy has decreased significantly. Before the crisis, aluminium gross output represented less than 15% of GDP and steel 2.7% though their shares in total exports remain significant (39% and 11%). The drop in international metal prices has further endangered the viability of the aluminium and steel industries. The Niksic steelworks (ZNK) managed a reconversion with state support, mostly in form of bank guarantees and energy subsidies. However, the more distressed aluminium smelter (KAP) went through a partial re-nationalisation, with the state taking back 30% of the company's shares in exchange of a rescue package, including loan guarantees and an ambitious restructuring plan to halve production costs. Other economic sectors, notably tourism have developed more dynamically, contributing from less than 10% of GDP in 2000 to 16% of GDP in 2009. *Overall*, the relevance of Montenegro's heavy metal industry for the economy is declining as it suffers from deterioration in competitiveness, requiring large scale restructuring.

In the energy sector the restructuring of the power company (EPCG) was launched in 2008. After the separation of the transmission unit from EPCG in 2009, tariffs for the use of the network were established and secondary legislation adopted in the context of the SEE Energy Treaty, formally meeting all necessary preconditions for the development of a competitive electricity market.

In the transport sector, while restructuring is quite advanced, privatisation results are mixed. The railway transportation company separated its passenger unit from the freight unit Montecargo and offered for sale the latter in 2010 to an international railways cargo operator. The tender for the sale of the port of Bar container and general cargo operator failed. In both cases, the railways and the port, the government keeps the ownership of the infrastructure. So far, the national air carrier, Montenegro Airlines, has implemented the first stage of its



foreseen restructuring by being transformed into a shareholder company. *Overall*, a large restructuring of strategic enterprises and sectors is underway.

The share of small and medium-sized enterprises (SMEs) in the economy has constantly increased over the recent years. However, SMEs remain largely focused on the domestic market and only around 15% of them export outside the former Yugoslav territory. Having benefited from the buoyant credit activity of banks until 2008, they are now faced with diminishing demand, increasing payment arrears, and stricter bank loans conditions due to the crisis. In 2009, the SME sector represented some 60% of GDP and employed 67% of the total workforce. SMEs face a number of persistent obstacles, such as delays and costs for obtaining municipal permits or the absence of spatial planning documents in some municipalities. *Overall*, SMEs have increased their weight in the economy but there is still ample scope for development.

#### *State influence on competitiveness*

The weight of subsidies in the consolidated budget has been historically low, accounting for less than 1% of GDP on average since 2003, very often related to privatisation clauses in view of restructuring the metal industries. During the crisis in 2009 and 2010, support to distressed companies mostly took the form of state guarantees (4.7% of GDP on foreign sources of financing and additional 1.8% of GDP to domestic ones), raising subsequent contingent liabilities for the public finances that may materialise later on. Electricity price cross-subsidisation amongst different class of users is being reduced and replaced with direct budget subsidies with the intention to avoid market distortions amongst consumers. An Administration for Protection of Competition and a State Aid Commission were established in 2008 (*see Chapter 8: Competition*). *Overall*, direct state aid has been limited but large state support interventions recently took place in the form of state guarantees for bank loans to distressed companies.

#### *Economic integration and convergence with the EU*

Montenegro remains a very open economy, with total trade (defined as the sum of imports and exports of commodities) close to 100% of GDP until 2008. However, 2009 witnessed a significant decline of trade, reducing the ratio of openness to 64% of GDP, as the most important trading partners (the EU and CEFTA), were also affected by the financial crisis. Exports to the EU contracted from 65% of total exports in 2008 to 48% in 2009, while exports to CEFTA increased from 33% in 2008 to 46% in 2009. However, the share of imports from the EU (40% of total imports in 2009) remained unchanged compared with 2008, while imports from CEFTA countries declined to 45% in 2009 from 50% a year earlier. During the first six months of 2010, exports to neighbouring markets witnessed a noticeable recovery, while exports to the EU as well as imports from CEFTA and EU markets still remained negative. However, the level of EU investment has remained high, reaching in 2009 almost 80% of total FDI. Relatively high inflation and wage growth after 2007 led to an appreciation of the real effective exchange rate (by 1.5% in 2008 and 5% in 2009), which, together with lack of adequate infrastructures, hampers Montenegro's international competitiveness. *Overall*, in recent years Montenegro suffered from deterioration in international competitiveness. Yet, the level of investment integration with the EU remains high.

### 2.3. General evaluation

The present assessment is made on the basis of the Copenhagen criteria related to the existence of a **functioning market economy**, as well as the capacity to cope with **competitive pressure** and market forces within the Union.

Montenegro achieved a broad domestic consensus on the fundamentals of economic policy as well as a track record in the implementation of economic reforms. Economic stability reached a degree considered sufficient to allow economic operators to make decisions in a climate of predictability. This has resulted in high growth rates which were on average above 5% in the years preceding the economic crisis. Budget deficit and public debt have been kept at moderate levels. Unemployment has been reduced to below 12% in 2009 and labour legislation modernised. The free interplay of market forces has been developing in the last decade through privatisations and the abolition of controls on prices, foreign exchange and trade regimes. Foreign investments were attracted by the improved business environment. The restructuring process of strategic enterprises and sectors is underway. State aid has been historically low, often related to privatisation clauses or supporting distressed companies. The Montenegrin economy remains very open and the level of trade and investment integration with the EU and the Western Balkan region is high.

However, after years of strong capital inflows supporting rapid economic growth, the global crisis unveiled significant internal and external imbalances exposing the country and threatening macroeconomic stability. The crisis also revealed vulnerabilities in the regulation and supervision of the banking sector, calling for critical recapitalisation of banks. In absence of fiscal space, the government could mainly react by providing guarantees to firms in difficulties, which threaten to materialise in the growing public debt. Persisting unemployment, and informal employment, point to weaknesses in the education and vocational training systems as well as to some labour market rigidities. The country has a still insufficient energy and transport infrastructure. Small businesses in particular are confronted with scarce and expensive financing. Persisting weaknesses in the rule of law negatively affect the business environment. The informal sector remains an important challenge.

### 3. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

The European Council in Copenhagen in June 1993 included among the criteria for accession “the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union”.

In applying for membership on the basis of the Treaty, Montenegro has accepted without reserve the basic aims of the Union, including its policies and instruments.

This part of the analytical report analyses Montenegro's ability to assume the detailed obligations of membership — that is, the *acquis*, as expressed in the Treaties, the secondary legislation and the policies of the Union. This section follows the structure of the 33 negotiating chapters into which the *acquis* has been divided for the purpose of conducting accession negotiations. Each chapter examines the current situation and prospects in Montenegro.

As the Union has developed, the *acquis* has become progressively more onerous and presents a greater challenge for future accessions than was the case in the past. The ability of

Montenegro to implement the *acquis* will be central to its capacity to function successfully within the Union.

In this respect, alignment with the *acquis* is a necessary but not sufficient condition to meet the obligations of EU membership. Montenegro must also take all necessary measures to create the necessary implementing structures, to bring its administrative capacities to the required level and to ensure effective enforcement. An analysis and assessment of the country's administrative capacities is therefore included in each of the chapters below.

For the purpose of this analytical report, and without prejudging any future date of accession, the medium-term perspective in the assessments has been defined as a period of five years.

### 3.1. Chapter 1: Free movement of goods

The principle of free movement of goods means that products must be traded freely from one part of the Union to another. In a number of sectors this general principle is supplemented by a harmonised regulatory framework, following either the 'Old Approach' (laying down precise product specifications) or the 'New Approach' (setting general product requirements). Transposition of harmonised European product legislation accounts for the bulk of the obligations under this chapter. Smooth implementation and proper enforcement of the *acquis* requires sufficient administrative capacity to notify restrictions on trade and to apply horizontal and procedural measures in areas such as standardisation, conformity assessment, accreditation, metrology and market surveillance.

The *Stabilisation and Association Agreement* creates a number of obligations in the field of free movement of goods, such as establishment of a free trade area. It also provides for gradual alignment to EU technical regulations and standards as well as metrology, accreditation and conformity assessment procedures.

Regarding **general principles**, Montenegro needs to ensure that its legislation, including distinctly as well as indistinctly applicable measures, is compatible with Articles 34–36 of the Treaty on the Functioning of the European Union and related case law of the European Court of Justice (with special emphasis on the principle of mutual recognition).

In the area of **horizontal measures**, Montenegro adopted new legislation on standardisation, accreditation and metrology in 2008 and 2009. Gradual harmonisation with the principles of the *New and Global Approach* has also been sought by adopting a new Law on technical requirements for products and conformity assessment in 2008. This law will need further revision to fully comply with the general principles of the New Approach and with the horizontal *acquis* of 2008.

In the area of *standardisation*, the Institute for Standardisation of Montenegro (ISME) was established in April 2007 and the present framework law has been in force since 2008. ISME is currently an affiliate member of the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC), and it is planning to become a member of the European Telecommunications Standards Institute (ETSI) during 2010. ISME is also active in international standardisation organisations. However, it is estimated that full membership of the three European Standards Organisations (ESOs), representing a precondition for EU accession, will take approximately five years. ISME's current staffing level is 18 out of the 32 planned employees, mainly due to lack of qualified applicants and inadequate office space. There are only limited financial resources for ISME's further development and the transposition of European standards into national ones. There are

currently 4,150 Montenegrin standards transposing European (EN) and international standards. Regulations have been introduced that provide for the withdrawal of old, and often compulsory, Yugoslav standards. Furthermore, ISME has recently established its first own database for newly adopted Montenegrin standards and related documents. However, some old laws still make normative reference to the old standards.

As regards *conformity assessment*, the Montenegrin framework law on technical requirements for products and conformity assessment and some implementing legislation has been established but it will need to be revised to take on board the latest horizontal *acquis*. So far ten conformity assessment bodies have been accredited. In line with Regulation (EC) 765/2008, accreditation remains voluntary in principle. There still exists a network of laboratories, certification and inspection bodies which were authorised to carry out conformity assessment activities in accordance with the old legal framework that prevailed before Montenegro's independence. In future these will be designated and accredited in accordance with the new Montenegrin horizontal legislation and the relevant international and European standards.

The present law setting the requirements for *accreditation* was adopted in 2009. The Accreditation Body of Montenegro (ATCG) which was set up in 2007 is a public, non-profit accreditation body with a full-time staff of 6. The Montenegrin accreditation policy principles are broadly in line with those of the EU, notably the public not-for-profit basis of accreditation and its professional and financial independence from possible clients. The ATCG signed a contract for co-operation with the European co-operation for Accreditation (EA) in 2008.

Pursuant to the Law on metrology of 2008, the Bureau of Metrology (BoM) is in charge of legal and scientific *metrology*. Since its establishment in 2006 under the Ministry for Economic Development, the BoM has been faced with a lack of adequate space and equipment for the metrology laboratories. The broken traceability chain has now been re-established for mass standards. The Bureau will seek at first to be accredited by a foreign accreditation body and, when possible, by the Montenegrin accreditation body.

As regards *market surveillance*, the Montenegrin system is based on a set of laws and secondary legislation, including the Law on inspection control of 2003, the Law on general product safety of 2008, the Law on technical requirements for products and conformity assessment of 2008 as well as product-specific laws and technical regulations. However, the system lacks coordination and additional measures are needed for further alignment with the *acquis*. The comprehensive market surveillance structure required by Regulation (EC) No 765/2008 still needs further development and existing inconsistencies with the *acquis* need to be repealed.

Montenegro has not yet aligned its legislation with the vast majority of the sector-specific EU legislation. In areas covered by the **Old Approach product legislation**, major discrepancies with the *acquis* remain to be addressed. Legislation regarding motor vehicles, emissions of pollutants from non-road mobile engines, chemicals, including REACH, medicinal products for human use, medicinal products for veterinary use, cosmetics, pre-packaging, textiles, footwear, aerosol dispensers and crystal glass will need to be aligned with the *acquis*.

As regards **New and Global Approach product legislation**, Montenegro has not yet aligned its legislation with the vast majority of directives. At this stage it has adopted legislation aimed at alignment only in the field of recreational craft, non-automatic weighing instruments

and eco-design requirements for energy-related products. Legislation has not been aligned with the *acquis* on low-voltage equipment, electromagnetic compatibility, toys, machinery, noise emissions from outdoor equipment, lifts, personal protective equipment, equipment and protective systems intended for use in potentially explosive atmospheres, medical devices, gas appliances, pressure equipment, simple pressure vessels, cableway installations, construction products, radio and telecommunications terminal equipment and measuring instruments.

Regarding **procedural measures**, Montenegro has not yet aligned its legislation with Directive 98/34, as amended by Directive 98/48, on provision of information in the field of technical standards and regulations. As regards *external border checks*, the Montenegrin legislation does not yet incorporate all the requirements of the EU *acquis* on control of products coming from third countries. The Law on weapons adopted in January 2004 and amended in 2008 aims to harmonise national legislation with the *acquis* on civil *firearms*. The Montenegrin Law on foreign trade in arms, military equipment and dual use goods of 2008 is a sound basis for implementing the relevant directive on intra-EU transfer of defence-related products. As regards the return of *cultural objects* unlawfully removed from the territory of EU Member States, Montenegro has not aligned its legislation with the relevant *acquis*.

### *Conclusion*

Although Montenegro has taken initial steps to bring its national legislation into line with the principle of free movement of goods, most elements of the EU *acquis* are not yet in place.

In particular horizontal and procedural measures and Old and New Approach product legislation still need to be harmonised with EU legislation. The framework legislation on technical regulations for products and conformity assessment procedures needs alignment with the *acquis*. The basic separation of standardisation, accreditation and metrology functions has been established, but further implementing measures are necessary. Administrative capacities must be reinforced in relevant ministries and technical organisations, and proper coordination of measures relating to free movement of goods is needed at governmental level. Major efforts towards alignment with the *acquis* will be necessary.

*Overall*, in the field of free movement of goods, Montenegro will need to enhance preparations and to make considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term. Chapter 2: Freedom of movement for workers

## **3.2. Chapter 2: Freedom of movement for workers**

The *acquis* under this chapter provides that EU citizens of one Member State have the right to work in another EU Member State, to reside there for that purpose with their family and to be treated in the same way as national workers in terms of working conditions and social and tax advantages. Furthermore, the *acquis* includes the EU instruments on coordination of different national social security systems.

The *Stabilisation and Association Agreement* provides that subject to specific conditions and modalities applicable, Montenegro and EU Member States ensure that their nationals who are legally employed on the territory of a partner country are free from any discrimination based on nationality as regards working conditions, remuneration or dismissal. Montenegrin legislation prohibits discrimination of employed persons and persons seeking employment on grounds of, inter alia, nationality.

As regards **access to the labour market**, Montenegrin legislation requires EU citizens to obtain a work permit. The Law on employment and work of foreigners does not distinguish between EU nationals and nationals of third countries in this respect. In addition to the work permit, a permanent or temporary residence permit and a valid labour contract are required before a foreigner can access the Montenegrin labour market. The government of Montenegro establishes annual work permit quotas for foreign citizens, based on a proposal from the Ministry of Labour and Social Welfare, following consultation of other ministries concerned and the Social Council.

By the time of Montenegro's accession to the EU, national law will have to ensure that EU citizens will be able to look for and take up work in Montenegro without any restriction and without being subject to a work permit scheme. The law will also have to ensure that EU nationals who have made use of their right to take up employment have the right to reside in the country. In addition, Montenegrin law will have to secure the right of family members to reside in the country, and to take up employment and self-employment. Children of EU workers will also have to be admitted to education institutions under the same conditions as Montenegrin nationals.

As regards employment in the public sector, Montenegrin legislation will have to take into account the *acquis* (in particular, the case law) in this field, according to which EU Member States may only restrict public service posts to their own nationals if they are directly related to the specific activities of the public service, i.e. involve exercising public authority and responsibility for safeguarding the general interest of the State (including of local authorities).

As regards Montenegro's future participation in the European Employment Services (**EURES**) network, attention needs to be paid to respective preparations. Besides making sure that the vacancy database is available in English and checking the language skills of potential EURES advisors, attention needs to be paid to ensuring that local and regional offices have the possibility to share vacancies data not only with the central employment agency but also with each other.

Concerning **coordination of social security systems**, the Montenegrin social security system includes all traditional branches of social security which come within the scope of EU coordination rules. The system is based on the principle of compulsory insurance in the country of work. Non-Montenegrin nationals are not discriminated in the compulsory insurance scheme. Montenegro has also a number of special benefits for war victims.

Following its independence in June 2006, Montenegro has signed a limited number of bilateral social security agreements with other countries, including four EU Member States (Austria, Belgium, Hungary and Luxembourg). On the basis of state succession, Montenegro applies various bilateral social security agreements concluded with the SFR Yugoslavia, SR Yugoslavia and State Union of Serbia and Montenegro. The strengthening of administrative capacity in order to fully apply Regulation 883/2004 on the coordination of social security systems as from accession will be the main challenge for the country in this context. The Montenegrin fund for pensions and disability insurance, the health insurance fund and the employment office would be the principal administrative structures responsible for applying the EU provisions in this field.

The main challenge for Montenegro will be building up the administrative capacity necessary to fully apply Regulations 883/2004 and 987/2009, which coordinate Member States' social security systems, upon accession. In addition, preparations for participation in the Electronic

Exchange of Social Security Information (EESSI) will be needed, which will require investment in IT infrastructure.

Additionally, Montenegro will also have to introduce the **European Health Insurance Card** upon accession.

### *Impact*

The estimated impact of Montenegro's possible accession upon the EU labour market has to be related to a number of factors, such as the size of Montenegro's working population, age structure, and migration movements.

Montenegro's total population is estimated to be around 630,000 persons and not expected to increase significantly over the next ten years (with an annual expected growth of 0.1%<sup>11</sup> until 2020). As regards the age structure, the share of the youngest (15 and less) is only slightly higher (19.7%) than in the EU (15.4%).

Montenegro's working age population (aged 15-64) in 2009 was estimated at 434,300, among which 262,100 were economically active. This represents around 0.1% of the EU economically active population. The employment rate for 2009 was estimated to be 48.7% (compared to 65.9% in the EU). Data on unemployment varies strongly depending on the method of calculation, with registered unemployment rates between 10-15% and labour force survey's data pointing to unemployment rates close to 20%. This rate has substantially decreased compared to the high level of 2005 (around 30%). Furthermore, an important number of persons work in the informal economy.

Despite a strong annual growth of GDP in the last decade (the GDP per capita in Montenegro has more than doubled since 2000), there remain significant differences between Montenegro and the EU. Montenegrin GDP per capita in purchasing power parity represents 43% of the EU 27 average.

Historically, there have been migration movements from Montenegro within the territory of the former Yugoslavia and, more limited, towards third countries, including EU member states. While precise figures of Montenegro's diaspora are not available, existing indications point to a very low migration rate in recent years.

Notwithstanding limits due to the lack of reliability and comparability of Montenegro's labour market statistics with that of the EU, overall, the above preliminary assessment tends to indicate that Montenegro's membership in the EU would have a minor impact on the EU labour market. However, this situation will have to be monitored taking into account developments in Montenegro and the EU.

### *Conclusion*

*Overall*, Montenegro will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term in the field of free movement of workers. On the basis of existing bilateral agreements, Montenegro has gained some experience in applying the social security coordination principle. However further efforts will be needed to strengthen administrative capacity to implement these tasks.

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<sup>11</sup> United Nations Population projections. See: <http://esa.un.org/unpp/index.asp?panel=2>

### 3.3. Chapter 3: Right of establishment and freedom to provide services

Member States must ensure that the right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services, as laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), are not hampered by national legislation, subject to the exceptions set out in the Treaty. The core piece of *acquis* in this area is the Services Directive. The *acquis* also harmonises the rules concerning regulated professions to ensure mutual recognition of qualifications and diplomas between Member States. For certain regulated professions a common minimum training curriculum must be followed in order to have the qualification automatically recognised in an EU Member State. The EU postal reform aims to ensure provision of a universal postal service, the establishment of an internal market for postal services and a high-quality postal service for end users.

The *Stabilisation and Association Agreement* provides for gradual liberalisation of the right of establishment and the freedom to provide services between the EU and Montenegro. It includes a standstill clause as regards restrictions to supply of services by providers established in a country other than that of the person for whom the services are intended.

In the field of the **right of establishment**, the Montenegrin legislation does not discriminate against foreign operators or their subsidiaries or branches. The procedures for registration in the commercial registry are non-discriminatory.

As regards **freedom to provide cross-border services**, Montenegrin legislation is not in line with the *acquis*, particularly the Services Directive. Its current legislation regulates provision of services with an establishment in Montenegro, but not provision of cross-border services. Full alignment with, and implementation, of the Services Directive will require building up and strengthening administrative capacity. Furthermore, effective compliance with the *acquis* will entail adequate coordination at national level between all relevant administrative bodies and, eventually, upon accession, with EU Member States.

In the area of **postal services**, Montenegrin primary legislation follows the principles and objectives laid down in the *acquis*. The postal affairs development strategy takes into account the latest developments of the *acquis*, as introduced by the Third Postal Directive, and provides for full liberalisation of the postal sector by the beginning of 2013. In this regard, particular attention will need to be paid to a number of specific issues regarding the universal service obligation (USO), such as VAT exemption, procedure for allowing exceptions to USO, transparent criteria for period of designation of universal service provider(s) and their supervision. Further efforts have to be made with regard to the reserved area, authorisation system, tariff regulation and complaints procedure. As regards administrative capacity, the government adopts postal policy decisions and develops the strategy. The Ministry of Transport, Maritime Affairs and Telecommunications sets the tariffs for universal postal services and deals with appeals against decisions of the Agency for Electronic Communications and Postal Services, the national regulatory authority (NRA). While the financial independence of the NRA is mainly ensured through proceeds of authorisations and licences, there is a need to ensure separation of regulatory functions currently exercised by the responsible Ministry. An increase in the number of dedicated staff dealing with postal services will be needed as well as a clear separation of regulatory and management tasks.

In the field of **mutual recognition of professional qualifications**, the scope of the regulated professions in the country coincides with the main Directive on the recognition of



professional qualifications. The exceptions are veterinary surgeons and midwives, for which no training is offered. However, further adjustments of the legal framework are needed to achieve compliance with the *acquis*. This would include the elimination of all nationality, residence and inappropriate linguistic requirements as well as reciprocity clauses and the introduction of a legal distinction between professions of doctors, dentists and pharmacists, as regards both training for and access to the exercise of these professions. Montenegrin legislation provides for mutual recognition of foreign higher education qualifications, but not of foreign professional qualifications. Recognition is granted by the Ministry of Education and Science, but it remains unclear to what extent such recognition actually gives access to regulated professions. Administrative structures and procedures will need to be established to allow the mutual recognition of all kinds of professional qualifications.

### *Conclusion*

There are no discriminatory legal barriers to the right of establishment for EU operators in Montenegro. However, significant efforts need to be made regarding the alignment of legislation on the freedom to provide services with the *acquis* as well as for administrative capacity and inter-institutional cooperation. Montenegro should be able to align its national postal legislation with the *acquis* in the medium term, but full independence of the NRA and integrity of its regulatory functions will need to be ensured. Professional training curricula need to be aligned with the *acquis* and relevant administrative structures and procedures established to ensure recognition of professional qualifications.

*Overall*, Montenegro will need to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term. Early preparations and particular sustained effort will be needed in the area of freedom to provide services.

### **3.4. Chapter 4: Free movement of capital**

Member States are expected to remove all restrictions on capital movements and payments both within the EU and between Member States and third countries. The *acquis* also includes rules on cross-border payments and execution of transfer orders concerning securities. The Directive on the fight against money laundering and terrorist financing requires banks and other economic operators to identify customers and report certain transactions, particularly when dealing with high-value items and large cash transactions. A key requirement in order to combat financial crime is creation of effective administrative and enforcement capacity, including cooperation between supervisory, law enforcement and prosecution authorities.

The *Stabilisation and Association Agreement* sets out a timetable for capital liberalisation. It also provides for freedom and convertibility of current account payments and transfers.

With regard to **capital movements**, Montenegro became an IMF member and assumed the obligations of Article VIII of the IMF Articles of Association, and hence full current account convertibility, in January 2007. Foreign direct investment has been the main factor in the development of Montenegro in recent years. Over the period January 2002-December 2009 the total inflow of foreign direct investment amounted to over 4 billion euro. Of this, 51% was invested in companies and banks, 34.5% in real estate, while 14.1% related to inter-company debt and 0.4% to other investments. In 2009 FDI as a percentage of GDP stood at 30.6% compared with 5.6% in 2002. Most of these inflows (about 64%) originated in the EU. During the reference period, significant direct investment occurred in privatised enterprises (telecoms, banks and financial services and metal industry) as well as in the tourism sector.

The Law on foreign current and capital transactions, adopted in July 2005 (last amended in 2008), is mostly aligned with the *acquis* and fully liberalises current and capital transactions, with a few exceptions justified by the public interest, defence and international agreements. No restrictions apply to long-term lease, concession or buy-own-transfer arrangements on immovable property, although inward investment in real estate by non-residents is still subject to some restrictions on ownership of property by foreign natural persons and legal entities. However, these restrictions do not concern EU nationals, subsidiaries and branches, as with the entry into force of the SAA in May 2010, they are subject to national treatment in acquiring real estate. In the event of a serious threat to monetary policy or the financial situation, safeguard measures can apply to capital movements for a period not exceeding six months. Montenegro has not retained special rights in privatised companies. However, investment rules for institutional investors, such as pension funds, are not yet in line with the *acquis*.

As regards **payment systems**, Montenegro will need to align with Directives 2007/64/EC and 2009/110/EC. The existing legislation does not regulate payment institutions and does not apply to cross-border payments. The necessary administrative structure is in place to ensure implementation of the payment *acquis*. Nonetheless, given the increase in workload, supervisory and enforcement duties and given the new responsibilities once the EU payment systems legislation is adopted, additional staff may be needed.

With reference to **anti-money laundering (AML)**, Montenegrin legislation is partially in line with the EU *acquis*, however additional efforts are needed to eliminate existing shortcomings (See also Chapter 24 - Justice, freedom and security). These include the current definition of beneficial owner, shell bank, financial institution, customer due diligence (CDD) measures, and politically exposed persons. The Montenegrin legislation does not explicitly prohibit the opening or keeping of anonymous accounts and does not provide for verification of the customer's identity. The national legislation is neither completely in line with the *acquis* with reference to full exemption from CDD measures in certain instances, provisions requiring obliged persons to pay special attention to any activity which is considered particularly likely to be associated with money laundering or terrorist financing and to complex or unusually large transactions, and to report suspicions of money laundering or terrorist financing. No provisions for terminating business relations and filing a suspicious transaction report apply in case the obligors are unable to comply with CDD requirements. Finally, no explicit legal requirements oblige supervisors to inform the Financial Intelligence Unit (FIU) about suspicious transactions, persons, and facts discovered during their supervision activities.

Designated supervisors are the Central Bank of Montenegro (CBM), the Insurance Supervision Agency (ISA), the Securities and Exchange Commission (SEC) and the Administration for the Prevention of Money Laundering and Terrorist Financing (the FIU)<sup>12</sup> The supervision regime in the area of AML and combating the financing of terrorism (CFT) encompasses *inter alia* banks, life insurance companies and agents, investment funds, stockbrokers, pension funds, leasing companies and currency exchange offices. However, the FIU, which plays a central role in the system, does not have sufficient staff to deal with all tasks assigned to it and suffers significant constraints in terms of high staff turnover as well as working space and IT equipment. The CBM has established a dedicated AML/CFT unit for the supervision of the banking sector, with a current staff of 3 out of 5 officials envisaged.

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<sup>12</sup> There are also other supervisors for supervising compliance in the area of AML and combating financial terrorism (CFT): the Agency for Telecommunication and Postal Services for the post offices, the administration body for games of chance for lotteries, and the tax authority for pawnshops.

The Agency for insurance supervision, responsible for the insurance sector, became operational in 2008 but has not yet developed any activities with regard to AML/CFT. There are no supervisory authorities for lawyers and notaries, while the FIU supervises real estate agents. Having identified this sector as an area of particular risk for money laundering the FIU took supplementary measures, including the collection on a daily basis of all real estate contracts from courts. Cooperation between the CBM, the SEC, the ISA and, to some extent, the FIU needs to be enhanced.

### *Conclusion*

Capital movements in Montenegro are essentially liberalised, but further efforts are necessary to fully align legislation with the *acquis*. As regards payment systems, legislation is not yet aligned with the relevant *acquis*. Nonetheless, Montenegro should be able to align, as well as effectively implement and enforce the *acquis* in the medium term if sufficient human resources are assigned to these tasks. Concerning anti-money laundering and counter-financing of terrorism good progress has been made, with the adoption of a basic legal framework which needs to be further fine-tuned. However implementation and enforcement mechanisms still need to be put in place or further enhanced. In particular, Montenegro needs to strengthen the capacity of the financial supervisory authorities and enforcement agencies. Factors such as the high level of cash usage in the economy and corruption may influence the effectiveness of the fight against money laundering and financing of terrorism. Measures need to be taken to limit these risks. Also, closer cooperation and coordination is needed between the relevant institutions as well as broad involvement of the private sector, which needs to be trained and adequately supervised.

*Overall*, Montenegro will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term in this area. Further efforts are particularly needed as regards the strengthening of the independence and capacity of supervisory authorities and enforcement agencies.

### **3.5. Chapter 5: Public procurement**

The *acquis* on public procurement includes the general principles of transparency, equal treatment, and non-discrimination. In addition, specific EU rules apply to coordination of the award of public contracts for works, services and supplies, for the classical sector, for the utilities and for the fields of defence and security. The scope of application is defined according to contracting entities, contracts covered and application thresholds and specific exclusions. The *acquis* also lays down rules on review procedures and the availability of remedies.

The *Stabilisation and Association Agreement* stipulates that EU companies, whether established in Montenegro or not, must have access to contract award procedures in Montenegro based on treatment no less favourable than that accorded to Montenegrin companies.

Whereas the **general principles** applying to public procurement in the internal market have been mainly transposed in the Montenegrin legislation, their implementation and enforcement needs to be improved by enhancing understanding and administrative capacity at local level and keeping up on policies to fight corruption in public contracts.

The **award of public contracts** is governed by the reform of public procurement legislation of July 2006. The Montenegrin law is modelled on the EU public procurement directives and it reflects the basic requirements of the classical directive (Directive 2004/18/EC); however, it still presents some procedural weaknesses with reference to restricted tenders, the considerable administrative burden imposed on bidders and too short time limits. In addition, an appropriate legal framework for procuring entities active in the utilities sector is not provided. Shortcomings concern the scope and procedures and the fact that public procurement legislation does not apply to private companies operating in the utilities sector on the basis of special or exclusive rights. A policy for green and social procurement has not yet been put in place. A new Law on concessions was adopted in January 2009 however it fails to satisfy some fundamental requirements of the procurement *acquis*, especially in terms of definitions and procedures.

As regards administrative capacity, the Public Procurement Directorate (PPD) was established in 2006 and has a vast number of tasks, including participation in preparing and monitoring the Montenegrin public procurement legislation and its application. Its capacities need to be strengthened through additional resources. The Concessions Committee has been set up by the new Law on concessions and it also needs to be strengthened in order to properly perform the tasks attributed to it by the law.

With reference to the **remedies** system, complaints on public contracts are reviewed by the State Commission for the control of procurement procedures (PPC), which is an autonomous body. Any person harmed by a contracting authority's decision may submit an objection to the contracting entity within eight days of such decision. The objection will have an immediate suspending effect on the contracting authority. The contracting authority's decision on the objection may be challenged in the State Commission. This implements the basic requirements for an independent review system, including the standstill period, as provided in the Remedies Directive, with the exception of the time limit for submitting objections and complaints. Montenegrin legislation still need to be aligned with other provisions of the new Remedies Directive providing more clarity and modernising the remedies regime. The Commission functions rather efficiently within very tight deadlines. However, with its very limited resources, it may find it difficult to continue handling all its tasks if the number of complaints continues to rise. Moreover, the PPC provides statements on correct application of the law. This gives rise to questions of conflict of interest when dealing with complaints where the same PPC has previously issued a statement.

### *Conclusion*

Montenegro has made significant efforts to comply with the requirements of the *acquis* in this area and progress towards alignment has been substantial. However, further efforts will be needed for the Montenegrin legislation to fully comply with the EU *acquis*. This applies in particular to the Utilities, concessions and the new Remedies Directives.

The requirements of the SAA have been implemented, although the EU utilities market will be open to Montenegrin operators only once the country will have adopted legislation introducing EU rules in this area.

*Overall*, in the area of public procurement Montenegro will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term. Strengthening of administrative capacity at central and local level - for both implementation

of the legislation and monitoring - is needed. Furthermore, it is necessary to step up efforts to fight corruption in public contracts.

### 3.6. Chapter 6: Company law

The company law *acquis* includes rules on disclosure requirements, formation, maintenance and alteration of capital, mergers and divisions, takeover bids and shareholders' rights, as well as corporate governance principles. In the area of financial reporting, the *acquis* lays down rules for the presentation of annual and consolidated accounts, including simplified rules for small and medium-sized enterprises. Particular accounting rules apply to the banking and insurance sectors. Application of International Accounting Standards is mandatory for some public interest entities. In addition, the *acquis* specifies rules for the approval, professional integrity and independence of statutory auditors.

Montenegrin **company law** is largely consistent with the EU *acquis* on the disclosure requirements for branches, on single-member private limited companies, on the disclosure requirements for public and private limited companies, on the formation of public limited liability companies and the maintenance and alteration of their capital, on mergers and on divisions. However, there are inconsistencies in these areas that relate mainly to the evolution of the *acquis* since 2003. The inconsistencies concern more specifically the disclosure requirements of companies, the grounds for nullity of companies, the electronic operation of business registers and capital maintenance and alteration. Montenegro has not yet aligned with the Shareholders' Rights Directive and the Takeover Bids Directive, although the Montenegrin Law on takeover of joint stock companies contains some elements of the last-named. A Corporate Governance code was adopted in May 2009 based on the '*comply or explain*' approach, but corporate culture and corporate governance is still to be developed in the full sense.

As regards administrative structure, the Ministry of Economy, Ministry of Justice and Ministry of Finance are competent for policy proposals in the area covered by the business organisation law. The Central Registry of commercial entities is an independent state body established as part of the Commercial Court in Podgorica and is in charge of implementation of the business organisation law and registration of business organisations in Montenegro. Its staff numbers 17 employees and no increase is envisaged. The deadline laid down by law for the registration or rejection of a company is four days from the application for registration and the average period effectively required is two days. The Law on electronic signatures has been amended, however it will need to be further aligned with relevant EU legislation.

Registration with the tax administration, employment agency, health insurance fund and pension insurance fund has been unified at the tax administration, in a single form. The percentage of limited liability companies that have submitted their financial statement is low (68% in 2008 and 62% in 2009). Applicable sanctions are stipulated by the Law on accounting and auditing. The Ministry of Finance has the powers to check the annual and quarterly financial statements of joint stock companies and other legal entities that issue securities, other financial instruments traded on the organised market and parent legal entities required to prepare financial statements. In addition, the Ministry of Finance, in coordination with the Council for Misdemeanours, has determined the procedure for submitting the request for initiating the misdemeanour procedure against legal entities and their responsible persons for the non-submission of financial statements.

The area of **corporate accounting** is regulated by the Law on accounting and auditing of 2008 while by-laws further regulate individual areas of its implementation. Legal entities having control (parent legal companies) over one or more legal entities (subsidiaries) are required to compile, submit and disclose consolidated financial statements, in accordance with the IFRS. Harmonisation with the EU *acquis*, which started in 2002, has not yet been completed and will most probably not be done before 2012.

Under the Law on accounting and auditing, Montenegro set up an Accounting and Auditing Council. The Council is a consultative body whose tasks are to consider and adopt its position on matters such as the development and promotion of accounting and auditing practice in Montenegro; to provide advice to policy makers, regulators and government bodies; to provide technical assistance for improving the quality of financial reporting and other matters important for the development and promotion of accounting and auditing practice in Montenegro, in line with the IFRS.

As regards statutory **audits**, the Law on accounting and auditing of 2008 transposes partially the Statutory Audit Directive (2006/43/EC) and takes into account some aspects of the Commission recommendations of 2008 on external quality assurance and limitation of the civil liability of statutory auditors and audit firms. A series of by-laws further regulates particular areas of auditing such as registration of audit firms and authorised auditors, requirements for authorised auditor licensing, and mandatory liability insurance of audit firms and authorised auditors. However, legislation needs to be developed on the establishment and approval of audit firms; the specific requirements for statutory auditors and audit firms which carry out audits of public interest entities such as banks, insurance companies or listed companies; the establishment of an external quality assurance system for statutory auditors and audit firms; the independent public oversight for auditors; the cooperation and exchange of information with other regulatory and supervisory authorities; the regulation of third-country auditors and audit firms as well as cooperation with competent authorities from third countries.

### *Conclusion*

In most areas under this chapter Montenegrin company law is aligned with the EU *acquis*. However, particular attention needs to be paid to alignment with the *acquis* on grounds for nullity of companies, electronic operation of business register, disclosure requirements of companies, capital maintenance and alteration, shareholders' rights, takeover bids and corporate accounting. Further alignment is needed on important aspects of the Statutory Audit Directive.

Beyond alignment, Montenegro faces additional challenges relating to effective implementation and enforcement in areas such as the electronic operation of business registers. All appropriate measures need to be taken to improve the corporate culture and further develop systems of corporate governance. Besides, an independent public oversight body for auditors and a quality control system need to be established.

*Overall*, Montenegro will have to undertake additional efforts to align with the EU *acquis* and to implement it effectively in the medium term.

### **3.7. Chapter 7: Intellectual property law**

The primary objective of the EU *acquis* in the area of intellectual property rights is to ensure the proper functioning of the internal market while striking the right balance between the

rights of right-holders and the interests of users and adapting the legal framework to the changing technological environment. The copyright *acquis* harmonises rules on legal protection of copyright and related rights. Specific provisions apply to protect databases, computer programs, semiconductor topographies, satellite broadcasting and cable transmission. The *acquis* on industrial property rights sets out harmonised rules for legal protection of trademarks and designs. Specific provisions apply to biotechnological inventions, pharmaceuticals and plant protection products. The *acquis* also establishes an EU trademark and EU design. Finally, the *acquis* contains harmonised rules for enforcement of copyright and related rights and industrial property rights. It requires Member States to set up adequate implementing mechanisms, in particular effective enforcement capacity.

The *Stabilisation and Association Agreement* states that Montenegro must take the measures necessary in order to guarantee, by January 2013, a level of protection of intellectual, industrial and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights.

In the area of **copyright and neighbouring rights**, the current relevant national legislation, which dates from 2005, presents some important gaps and incompatibilities with the *acquis*. These include key provisions on the resale right, on exercise of the cable retransmission right, and on the protection of technological measures. However, some of these divergences are expected to be addressed in a revised copyright law, to be adopted by the end of 2010. Responsibilities in this area have been shifted from the Ministry of Culture to the Ministry of Economic Affairs to consolidate efforts and resources. However, this process is at a very early stage.

Montenegrin legislative framework on **industrial property rights** is largely aligned with the *acquis*, but some discrepancies remain. On 1 March 2010 the Cooperation and Extension Agreement with the EPO entered into force. However, a number of amendments to the Montenegrin laws on trademarks and designs are necessary in order to bring them into line with the EU *acquis*. In addition, a number of implementing rules are needed in order to enable the IPR law to be implemented effectively with regard to patents. The Montenegrin Intellectual Property Office (MIPO), opened in May 2008, currently employs 24 permanent staff out of 31 planned. Its Industrial Property Department currently employs one trademark examiner. MIPO is at present not in a position to fulfil its legal obligations with regard to processing IP rights. Technical infrastructure, including secured premises, a configured network, databases and registers, and workflow management tools, is not yet in place. Absence of working procedures as well as limited expertise in IP hamper the active involvement of MIPO in reforming the system of industrial property rights.

The provisions relating to **enforcement** of intellectual property rights are to be found in legal texts regulating the various intellectual property rights. In addition there is a Law on the enforcement of legislation regulating the protection of intellectual property rights that covers administrative procedures (inspections, destruction, etc.) and criminal sanctions. Directive 2004/48/EC is not completely implemented. Too many provisions are not sufficiently aligned with the Directive's standards (rules about evidence and measures to preserve evidence, provisional measures, right of information, corrective measures) and several tools are completely missing (e.g. recurring penalties, measures in case of alleged commercial-scale infringements). Considerable efforts remain to completely align the legislation with the *acquis*.

The main enforcement agencies are the Intellectual Property Office, the Customs Administration, the National Police, the Market Inspection Service, the Commercial Court and the basic courts. Also the inspectorates for medicines and for medical devices, the building inspectorate, the tourist inspectorate and the authorised official of the independent regulatory authority in charge of broadcasting are listed in the Law on the enforcement of legislation regulating the protection of intellectual property rights. All main enforcement agencies suffer from both inadequacies of premises and staff and/or from lack of specialised expertise in the intellectual property field. Coordination among the IPR enforcement bodies is non-systematic and limited to specific cases. Information exchange and provision is episodic and not based on modern IT platforms that would ensure quality and update information. The level of activities is fairly low except for the Market Inspection Service, which in 2009 reported a number of activities considerably higher than for other enforcement agencies. Participation of economic operators and consumers in preventing counterfeiting and piracy is sporadic. The process of building a sound IPR protection system in Montenegro needs to continue beyond the first step by securing the necessary resources and expertise for bodies involved in fighting counterfeiting and piracy. Effective coordination mechanisms need to be established and awareness-raising activity intensified. So far, Montenegro cannot effectively and efficiently fight counterfeiting and piracy, which leads to considerable economic, social and development losses.

### *Conclusion*

Montenegrin legislative framework on intellectual property is partially aligned with the *acquis* but remaining discrepancies need to be timely addressed, with particular attention to civil judicial remedies. Significant strengthening of administrative capacity, not least through vocational training and development of necessary competences, especially for judges, is vital for further progress in this area. Effective enforcement of intellectual property rights will require substantial further efforts based on political determination and the allocation of adequate human, financial and technical resources to the relevant agencies and to the judiciary. Strengthening and rationalisation of resources and capabilities of the authorities responsible need to be accompanied by an efficient mechanism for coordination.

*Overall*, Montenegro will have to enhance its preparations and to make considerable and sustained efforts to align with the EU *acquis* in this area, and to implement it effectively in the medium term. This is even more urgent taking into consideration Montenegro's obligations under the SAA.

### **3.8. Chapter 8: Competition policy**

The competition *acquis* covers antitrust, merger and state aid control policies. It includes rules and procedures to fight anticompetitive behaviour by companies (restrictive agreements between undertakings and abuse of a dominant position), to scrutinise mergers and to prevent governments from granting state aid that distorts competition on the internal market. Competition rules are directly applicable throughout the Union and Member States must cooperate fully with the Commission on enforcing them.

The *Stabilisation and Association Agreement* (SAA) includes provisions closely aligned with a large part of the competition *acquis*. These cover anti-competitive agreements between undertakings, abuse of dominant positions and State aid distorting competition. The SAA includes rules applying to public undertakings and to undertakings which have been granted special and exclusive rights and prohibits quantitative restrictions on imports from the EU into



Montenegro. The SAA provides for operationally independent public authorities to supervise application of the competition rules. It also includes a protocol laying down rules on State aid in steel industry.

As regards **antitrust including mergers**, the necessary legal and institutional framework has been put into place satisfactorily, but certain legal provisions need to be improved to better align with the EU *acquis*. Rules applicable to anticompetitive agreements, abuses of dominant positions and merger control are based on Articles 101 and 102 TFEU and on Council Regulation (EC) No 139/2004. Competition law applies to all sectors of the economy, to goods and services and to public as well as private enterprises. Moreover, the law incorporates the principles of Article 106(2) TFEU regarding services of general economic interest. Block exemptions harmonised with EU Regulations are regulated separately in a by-law. Merger rules stipulate that proposed merges must be notified to the competition authority on the basis of ‘threshold values’ that appear appropriate to the country’s economic conditions. However, the assessment of mergers and acquisitions is still based on the ‘dominance test’ instead of the ‘SIEC (significant impediment of effective competition) test’. The definition of a dominant position is overly simplistic. And, finally, the determination of fines as a multiple of the minimum wage -rather than a function of the firm’s turnover- has regressive implications penalising SMEs.

The Competition Protection Administration, established in 2008, has investigatory powers and may impose fines on undertakings and public bodies where the competition rules are infringed. Decisions by the competition authority are subject to judicial review by the Administrative Court of Montenegro. The competition authority has a staff of 10 civil servants, insufficient to carry out all its tasks. Its administrative capacity needs to be boosted and adequate financial resources need to be provided for adequate competition enforcement.

The necessary legal framework for **state aid** control has been put into place in a satisfactory manner. Certain legislative provisions need, however, to be aligned more closely with EU rules, e.g. the rights of third parties to file complaints. The Montenegrin Law on state aid, as revised in 2009, is in line with the provisions of Article 107 TFEU and Regulations in force at the time of its adoption. A State aid inventory was drawn up in September 2008 and its database is updated regularly.

As regards administrative capacity, the Montenegrin state aid authority is the State Aid Commission (SAC), a collegial body that takes final decisions based on an assessment prepared by the State Aid Monitoring Unit (SAMU), a separate office within the Ministry of Finance. The SAC consist of a Chairman, appointed by the Ministry of Finance, and eight members nominated by state bodies, associations of municipalities and employers. The SAC authorises notified state aid schemes and individual aid. In addition, the SAC may order recovery of unlawful aid. If the aid granting body fails to comply with the SAC instructions, the SAC informs the government and proposes that measures be taken. The SAC may initiate *ex officio* investigations but the Law on State aid does not explicitly allow third parties to submit complaints. The SAMU, with a staff of 5, performs professional, administrative and technical tasks on behalf of the State Aid Commission and prepares draft opinions for ex-ante and ex-post state aid control. In 2009, 19 cases of proposed state aid were assessed; resulting in 15 decisions on compliance and 4 conclusions on non-applicability or lack of competence. To date, no *ex officio* cases have been opened.

There are no systemic issues regarding Montenegro’s ability to assume the obligations of EU membership in the field of state aid. However, efforts will be needed to strengthen the

institutional capacity and independence of the SAC. Its enforcement record and the quality of its decisions need to be closely monitored in the future. This will include in particular the compatibility of the restructuring aid being granted to the metal industry with the obligations undertaken by Montenegro in the SAA.

Concerning **liberalisation**, a number of Montenegrin undertakings enjoy special or exclusive rights, e.g. in the field of electricity, pharmaceuticals, road and railway infrastructure, postal services, radio and television, forestry, utilities, maritime management and the management of goods of general interest. Further analysis and monitoring of Montenegro's progress in this regard will be required, although no systemic issue can be identified at this stage with reference to undertakings enjoying special or exclusive rights and services of general interest.

### *Conclusion*

Montenegro's legal framework for competition is based on EU rules, but elimination of idiosyncrasies which are not entirely in line with the *acquis* will be needed. The relevant administrative structures are in place, however, the de facto independence of the state aid authority needs to be closely monitored and the quality of the decisions taken by the competition authority and the state aid authority needs to be verified on a regular basis. Further monitoring and analysis of Montenegro's progress towards market liberalisation in reserved sectors in line with the *acquis* will be required.

*Overall*, Montenegro will have to undertake additional efforts to align with the EU *acquis* in the field of competition and to implement it effectively in the medium term, including strengthening administrative capacity and safeguarding the operational independence of the state aid and competition authorities.

## **3.9. Chapter 9: Financial services**

The main objectives of the *acquis* as regards financial services are to ensure financial stability, the financial soundness of companies operating in the financial sector, and appropriate protection of consumers, investors and policyholders. The aim is to build up confidence in the financial markets and to provide a level playing field. The *acquis* on financial services includes rules on authorisation, operation and supervision of financial institutions in the areas of banking, insurance, supplementary pensions, investment services and securities markets as well as on financial market infrastructure. Financial institutions can operate across the EU in accordance with the 'single passport' and the 'home country control' principle, either by establishing branches or by providing cross-border services.

As regards **banks and financial conglomerates**, the banking sector is the most developed component of the financial sector in Montenegro. There are 11 banks operating in the country. At the end of 2009, their balance sheet total amounted to €3,025.2 million, recording a nominal decrease of €284.4 million (8.59%) in comparison with 2008. The official statistics show that the Montenegrin banking system is significantly concentrated. The market share of the four largest banks in terms of total assets amounts to 76.5%; their share of loans is 79.4%, and their share of deposits is 80.1%. The nine foreign-owned banks have a market share of 77% in terms of total assets.

The Law on banks adopted in February 2008, as amended in July 2010, and several implementing decisions adopted by the Central Bank of Montenegro (CBM) together constitute the legislation applicable to the sector. Both are to a great extent in line with the Capital Requirements Directive (CRD). However, further progress in the area is needed for

full alignment with the CRD and the EU *acquis*. Improvements are especially needed in relation to own funds, introduction of internal models for credit and operational risks, credit risk mitigation, large exposures, counterparty credit risk, consolidation rules and home/host issues. The internal capital assessment process, the supervisory review process and the transparency of the banks' activities for building and maintaining a sustainable financial system are not sufficiently covered and further intensive work in this area is required. The recent amendments to the banking law also introduced early intervention and bank resolution arrangements, which are under review and development in the EU. The Financial Stability Council Law aims at improving the identification and mitigating of systemic risks in the financial sector to ensure financial stability. The current legal framework for the deposit guarantee scheme is not compliant with the *acquis* either. The amended bank bankruptcy and liquidation law is not compliant with the reorganisation and winding up directive of the EU.

The Montenegrin parliament adopts primary financial legislation. The Ministry of Finance is responsible for submitting draft new laws to parliament and for coordinating the legislative drafting process between parliament, the CBM and the Securities and Exchange Commission (SEC). The cooperation process, however, need to be improved as there have been numerous cases in the past where the legislative proposals made by the CBM were subsequently changed before the final vote by parliament without coordinating the changes or consulting the other authorities involved. The CBM participates actively in the process of technical preparation of legislative acts, and has established appropriate enforcement mechanisms for their implementation. However, the establishment of a team dedicated to the process of alignment with the EU legislative acts is needed. Further progress in the enforcement of some areas of legislation needs to be achieved, as regards for example consolidated supervision and financial reporting.

The supervision of banks is the sole responsibility of the CBM. In addition, the CBM supervises five micro-credit institutions. Under the law it is responsible for the supervision of credit unions, so far non-existent in Montenegro. The banking supervision department of the CBM, consisting of 45 employees, performs specialised supervision and supervision of the systemic risk. This structure is quite new and was introduced two years ago with the aim of promoting an effective risk-based supervision process in the CBM. The banking supervision department has the right to issue instructions and prescriptive guidelines. In the light of future challenges to the regulatory framework there is a need for additional knowledge and professional competence to be built up.

As regards the deposit guarantee scheme, although the Deposit Protection Fund is aware of the EU requirements, the limited resources it possesses jeopardise further alignments, hence capacity improvement is vital.

In the areas of **insurance and occupational pensions**, the insurance sector, including private pension insurance, remains relatively small. Gross underwritten premiums for 2009 amounted to €64.22 million, out of which 87.42% in non-life insurance. The five biggest insurance companies account for 93% of the insurance market and only two of them offer life insurance.

The main legislation in the field of insurance is the Law on insurance of 2006 while the Law on compulsory transportation insurance regulates the minimum amounts of coverage for compulsory motor vehicle insurance. Some important principles are missing and amendments are needed in order to ensure compliance with the *acquis*. No cross-border provision of services is allowed, national incorporation is required, and minimum amounts of compensation for personal injuries and material damage are far below the amounts specified

in the motor insurance *acquis*. There are no financial conglomerates in Montenegro and the relevant *acquis* has not been transposed.

The insurance supervisory agency (ISA) is empowered to regulate and supervise the insurance market. It is an independent regulatory body, reporting directly to parliament. It also issues recommendations, guidelines and opinions, and prepares annual reports on the insurance market. The ISA is reasonably endowed with the relevant authority and responsibility but is severely burdened by limited resources, especially in terms of staff. Additional resources are needed to further strengthen its capacity.

As regards **securities markets and investment services**, the securities market in Montenegro is small. The merger of the two domestic stock exchanges was approved in August 2010 with the consent of the securities commission, establishing a single capital market. On 30 September 2010, there were 23 authorized participants on the securities market, of which 10 have broker licenses and 13 have broker and dealer licenses; six banks have a license to provide custody services. Trade in securities is performed exclusively on regulated markets and legislation does not offer any alternative trading venues, such as multilateral trading facilities (MTFs) or systematic internalisers as defined in markets in financial instruments directive (MiFID).

The regulatory framework for the securities sector consists of the Securities Law adopted in 2000 and amended in 2006, along with implementing legislation, covering most of the *acquis* principles. However, no legislation is in place with regard to investor compensation schemes and credit rating agencies. The provisions of the undertakings for collective investment in transferable securities Directive (UCITS) have not been transposed into Montenegrin legislation, which regulates only closed-ended investment funds. Alignment gaps relate to definitions, exemptions, and the requirement for a summary; the possibility of incorporating information by reference or preparing a prospectus consisting of several documents; certain requirements for the admission of shares; requirements for notifying major holdings of voting rights; a series of definitions on e.g. systematic internalisers, market makers, market operators, MTFs, as well as some principles concerning investment intermediaries; and, finally, minor aspects concerning the market abuse Directive (MAD).

The Montenegrin Securities Commission is the competent regulatory and supervisory authority for the securities sector. It is composed of a president, a deputy president and three commissioners. It currently employs a staff of 28 out of the 39 employees planned. It is entirely self-financed through taxes from businesses. The Commission has signed the IOSCO Multilateral Memorandum of Understanding on the exchange of information and cooperation, becoming part of the international network of regulators. This improved its capacity to undertake cross-border actions, and the possibility of exchanging information with all important jurisdictions in the world. The Commission manages licensing of participants in the market and the registration of issuers. It has sufficient investigative powers and may withdraw or suspend licences or trading in securities, but it cannot impose pecuniary fines or other administrative penalties. It has to rely on administrative or criminal courts for imposing sanctions on both regulated and non-regulated entities. All decisions of the Securities Commission may be challenged before the Administrative Court of Montenegro.

### *Conclusion*

Although the legislation on financial services covers to a considerable extent the requirements of the EU *acquis*, numerous provisions need to be amended. Particular attention will need to

be paid to staff competence of the banking supervision department, especially with reference to Basel II requirements. Banking supervision needs to be effective. Capacities of the Deposit Protection Fund also need to be reinforced. As regards insurance both the legislation and the corresponding supervisory framework, including enforcement, need to be enhanced.

*Overall*, Montenegro will have to undertake additional efforts to align with the EU *acquis* and to effectively implement it in the medium term.

### **3.10. Chapter 10: Information society and media**

The *acquis* on information society and media aims to eliminate obstacles to the effective operation of the internal market in electronic communication services and networks, promote competition and safeguard consumer interests in the sector, including the universal availability of basic modern services. It also includes rules on information society services and a transparent, predictable and effective regulatory framework for audiovisual media services in line with European standards.

As regards **electronic communications and information technologies**, the *Stabilisation and Accession Agreement* specifies the ultimate objective of Montenegro adopting the EU *acquis* in the sector of electronic communications networks and services three years after the entry into force of the SAA, therefore by May 2013. This means that a substantial number of directives, which form the relevant EU *acquis*, such as the Access Directive, the Authorisation Directive, the Framework Directive, the Universal Service Directive and the Data Retention Directive, have to be transposed into Montenegrin legislation and the necessary administrative structures for implementation have to be in place by that date.

The electronic communications sector was formally liberalised on 31 December 2003, and competition has emerged since then mainly in the mobile telephony market. Competition in the other market segments (fixed telephony, internet, fixed wireless access, etc.) is limited, mainly due to the very small market share that the existing new entrant operators have in these markets. There is no state shareholding in any of the operators currently active in the market. Very few competitive safeguards have been introduced in the market, and there is neither full tariff rebalancing, nor has a costing methodology been developed and applied. In combination, these conditions make it difficult for new operators to enter the Montenegrin market.

Montenegro's policy in the field of electronic communications is set out in the five-year strategy for the electronic communications sector, adopted by the government in June 2006. Based on this strategy, the Law on electronic communications (LEC) was adopted in July 2008, replacing the Telecommunications Law of 2000, and establishing a new legislative framework aiming for alignment with the EU regulatory framework. Amendments to the LEC, and the Law on audiovisual media were adopted in July 2010, which are aligned with each other and together clarify the funding of the future agency for electronic media and its role in the procedure for granting broadcasting licences. However, as the amendments entered into force only in August 2010, their actual implementation cannot be assessed at this stage and will need to be seen in the coming months. Implementation of the LEC so far, through the adoption of secondary legislation and through the enforcement of regulatory decisions, is still at an early stage. Several decrees on universal services were adopted in September 2010. Despite the alignment of the LEC with the Law on electronic media there are still concerns about several provisions of the LEC, not least those regarding the regulatory oversight function of the ministry over the regulatory authority and the latter's independence.

The LEC established the Agency for Electronic Communications and Postal Services (EKIP), which became operational at the end of 2008. The five members of the agency's board are appointed directly by the government, which carries the potential risk of political influence. This appointment procedure is not in line with the EU regulatory framework, which aims to ensure that national regulatory authorities are protected against any external intervention jeopardising their independent assessment. The LEC further grants comprehensive supervisory powers over EKIP to the Ministry of Transport, Maritime Affairs and Telecommunications, which also endangers the agency's independence. The administrative capacity of EKIP to adopt and implement regulatory decisions/secondary legislation as required by the LEC is limited; the administrative capacity of the Ministry is even more limited.

In the field of **information society services**, Montenegro adopted a strategy on the information society 2009-2013 in early 2009; however, broadband policy is not addressed. The Ministry for the Information Society, established at the beginning of 2009, is in charge of its implementation and coordination with other government bodies and institutions. A dedicated budget is available, but the administrative capacity of the ministry is fairly limited.

The legislation on conditional access will need to be improved and brought into line with the *acquis*. The Law on electronic signatures and the Law on electronic trade were amended in July 2010. While the Law on electronic trade is now well approximated with the *acquis*, the Law on electronic signatures will need to be further aligned with relevant EU legislation.

As regards **audiovisual policies**, Montenegro adopted in July 2010 the Law on electronic media, which aims to align Montenegrin legislation with European standards on media regulation and the Audio Visual Media Services Directive (AVMSD). The law establishes the Agency for Electronic Media, previously the Broadcasting Agency, as an independent regulatory body in this field and defines its competences. It clarifies, together with the amendments to the Law on electronic communications that the Agency for Electronic Media will be in charge of the allocation of broadcasting frequencies. The new law also redefines the sources of funding of the regulatory authority and provides that the revenues from frequency allocation tenders will be allocated to the activities of the Agency, thereby contributing to its financial independence. Overall, the Law on electronic media is largely aligned with the AVMSD.

As regards film heritage, the actions undertaken in this area are satisfactory. Concerning protection of minors, increased efforts will be necessary. Montenegro is party to the Council of Europe Convention on transfrontier television and to the UNESCO Convention on the promotion of diversity of cultural expressions.

### *Conclusion*

As regards electronic communications and information technologies, Montenegro has partly aligned its legislation with the *acquis*. However, the country is at an early stage of implementation of the legislation. Market liberalisation has progressed slowly. Moreover, there is a lack of administrative capacity and a potential risk of political influence through the appointment of the board of the Agency for Electronic Communications and Postal Services.

In the area of information society, there has been progress in terms of legislative alignment and the focus now needs to turn to implementation, which is at an early stage. The administrative capacity of the new established Ministry for Information Society is fairly

limited. Concerning audiovisual media, Montenegrin legislation is largely aligned with the Audiovisual Media Services Directive and European standards on media regulation. Montenegro will need to step up efforts as regards protection of minors.

*Overall*, Montenegro will have to undertake additional efforts to align with the *acquis* in the area of information society and media and to implement it effectively in the medium term.

### **3.11. Chapter 11: Agriculture and rural development**

The *acquis* on agriculture and rural development covers a large number of binding rules, many of which are directly applicable. The proper application of these rules and their effective enforcement and control by an efficient public administration are essential for the functioning of the common agricultural policy (CAP). Running the CAP requires the setting-up of a paying agency and management and control systems such as an integrated administration and control system (IACS), and the capacity to implement rural development measures. Member States must be able to apply the EU legislation on direct support schemes and to implement the common market organisation for various agricultural products.

Pending the entry into force of the *Stabilisation and Association Agreement* between the EU and Montenegro on 1 May 2010 an Interim Agreement on trade and trade-related matters had been in force since 1 January 2008 and already provided for the gradual liberalisation of agricultural trade.

Montenegro has a surface area of about 13,812 square kilometers with agricultural land accounting for 38% (516,067 hectares) of the total territory. The greatest share of agricultural land resources consists of pasture and grassland (88%; 454,138 hectares), which is used extensively. Covering a relatively small area and benefiting from a Mediterranean climate, Montenegro's agriculture is quite diversified — from growing olives and citrus fruits in the coastal region, through early season vegetables and tobacco in the central parts to extensive livestock breeding in the north. Agriculture is by far the largest activity of the rural population — more than 60,000 households obtain their income partly or entirely from agriculture. Food production and agriculture play an important role in Montenegro's economy, with the primary sector alone providing more than 10% of total Gross domestic product (GDP). Agricultural employment stood at 8.3% in 2007.

Montenegro is a net importer of food products, with a negative trade balance (approximately €350 million in 2009). Agricultural trade follows an upward trend, reaching €440 million in 2009, a 16% increase on 2007. Neighbouring Central European Free Trade Agreement (CEFTA) countries are the main exporting/importing destinations, accounting for 80% of the trade. Serbia is the main partner, accounting for over 55% of total agricultural imports and 40% of total exports. The EU share in total agricultural trade has been growing in recent years, representing around 28% of all Montenegrin imports and 18% of exports in 2009. Montenegro's tariffs will have to be aligned with EU levels upon accession.

The current administrative capacity of the Ministry of Agriculture, Forestry and Water Management is limited, with 72 staff covering policy formulation and undertaking the necessary measures for its implementation. Currently available agricultural statistics are rather limited and unreliable. However, an agricultural census took place in mid-June 2010. The results of the census are currently being analysed and are expected to provide a more reliable basis for designing agriculture and rural development policy. (*See Chapter 18 — Statistics*)

Montenegro's agricultural policy is based on the 2009 Law on agriculture and rural development. This law sets the objectives of agriculture policy and provides the general framework for the development of and support to agriculture and rural areas, grouped under four main strands: market price, rural development policy, activities of public interest and social transfers to the rural population. Montenegro's agriculture is still characterised by small subsistence farming and traditional production, which results in a less favourable structure and low productivity. There are many challenges for Montenegrin agriculture, with emphasis on increasing competitiveness and stronger integration within the food chain. Total agricultural support by the Ministry of Agriculture, Forestry and Water Management in 2010 amounts to €26.75 million.

Concerning **horizontal issues**, the main form of support to production is direct headage payments for livestock and payment per hectare of area in plant production. Since the *acquis* on the paying agency and IACS — central elements for the management and control of CAP funds — is very demanding, planning and preparation will require extensive investment and institution building well in advance of accession. Montenegro will also need a farm accountancy data network (FADN) in line with the *acquis*.

*Direct payments* in Montenegro are not in line with the EU rules. There are substantial differences in the way direct support to farmers is delivered. Contrary to the reformed CAP, which provides for 85% decoupling (93% in 2013), direct aid payments are coupled, and will need to be brought into line with the EU *acquis*. Direct aid payments are currently granted for Montenegro's key production sectors: milk, tobacco, headage payments for cows, bulls, sheep and goat production. In all cases, a yearly budgetary ceiling is fixed which limits the individual payments. Therefore, the aid rate can change annually. The national programme for food production and rural development 2009-2013 provides for the introduction of the principle of mandatory compliance, but its precise scope and extent remains unclear. Furthermore, Montenegro will have to put in place an information system for beneficiaries of CAP payments under shared management and ensure yearly publication of names of beneficiaries.

With regard to *state aid*, other than market-related subsidies and rural development measures, Montenegro applies a number of additional measures for granting aid to farmers. Montenegro will need to bring all its state aid measures into line with EU rules and guidelines.

Due to its specific natural conditions, Montenegro has small areas of arable land that are under-utilised, so that **arable crop** production is limited. *Cereals* are grown on an area of 5,000 hectares, with subsidies granted for the production of wheat, maize, barley, rye, oats, buckwheat and *fodder* crops (lucerne, clover-grass mixtures). *Potato* production at around 10,000 hectares is a very important sector, which has been growing in recent years. Production of other products of the arable sector has little significance in Montenegro.

Cattle breeding is the largest sub-sector in overall **animal production**, with dual-purpose production prevailing. The total population stands at 106,000 heads while cows and heifers constitute 73%. Annual production of *milk* is around 160,000 tonnes and meat approximately 7,500 tonnes. Only 15-20 % of total milk production is delivered to dairies, with the rest used in households. Average yield per cow is very low, less than 2,500 kg, and the breed structure is not favourable, as around 50% of the Montenegrin cow herd are of the lower productive crosses. The *sheep* breeding sector is characterised by semi-intensive production and is focused on most rural areas. It is based on rearing of local breeds used for milk and meat, with



an annual output of 7,000 tonnes and 3,500 tonnes respectively. *Goat* production is also important. *Pig meat* production is weak.

Regarding **specialised crops**, in the area of fruit and vegetables the surface under fruit has been increased by some 20% in the period 2001-2008. Total annual production of fresh *fruit* reaches 30,000 tonnes (mainly oranges, tangerines, plums and apples). Montenegro applies a per hectare subsidy for planting new orchards. This measure is not in line with the *acquis*. While there are associations of producers in Montenegro which undertake certain functions, these are not producer organisations as defined by the EU *acquis*. There is a need to develop administrative capacity to operate this scheme in the future. Particular attention needs to be paid to aligning existing marketing standards with EU standards and building up a quality inspection body. Montenegro already operates a system of price reporting for domestic and imported fruit and vegetables. In the *wine* sector, grape production and vineyards cover an area of 4,300 hectares, with an upward trend in recent years. Montenegro grants a per hectare subsidy for the planting of new vineyards. Subsidies for *olive oil* are in place for the setting-up and reconstruction of existing olive groves. These measures are not in line with the *acquis*. As a member of the International Olive Oil Council, Montenegro applies marketing standards on olive oil that are harmonised with the EU.

Montenegro's policy displays a commitment to **rural development** with a comparable approach to that of the EU and the existence of a strategy and a national programme. However, certain measures or parts thereof are not compatible with the EU *acquis*. Selection criteria and targeting of measures must be established and monitoring and evaluation further enforced. The agri-environmental orientation of Montenegro's rural development policy remains weak. In addition, limited attention is paid to extension and advisory services or to the upgrading of human capital. The overall approach to rural development policy will need to be further strengthened and consolidated in line with EU requirements. The Ministry of Agriculture, Forestry and Water Management has overall responsibility for rural development policy and implementation, albeit with limited capacity. Thorough preparations will be required to adopt EU-compatible delivery mechanisms. The first important step is the timely establishment of complete IPARD (Instrument for Pre-accession Assistance for Rural Development) structures for implementing pre-accession assistance. Cooperation between all concerned departments of the Ministry and related IPA structures should be strengthened.

As regards **quality policy**, Montenegro applies a quality management scheme similar to the EU scheme of geographical indications and traditional names. The **organic farming** sector in Montenegro is relatively small but expected to grow due to domestic support, ongoing international projects and trends. There are 88 producers involved in organic production but no precise data are available on the area planted. Montenegro's legislation on organic farming needs to be aligned with the *acquis* and supervisory activities strengthened.

### *Impact*

The estimated impact of EU accession of Montenegro on the EU's common agricultural policy is linked to the structure and size of Montenegro's agricultural sector. The agricultural sector in Montenegro accounts for 9.3% of GDP (2008). Montenegro, if it joined the EU, would add 516,067 hectares of agricultural land to the EU agricultural sector (equal to 0.3% of utilised arable area in the EU-27). The production of milk, beef and sheep would constitute a small percentage of total EU-27 production. Crop production is negligible when compared to EU production. Overall, a preliminary assessment indicates that Montenegro's membership of the EU would have a limited impact on the CAP.

## Conclusion

*Overall*, in the field of agriculture and rural development, Montenegro will have to undertake considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term. Agricultural policy will require adjustments, moving towards decoupled support measures. Montenegro will have to strengthen its administrative capacity and focus preparations on setting up basic instruments and institutions for managing the CAP in particular with regard to the paying agency and the integrated administration and control system. An important action is the timely establishment of all operational structures for implementing pre-accession assistance to rural development. Montenegro needs to establish a solid basis of precise agricultural statistics. Particular attention must be paid to strengthening administrative capacity to manage common market organisation and rural development activities.

### 3.12. Chapter 12: Food safety, veterinary and phytosanitary policy

The EU has an integrated approach aimed at ensuring a high level of public health, animal health, animal welfare and plant health by means of coherent farm-to-table measures and adequate monitoring, while ensuring effective functioning of the internal market. The *acquis* lays down hygiene rules for food production and veterinary rules, which are essential for safeguarding animal health, animal welfare and the safety of food of animal origin in the internal market. EU phytosanitary rules cover issues such as seed quality, plant protection products, harmful organisms and animal nutrition. Member States must have appropriate administrative structures for inspection and control of food products, including appropriate laboratory capacity.

In the area of **general food safety**, the Ministry of Agriculture, Forestry and Water Management and the Ministry of Health share the competence for policy planning, adoption of secondary legislation and supervision. The main piece of legislation in this area is the 2007 Law on food safety, which is only partially aligned with the *acquis*. The veterinary and phytosanitary administrations within the Ministry of Agriculture, Forestry and Water Management and the department for food safety within the Ministry of Health are the main administrative bodies responsible for implementation. As regards risk assessment, a National Council for Food Safety Assessment was established in September 2009, which provides scientific advice and assistance towards all risk assessment activities concerning food and feed safety. Food safety controls are performed by the veterinary and phytosanitary administrations of the Ministry of Agriculture, the department for health and sanitary inspection of the Ministry of Health, and eight municipal units. The capacity of these services is very limited and will need to be considerably strengthened in order to be able to fulfil the obligations arising from the *acquis*. Laboratories carry out the testing in Montenegro, except for genetically modified organism (GMO) analysis, which is done in foreign laboratories. The laboratories' equipment is outdated and inadequate, so that overall food testing capacity is limited. Several laboratories are undergoing the process of accreditation for various analytical methods. There is currently no rapid alert system in place in Montenegro.

In the **veterinary policy** sector, the legislative framework and basis for secondary legislation is formed by the Veterinary Law, the Law on animal welfare, and the Law on animal identification and registration. Montenegro has commenced the process of harmonisation with the relevant *acquis*, but this will require further efforts, with special reference to the animal by-product sector. The veterinary administration within the Ministry of Agriculture, Forestry

and Water Management is the competent authority for the *identification of animals*, for animal health and *animal welfare* issues and for the safety of products of animal origin.

Montenegro is a member of the World Organisation for Animal Health (OIE) and joined on a voluntary basis the EU Animal Diseases Notification System (ADNS). The Ministry of Agriculture, Forestry and Water Management adopts annually programmes concerning animal health protection measures. However, certain *animal disease* contingency plans are not in place yet and a comprehensive programme for control and monitoring of transmissible spongiform encephalopathy (TSE) will be necessary in order to comply with *acquis* requirements. Basic elements of the *control system* required in the internal market are in place but need to be strengthened. Legislation creating a system for the identification of animals and registration of their movements has been adopted. However, some secondary legislation (for sheep and goats, porcine and equine animals) is still required and the system needs to be made fully operational.

The introduction of animals and animal products into Montenegro is possible at nine border crossing posts. Equipment and procedures would need to be upgraded and modified in order to meet the requirements applicable to an EU border inspection post.

Concerning the **placing on the market of food, feed** and animal by-products, Montenegrin legislation in place will need to be further harmonised with the *acquis*, in particular through amendments to the Law on food safety and the adoption of a law on animal by-products. *Hygiene rules* have already been partially aligned with EU requirements, with the exception of certain microbiological criteria for foodstuffs. The new hygiene requirements are being progressively implemented, starting with new establishments. Legal provisions for hazard analysis and critical control point (HACCP) based controls have been adopted and financial support for their introduction is provided to food business operators from the state budget. The current system for *controls of animal products* and animal by-products is not harmonised with EU requirements; in particular there are no provisions for the control of specified risk material (SRM). Harmonisation will also be necessary in the area of feed hygiene.

In Montenegro, 76 meat, 22 milk and 9 fish establishments are currently operating. It is likely that a large number of these establishments will need to substantially upgrade their facilities in order to meet EU requirements.

As regards **food safety rules**, national legislation addresses some of the EU requirements concerning *labelling, additives, food enzymes, flavourings, contact materials, supplements* and contaminants, but further harmonisation with the relevant *acquis* will be necessary. The Montenegrin legislation on **specific rules for feed** comprises some elements required by the *acquis*. However, legislation on *feeding stuffs intended for particular nutritional purposes* and on *certain products used in animal nutrition* is missing. There are two bilateral agreements in place in this area, concluded with Bosnia and Herzegovina and Croatia. It will have to be ensured that all relevant international agreements are in compliance with EU requirements upon accession.

In the **phytosanitary sector**, the Law on plant health protection forms the main legal basis. Montenegro has started the process of transposition of the *acquis* in this sector by adopting or aligning framework legislation. However, there is currently no specific legislation with regard to protected zones, registration of operators, passports, notification of interception and expenditure. The main competent authority is the phytosanitary administration within the Ministry of Agriculture, Forestry and Water Management. It is in charge of implementation

and, in cooperation with the Ministry of Health, sets and monitors maximum residue limits for pesticides. For the placing on the market of *plant protection products*, the Agriculture Ministry, the Health Ministry and the Ministry of Physical Planning and Environmental Protection cooperate. Montenegro has been a member of the International Union for the Protection of New Varieties of Plants (UPOV) since 2007. Tests for distinctness, uniformity and stability (DUS) are not performed in Montenegro, but tests performed abroad are recognised. Laboratory capacity for control of seed and seed material and for pesticide residue analysis is limited and will need to be strengthened considerably to meet EU requirements.

### *Conclusion*

Montenegro has started the process of aligning its legislation with EU requirements. *Overall*, however, it will have to make considerable and sustained efforts to fully align with the *acquis* and in particular to implement it effectively in the medium term. The administrative capacity of all authorities active in the sector but mainly of the veterinary and the phytosanitary administration within the Ministry of Agriculture, Forestry and Water Management will need to be strengthened to be able to cope with EU requirements. This is in particular valid for all activities related to inspection and control measures.

### **3.13. Chapter 13: Fisheries**

The *acquis* on fisheries consists of directly applicable Regulations, which do not require transposition into national legislation. However, it does require the introduction of measures to prepare the administration and operators for participation in the common fisheries policy (CFP), which covers resource and fleet management, inspection and control, structural actions, market policy and state aid control. In some cases, existing fisheries agreements and conventions with third countries or international organisations need to be adapted.

The Stabilisation and Association Agreement regulates preferential trade in fish and fishery products and encourages cooperation in the field of fisheries.

Montenegro has a very small fishery sector, which accounts for only 0.5% of its GDP. There are currently around 160 persons employed in marine fisheries (full- and part-time) and 36 in aquaculture. The official annual catches amount to around 700 tonnes, mainly pelagic, demersal and molluscs.

The Montenegrin fisheries administration is likewise small. The fisheries unit within the Ministry of Agriculture, Forestry and Water Management consists of one senior advisor (working half-time on fisheries) and two junior officers. The Institute of Marine Biology in Kotor plays an important role, not only as a scientific advisory body but also by providing support regarding fleet management and data collection. Overall, the capacity of the current fisheries administration is very limited and will need to be significantly strengthened to take on the tasks imposed by the CFP.

The Law on marine fisheries and aquaculture of 2009 and the Law on freshwater fishery of 2007 form the main legal foundation. A national strategic plan for the fisheries sector 2009–2013 sets objectives for the development of aquaculture and marine fisheries, including the scientific assessment of fish stocks.

Regarding Montenegro's **resource and fleet management**, no fish species exploited by Montenegrin fishermen are subject to catch limitations. Montenegro is not a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and has no quota

for blue-fin tuna. The Montenegrin fleet comprises around 200 small vessels, including 21 commercial vessels larger than 12 metres. Vessels are registered manually by the local harbourmaster's office. A fleet register as part of a fisheries information system (including data collection and a sampling programme for the small-scale fishing fleet) has been designed in the context of an EU-funded project, but is not yet fully operational. It will need to be further developed and implemented to become compatible with the EU fishing fleet register.

The Ministry of Agriculture, Forestry and Water Management establishes the number of fishing permits annually on a proposal from the Institute of Maritime Biology, based on catch data. However, there is a need for more reliable, systematic and improved collection of data as regards the fishing fleet, catches, landings and the biological state of the fish stocks in Montenegrin waters in order to allow a comprehensive resource assessment programme and to prepare for the EU CFP.

Montenegro will need to align its legislation with several *acquis* provisions, in particular Regulation 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, and Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the CFP.

As regards **inspection and control**, the Montenegrin Marine Fisheries Law regulates logbook requirements for vessels larger than 10 metres, but its application in practice is problematic. There is no systematic processing of logbooks, catches and landings are not adequately registered, and there are no sales notes. Hence, systematic cross-checking between the catch composition and logbook records can not take place. Montenegro will have to ensure proper registration and cross-checking of catches, landings and sales notes as a matter of priority.

The country will also need to prepare for the future obligation to record all catches by electronic means and to submit this information also electronically to the competent authorities (this 'electronic logbook' requirement will be applicable for EU Member State vessels with a length of over 12 metres as of 1 January 2012). Montenegro will further need to clarify how it will tackle the *acquis* requirements for a vessel monitoring system (VMS). Although only few Montenegrin vessels will be concerned, Montenegro needs to establish a fisheries monitoring centre or agree with a neighbouring country to share its facilities.

Concerning the human resources involved, there are currently three inspectors monitoring marine fisheries in Montenegro. There is some cooperation with the border maritime police, but their involvement in fisheries control is limited due to their own priorities.

As regards **structural actions** and **state aid**, Montenegro provides only limited financial support to the fishery sector. Apart from some aid to freshwater restocking of endemic species, the support measures are similar to those provided by the European Fisheries Fund (EFF). Upon accession, all state aid measures, including direct and indirect support to the fisheries sector, will have to be brought into line with the *acquis*.

In order to benefit from EU assistance following accession, Montenegro will have to comply with the programming mechanisms of the EFF. Montenegro will also have to set up a proper management and control system to ensure the sound and efficient management of EFF funds in the framework of shared management. This will require strengthening human resources and in particular training.

Concerning **market policy**, Montenegro's market measures are at a very embryonic stage, in particular with regard to establishing producer organisations and collecting market data. Alignment with the *acquis* would be required.

Regarding **international agreements**, Montenegro is a member of the General Fisheries Commission for the Mediterranean (GFCM) and participates in the FAO AdriaMed project 'Scientific cooperation to support responsible fisheries in the Adriatic Sea', which is co-funded by the EU. The 2002 protocol on the Prevlaka peninsula, at the border between Montenegro and Croatia, comprises a provision on fishing activities. No difficulties regards its implementation are reported.

### *Conclusion*

The Montenegrin fishery sector is very small and the current capacity of the fisheries administration for dealing with management and inspection is particularly limited. *Overall*, Montenegro will have to make considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term. In particular, there is a need to strengthen administrative capacity and to improve the collection of data as regards the fishing fleet, catches, landings and the biological state of the fish stocks.

### **3.14. Chapter 14: Transport policy**

EU transport legislation aims at improving the functioning of the internal market by promoting efficient, environment- and user-friendly transport services. The transport *acquis* covers road transport, railways, aviation, maritime transport and inland waterways. It governs technical and safety standards, social standards, and market liberalisation in the context of the single European transport market.

The *Stabilisation and Association Agreement* (SAA) places an obligation on Montenegro to grant unrestricted access to EU transit traffic to cross its territory and provides for applying non discriminatory road charges as well as for a timetable for harmonisation of the road safety legislation with the EU.

In the field of **road transport**, Montenegro needs to step up its efforts in both aligning and implementing the *acquis*. Access to the market for goods and passenger transport for both national and international operations is regulated, but the four criteria for access to the occupation (professional competence, financial standing, good repute and effective establishment) are not fully met. As regards the road charging *acquis*, Montenegro applies discriminatory charges towards EU road vehicles in addition to the so-called eco-tax that has not been made proportionate for road vehicles of EU origin other than heavy goods vehicles. If the legislation and organisational arrangements for roadworthiness testing are in place, the technical *acquis* on vehicles' weights and dimensions is not yet implemented. In the area of the social *acquis*, the legal framework regulating driving times and introducing tachographs was adopted in mid-2010. Compliance with mandatory driving times and rest periods and the use of tachographs are still to be verified. Enhanced administrative capacity is needed to overcome the delay in the implementation of digital tachographs. As regards the transport of dangerous goods, the Law on transport of dangerous substances is in force and the country is a party to the European Agreement concerning the international carriage of dangerous goods by road (ADR). However, Montenegro must strengthen its mechanisms for monitoring the implementation of relevant international rules and EU legislation, including that on transportable pressurised equipment, roadside checks on vehicles and safety advisors.

On **rail transport**, Montenegro achieved some progress in implementing the railway reform. It has unbundled infrastructure and operations of its state-owned railway companies, thus meeting a major requirement of EU railway legislation. Montenegro has signed a border crossing agreement with Serbia (based on the Bulgarian – Serbian agreement) which, however, is not in full compliance with EU legislation. The international rail freight traffic with Serbia and Albania reports strong growth after the 2009 crisis. The cooperation with Serbia on this route increases the strategic and commercial value of Montenegro's rail sector. Montenegro aims to develop passenger transport by rail. However, the legal framework in this area does not meet the requirements of EU law. The third railway package and the most recent EU legislation have not yet been transposed. Implementation of the EU Regulation on passenger rights and obligations is not satisfactory. The *acquis* in the area of rail transport safety must be transposed and implemented, in particular the Directives on the train driver license and interoperability. The separation of accounting between activities of the operator receiving state compensation and other activities, such as freight transport, is still pending. The absence of infrastructure charges for passenger trains does not comply with EU law and risks damaging the competitive position of rail freight. The Railway Authority, in charge of safety and regulation, was established in 2009. However, due to a lack of staff and resources, it is not fully operational. The remit of the Railway Authority needs to be enhanced through granting it the right to impose penalties and to request information as well as through mechanisms to enforce its decisions. An independent accident investigation body and a relevant appeal mechanism need to be set up.

There is no **inland waterway transport** in Montenegro.

As regards **combined transport**, Montenegro is in the initial phase of its development.

Concerning **air transport**, according to the last European Common Aviation Area (ECAA) experts' assessment (September 2010), Montenegro has made considerable progress with regard to the implementation of the first transitional phase of the ECAA Agreement and further requirements relating to the second phase. The state of compliance of Montenegro airlines is satisfactory. The country is on track to fulfil the conditions for phase one during 2011. However the issues of independence of the accidents' investigation body and the implementation the Safety Management System at the airport, as required by the Montreal Convention, still need to be addressed. A number of changes to the domestic air transport law are also necessary in the field of economic regulation, including regarding the implementation of the working time directive. The authority responsible for the National Civil Aviation Security Plan and the responsible for the Quality Control Programme need to be designated. Particular efforts need to be made to implement the safety *acquis* and the Single European Sky *acquis* through the ISIS Programme. Some progress has already been made in this respect with draft legislation prepared for implementation of the Single European Sky *acquis*. Montenegro needs to ensure that this legislation is adopted at the earliest opportunity to help ensure regulatory convergence in the air traffic management field.

Montenegro has only a limited **maritime transport** sector. However, considerable progress needs to be made in improving both flag state control and port state control. Montenegro is a member of the International Maritime Organisation (IMO) and the International Labour Organisation (ILO). Even though full statistics under the Paris Memorandum of Understanding on port state control are not available, the detention rate for Montenegro-flagged vessels was 23% in 2009, to be compared with an average for EU-flagged vessels of 2.2% the same year.

As regards **satellite navigation**, Montenegro is committed to participate in the Galileo satellite navigation programme once it is operational.

### *Conclusion*

*Overall*, the country will have to undertake additional efforts to align with the transport *acquis* and to implement it effectively in the medium term. Further adjustments of the legal and institutional framework and in particular strengthening of administrative and implementation capacities are needed. Particular attention needs to be paid to further alignment of the eco-tax and road charges legislation as well as to transposition of the third railway package. Montenegro need also to ensure sound implementation of social and technical rules in road transport, safety and security requirements in the maritime sector as well as the standards for transport of dangerous goods by road.

### **3.15. Chapter 15: Energy**

The EU's energy policy objectives are to improve competitiveness, ensure security of supply and protect the environment. The energy *acquis* consists of rules and policies covering competition and state aid, the internal energy market (opening up electricity and gas markets in particular), promoting renewable energy sources, energy efficiency, crisis management and oil stock security obligations, nuclear energy and nuclear safety and radiation protection.

Montenegro's overall energy balance comprises hydropower, petroleum products, coal, wood and wood waste, as well as imported electricity. In 2008, the three largest major energy groups in the overall energy balance were petroleum products (37%), coal (34%), and hydropower (12%). Domestic production is roughly half of total primary energy consumption, with lignite being the most important source (some 69% of total domestic production). All oil and petroleum products are imported. Montenegro currently has no gas infrastructure; however it intends to bring gas to the country.

As a member of the Energy Community, Montenegro is legally bound to implement substantial parts of the energy *acquis*. A new Energy Law, adopted in April 2010, is the basic document governing the main principles for implementing energy policy and strategy, competencies of the government in the energy sector, and the establishment, role and responsibility of the regulatory body. This law is generally in line with the energy *acquis* but substantial implementing legislation is still required.

With respect to **security of supply**, the new Energy Law sets the legal framework for maintaining 90 days of petroleum products stocks in accordance with the previous Directive on oil stocks. However the law does not set timeframe and conditions. It will be accompanied by a Decree on mandatory strategic stocks of oil and petroleum products in accordance with the new Directive on oil stocks. Some provisions of the Directives on security of electricity and gas supply have been transposed by the new energy law, but further efforts are required, also in view of Montenegro's participation in regional gas infrastructure projects ("Gas Ring").

In the area of **competitiveness and the internal energy market**, the new Energy Law (and associated implementing legislation) aims to achieve a greater degree of harmonisation with EU directives on electricity and natural gas markets, and will better address overall competences in the energy sector, the rights and obligations of energy entities and of the regulator. The electricity market has been *de jure* open for all non-household consumers since 1 January 2009 (some 40% of the market). Real market opening still lags behind. In



December 2009, the regulator issued the first licence for trading and supply to a company other than EPCG.

The distribution system operation function remains with the vertically integrated utility. There is no timeline foreseen for the legal unbundling of the distribution system operator. The transmission company (Prenos) was legally unbundled in 2009. Its operating transparency is improving, but it still does not fully meet the requirements of the *acquis* (such as publishing network charges and investment forecasts). The energy regulatory agency, Regagen, develops licensing rules and procedures, tariff methodology and dispute settlement rules. Its independence needs further strengthening.

In line with its obligations under the Energy Community, Montenegro needs to establish a legal framework for its future gas market.

Further efforts need to be made to align the national energy laws with the new provisions of the Third internal energy market package.

Hard coal is not exploited in Montenegro, which produces around 1.5 million tonnes of lignite per year. There is no state aid scheme supporting coal production, although government aid exists in the form of deferred payment of the liabilities of the *Pljevlja* mine towards the government (concessions, VAT, contributions).

The Law on the exploration and production of hydrocarbons, adopted in July 2010, provides a partial alignment with the Hydrocarbons Directive.

As for **renewable energy**, Montenegro has very significant hydropower potential. Tenders are well advanced to build both large-scale and small-scale hydropower plants.. The country also has potential for solar, wind and biomass. The new Energy Law aims to comply with the Renewable Energy Directive, which sets Member States targets for minimum shares of renewable energy by 2020. Through the Energy Community, each contracting party will have to establish a national target according to the same methodology as for Member States. Montenegro's target has not yet been established, and a key challenge will be to establish a reliable value for Montenegro's share of renewable energy in 2005 (the base year for the calculation). Montenegro's current renewable energy plans are not sufficient to comply fully with the 2020 target. Current efforts to increase renewables are focused on the electricity sector, but not on transport or heating. There is no timeframe for adopting national legislation related to the requirements of the Renewable Energy Directive. Montenegro commits to meet this future target, but without giving an outline or a timeframe for its adoption.

Montenegro adopted an **energy efficiency** strategy in 2005. It is supplemented by an action plan for the period 2008-2012, which sets out the measures, responsibilities and timing. However, it does not fully meet the requirements of the *acquis*. In particular, it lacks national indicative targets for improving energy efficiency. This plan is currently being revised. A Law on energy efficiency was adopted in May. It contains provisions relating to energy end-use efficiency, energy performance of buildings, eco-design of products, labelling of household appliances, as well as obligations of suppliers and distributors of energy-using appliances. However this Law does not foresee a specialised implementing body or an Energy Efficiency fund. The promotion of high-efficiency cogeneration is regulated by the April 2010 Energy Law. Montenegro is preparing a new national energy efficiency action plan, which should set out a strategy for achieving a 9% energy saving by 2018, in compliance with the Energy

Community commitments. Montenegro has no plans to implement the new EU Regulation on the labelling of tyres.

As regards **nuclear energy, nuclear safety and radiation protection**, Montenegro has ratified all the international conventions and treaties relevant for EU membership apart from the Convention on Nuclear Safety. The 2009 Radiation Protection Act provides the legal framework for the nuclear sector in accordance with international standards. However, Montenegro needs to develop implementing regulations and working procedures in line with the EU *acquis*. The regulatory body has been integrated into the Environmental Protection Agency, but there is no specific department within the EPA that has been assigned to nuclear issues. Neither has the EPA sufficient manpower to fulfil the tasks assigned in the nuclear field. There is no separate/dedicated budget for regulation in this area. The EPA's capability for review and assessment needs to be enhanced. There is no programme of environmental monitoring of radioactivity that is in full compliance with Articles 35 and 36 of the Euratom Treaty. There is no national emergency plan for radiation/nuclear accidents. The licensing of the storage facility for radioactive waste needs to be licensed following international standards and EU Directives, with special reference to environmental impact assessment.

In the area of nuclear safeguards, Montenegro has signed a Comprehensive Safeguards Agreement and an Additional Protocol thereto and has also signed the amended Small Quantities Protocol. However, none of these instruments is in force yet.

Montenegro is a party to the Convention on the Physical Protection of Nuclear Material, but not to the amended Convention.

### *Conclusion*

*Overall*, despite recent legislative developments, Montenegro will have to undertake additional efforts to align with the energy *acquis* and to implement it effectively in the medium term, with special reference to genuine opening of the electricity market, security of oil stocks, meeting targets for improving energy efficiency and use of renewables. A great deal of progress remains to be achieved in the field of nuclear safety and radiation protection. Further adjustments of the legal and institutional framework and in particular strengthening of administrative and implementation capacities are also needed.

### **3.16. Chapter 16: Taxation**

The *acquis* on taxation covers the area of indirect taxation as regards value added tax (VAT) and excise duties and lays down definitions and principles of VAT. Excise duties on energy, tobacco products and alcoholic beverages are subject to EU Directives covering the structures of the duties, the levels of minimum rates and the holding and movement of excisable goods. Regarding direct taxation, the *acquis* covers some aspects of corporate taxes and aims mainly at removing obstacles to cross-border activities between enterprises. EU legislation in the area of administrative cooperation and mutual assistance provides tools to prevent intra-EU tax evasion and tax avoidance.

As regards **indirect taxation** and *value added tax*, the legislation is broadly in line with the Directive; however, Montenegro should pursue its legislative alignment for the concept of the zero rate; the investment gold scheme (which is not applied); and the reduced rates applicable to e.g. computer equipment.

Related to *excise duties*, the energy taxation provisions of the Excise Duties Law are only partially aligned, since the law essentially only covers mineral oils. In order to further align national legislation with the EU *acquis* in the field of energy taxation, natural gas (used as motor fuel or for heating, industrial and commercial purposes), coke and coal (heating) and electricity need to be made subject to excise duties.

The fiscal marking of mineral oils is not in line with the Union marking level laid down in Article 1 of Commission Decision 2006/428/EC.

The Law on excise duties for tobacco products provides for a comparable tax structure to that applicable in the EU. However, following the entry into force of the new Tobacco Directive 2010/12 on 1 January 2011, Montenegrin tobacco legislation will diverge more significantly from EU legislation. The excise duties on cigarettes are still below the European minimum level.

Currently, for travellers, the exemptions for alcoholic products differ from those applicable in the EU, as well as the monetary thresholds.

The categories of alcoholic products (beer, wine, other fermented beverages, intermediate alcoholic beverages and ethyl alcohol) and the product definitions are similar to those laid down by EU law. Wine, other fermented beverages and intermediate products are taxed per hectolitre, whereas beer and ethyl alcohol are taxed on the content of alcohol by volume per hectolitre, which is similar to EU law. The rates of duty which are applied either meet or exceed the minimum rates specified in Directive 92/84EEC. The provisions in Article 45 concerning the personal use of alcohol by small commercial producers are not provided (yet) for in Community law.

Concerning the taxation of passenger cars, the maximum depreciation level of 70% is not sufficient to allow reasonable approximation of the value of a specific used car.

As regards **direct taxation**, Montenegro needs to implement all pieces of EU legislation enacted in the direct tax area, which are currently only partially reflected in its direct tax system. The provisions concerning direct taxation of the limited commercial activities of non-governmental organisations are not compatible with EU legislation.

As regards harmful tax competition (Code of Conduct on business taxation), the following measures need to be formally assessed against the criteria of the Code of Conduct by the European Council: tax relief for activities in economically underdeveloped municipalities; tax relief for hiring new employees; tax relief for NGOs; tax relief for investments in specific fixed assets; tax exemption for dividends; tax exemptions from corporate income tax under Article 25 or 34 of the Law on free zones.

Regarding **administrative cooperation or mutual assistance** in the field of recovery, the country does not have any agreement for the moment. Montenegro has concluded several bilateral agreements for mutual assistance and avoidance of double taxation. Measures implementing the EU legislation applicable in the field of mutual assistance for assessment in direct tax matters should be put into effect.

By the time of accession, the tax administration will be required to perform additional tasks in terms of administrative cooperation (in both the direct and indirect area) and under the Savings Directive. Therefore further efforts are needed to upgrade human resources capacity.

Concerning **operational capacity and computerisation**, as a general rule, the administration appears to employ competent, well-educated and committed staff at all levels of its organisation. The administration is encouraged to further increase training activities and make them extensively accessible to all members of staff. The tax administration has made significant efforts to enhance voluntary compliance by taxpayers, by means of transparency, including a website, a call centre, training activities, information campaigns and a high level of service to taxpayers. As a result, the administration manages to effectively collect the bulk of tax debts. However, the administration is encouraged to strengthen its risk analysis and inspection tools to identify unregistered taxpayers. In addition, further efforts are needed to regulate the legal effects for the tax administration of the written answers provided to taxpayers. Internal and external inspection audits are carried out on the basis of flexible planning and the results are communicated throughout the organisation. However, the internal control mechanism for detecting misconduct or corruption is not yielding results; Montenegro is therefore encouraged to investigate the efficiency of its tax administration's internal control system.

The tax administration has developed a national taxation IT system which allows registration of taxpayers, receipt and processing of tax returns for different types of taxes, collection enforcement, inspection audit, accounting and bookkeeping of public revenues, undertaking, verification and archiving data, internal control and safety, preparation of reports and verification and archiving of data. All units of the Montenegrin tax administration have access to the network of the taxation IT system.

Although the central IT system functions well, the automated application of risk parameters is lacking, as well as the possibility of filing automated tax returns. In order to further increase the efficiency of the data systems, the internal checks on information fed into them by tax officers should be extended.

In the area of administrative assistance Montenegro will only start preparing the relevant legislation and setting up the necessary infrastructure (CLO, ELO, FN, EMCS, VIES, etc.) shortly before accession. All national parts of the trans-European taxation and excise IT systems should be developed and fully operational by the time of accession.

The tax administration has the legal and administrative structures and adequate resources to sufficiently enforce the relevant legislation. As a consequence, this administration can be considered to have reached a sufficient level of administrative capacity to assume the obligations of the *acquis* in the medium term.

### *Conclusion*

In general, the tax legislation in Montenegro is partially aligned with the EU *acquis*. Some discrepancies can be observed in the area of indirect taxation, e.g. VAT, where zero rates, the gold scheme and reduced rates are not EU-compatible. In the excise sector some more energy products need to be covered, although the level of excise duties on the products that are covered meets the EU minima. Apart from cigarettes, most products are taxed at the EU minimum level, although the new Tobacco Directive may cause new gaps between Montenegrin and EU legislation. The excise rate applicable to wine and other fermented beverages needs to be adapted to the EU rate. Finally, the depreciation of the value of cars is not in line with the *acquis*. In direct taxation, Montenegro has to implement EU tax directives by the date of accession. Some aspects of tax relief laws need to be further examined in order to check whether they can be considered as harmful. The IT system is functioning and needs to be further modernised. In terms of administrative capacity the tax administration functions

sufficiently, although some organisational issues remain to be solved. Internal control needs to be enhanced in order to effectively prevent and detect corruption and misconduct.

*Overall*, despite the fact that the Montenegrin tax administration is still facing challenges in the area of legislative alignment and administrative capacity, if it continues its efforts, Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis*.

### **3.17. Chapter 17: Economic and monetary policy**

The *acquis* in the area of economic and monetary policy contains rules requiring the independence of central banks in Member States and prohibiting both direct financing of the public sector by the central banks and privileged access for the public sector to financial institutions. Member States are expected to coordinate their economic policies and are subject to the rules of the excessive deficit procedure as well as of the Stability and Growth Pact. The national central banks will be subject to the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB). New Member States are also committed to complying with the criteria for adopting the euro. Until they join the euro area, they will participate in economic and monetary union (EMU) as Member States with a derogation and must treat their exchange rate policy as a matter of common concern.

In the area of **monetary policy**, Montenegro currently uses the euro as sole legal tender. Unilateral euroisation runs counter to the underlying economic logic of EMU in the Treaty, which foresees the eventual adoption of the euro as the endpoint of a structured convergence process within a multilateral framework. The introduction of the euro in Montenegro is the result of history and is not linked to its EU-membership ambitions. The origin of Montenegro's euroisation goes back to November 1999 when its government unilaterally decided to introduce the D-mark, already widely used as a parallel currency, as its official tender, replaced by the euro in 2002. A Central Bank was established in 2000 with functions mostly related to banking supervision and running the payment system, the only effective monetary instrument being its reserve requirement policy.

The functional independence of the Central Bank of Montenegro is enshrined in the new Law on the national bank, adopted on 16 July 2010 and almost compliant with EU legislation. It stipulates that the Bank shall neither seek nor take instructions from other authorities. The Bank is financially independent and is the only institution responsible for monetary and foreign exchange policies in Montenegro. The primary objective of the Bank is the achievement and maintenance of price stability. However, some legislative provisions need to be further aligned with the *acquis*. In terms of institutional independence, the reporting obligations on monetary policy should only be ex-post, in order to prevent any possibility of external influence. In the area of personal independence, the provisions concerning grounds for dismissal of the Governor do not reflect the Statute of the ESCB and of the ECB. Regarding the prohibition of direct financing and privileged access of the public sector, the law explicitly prohibits extending credit directly to the Republic of Montenegro. However, the Insurance Act contains floors or thresholds with respect to public Montenegrin securities. This is tantamount to creating privileged access for the Republic of Montenegro compared to other states and institutions. These provisions will need to be adapted.

In the area of **economic policy**, since 2006 Montenegro has been participating in the pre-accession economic policy surveillance which aims at strengthening economic planning capacity in the country to prepare it for eventual participation in the economic policy

coordination and budgetary surveillance mechanisms of the European Monetary Union (EMU). In this context, Montenegro submits regular economic and fiscal programmes (EFP). The 2010 EFP covers the period 2010-2012, provides a concise overview of recent macroeconomic developments and present different scenarios about future macroeconomic developments and structural reform framework. However, data coverage remains weak; some discrepancies persist as well as the need for streamlining.

### *Conclusion*

*Overall*, Montenegro will have to undertake additional efforts to align with the *acquis* and implement it effectively in the medium term in the field of economic and monetary policy. Some aspects of legislation on central bank independence, monetary financing, privileged access of the public sector to financial institutions and protection of the euro need to be paid particular attention.

Montenegro's present use of the euro is distinct from euro area membership, which is the endpoint of a structured convergence process within a multilateral framework. This may take considerable time to achieve for Montenegro after EU accession. The implications of the Treaty framework for Montenegro's monetary regime will be further detailed in the future accession negotiations.

### **3.18. Chapter 18: Statistics**

The *acquis* on statistics consists almost exclusively of legislation which is directly applicable in the Member States, such as European Parliament and Council regulations and Commission decisions or regulations. It also includes a range of methodological handbooks and manuals. International agreements provide a further basis for production of statistics.

In the area of **statistical infrastructure**, further efforts are needed. Monstat, the national statistical institute, is the main producer of official statistics and responsible for coordination of the Montenegrin statistical system. With the independence of Montenegro in 2006, Monstat's functions and responsibilities increased significantly. However, the corresponding increase in resources has not been sufficient and the lack of human resources remains a critical issue. Monstat currently has 127 staff, 34 of which work in the regional offices. Additional office space is a necessity as Monstat's current offices are already stretched to the limit. The management capacity of Monstat needs to be strengthened urgently and adequate resources made available so Montenegro can fulfil all obligations under the *acquis*.

The Law on statistics was adopted in 2005 and is broadly aligned with international standards. It guarantees the professional independence of producers of official statistics and the confidentiality of data. However, there are weaknesses in the law which need to be addressed to strengthen the position of Monstat in the national statistical system and clarify ambiguities with regard to the role of the Statistical Council.

The national statistical system consists of several producers of official statistics, including the Central Bank, the Ministry of Finance, the Securities Commission and others. The coordination of the national statistical system has improved, but Monstat does not yet fulfil its role as the main coordinator. The programme of statistical surveys 2009-2013 is very ambitious, but it can only be achieved if the appropriate human and financial resources are made available. Therefore planning needs to be better linked to the resources available.

In the area of **classifications and registers** substantial efforts are needed to become compliant with the *acquis*. The preparation of the Law on the national statistical classification of economic activities according to the European classification NACE Rev. 2 is seriously delayed. The revision of the national classification of products by activities according to CPA 2008 needs to start as soon as possible. The statistical business register is operational, but significant shortcomings remain. A survey to improve the quality of the statistical business register is ongoing. Monstat plans to establish a statistical farm register based on the results of the agricultural census carried out in June 2010. A regional statistical classification in accordance with the EU NUTS Regulation has been agreed with the European Commission. According to the classification Montenegro constitutes one statistical region equivalent to NUTS level 1, 2 and 3, so national statistics will serve as input for regional statistics on all three NUTS levels.

In the area of **sector statistics** significant challenges remain before Montenegro is compliant with the *acquis*. Overall, progress has been achieved in many areas over the last two years. Several new statistical products are in the development phase and should produce visible results in the next years. Technical assistance is provided in a range of areas to achieve harmonisation with the *acquis*. However, administrative capacity remains limited and several projects have suffered from delays due to lack of staff.

The agricultural census was conducted in June 2010. Monstat is preparing the introduction of agro-monetary statistics (2012). Fishery statistics are produced by the Ministry of Agriculture, Forestry and Water Management. Monstat is preparing the population and housing census, which is planned for April 2011. The population census law has been adopted by parliament. A new population register has been developed by the Ministry of the Interior and Public Administration that will be an important source for population statistics in the future. Vital statistics and migration statistics are mainly based on registers, but a new migration survey was introduced in 2009. Concerning labour market statistics, Monstat has been conducting the labour force survey quarterly since 2008. The methodology is harmonised with EU standards. The labour cost survey was carried out for the first time in 2009 for reference year 2008. Job vacancy statistics are produced by the Employment Office. With regard to other social statistics, Montenegro has carried out the household budget survey annually since 2005. Monstat collects data on education statistics.

Progress has been made in the area of annual and quarterly national accounts, but much remains to be done to fully comply with the European System of Accounts (ESA 95). The timeliness of annual national accounts has improved significantly. Financial accounts are not yet produced. Government finance statistics are produced by the Ministry of Finance and largely follow the manual of the International Monetary Fund on Government Finance Statistics. The balance of payments, foreign direct investment and monetary and financial statistics are compiled by the Central Bank. Foreign affiliates statistics (inward and outward FATS) are not yet collected. With regard to price statistics, the consumer price index (CPI) is the official inflation index in Montenegro. Improvements in quality are still needed. The price collection survey has been improved in 2010 to include all products required for the harmonised index of consumer prices (HICP). The purchasing power parities are partially compliant and a project for further improvements is ongoing. The production of statistics on own resources is at an early stage. The analysis of available data sources for the compilation of gross national income has started. In the area of external trade statistics, Montenegro is partially compliant and data are delivered to Eurostat. The quality of data must be further improved; in particular, exports are believed to be underreported. The customs authorities have implemented the single administrative document and apply the latest EU classification,

CN2010. For short-term statistics several improvements have been made to the existing questionnaires and a new quarterly survey established in early 2010. In the area of tourism, transport, energy and environmental statistics Montenegro is not compliant with the *acquis*.

### *Conclusion*

*Overall*, the statistical production of Montenegro is not yet at a satisfactory level of alignment with the *acquis*. Progress is being made in several areas and the range of statistics is increasing, but significant challenges remain. Montenegro will have to make considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term. This requires in particular that the necessary human and financial resources are made available and that progress is closely monitored. In the area of sector statistics, shortcomings need to be addressed *inter alia* in the fields of agriculture, business and macroeconomic statistics. The implementation of the agricultural census in June 2010 and the adoption of the Law on the population census show that things are moving in the right direction. The necessary resources for the population and housing census planned for 2011 need to be made available in due time. Given Monstat's weak institutional status, the statistical law needs to be revised to strengthen its position in the national statistical system. The coordination of the statistical system needs to be further improved.

### **3.19. Chapter 19: Social policy and employment**

The *acquis* on social policy and employment includes minimum standards in areas of labour law, equal opportunities, health and safety at work and anti-discrimination. Member States participate in EU policy processes in the areas of employment policy, social inclusion and social protection. The social partners of Member States participate in social dialogue at European level. The European Social Fund (ESF) is the main financial tool through which the EU supports the implementation of its employment strategy and contributes to social inclusion efforts.

As regards **labour law**, Montenegrin legislation, in particular the Labour Law of 2008, covers several of the basic principles laid down by the EU labour law directives. However, a number of adjustments to the national legislation in this area will still be necessary in order to fully transpose the *acquis*. In addition, Montenegro will have to put in place legislation transposing the Directives on information and consultation at transnational level, i.e. regarding European Works Councils, the European Company and the European Cooperative Society, and the Directive on posting of workers.

The central piece of legislation in the area of **health and safety at work** is the Safety at Work Law, which covers both public and private sectors. It aims to transpose the main provisions of the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and also incorporates provisions relevant to certain specific areas and subjects (such as the construction sector, personal protective equipment, health and safety signs, and chemical hazards). There are also other related legislative acts in force which were adopted still in the Socialist Federal Republic of Yugoslavia, regulating both specific subject areas and sectors. In certain areas International Labour Organisation (ILO) instruments are applied (e.g. safety in the use of asbestos). There is no national legislation corresponding to EU Directives concerning display screen equipment, fishing vessels and artificial optical radiation. Neither are there indicative limit values set for chemical agents at work as required by the *acquis*.



The safety at work inspectorate of the Ministry of Labour and Social Welfare supervises the implementation of the Safety at Work Law and related by-laws. Currently, there are 12 safety at work inspectors active for around 212,000 employed persons, which constitutes an approximate ratio of 1 inspector per 17,600 workers (ILO recommendations are 1 inspector per 10,000 workers). The inspection capacities need therefore to be significantly strengthened in order to allow effective enforcement.

**Social dialogue** takes place mainly at tripartite level in the framework of the Social Council (SC). The SC was established in June 2008 as a consultative body with the task of monitoring, encouraging and analysing social and economic activities in Montenegro. It comprises representatives of the government and workers and employers associations and works with seven commissions covering different socio-economic areas. Transparency and effectiveness of its work needs to be improved. The plan of the government to develop the technical and administrative capacities of the SC secretariat was suspended due to current budgetary restrictions.

The General Collective Agreement dates from 2004 and was amended in 2006; negotiations for further amendments took place in 2010.

Bipartite social dialogue is little developed and the numbers of agreements concluded in the past years indicate a declining trend in the development of autonomous social dialogue. Efforts towards the promotion of bipartite social dialogue, especially at the branch level, need to be stepped up.

The most prominent trade union organisations are the Confederation of Trade Unions of Montenegro (CTUM) and the Union of Free Trade Unions of Montenegro (UFTUM), which split from CTUM in 2008. CTUM is a member of the International Trade Union Confederation (ITUC) and in the process of becoming affiliated with the European Trade Union Confederation (ETUC) as an observer. A new Law on trade union representativeness was adopted in May 2010 establishing new representativeness criteria and thereby opening the way to trade union pluralism.

Employers in Montenegro are represented by the Montenegrin Employers Federation (MEF), a voluntary organisation established in 2002. The MEF is a member of the International Organisation of Employers (IOE) and has observer status within BusinessEurope.

An agency for peaceful resolution of labour disputes was established in April 2010, with a tripartite steering committee as governing body. It is the first body of this kind in Montenegro and it is in the process of being established; the selection and training of staff is ongoing and additional efforts are needed before it will be fully operational.

As regards **employment policy**, the unemployment rate was recorded at over 11% by administrative data at the end of 2009 and at a much higher level by the labour force survey (LFS), with an upward tendency due to the impact of the economic and financial crisis, and a large share of long-term unemployed. The relatively low activity rate (around 60% in 2009) is a matter of concern for Montenegro's future development as are development and employment gaps between the north and other parts of the country. Other areas of concern are the substantial level of informal employment, the increasing segmentation of the labour market, with increased usage of fixed-term contracts and the persisting skills mismatch. Developing reliable data and statistics remains an outstanding issue in several areas, in particular for labour market analysis.

Montenegro has a national strategy for employment and human resources development in place for the period 2007-2011, which is supplemented by a national action plan for employment (NAPE), currently covering 2010-2011. However, implementation of the NAPE has until now fallen short on its main objective of increasing employment rates, partly due to the impact of the economic and financial crisis. Employment policy consists mainly of a number of active labour market measures (e.g. co-financing of apprentices, training, retraining and credits for self-employment), which up to 2009 took more than 50% of the total budget for labour market measures. The labour market mismatch is being addressed through a new vocational training strategy and efforts made by the employment office to develop vocational counselling. However, training programmes seem under-utilised and cooperation between the employment offices and the training institutions should be strengthened.

In terms of preparation for the **European Social Fund (ESF)**, a large number of elements required by the *acquis* in the area of cohesion policy are not yet in place. Montenegro will have to adapt its legislation and structures in order to be able to successfully manage, implement, monitor, audit and control Social Fund-type measures. The administrative capacity of all authorities involved, mainly government bodies, but also municipalities and education institutes, will need to be strengthened. Good progress in the preparation and implementation of IPA component IV on human resources development, including the finalisation of the draft Strategic Coherence Framework (SCF) and the Operational Programme (OP), will be an indicator of capacity to manage ESF funds efficiently upon accession. *(See also Chapter 22 — Regional policy and coordination of structural instruments)*

Additional efforts are necessary to ensure the **social inclusion** of socially and economically disadvantaged and vulnerable groups, such as Roma, Ashkali and Egyptians, disabled persons, youth and elderly people. Related statistics will need to be improved and in particular a data base and indicators used in the EU to monitor social inclusion and social protection will need to be developed.

As regards persons with disabilities, Montenegro has ratified the UN Convention on the rights of people with disabilities and national legislation is in line with the UN Convention. A strategy for integration of people with disabilities 2008-2016, with a respective action plan, was adopted in 2008. A quota system for the employment of people with disabilities was introduced in May 2009. However, most companies concerned prefer to pay a non-compliance fee. There is a need to move to a more comprehensive approach to promote access of people with disabilities to open employment and to establish reliable data.

Montenegro has implemented a number of reforms in the field of **social protection**, notably of pensions, e.g. increasing the retirement age. In order to face the demographic challenge of an ageing population, efforts to promote employment of women and older workers need to follow. Further progress is needed in the introduction of internationally comparable indicators of adequacy of pensions. In the health care sector, equal access to health care services need to be ensured, also for representatives of socially disadvantaged groups, e.g. Roma, Ashkali and Egyptians and internally displaced persons.

As regards **anti-discrimination**, the Constitution of Montenegro prohibits discrimination 'on any ground' and a comprehensive Anti-discrimination Law was adopted in July 2010. The adopted law is broadly in line with the relevant *acquis*, but some aspects, such as the definition of direct discrimination, will need to be further aligned. The law includes provisions on the "Protector of human rights and freedoms" (Ombudsman) designating this

institution as an equality body with competences corresponding to those set out in related EU directives. This will need to be complemented with further guarantees for effective and independent functioning of the Ombudsman in the Law on the Ombudsman. Several other laws, including the Labour Law, also contain provisions prohibiting discrimination on a number of specific grounds covered by EU legislation.

In the area of **equal opportunities**, Montenegro is a party to a number of relevant international conventions, including the UN Convention on the elimination of all forms of discrimination against women (CEDAW). Discrimination on grounds of sex in relation to employment is prohibited by Montenegrin legislation, e.g. the Labour Law and the Gender Equality Act, to mention the principal instruments. Montenegro has the necessary basic legislation in this area in place, comprising equal pay, access to employment and maternity protection, including maternity leave. The adoption of the Anti-discrimination Law in July 2010 should further improve the legal framework. Further legal adjustments are, however, necessary, e.g. concerning the removal of over-protection of women, introducing parental leave in accordance with EU legislation or improving the equal pay legislation. Generally, as regards both anti-discrimination and gender equality, effective implementation of existing legislation and strengthening of related administrative capacity is the main challenge.

A Law on the prevention of domestic violence was adopted in July 2010. The law aims to prevent and reduce all forms of domestic violence by providing various protection measures, outlining the rights of the victims, and related procedures. The preparation of a connected strategy and action plan is also envisaged by the law.

### *Conclusion*

Montenegro has started alignment with the *acquis* in the areas of labour law, health and safety at work, equal treatment for women and men, and anti-discrimination. However, progress is uneven across the areas and substantial gaps remain to fully transpose and effectively implement the *acquis* related to health and safety at work. Social dialogue remains weak. In general, strengthening capacity for policy development, implementation and monitoring constitute the key challenges for Montenegro, also with a view to the country's preparation for the European Social Fund. Establishing reliable labour market and social data and related statistics remains an outstanding issue.

*Overall*, Montenegro will have to make considerable and sustained efforts to align with the *acquis* in the area of social policy and employment and to implement it effectively in the medium term. The country also needs to prepare itself for participation in the cooperation processes developed at European level in the fields of employment, social inclusion and pensions.

### **3.20. Chapter 20: Enterprise and industrial policy**

The *acquis* under the enterprise and industrial policy chapter consists largely of policy principles and policy recommendations, which are reflected in communications, recommendations and Council conclusions. The EU's enterprise and industrial policy, including its small and medium-sized enterprises (SME) policy, seeks to promote the competitiveness of the economy. It is strongly driven by the Europe 2020 strategy, the successor of the Lisbon strategy for growth and jobs, and by the 2008 Small Business Act for Europe. Enterprise and industrial policy comprises policy instruments, including financial

support and regulatory measures. It also includes sectoral policies, such as recommendations for more targeted policy analysis and for new initiatives and consultations at sectoral level.

The most highly developed component of Montenegrin **enterprise and industrial policy** is currently SME policy.

Montenegro has developed an SME policy which has a positive impact on the business environment as the weight of SMEs in terms of employment, GDP and exports has increased in recent years. In 2008, SMEs accounted for approximately 62% of employment, and their contribution to gross value added amounted to approximately 60%. The contribution of SMEs to Montenegro's total exports is 31%.

The Montenegrin SME policy complies with the principles of the European Charter for Small Enterprises and is moving towards alignment with the Small Business Act. An SME strategy is in place for 2007-2010 and a new one for 2011-2015 is being prepared. The main body in charge of the SME policy, the Directorate for development of SMEs (SMEDA) within the Ministry of Economic Affairs, has 11 regional and local centres and runs the European Information and Innovation Centre (EIIC). The centres provide information to local businesses, advise on the preparation of business plans and implement SMEDA's projects. Business representatives are consulted on legislation in the framework of the Council for Regulatory Reform and Enhancement of the Business Environment.

However, the definition of SMEs is not fully aligned with the EU definition, and different providers of statistics on SMEs (the Central Register of the Commercial Court, the statistics agency — Monstat, and the tax administration) use different criteria in monitoring registered companies.

Montenegro's industrial policy is relatively weak as regards overall policy design, even though the development of specific policy components, such as enterprise policy, is fairly satisfactory. Montenegro has faced a strong decline in the relative size of industry to GDP (from 20.7% to GDP in 2001 to 13.5% in 2009), with the manufacturing sector going down from 12.8% to 5.9% for the same period. Industrial production has kept on increasing in absolute terms, but not in relative terms. So far, the government has not indicated whether the issue of declining industry will be addressed in an industrial strategy. Such a strategy should also address the high concentration of the manufacturing industry in the metal and agri-processing sectors.

The country has few elements of an innovation policy. There is no overall strategy for effective innovation support, only a number of sectoral innovation programmes and innovation support for SMEs. Innovation policy focuses still very much on R&D as a major source of innovation. The involvement of the business community in innovation policy is limited.

As regards **enterprise and industrial policy instruments**, Montenegro joined the Entrepreneurship and Innovation Programme of the EU Competitiveness and Innovation Framework Programme in 2008 and participates in the Enterprise Europe Network. The government launched a series of programmes in order to promote and improve access to finance for SMEs, newly-established enterprises and unemployed people establishing their own business. However, there is no indication whether the programmes concerning access to finance have yielded the expected results. In order to improve access to finance, the Montenegrin government has established the Investment and Development Fund (with a

capital of €80 million, of which 20% will be liquid assets), which should operate in the following fields: supporting the implementation of infrastructure and ecological projects, reducing regional discrepancies, supporting the sector of micro, small and medium-sized enterprises, and privatising the remaining capital in the Fund's portfolio.

Regarding alignment with Directive 2000/35/EC on combating late payments in commercial transactions, Montenegro has made progress in aligning its national legislation with the obligations of the Directive.

As regards **sector policies**, the main component of Montenegrin industry is manufacturing. Approximately 80% of gross value added in manufacturing in 2009 came from two sectors with similar contributions: production of foodstuffs, beverages and tobacco and production of basic metals and standard metal products. At this stage, no sectoral policies have been drawn up, with the exception of tourism.

Tourism is an important sector of the Montenegrin economy. For 2009 the travel and tourism industry indicators show that tourism has 16 % of total GDP and 10.8 % when related to employment. The Ministry of Tourism supports the tourism sector through promotion programmes aimed at creating a more favourable overall environment for enhancing tourism development, as well as improving the quality of services offered. The tourism strategy as developed and put in place so far shows that Montenegro is taking account of the sustainability aspect as followed by the EU and its Member States. Montenegro is a member of the United Nations World Tourism Organisation and works with other international organisations in developing its strategic framework.

The production of basic metals and standard metal products is the largest sector of the manufacturing industry. The capacity of the iron and steel industry in Montenegro is about 160,000 tonnes, corresponding to slightly more than 0.1% of the EU-27 capacity. Production capacity for the manufacture of non-ferrous metals is about 145,560 tonnes, mainly aluminium oxide (alumina) and aluminium ingots. The biggest plant, the Podgorica aluminium plant (1 300 employees), was privatised in 2005, being acquired by the Central European Aluminium Company. The plant is the biggest single contributor to Montenegrin GDP and exports (until recently 51% of the country's exports). The restructuring programme started in 2005 and is on-going in 2010.

The production of food products, beverages and tobacco products is the second largest manufacturing sector (38% of total manufacturing in 2008). Other industrial sectors (chemicals and rubber, defence industry, wood production, and maritime industry) make only a marginal contribution to the country's manufacturing sector and economy.

### *Conclusion*

Montenegro has developed an enterprise policy in line with EU principles, particularly in the area of support for SMEs. *Overall*, therefore, if it continues its efforts it should have the capacity to comply with the requirement of the *acquis* in the medium-term. However, further efforts are needed with regard to industrial policy and strategically important manufacturing sectors.

### **3.21. Chapter 21: Trans-European networks**

This chapter covers trans-European networks policy in the areas of transport, telecommunications and energy infrastructures, including the EU guidelines on the

development of trans-European networks and the support measures for developing projects of common interest. The aim of establishing and developing trans-European networks and promoting proper interconnection and interoperability of national networks is to take full advantage of the internal market and contribute to economic growth and the creation of employment in the European Union.

As regards trans-European **transport networks** (TEN-T), Montenegro participates actively in the implementation of the memorandum of understanding on development of the South East European Core Network and Observatory and has been playing a constructive role in the negotiations on a Transport Community Treaty for South-East Europe. However, more concrete steps are needed to develop jointly projects of regional interest with neighbouring countries. Regarding the current state of the Core Network in Montenegro, both road and rail links need to be upgraded. Bar-Boljare motorway project was developed to address this issue. However Montenegro's efforts are challenged due to mountainous landscape and limited financial means and rather low-density traffic. Maintenance of the transport infrastructure is not fully ensured, mainly due to a lack of financial resources. This affects in particular the secondary network, hampering connection to the Core Network of the remote rural areas. The port of Bar, which is among the deepest water ports in the region and Montenegro's only commercial port, also needs to be upgraded. Improving the two main airports (Podgorica and Tivat) should also be considered.

Trans-European **energy networks** (TEN-E) play a pivotal role in Montenegro's electricity supply. Montenegro's electricity networks are well connected with the power systems of Serbia, Bosnia and Herzegovina and Albania, but the electricity networks are outdated, which causes supply instability. The insufficient capacity of the high voltage networks affects its reliability, which may cause system collapse. Montenegro's transmission network has a mostly radial structure and its 110 kV network is not interconnected over the entire territory of Montenegro. In order to ensure more reliable supply, the transmission system operator is expanding several transformer stations and building new national transmission lines. The priority project to upgrade the interconnection with Albania to 400 kV is well advanced. Montenegro signed an agreement with Italy to build an underwater interconnection between the two countries by the end of 2013. All infrastructure will be public (owned by the transmission system operator), and the rules of the national regulators will apply to this infrastructure. Construction of at least one 400 kV line towards Serbia or Bosnia and Herzegovina is envisaged. Montenegro has no national gas network at this stage; however there are plans to develop domestic off-shore production and to join regional gas infrastructure projects. A participation in the development of the regional gas pipeline, the Ionian Adriatic Pipeline was envisaged, but not delivered. In particular, Montenegro needs concrete steps, in coordination with other Energy Community countries in the region, towards the construction of gas transmission lines and interconnectors under the concept of the Energy Community Gas Ring.

Regarding **telecommunication networks**, activities for the accession of Montenegro to the ICT Policy Support Programme, component of the Competitiveness and Innovation Framework Programme, are at an early stage.

### *Conclusion*

*Overall*, Montenegro will have to undertake additional efforts in the field of trans-European transport and energy networks to align with the *acquis* and to implement it effectively in the medium term. Regarding TEN-T infrastructure, Montenegro needs to develop in particular the

road Core Network in line with the expected volume of traffic. Rail needs specific attention, in particular the rail link from the port of Bar, which plays an essential role in the country's development. Balance needs to be found between the necessary improvement of the Core Network and its connections on the one hand and, on the other hand, the profitability of some projects, which must be better taken into account. Some projects, in particular motorway links, might need to be delayed. Regarding the TEN-E network, given the dependence on electricity imports and the problems caused by the outdated transmission system, Montenegro has to develop its policy concerning electricity as well as gas interconnections with neighbouring countries (within the concept of Energy Community Gas Ring) and has to update the national transmission system.

### 3.22. Chapter 22: Regional policy and coordination of structural instruments

The *acquis* on regional policy and coordination of structural instruments consists mostly of framework and implementing regulations, which do not require transposition into national legislation. They lay down the rules for drawing up, approving and implementing programmes financed by the Structural Funds (the European Regional Development Fund and the European Social Fund) and — for some Member States — Cohesion Fund programmes reflecting each country's territorial organisation. These programmes are negotiated and agreed with the Commission. Implementation is a shared responsibility of the Member States and the Commission. Member States must comply with the provisions of the *acquis*, for example in the areas of public procurement, competition and the environment, equality between men and women and non-discrimination, as well as sustainable development, when selecting and implementing projects.

As regards the **legislative framework**, regional development in Montenegro is not regulated in an integrated manner. There is no Law on regional development but preparatory work for such legislation is under way, although such a law is not mandatory. Policy measures with a regional or local focus are currently based on several pieces of legislation, e.g. the spatial plan, the Law on territorial organisation, and the Law on local self-government.

Montenegro has two levels of governance: national/central and local authorities (municipalities), which are self-government units. Montenegro's territory is organised into 19 municipalities, the capital Podgorica and the historic royal capital Cetinje. There are neither regions, as an administrative form of territorial organisation, nor bodies competent for decision making at regional level. The competences of the municipalities are determined by the Law on local self-government. Their financing is ensured by own revenues (local taxes) and by budgetary transfers from the central government.

The Budget Law does not explicitly provide for multi-annual budget programming, but allocations for implementing multi-annual policies and programmes are presented in the annual budget bill as previews. Amendments to the Budget Law will be needed to allow the transfer of national co-financing budgets between EU programmes, funds and years.

Montenegro is considered in statistical terms as one region corresponding to levels 1, 2 and 3 of the NUTS classification.

With regard to the **institutional framework** for the implementation of regional development policy, the Ministry of Economic Affairs plays a coordinating role among the multiple stakeholders. A department for regional development has been established in the ministry,

which is, among other things, responsible for coordinating and monitoring the implementation of Montenegro's regional development strategy and related legislation.

Montenegro is currently preparing for components III (regional development) and IV (human resources development) of the IPA programme, which will become available once Montenegro is granted candidate country status. IPA components III and IV mainly aim to prepare candidate countries for the management of financial instruments under the Structural and Cohesion Funds following EU accession. A number of decisions and actions have been taken in this context. A strategic coordinator has been appointed and the Operating Structures (OS) for IPA components III and IV, as well as their heads, were designated. Yet, the operation and function of the OS will need to be specified in more detail and to be put in place. Other structures established for IPA component I will remain in effect, namely the national IPA coordinator, national authorising officer (NAO), the National Fund and the Audit Authority. Capacity developed in the Central Finance and Contracts Unit (CFCU) will serve as a basis for implementing future programmes under IPA components III and IV. Nevertheless, a lot remains to be done to prepare the institutional framework and structures for managing IPA components III and IV and subsequently Structural Funds. Related preparatory activities need to be further accelerated.

Upon accession, Montenegro will need to have a sufficiently strong **administrative capacity** in place to deal with the requirements of the EU structural policy. Competent staff with solid managerial capacities needs to be deployed at various levels of the administration dealing with Structural Funds, and effective financial management, control and monitoring mechanisms will need to be in place. Thorough and sound project preparation and implementation by the final beneficiaries is one of the keys to success, and trained and skilled staffing is essential in this respect. IPA assistance and in particular the preparations for IPA components III and IV are expected to contribute to the administrative strengthening process.

With regard to **programming**, the government of Montenegro has adopted a number of strategic documents to implement and promote sectoral policies for regional development purposes. A Regional Development Strategy was adopted in July 2010, which sets policy objectives and strategic directions to create the conditions for balanced development of the country. The national programme for Montenegro's integration into the EU for the period 2008-2012, the energy development strategy to 2025, the transport development strategy and the strategic master plans for waste management are some further strategic documents. In addition, Montenegro aims, with IPA project assistance, to draw up a national development plan. In the framework of preparing for IPA components III and IV, drafts of the Strategic Coherence Framework (SCF) and of the operational programmes have been elaborated; however, they need further improvement before adoption.

Progress is needed on the availability of reliable statistics. In particular, Montenegro needs to strengthen its capacity to gather and prepare adequate statistical data.

The implementation of actions under IPA component I (transition and institution building) and II (cross-border cooperation) has allowed the Montenegrin authorities to familiarise themselves with the requirements for **monitoring and evaluating** EU (co-)funded programmes and projects. But adequate national systems and mechanisms do not exist yet; they need to be designed and put in place in order to evaluate and monitor the quality and impact of development programmes.



With regard to **financial management and control**, the Ministry of Finance is the main body responsible. Within the context of IPA components III and IV, the national authorising officer, as the head of the national fund, will be responsible for the sound financial management of EU funds once the country has been accredited to manage IPA funds in a decentralised manner. This responsibility is assumed by the Deputy Minister of Finance for the Treasury Department. A central finance and contracting unit (CFCU) within the Ministry of Finance has been established that will be in charge of tendering and contracting once IPA management powers are conferred on Montenegro. Currently, experience in project implementation entailing financial transactions is rather limited and confined to projects under IPA components I and II. Financial management, control systems and procedures will need to be designed and put in place in order to fully align with IPA requirements.

An audit authority for IPA funds has been appointed within the State Audit Institute. Its full independence will need to be ensured before the management of IPA funds can be transferred to Montenegrin authorities. (*See also Chapter 32 Financial Control*)

### *Impact*

Montenegro had a nominal GDP of €3 billion in 2008. This equals about 0.02% of EU-27 GDP for about 0.13% of the EU-27 population. Considering the size of its economy and population, Montenegro's accession would only marginally reduce the EU's average GDP per capita (PPS) compared to today's data and hence would slightly influence the eligibility of regions.

Given that GDP per capita is considerably below the EU average, Montenegro would be entitled to receive EU cohesion policy contributions under the convergence objective. Following a preliminary assessment of Montenegro's, economic situation and considering the current capping rules of the structural funds, the estimated impact of Montenegro's possible accession on EU cohesion policy is considered manageable.

### *Conclusion*

*Overall*, Montenegro's preparations for regional policy instruments, structures and mechanisms are at an early stage. A positive start was made with preparation for IPA components III and IV and with the definition of some strategic directions; however, considerable and sustained efforts to set up sound procedures and competent administrative structures will be necessary to allow Montenegro, in the medium term, to apply EU rules and channel the funds from the EU structural instruments.

## **3.23. Chapter 23: Judiciary and fundamental rights**

EU policies in the area of the judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The establishment of an independent and efficient judiciary is of paramount importance. Impartiality, integrity and high standards of adjudication by the courts are essential for safeguarding the rule of law. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Likewise, Member States must fight corruption effectively as it represents a threat to the stability of democratic institutions and the rule of law. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption. Member States must ensure respect for fundamental rights and EU citizens' rights as guaranteed by the *acquis* and by the Charter of Fundamental Rights.

The principle of *independence* of the **judiciary** is set out in the Constitution and further specified in the country's legislation<sup>13</sup>. The permanent status of judges is guaranteed by the Constitution. However, serious concerns exist over the independence of the judiciary, as the legal framework leaves room for disproportionate political influence. Although judges are appointed by the Judicial Council, the majority of its members are appointed by parliament and the government.

Except for the President of the Supreme Court who is appointed by the Parliament, the selection, promotion, disciplinary proceedings and dismissal of judges are carried out by the Judicial Council. Yet, selection criteria are not followed consistently while written entry tests are not mandatory or anonymously checked. A fully-fledged merit-based career system needs to be established to strengthen independence, professionalism and transparency in the judiciary.

Accountability in the judiciary is ensured by means of the monitoring role of the Judicial Council and its role in disciplinary proceedings. A Code of Ethics has been established in 2008 but no proceedings have been initiated for its breach. There is a need to strengthen the overall system to increase transparency and ensure proper implementation of the Code of Ethics.. A track record on fighting corruption in the judiciary has started to be established. However, corruption and conflict of interest rules are not sufficiently monitored. Accountability in the judiciary needs to be improved.

*Prosecutors* are appointed and dismissed by parliament. Deputy prosecutors are appointed by the Prosecutorial Council, the members of which are appointed by parliament. Deputy public prosecutors enjoy permanent tenure after a 3-year probationary period. Disciplinary proceedings against prosecutors are carried out by parliament and for deputy prosecutors by the Prosecutorial Council. The criteria for dismissal and disciplinary proceedings are not transparent and the risk of discretionary implementation is high.

*Impartiality* of judges is ensured by random allocation and by conflict of interest rules and disqualification provisions established by law. However, the rules for random allocation are not sufficiently sound and do not guarantee the genuinely random allocation of cases, especially in small courts. The recent introduction of a computerised court case management system and random allocation is expected to change this. Disqualification rules apply to prosecutors as for judges. The financial position of judges and prosecutors has considerably improved. Both judges and prosecutors enjoy functional *immunity*. The lifting of immunity for judges and deputy prosecutors is within the competence of the Judicial Council and of the Prosecutorial Council respectively while Parliament can lift the immunity of public prosecutors. The President of the Supreme Court has full immunity which can be lifted only by the parliament.

A Judicial Training Centre functions under the Supreme Court and is financed from its budget. The Centre provides both initial and continuous training to judges and prosecutors. However, there is no systematic approach to training. Planned training with set curricula for all members of the judiciary needs to be established. This should include systematic training on new legislation and EU law.

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<sup>13</sup> the Law on Courts, Law on Public Prosecutors and Law on the Judicial Council, as well as in the Rules of Procedure of the Judicial and Prosecutorial Councils.

Montenegro has made efforts to improve the efficiency of the judiciary. Implementation of the new Criminal Procedure Code (CPC) and of the amendments to the Criminal Code will contribute to a more effective administration of justice. Montenegro has suffered from a large *backlog* of unresolved court cases but the authorities introduced measures since 2008 to address this problem. Data presented by the authorities suggest a reduction of over 75% on an annual basis in the beginning of 2010. Yet, there are concerns as to the soundness of the approach and the transparency of the methodology used. Enforcement of both civil and criminal decisions is weak. Additional measures to improve enforcement are required.

The administrative capacity of the Montenegrin judiciary is generally adequate for normal administration of justice. Lack of infrastructure and equipment has hindered the judiciary's efficiency, but efforts are being made by the authorities to remedy the situation. A reorganisation of the court system is envisaged in the government strategy on the reform of the judiciary but it has not yet been implemented. Such a reorganisation should be carried out following an objective analysis on the basis of reliable court statistics and a precise account of the current workload of the courts. *Budget allocations* for the courts have risen in the last few years, but the overall allocations remain low in comparison to the needs in particular for investment.

Access to justice is guaranteed by the Constitution to different categories of both national and foreign persons. The right to a fair and public trial within a reasonable time and the presumption of innocence are also guaranteed. The Law on the right to trial within a reasonable time is not being implemented effectively, as almost all complaints are rejected on procedural grounds. Long duration of court proceedings remains a cause for concern. Legal aid is provided by the Bar Association and other services, including non-governmental organisations. Free legal aid is regulated by the provisions of the Criminal and Civil Procedure Codes. Local Self-Government is in charge of organising the provision of legal aid to citizens. However, the law is not implemented effectively yet. The constitutional provision on the right to legal remedy does not fully comply with Article 13 of the ECHR. Enforcement of both civil and criminal decisions is weak. Additional measures to improve enforcement are required.

*(See also Political criteria — Democracy and the rule of law)*

Concerning **anti-corruption policy** and measures, Montenegro has undertaken coordinated efforts to fight corruption, by putting in place the legal, policy and institutional framework.

Montenegro has ratified the key anti-corruption conventions, including the Council of Europe Criminal and Civil Law Conventions on corruption, the Additional Protocol to the Criminal Law Convention and the Council of Europe Conventions on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism. Montenegro also acceded to the United Nations Convention against corruption. However, the alignment of national law with provisions of international conventions has not yet been completed. Montenegro is a member of GRECO, the Group of States against corruption. An evaluation of December 2008 found that eight out of the twenty four recommendations made in 2006 by the group have not yet been implemented.

Important legislation has been adopted, such as the new Criminal Procedure Code (CPC), amendments to the Criminal Code, the Law on prevention of conflicts of interest, the Law on the financing of parties and the Law on civil servants and state employees. A Strategy for fighting corruption and organised crime was adopted in 2005 followed by two Action Plans.

A mechanism to monitor implementation was put in place in 2007. However results so far remain uneven. A new improved Strategy and Action Plan for the period 2010-2014 have been adopted. Montenegro needs to vigorously implement the new anti-corruption strategy and action plan.

A number of key institutions and agencies have been established for the fight against corruption. However, the institutional set up needs to be streamlined and properly coordinated. The National Commission monitors implementation of the strategy papers. The Directorate for Anti-Corruption Initiatives (DACI), to which 54 other institutions report on corruption, has mainly a consultative role focusing on soft prevention measures such as education and awareness-raising. There is no single authority with clear legal powers and the capacity to monitor and enforce commitments and obligations of government bodies and no clear division of competences.

The Parliament's role in supervision of the anti-corruption efforts remains limited. Supervisory institutions in areas and bodies where large expenditure of public money or disposal of public assets takes place need to be further strengthened to efficiently control corruption risks.

Montenegro has strengthened mechanisms to fight corruption by allocating human resources, funds and equipment, in particular in the Police Directorate, the Public Prosecutor's Office and the Administration for Prevention of Money Laundering and Terrorism Financing (the FIU). Efforts have been made to strengthen cooperation between various law enforcement and other bodies on the national and international level. Cooperation agreements have been signed between the main law enforcement bodies. A Joint Investigative Team, dealing amongst others with corruption cases, consisting of representatives of law enforcement bodies and headed by the Special Prosecutor was established in early 2010.

An internal control department operated within the police service until the end of 2009. In 2010 it was moved to the Ministry of Interior and Public Administration. However its work so far has been limited to cases of petty corruption. Anti-corruption monitoring in the judiciary has had limited effectiveness so far.

The law enforcement authorities possess the basic skills for prosecuting corruption, however the track record of investigations, prosecutions and final convictions in corruption cases at all levels remains low. There is a need for a proactive approach in investigating and prosecuting corruption.

The track record of investigations, prosecutions and final convictions in corruption cases at all levels remains low. Although, operational and investigative capacity of the law enforcement authorities have been strengthened, it remains weak.. The recent criminal law reform can improve the capacity of the criminal justice system to investigate and prosecute corruption. The new CPC enhances investigation capacity by allowing use of special investigative means in corruption cases. Efficient implementation of the CPC will be essential in order to achieve tangible results. The prosecution service needs to develop pro-active approaches and take the lead in performing its investigation duties under the new CPC. Continuous training must be provided for all prosecutors. The quality of statistics has not significantly improved, despite the establishment of a tripartite commission to unify data collection methods.

Despite an improved legal and institutional framework, corruption remains a widespread and prevalent problem in Montenegro. The perception of corruption across many sectors and

institutions remains very high with certain sectors and areas particularly concerned, i.e. construction and inspection supervision as well as urban and spatial planning, including cadastre. Other risk areas are public administration, the judicial system, the police, privatisation, public procurement, health, education and local-government. Furthermore, capacity for financial investigations is still insufficient. The use of financial investigation and confiscation as a means of targeting corruption (and organised crime) based on unexplained wealth needs to be used as a basis of investigations. Lack of proactive approach in investigations (which are triggered mainly by complaints) including the collection of evidence from various sources affects efficiency in this field.

Politicised appointments of prosecutors and judges and limited investigation capacities notably in the area of financial crime undermine law enforcement effectiveness. Statistics on corruption cases need to be substantially improved. Strong political will is needed to significantly improve performance in combating corruption and establishing a track record of final convictions at all levels.

*(See also Political criteria — Democracy and the rule of law)*

Montenegro is well advanced in setting up the legal and institutional framework necessary for the protection of **fundamental rights** and is constantly improving it. However, further efforts are needed to ensure genuine implementation of the legal and policy framework. The capacities and efficiency of institutions devoted to human rights, in particular the Ombudsman, needs to be enhanced. Increased awareness and sensitivity of the administration, police and the judiciary to European and international fundamental rights standards are needed.

As regards the *prison system*, further upgrading of facilities is needed as well as the alignment of detention conditions with European standards.

Montenegro has made some progress as regards the fight against *torture and ill-treatment* including impunity but serious efforts are still needed, including through improved administrative and judiciary proceeding of cases.

Despite satisfactory constitutional and largely improved legal framework, *freedom of expression (including the media)* remains hampered by the high-level fines applied in defamation cases. Investigative journalists still face intimidation. Past cases of violence have not always been satisfactorily investigated and followed up. Compliance of journalists with professional ethics and standards still needs to be strengthened.

*Freedom of assembly and association* is guaranteed and generally respected in Montenegro, as shows the State's financial support to NGOs and the June 2010 decision to set-up the Council for cooperation with NGOs. However, cooperation with *civil society organisations*, in particular in the framework of the legislative process and definition of major public policies and projects needs to be improved.

*Freedom of religion* is guaranteed by the Constitution and is widely respected, ensuring broadly smooth inter-faith relations. However, the adoption of the legal framework for the restitution of property confiscated from religious communities is still pending.

Montenegro has improved provisions regulating access to *citizenship*. However, registration and checking of data need to be improved. De facto statelessness of around 1 500 Roma, Ashkali and Egyptian persons, due to the lack of personal documents, is a matter of concern.

As regards *anti-discrimination policies*, direct or indirect discrimination on any ground is forbidden by the Constitution and addressed through several pieces of legislation, including the recently amended general law on prohibition of discrimination. However, implementation of mechanisms for preventing, monitoring, sanctioning and prosecuting discrimination cases need to be strengthened. Discriminations against Roma, Ashkali and Egyptian, persons with disabilities (including children) and lesbian, gay, bisexual and transgender (LGBT) persons, including on the part of state authorities, are a matter of concern.

Further efforts are also needed to ensure *women's rights* and gender equality, in particular regarding the access to decision-making positions in politics and work as well as to equal pay. Despite some efforts at awareness-raising and improved attitude of the police, domestic violence remains an issue of concern as the legal framework is not properly implemented and support to victims is unsatisfactory.

Concerning the *children's rights*, despite efforts of harmonisation of the national legal framework with international standards, more needs to be done to improve the legal framework and to ensure its proper implementation, including as regards the situation of children with disabilities and the development of alternatives to institutionalisation.

The *labour rights and freedom to join trade unions* is guaranteed by the Constitution and the issue of trade union representativeness was properly addressed with the newly adopted law. However social dialogue remains unsatisfactory, as shown by the limited role of the Social Council.

The *property rights* are guaranteed by the Constitution and addressed through the Law on Private Property Relations. However, the process of property restitution is slow.

Montenegro has a broad legal and institutional framework for protection of *minorities*. However, cooperation of the government with Minority Councils is still insufficiently developed. Persons belonging to minorities claim under-representation in the administration, judiciary and police. Roma, Ashkali and Egyptian persons remain the most vulnerable group as regards access to political, economic and social rights.

*(see also political criteria - Human Rights and the protection of minorities)*

To ensure **EU citizens' rights to vote** and stand as a *candidate in municipal and European Parliament elections*, Montenegro will need to harmonise the provisions of the Constitution, laws and other regulations, which regulate the exercise of right to vote, with the *acquis communautaire* and especially with the Council Directives 94/80/EC and 93/109/EC.

Regarding *residence rights*, the current Montenegrin legal framework is not in line with EU *acquis* in the area of free movement of EU citizens and major amendments are necessary. However, this will only be a requirement in the later stages of the EU accession process. Administrative structures are in place to deal with migration issues and these structures are likely to be involved in implementation of EU law. Montenegro is on the right track and it is expected that by the time of accession it will be able to adopt the necessary legislative changes and to prepare for full implementation of the EU legislation.

In order to comply with the *acquis*, Montenegro will have to implement in particular the Decision regarding protection for citizens of the European Union by *diplomatic and consular* representations and the Decision on the establishment of an emergency travel document.

## Conclusion

Overall, Montenegro will have to make considerable and sustained efforts to align with the *acquis* in this chapter and in particular to effectively implement and enforce it in the medium term. Considerable strengthening of administrative and implementation capacities will also be needed.

(See also the conclusion of Part 1 – Political criteria)

### 3.24. Chapter 24: Justice, freedom and security

EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as external migration, asylum, border control, visas, judicial cooperation in criminal and civil matters, police cooperation, the fight against organised crime and terrorism, cooperation in the field of drugs and customs cooperation, Member States need to be properly equipped to adequately implement the growing framework of common rules. Above all, this requires strong and well-integrated capacity within the law enforcement agencies and other relevant bodies to attain the necessary standards. A professional, reliable and efficient police organisation is of paramount importance.

The most detailed part of the EU's policies on justice, freedom and security is the Schengen *acquis*, which entails the lifting of internal border controls in the EU. For a new Member State, substantial parts of the Schengen *acquis* are implemented following a separate Council decision to be taken after accession.

Visa-free travel to the Schengen area entered into force in December 2009 for Montenegrin citizens holding biometric passports, after Montenegro had fulfilled the requirements of the visa liberalisation roadmap. Benchmarks were set on areas such as visa policy, migration, border management, asylum, judicial co-operation in civil and criminal matters and organised crime including money laundering, drug-trafficking. Progress attained in these fields, through the visa liberalisation dialogue, constitutes a good basis on which Montenegro can build further in order to meet challenges in the area of justice, freedom and security.

Currently, the **migration** flow to Montenegro is limited and migrants come primarily from neighbouring countries. The approach, structure and concepts introduced in the migration legislation are generally in line with the EU *acquis*. However, in order to achieve full harmonisation, further efforts are necessary, with special reference to legislation on family reunification, foreign workers, foreign students and researchers. Legislation on irregular migration is broadly in line with the EU *acquis*. A significant divergence concerns the definition of smuggling of persons and the rules concerning residence permits for victims of trafficking.

Montenegro implements the readmission agreement with the EU efficiently. During the return procedure, the special needs of vulnerable persons such as unaccompanied minors and disabled persons are taken into account. In the case of voluntary compliance with a return decision, the necessary safeguards must be provided as well. The main challenge for Montenegro in this area relates to the implementation of the new legislative framework, which requires adequate resources and administrative capacities, as well as efficient inter-agency coordination and cooperation.

Montenegro has established its **asylum** system. The legislation largely transposes the essential elements of EU Directives on eligibility, procedures and reception conditions for asylum

seekers. The essential institutions have been set up, staffed and are operating. The completion of the asylum centre has delayed. It is planned to become operational by mid-2011. Although Montenegro faces a low number of asylum seekers, there are challenges related to their reception, including access to health care, employment, identity documents and integration. Relevant pieces of primary and secondary legislation in this area need to be adjusted and practices must be improved. With a view to preparing for possible future participation in Eurodac, the country needs to develop a national database for checking asylum-seekers' personal data, including fingerprints.

Montenegro has adopted several laws aimed at modernising the visa regime, following international and EU standards. However, **visa policy** is not yet fully in line with the EU *acquis*. Montenegro has limited capacities for the issuing of visas by the Ministry of Foreign Affairs and by its diplomatic and consular missions. There is no electronic database linking consular offices issuing visas with the Foreign Ministry. Furthermore, the high number of visas issued at the border remains a concern, taking into account the fact that applications are processed on paper, which undermines the effectiveness of checks. Upgrading of administrative capacity, including enhancing of expertise and human resources is required.

Regarding **external borders and Schengen**, the necessary conditions and arrangements for implementing efficient border management are broadly in place. The new legal framework on border control has been harmonised with the Schengen Border Code. Legislation and agreements provide for inter-agency and international cooperation. An integrated border management (IBM) strategy is in place, but monitoring of its implementation remains weak.

The Border Police Department is organised within the Police Directorate. Its organisation is generally in line with EU standards. Human resources allocated are sufficient but training needs to be further improved, as a means to ensure consistency in implementing policies and rules. Frequent staff rotation within border police needs to be avoided. Modernisation and upgrading of equipment and infrastructure is required both at border crossing points and for surveillance purposes, including access to relevant Interpol databases. Border with Kosovo is not demarcated and poses a challenge in terms of crime activities. Security of the sea border also needs to be strengthened. Cross-border cooperation needs to be further strengthened. Montenegro and Frontex signed a working arrangement on 18 June 2009, establishing the basis of their operational cooperation.

Regarding **judicial cooperation in civil matters**, the relevant legislative framework is mostly in place and the general system for civil and commercial matters is broadly in line with the EU *acquis*. However, further efforts are necessary to ensure its efficient enforcement. Furthermore, Montenegro has not ratified all relevant international instruments in this area, in particular those related to the framework of the Hague Conference on Private Internal Law. Practical enforcement of both national and international legal frameworks needs to be improved.

Montenegro has adopted legislation, ratified relevant international instruments and concluded bilateral agreements to ensure **judicial cooperation in criminal matters**. However, the legal framework is not complete and needs to be brought fully into line with the *acquis*. Further efforts are necessary to meet requirements including on applying legislation on the European evidence warrant and the principle of mutual recognition to judgments and probation decisions. The main challenge concerns implementation. The capacity of the Ministry of Justice for judicial cooperation needs to be strengthened and effective implementation of legislation must be ensured. Its internal organisation and procedures, administrative capacity



and IT systems need to be further improved. Montenegro also needs to take steps to ensure cooperation with Eurojust.

In the area of **police cooperation and the fight against organised crime**, Montenegro has achieved progress in recent years. Nevertheless, it continues to face major challenges in this area. Montenegro is a country both of origin and of transit for organised crime activities. Money laundering and drug smuggling are key areas of concern. The legislative and policy framework are broadly in place. Montenegro has acceded to relevant international legal instruments<sup>14</sup>. However, the implementation of adopted legislation and policy documents as well as the application of ratified international conventions, which have not been fully transposed in the national legislation, are still poor and have a rather limited impact.

The new Criminal Procedure Code (CPC) entered into force in August 2010, as regards organised crime and corruption as well as war crimes. Its general use has been postponed by one year. It introduces a number of new tools and concepts, including the use of special investigative means and the reverse burden of proof for property of suspicious legal origins and extended confiscation of criminal assets. The capacity of public prosecutors to implement the new legislation and to ensure guidance and coordination of police and other law enforcement agencies will be critical to improve effectiveness in the fight against organised crime and corruption in the medium term. Montenegro needs to fully engage in sound implementation of the CPC and to provide the necessary means to ensure it.

The level of inter-agency cooperation, information flow and exchange among the different law enforcement agencies (police, customs, tax authorities, anti-money laundering administration) and with the prosecutor's office is not satisfactory. The framework also needs to be streamlined and duplications avoided. Montenegro also lacks proper risk assessment, crime mapping and a forward-looking approach to organised crime risks and threats. Intelligence-led policing needs to be enhanced and implemented across the country. Considerable improvements are needed with regard to crime statistics produced by law enforcement and judicial authorities.

Montenegro cooperates with Interpol (ICPO) and the SECI Centre/Selec. Montenegro needs to enhance usage of the available Interpol tools leading to operational results. Regional cooperation in law enforcement matters needs to be further improved. In October 2010, an agreement establishing a regional office in Belgrade for improving cooperation in the fight against organised crime was signed with Albania, Bosnia and Herzegovina, Croatia, Montenegro and the former Yugoslav Republic of Macedonia. Cooperation with Europol is based on a strategic cooperation agreement which has been in force since July 2009. Prior to conclusion of an operational agreement with Europol, Montenegro will have to comply with the relevant requirements, data protection in particular.

Activities in the **fight against terrorism** are broadly aligned with the existing international regulatory framework. The national legal framework includes provisions relating to counter-terrorism. However, they need to be brought fully into line with the EU *acquis*. Capacities to detect and address activities possibly linked to terrorism need to be enhanced.

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<sup>14</sup> UN Convention on transnational organised crime and its additional protocols, Council of Europe (CoE) Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, CoE Convention on action against trafficking in human beings, EU Convention on mutual legal assistance in criminal matters, CoE Convention on corruption

Montenegro remains on one of the main Balkan trafficking routes for drugs. The strategic, legislative and institutional framework for the **fight against drugs** is satisfactory. However, the administrative and operational capacities for its implementation are weak and need to be further strengthened. Particular attention needs to be paid to reinforcing law enforcement cooperation and coordination, especially at the borders. In particular drug trafficking via the blue border has increased. Investigative and prosecution capacities need to be continuously developed and improved. Policies and activities in this area need to be underpinned by adequate human and financial resources. With regard to drug reduction, more information and precise data are needed. The creation of the National Office for Drugs is only the first step as far as the preparation for future participation in the EMCDDA is concerned. There has been limited institutional progress in this area; more concrete results are expected from the EMCDDA technical assistance for 2010-2011. So far, Montenegro is not yet ready for establishing a national focal point.

Regarding **trafficking in human beings**, Montenegro has put in place a legislative framework which is largely in line with the EU *acquis*. Montenegro has ratified relevant international instruments with the exception of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. Following the regional trend, a low number of cases have been registered. The number of staff and other resources are adequate. However, investigative techniques and victims' identification need to be further enhanced. Substantial work was accomplished in the field of prevention and public awareness-raising. The government authorities maintain good cooperation with the non-governmental sector in this area.

Additional efforts are needed to fully align legislation on **money laundering** with the EU *acquis* and international standards. (*See also Chapter 4 — Free movement of capital*) Advanced legislation on matters such as criminal liability of legal persons, extended confiscation of assets, and money laundering as a stand-alone crime has been adopted. However, its implementation is weak, as shown by the fact that convictions for money laundering and confiscations are rare. The capacity of the law enforcement bodies for financial investigation and investigation of money laundering is limited, including capacities of the Financial Intelligence Unit (FIU).

The overall level of reporting of suspicious transactions by financial institutions and other relevant agencies remains insufficient. Police and prosecutors have a limited track record in following up cases reported by the FIU. In this context, the potential impact of citizenship granted to persons based on their investment to Montenegro is an issue of concern. At international level, the FIU maintains active contacts, in particular with the Egmont Group. In March 2010, MONEYVAL has identified several weaknesses, which need to be addressed. The legislative framework on seizure and confiscation of criminal assets has been improved. Effective implementation and management of the assets needs to be ensured. There have been no convictions on confiscation and only one conviction on money-laundering

Montenegro has put in place a range of bilateral agreements on **customs cooperation**. It needs to start preparing for ratification and implementation of the Convention on mutual assistance and cooperation between the Member States (Naples II) and the Convention on the use of information technology for customs purposes (CIS). The technical and administrative capacity of customs services needs to be further enhanced so that they can carry out effective operations to counter organised crime.

*For the protection of the euro against counterfeiting, see Chapter 32.*

## Conclusion

Montenegro has put in place the basic elements of the legal framework in the area of justice, freedom and security. *Overall*, however, the country will have to make considerable and sustained efforts to align its legislation with the *acquis* and in particular to implement it effectively in the medium term. All relevant international instruments also need to be signed, ratified and implemented in the medium term. Considerable strengthening of administrative and implementation capacities are needed, in particular in the fight against organised crime where track records of convictions remain limited. Money laundering and drug-smuggling are key areas of concern. *Overall*, considerable and sustained efforts are needed to address weak law enforcement capacities and coordination between law enforcement agencies. Administrative capacity including infrastructure, equipment and adequate training must be significantly strengthened. Consistency of implementation across the country must be ensured.

### 3.25. Chapter 25: Science and research

The *acquis* in the field of science and research does not in principle require transposition of EU rules into the national legal order. Successful implementation of the *acquis* in this domain therefore involves mainly fulfilling the necessary conditions for participating effectively in the EU's Research Framework Programmes and contributing to the creation of the European Research Area. This requires good administrative capacity (adequate staffing and knowledge of research cooperation) and scientific excellence in order to be successful in carrying out research and innovation projects together with scientific partners from EU Member States and in creating growth and jobs in an economically sustainable way.

Montenegro, as a potential candidate country, has been associated to the Seventh EU Research Framework Programme (FP7) since January 2008.

**Science and research policy** is under the authority of the Ministry of Education and Science. A special department for science, research and technological development was established within the ministry at the end of 2008. A Council for Scientific Research Activities, established in 2006, acts as an independent advisory body. It consists of nine members, three from the government and six from the research community. The Agency for International Scientific, Educational, Cultural and Technological Cooperation plays an important role in research cooperation with third countries. The Montenegrin Academy of Sciences and Arts is the most significant scientific institution in the country, covering natural sciences, humanities and arts. The State University of Montenegro, founded in 1974, comprises 19 faculties and 3 research institutes. The privately-owned University Mediterranean also engages in research through its independent faculties for scientific research.

In July 2008, the government adopted a strategy for scientific research activities 2008-2016 (including an action plan) in which increased research cooperation with the EU and reform of the national scientific community were identified as key priorities in order to facilitate integration into the European Research Area. The strategy's action plan includes a roadmap for increasing investment in science and research, both by the public and private sector, aiming at investing 1.4% of Montenegro's GDP in research by 2013. The current level of investment is very low (estimated at 0.13% of GDP in 2007). Due to the lack of statistics and means of collecting data on investment by the private sector, there are no reliable figures on investment in research by the private sector available. The lack of reliable statistics makes the

monitoring of identified targets very difficult. Montenegro is, however, working on the reform of statistics in science and research to bring its statistics into line with EU criteria.

Human research capacity is very limited: in 2008 Montenegro counted 766 full-time research equivalents (researchers, who together with part-time colleagues and external research associates work in the country's 2 universities, 9 private higher education institutions, government and the private sector). This corresponds to about 0.3% of the total workforce in Montenegro. Montenegro still suffers from brain drain following the wars in the 1990s. The government has launched some measures to attract young researchers, in particular PhD students, to the University of Montenegro. A database on scientific *diaspora* is also being established. Montenegro suffers from a lack of modern research infrastructure and state-of-the-art equipment which hampers its engagement in research activities and research cooperation with the EU.

Since its association to the 7th **Framework Programme** in January 2008, Montenegro has progressively increased its participation, with a focus on information and communication technologies, environment and food safety projects. Montenegro is actively participating in several FP7 regional projects which allows for the exchange of researchers and programmes with the countries in the region. Montenegro organises at regular intervals information and promotion events on research and innovation, some of them together with the chamber of commerce, to encourage the private sector to become more involved.

Montenegro is not engaged in nuclear research and has not requested to become associated with the *Euratom Framework Programme* for nuclear research.

Montenegro has started to integrate into the **European Research Area** (ERA). It has nominated delegate observers in most ERA governance bodies including in the European Research Area Committee (ERAC, ex CREST). Montenegro participates as an observer in the Standing Committee on Agricultural Research (SCAR).

Montenegro has concluded science and technology agreements with several neighbouring countries.

### *Conclusion*

Montenegro has started to be involved in EU research policy, mainly through its association to the 7th Research Framework Programme. Montenegro's strategy for research activities is largely in line with the EU research policy and contributes to the targets set at EU level in the context of the ERA. However, close monitoring of these targets and implementation of planned actions will be of key importance. *Overall*, if it continues its efforts, Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis*. However, it will have to undertake additional efforts in strengthening human capital and infrastructure capacities for its effective participation in research framework programmes and integration into the European Research Area.

### **3.26. Chapter 26: Education and culture**

The *acquis* on education and culture consists mainly of a cooperation framework made up of programmes and the open method of coordination (OMC), which aims at convergence of national policies and attainment of shared objectives. In the field of education and youth, Member States need to ensure sound management of decentralised EU programmes. The *acquis* also requires Member States to facilitate the education of children of EU migrant

workers and to prevent discrimination against EU nationals. In the field of culture, the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions, ratified by the EU, is a major component of the *acquis*. The EU also contributes to promoting European sporting issues.

As regards the field of **education and training**, Montenegro has initiated reforms with extensive legislative changes in the past few years. Laws on general, preschool, primary, secondary, vocational, higher and adult education were adopted or amended. A very ambitious roadmap has been established, which aims to bring Montenegro's education system into line with European principles and developments by 2014. The main objective of the reforms is the modernisation of the education system, with the focus on the design and structure of various education subsystems. However, the human and financial resources of the Ministry of Education and Science for the implementation of the reforms are limited and the target dates are highly unrealistic. The impact of the reforms and revised legislation cannot be evaluated as the timeframe is too short.

A high enrolment level is reported in primary and secondary education. Montenegro participated in the 2006 PISA test assessing skills of 15 year-old pupils and ranked 48th out of 57 participating OECD countries. In order to converge with EU best practices, teaching methods will need to be further modernised. Legislation on ensuring inclusive education of vulnerable groups and children with special needs remain to be enforced more vigorously. The Montenegrin vocational education and training (VET) system also needs to be modernised as it continues to face serious problems in delivering high-quality education and in responding to labour market needs. Rather than entering the labour market, a high percentage of graduates from VET schools enrol in university.

As a member of the Bologna process, Montenegro has already started reforms in higher education since 2003. However, improving quality assurance mechanisms and designing a national qualification framework remain the main challenges. The country has benefited from the Tempus programme supporting university reform.

In the field of **youth** policy, a national youth action plan was adopted by Montenegro in 2006. The strategy identifies nine priority areas (education, employment, health, social inclusion, human rights, culture, leisure time, access to information and mobility, family) and is implemented via annual action plans. In February 2010 the responsibility for youth policy implementation was assigned to a directorate for youth and sports, linked to the Ministry of Education and Science. However, it is too early to assess the impact of this measure and implementation capacity so far is limited.

As regards the Directive on education of children of migrant workers, Montenegro's legislation already covers most of its requirements. Montenegro will need to slightly amend its laws to ensure that EU citizens have access to the Montenegrin higher education system and are granted the same rights and conditions as Montenegrin nationals.

In order to fulfil the preconditions for participation in the decentralised EU programmes in the fields of education and training and youth, the relevant authorities will need to develop its capacities for sound financial management and financial control.

As regards **culture**, Montenegro ratified the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions in 2008 and subscribes to the objectives of the European Agenda for Culture. The 2008 Law on culture provides the general framework

for cultural policy, incorporating goals and principles promoted by the 2005 UNESCO Convention. Montenegro has a well developed state support system in the field of cultural activities and joined the EU's Culture Programme (2007-2013) on 1 January 2010. It cooperates actively in cultural regional initiatives (e.g. Ljubljana process, Council of Ministers of Culture of Southeast Europe).

### *Conclusion*

Montenegro has started its preparations towards the alignment with the *acquis* in the area of education, youth and culture. However, the country now needs to shift its attention from policy design to implementation. Close monitoring of the implementation of reforms and ambitious targets set is necessary. Montenegro will need to significantly strengthen its administrative capacity in order to ensure sound financial management of the decentralised education programmes. Non-discrimination of EU nationals within the Montenegrin education system will need to be ensured. Inclusive education of vulnerable groups and children with special needs deserves continued attention. *Overall*, if it continues its efforts Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis* in this area.

### **3.27. Chapter 27: Environment**

EU environment policy aims to promote sustainable development and protect the environment for present and future generations. It is based on the integration of environmental protection into other EU policies, preventive action, the polluter pays principle, fighting environmental damage at source and shared responsibility. The *acquis* comprises over 200 major legal acts covering horizontal matters, water and air quality, waste management, nature protection, industrial pollution and risk management, chemicals and noise. Ensuring compliance with the *acquis* requires significant investment, but also brings significant benefits. A strong and well-equipped administration at national and local level is imperative for the application and enforcement of the *acquis*.

The Constitution defines Montenegro as an ecological state. It enshrines the key principles of sustainable development and environmental protection, provides for a universal right to a sound environment and makes it mandatory for everyone, in particular the state, to preserve and improve the environment. The national environment programme (NEP) determines the key actions and priorities for environmental protection and for strengthening Montenegro's legal and institutional framework.

The **basic legal framework** for environmental protection is provided by the Law on the environment. However, the law is not fully implemented as a series of by-laws have not yet been adopted. Given the size of the environmental *acquis* further efforts need to be made for timely approximation of legislation.

Regarding the **institutional and administrative framework** the newly established Ministry for Spatial Planning and the Environment has been responsible for environmental policy since 2009. The administrative capacities and staffing levels dealing with the environment are low. The Environmental Protection Agency (EPA), with a wide range of responsibilities in implementing and enforcing legislation, began operation in 2009. Water issues fall under the responsibility of the Ministry of Agriculture. Further efforts are needed in consolidating currently fragmented responsibilities for environmental protection. A precise division of responsibilities between the ministry, the EPA, other relevant ministries and local authorities

needs to be defined. Heavy reliance on temporary staff and trainees and a high turnover of staff, as well as limited resources in both the ministry and the EPA, raise concerns as to the overall capacity of these institutions to guarantee continuity, sustainability and due accountability.

A legal and institutional framework for inspections is in place. The EPA has an annual inspection and monitoring programme implemented by inspection bodies at national and municipal level. However, the number of inspections carried out remains limited. The number of prosecutions for breaches of environmental law is extremely low and no prosecution for major breaches has been completed. A more effective system is required. Overall enforcement levels are low, due to the lack of human and financial resources, low awareness of environmental compliance requirements, scattered responsibilities and poor coordination between relevant authorities, as well as weaknesses in prosecution and the judiciary.

There is no overall environmental investment plan. Priority needs to be given to environmental spending by national means, to supplement international funding. A comprehensive national environmental investment strategy needs to be prepared urgently.

Public awareness of environmental issues is starting to grow but public participation in environmental decision making and public access to environmental information remains weak. Further efforts are needed to build a solid partnership between government and civil society. There are some mechanisms for integrating the environment into other policies, mainly at strategic document level, but their application in practice is limited.

Regarding **horizontal legislation**, Montenegro has achieved a high level of alignment. Further efforts are needed to more closely align legislation relating to transboundary aspects of the environmental impact assessment and provisions relating to access to environmental information and access to justice. It is also essential to make environmental administrative and judicial procedures more effective in relation to access to justice and public participation. Particular attention needs to be given to issues related to the Environmental Liability Directive, especially regarding prevention and remediation of environmental damage. Implementation and enforcement of legislation in this field require considerable strengthening. In particular, environmental impact assessments, including due consideration of viable alternatives, need to be properly carried out wherever legally required and proper coordination among different authorities as well as with all stakeholders needs to be ensured.

Montenegro is progressing in its alignment with **air quality** legislation. The Air Quality Law has been adopted, but implementing measures and air quality standards have not been drawn up yet. Montenegro needs to identify conurbations and zones, establish an air quality monitoring programme, plans and a database and make relevant data available to the public. The EPA's capacity in the area of air pollution, monitoring, inventories, etc. needs to be strengthened.

**Waste management** is one of Montenegro's biggest problems. Despite some progress, alignment with the European standards is at a very early stage and needs speeding up considerably. The waste management law and the waste management master plan were adopted in 2008, but the law only entered into force in January 2010. Implementing legislation has been adopted and the future integrated waste management system is being set up, including the preparatory work on developing six regional landfills. Currently there is only one modern sanitary landfill, while most waste is disposed of in open landfills or multiple unauthorised sites. There are no incineration or composting plants and few recycling

facilities. The lack of suitable infrastructure hampers adequate waste disposal, including of hazardous waste. The establishment of an efficient system for data collection, analysis and reporting is essential for sound policy making. Particular attention needs to be given to implementation of the waste management strategy at local level. Administrative and enforcement capacity needs to be considerably strengthened and investments need to increase.

The existing **water quality** legislation provides a good basis for alignment with the *acquis*, although by-laws and implementing measures are often missing. Montenegro is quite advanced in alignment with the Water Framework Directive and its daughter directives. Further efforts are needed, however, as regards alignment with the Drinking Water Directive, the Urban Waste Water Treatment Directive and the Marine Strategy Framework Directive. Furthermore, implementation and enforcement of the water legislation needs to substantially improve: Montenegro will have to make significant investments in the area of waste water collection and treatment as well as drinking water supply. It also needs to ensure a clear division of responsibilities and coherence between the action of all authorities involved in water management issues.

Montenegro is well on track as regards alignment with the **nature protection** policy and its initial preparations for establishment of the Natura 2000 network. An increased effort is needed, however, to develop scientific information and data required for the designation of sites. A biodiversity strategy with an action plan have been adopted. Currently 20.75% of the territory is reported as protected either through national legislation or in compliance with international obligations. However, illegal hunting and logging in the protected areas as well as widely spread unauthorised construction, particularly in the coastal area, remain significant concerns. Implementation measures, and particularly management of the protected areas, need to be significantly strengthened, as does capacity building at all levels and ensuring proper coordination among public authorities. Inspection measures and sanctions have not yet been adopted. Further awareness-raising efforts are needed.

The Law on chemicals regulates the procedure for reporting and placing on the market new and existing **chemicals**, the procedure for assessing and evaluating the hazard arising from chemicals, the classification, packaging and labelling of chemicals, imports, exports and other issues important for the protection of human health and the environment. It does not, however, cover exports and imports of dangerous chemicals. The Rotterdam Convention has not been ratified and alignment with the Biocides Directive has not yet started. In order to achieve Montenegro's plans to comply with the REACH Regulation by 2011, work needs to be accelerated considerably. Furthermore, implementation is slow due to unclear and overlapping competences. Although competent authorities have now been designated for most of the chemicals directives, the introduction of implementation measures is at an early stage.

As regards **industrial pollution and risk management**, -Montenegro has the necessary national legislation regarding Integrated Pollution Prevention and Control (IPPC) installations and a clear plan for BAT (best available technique)-based permitting within a reasonable timeframe (existing installations to be permitted until the end of 2015). Capacities of inspectorates should be strengthened. Alignment with the Directives on industrial risks (Seveso II) and large combustion plants has not been achieved and competent authorities for implementation have not been designated. Further progress is needed also in aligning with the Waste Incineration and Solvents Emissions Directives.



The Law on the environment provides a basis for the application of **environmental audit schemes** (EMAS) and **eco-labelling**. However, further alignment of legislation with the *acquis* is needed and structures have to be put in place for proper implementation.

As regards **climate change**, Montenegro has ratified the Kyoto Protocol. Montenegro is a non-Annex I Party to the United Nations Framework Convention on climate change (UNFCCC) and has no greenhouse gas (GHG) emission limitation/reduction target. At this point Montenegro is not ready to take on a legally binding GHG emission limitation or reduction commitment under the post-2012 climate regime. It has not submitted a national communication (NC) under the UNFCCC, but development of the first NC is under way.

Montenegro is striving for gradual harmonisation and implementation of the climate change *acquis* and will have to put a great deal of effort into implementing the climate and energy package setting a GHG emission reduction target for the EU.

Currently, Montenegro is not able to meet the GHG reporting obligations under Decision 280/2004/EC on the monitoring mechanism. It prepared an inventory of greenhouse gas emissions for the years 1990 and 2003 and an estimation of GHG emissions in 2006 with external help, but a national system for the development of a GHG inventory or projections is still missing. Montenegro has not taken any steps so far to prepare the inclusion of its installations in the EU Emissions Trading System (EU ETS). Montenegro will have to make a considerable effort in order to align with the *acquis* for sectors outside the EU ETS.

Montenegro is a party to the Montreal Protocol on substances that deplete the ozone layer and has ratified all amendments to it. Montenegro has to comply with less demanding phase-out schedules for the different groups of substances than the EU and its Member States and has a satisfactory level of compliance with the Protocol.

Administrative capacity as well as technical and financial resources need to be strengthened considerably for Montenegro to be able to align with and implement all the requirements of the climate change legislation.

As regards **noise**, transposition has started, while implementation is at an early stage.

**Civil protection**, which falls under the responsibility of the Ministry of the Interior, is regulated by the Law on protection and rescue. A national strategy for emergency situations is in place. Civil protection units have been established in all municipalities but only 20% of the planned staff of 2,000 have been recruited and equipped. The Law and the strategy provide for measures to be taken in the event of an environmental emergency. The aim is the identification of risk and vulnerability reduction through sustained development and the creation of conditions for rapid reaction and rescue of persons and property. Montenegro introduced the European emergency number 112 and established in 2009 a national team for action in case of chemical, biological or nuclear accidents. It has signed international agreements on cooperation and exchange of information and is very active in the framework of the disaster preparedness and prevention initiative (DPPI) in South-East Europe. It faces a particular threat of forest fires during summer and has developed some operational capacity in this field, establishing observation services covering all forest regions. While some basic legal and administrative infrastructure is being put in place, the overall administrative and operational capacities remain particularly limited and will have to be further developed.

*Conclusion*

While the basic elements of a legislative framework are in place, considerable efforts will be needed to fully align with the environmental *acquis*. Montenegro needs to speed up its strategic planning in all sectors and identify sustainable funding for implementation. The environment has to be integrated into other sectors more systematically, including at the policy implementation level. There are serious weaknesses in implementation and enforcement that need to be addressed for the *acquis* to be effectively implemented, in particular regarding EIAs. While projects and actions with an environmental dimension are being publicly consulted, a more genuine consultation process which sufficiently incorporates comments and suggestions received needs to be envisaged. Implementation of legislation and particularly management of protected areas, need to be significantly strengthened. Among others, a more careful development planning of the coast that takes into account the unique natural values must be envisaged. Development of the comprehensive environmental monitoring and information system needs to be sped up.

The environmental administration will need to be significantly strengthened to implement the EU environmental *acquis*. Streamlining management of responsibilities currently fragmented between different ministries and bodies and ensuring proper horizontal and vertical coordination is needed. Particular efforts are needed to ensure that local self-government units have the necessary resources to implement their responsibilities effectively. Inspectorates and enforcement capacities need to be strengthened while cooperation with the judicial system needs to be reinforced.

*Overall*, Montenegro will have to make considerable and sustained efforts to align with and especially to implement and enforce the environmental *acquis*. It will be particularly important to create conditions for building the necessary technical and human capacities and resources in this area within the next few years. Effective compliance with EU legislation requiring a sustained high level of investment and considerable administrative efforts can only be achieved in the long term. However, given the challenge ahead efforts to align in this area need to be considerably speeded up.

### **3.28. Chapter 28: Consumer and health protection**

The *acquis* on consumer protection covers the safety of consumer goods as well as the protection of the economic interests of consumers in a number of specific sectors. Member States need to transpose the *acquis* into national law and to put in place independent administrative structures and enforcement powers that allow effective market surveillance and enforcement. Appropriate judicial and out-of-court dispute resolution mechanisms, consumer information and education, and a role for consumer organisations should be ensured as well. This chapter also covers rules in the area of public health.

The *Stabilisation and Association Agreement* provides for enhanced cooperation in the area of consumer protection aimed at aligning the standards of consumer protection in Montenegro with those of the European Union, including through active consumer protection and efficient law enforcement.

The overall responsibility for **consumer protection** policy lies with the Ministry of Economic Affairs. Inspections to monitor compliance with the Law on consumer protection are carried out by the Ministry through its market inspectors, other ministries and administration bodies. Consumer policy is spelled out in the national consumer protection programme. A Commission consisting of representatives of various administrative bodies, consumer organisations and industries to monitor its implementation has been established. There has

also been an arbitration board responsible for out-of-court settlement of consumer disputes since late 2008.

*Product safety-related issues* are regulated by the Law on general product safety. Montenegro's legislation has been broadly aligned with the General Product Safety Directive (GPSD) and the Food Imitating Products Directive. However, provisions included in acts adopted by the European Commission to implement the GPSD are not aligned. Inspection for product safety is shared between the Health Inspectorate, the Ecological Inspectorate and the Market Inspectorate.

Concerning *non-safety related issues*, the 2007 Law on consumer protection is broadly aligned with the EU *acquis* on unfair terms in consumer contracts, distance contracts, contracts negotiated away from business premises, misleading and comparative advertising, and the indication of product prices. Unfair commercial practices are only partially covered. Sectoral laws cover issues regulated by the Directives on sale of consumer goods and guarantees, on package travel and on timeshares (the old Directive 94/47/EC). The new Timeshares Directive has not yet been addressed by Montenegro. Distance marketing of consumer financial services is covered by the regulations on the securities market.

Montenegro's legislation has not been aligned with the Consumer Credit Directive and the Directive on injunctions.

While Montenegro has a basic institutional infrastructure for market surveillance regarding product safety, with competences shared between market, health and ecological inspectorates, there are serious problems of coordination among these bodies. There is no systematic approach to re-active and pro-active surveillance. Although an interdepartmental working group on coordination was set up recently, there is no authority coordinating consumer product safety policy and no uniform approach to risk assessment in the area of product safety. Neither is there any testing for essential safety requirements (only administrative checks based on documents), while traceability of goods is not ensured as no mapping of the retail outlets has been established so far.

National enforcement competences for consumer rights are not fully defined. Enforcement and investigative tools are not effective enough in preventing infringements of consumer laws. Inspection authorities do not have adequate powers to take measures when consumer rights are breached, such as imposing sanctions.

There are two consumer NGOs, which are cooperating with the government but have limited impact on the substance. Information and awareness activities are planned in the national consumer protection programme but activities so far have been limited. Montenegrin society remains broadly unaware of consumers' rights.

Concerning **public health**, the overall aim of the EU's policy is to improve health and prevent human illness and diseases. The EU *acquis* in this area consists of a limited number of legally binding instruments and a larger body of non-binding measures and policy documents, as well as two international commitments on health.

In this area, the overall responsibility in Montenegro lies with the Ministry of Health, the authority in charge of health policy, and the Public Health Institute, whose activities are aimed at preserving and improving the health of all citizens. The government strategy 'Health Policies in Montenegro up to 2020' aims to extend life expectancy, improve the quality of life, reduce health inequities and integrate Montenegro's health system with the European and

global health development process. The development of the health sector in Montenegro is guided by a Master plan for 2010 – 2013, which is broadly in line with the EU health strategy. E-health is used as a policy tool and is on its way to full integration within health policy. Full-scale implementation remains outstanding as does active involvement of patients' and health professionals' associations.

The legislation on *tobacco* is partially aligned with the *acquis*. There is a national strategy for tobacco control and a law on limiting the use of tobacco products was adopted in 2004. However, missing elements concern the sponsorship of sports and similar events and the maximum levels of tar, nicotine and carbon monoxide for export products. Generally, there is a need to closely monitor implementation of tobacco legislation. Smoking is a persistent problem in Montenegro and implementation of the provisions regarding limiting the use of tobacco in public spaces needs to be strengthened.

The basic act regulating *communicable diseases* in Montenegro is the Law on the protection of the population against communicable diseases and the Rulebook on reporting communicable diseases and hospital infections. However, some case definitions for reporting communicable diseases, including clinical, laboratory and epidemiological criteria, are missing. Legislation provides for reporting mechanisms which go beyond the existing epidemiological surveillance system in Montenegro. Overall, the legal basis, national structures and resources are generally in place and are being strengthened. However, the surveillance and response capacity is still limited, in particular regarding human and material resources.

Concerning *blood, tissues and cells*, legislation on blood is overall aligned while legislation on tissues and cells is still at an early stage of development. Implementing measures in the field of blood transfusion are still to be adopted, while administrative and technical capacities need to be strengthened.

Regarding *mental health*, Montenegro's national strategy identifies a series of efforts needed, but the administrative capacity is inadequate to ensure its implementation.

On *cancer* prevention and control, Montenegro is still at an early stage of development. A national programme on early detection of breast cancer was adopted in June 2010. The Council recommendation on cancer screening is still to be implemented. Reducing the harmful effects of alcohol, drugs and smoking are included among the specific goals of health policy up to 2020. There is a National Strategic Response to Drugs addressing the prevention of drug use, treatment and rehabilitation, as well as harm reduction. There is no dedicated policy document for the prevention of *alcohol*-related harm, but alcohol is addressed in a range of broader health policies and child/youth policies. Alcohol is also addressed in the mental health strategy and as part of the secondary prevention of TB and diabetes. In the field of HIV/AIDS, Montenegro broadly has the necessary legal basis for prevention and control. Montenegro's efforts in the field correspond to the broad lines of the EU Communication on combating HIV/AIDS.

### *Conclusion*

Montenegro has aligned its legislation with a significant part of the *acquis* in the area of consumer protection. *Overall*, however, the country will have to undertake additional efforts to achieve full alignment and to deliver on commitments already undertaken, substantial further efforts will have to be made, in particular in the field of unfair commercial practices

and by amending and fully implementing the Law on general product safety. Although some basic infrastructure for market surveillance is in place, the market surveillance system needs to be substantially improved in order to meet EU requirements. Further enhancements to the enforcement system for consumer rights are necessary. Support for consumer NGOs as well as awareness raising within the general public need to be promoted.

On health protection, while the country has made many steps forward in the recent past and the basic administrative and legal infrastructure is in place, additional efforts are needed for it to be able to align with the *acquis* and to implement it effectively in the medium term.

### **3.29. Chapter 29: Customs Union**

The *acquis* in this sector consists of the EU Customs Code and its implementing provisions; the Combined Nomenclature; the Common Customs Tariff, including trade preferences, tariff quotas and tariff suspensions; and other customs-related legislation outside the scope of the Customs Code. Member States must ensure that the necessary implementing and enforcement capacities, including links to the relevant computerised EU customs systems (e.g. tariff-related systems, NCTS, ECS, ICS and EOS) are in place. The customs administration must also ensure adequate capacity to implement and enforce special rules laid down in related areas of the *acquis* such as the provisions on external trade, health and security.

The *Stabilisation and Association Agreement* (SAA) provides for establishment of a free trade area with the EU and the immediate or progressive removal of customs duties on a wide range of products. It places an obligation on Montenegro to adopt the Combined Nomenclature. It also provides for administrative cooperation on customs matters, and rules of origin which have to be observed in order to benefit from the trade preferences.

Concerning **Customs legislation**, upon accession, Montenegro will need to ensure full implementation of all the EU customs-related legislation. The Combined Nomenclature (CN) is applied and the classification rules are largely in line with the *acquis* although classification practice is not always consistent.

Montenegro applies a system of binding tariff information, which is similar to the EU system, but the service is not provided for free.

Tariff quotas are currently managed via the TARICG system, not daily, but on a first-come first-served basis at the moment of acceptance of every single declaration for release for free circulation.

Montenegrin legislation contains provisions similar to those in the EU Regulation on duty relief (EC 1186/2009) but on accession they will have to be replaced in full by the EU provisions. Montenegro applies several administrative fees that are not in line with the Stabilisation and Association Agreement and the EU *acquis*.

The country implements preferential rules of origin and methods of administrative cooperation that largely reflect those used by the EU in its free trade agreements. Montenegro applies diagonal cumulation with the EU and other countries participating in the European Union's Stabilisation and Association Process.

The legislation in the field of intellectual property rights is not fully in conformity with the EU customs enforcement legislation since, for example, plant variety rights are not covered.

The customs procedures are aligned with the rules of the Trade-related aspects of intellectual property rights (TRIPS) Agreement and are largely in line with the EU *acquis*.

As regards cash controls, Montenegro's legislation is not fully in line with the EU *acquis*. In particular, it does not lay down the necessary details and procedures for taking cash in or out of the country, and penalties for failure to declare such movements, and lacks provisions on exchange of information with third countries.

Concerning **administrative and operational capacity**, the Customs Administration of Montenegro has the legal and administrative structures in place and adequate resources to implement and enforce the customs legislation. A high degree of autonomy is conferred on the regional and local departments, and the Internal Audit Unit helps ensuring uniform application of rules and procedures. However, internal control needs to be enhanced in order to effectively prevent and detect corruption and misconduct.

Post-clearance controls and risk analysis are widely used, but the actual effectiveness of these procedures is unclear. The department in charge of post-clearance controls needs to be strengthened in order to be able to systematically plan and operate *a posteriori* controls compensating for reduced physical and documentary checks. The Customs Administration needs to further encourage the use of simplified procedures in the framework of specific authorisations allowing customs clearance at the premises of operators so as to eliminate the current lack of a legal basis for such procedures. Montenegro needs to align its transit procedures in preparation for accession to the Common Transit Convention.

The Customs Administration currently uses a Customs Information System (CIS). The CIS is able to process customs declarations electronically, with the exception of transit declarations. Yet there is no obligation on economic operators to use electronic data processing techniques. Data transmitted are not synchronised. The CIS checks the authenticity of declarations and data accuracy, while automated risk analysis is performed for import and release for free circulation. Regarding statistics, electronic tariff and accounting systems, the Customs Administration collects statistical information on trade. The country has implemented its national TARIC system, used also for the control of quotas.

The Administration has adopted a business strategy for customs, a three-year action plan and an IT strategic plan. However, further action is still needed in the preparation of technical specifications and software for customs IT systems.

The department for IT and statistics of the Customs Administration is responsible for developing the systems' administrative and operational capacity.

Overall, Montenegro has progressed in customs computerisation and is planning for future interconnectivity with trans-European customs IT systems. However, the country has limited resources for implementation.

### *Conclusion*

The Customs legislation is partially aligned with the EU *acquis*. Further efforts are needed in a number of areas, such as management of quotas, intellectual property rights, cash controls, security-related provisions and the EU Customs Code.

The administrative and operational capacity of Montenegro's customs administration is adequate, thus ensuring that procedures and working methods are effectively implemented. However, to be able to address the future challenges, it will need to be reinforced. Particular

attention needs to be given to interconnectivity and interoperability with the EU IT systems. Internal control needs also to be enhanced in order to effectively prevent and detect corruption and misconduct.

*Overall*, Montenegro needs to address some challenges in the area of legislative alignment and administrative capacity, but, if it continues its efforts, it should, in the medium term, have the capacity to comply with the requirements of the *acquis*.

### **3.30. Chapter 30: External relations**

The *acquis* in the field of external relations consists mainly of directly binding EU legislation that does not require transposition into national law. In the area of humanitarian aid and development policy, an applicant country needs to comply with EU legislation and its international commitments and to ensure that it has the capacity to participate in the EU's policies.

The Stabilisation and Association Agreement includes a core trade part establishing a free trade area between Montenegro and the EU. It includes provisions requiring the parties to act in accordance with the rules of the WTO or relevant international obligations. Montenegro shall also enhance trade liberalisation within the Western Balkans and with other countries involved in the enlargement process.

Upon accession, Montenegro will be bound by the **common commercial policy**. Montenegro will have to apply all the autonomous trade regimes that the EU grants to certain third countries, including the Generalised System of Preferences (GSP). Montenegro will also have to terminate all its current preferential trade agreements with third countries and bring all other agreements, including non-preferential trade agreements, into line with the obligations of EU membership. Moreover, Montenegro will become party to the European Economic Area (EEA) and it will have to apply all EU international trade agreements.

Montenegro is not yet a member of the *World Trade Organisation* (WTO). However, it has concluded all except one bilateral negotiation and has finalised the multilateral negotiations. In its WTO's accession process Montenegro submitted its last schedule of commitments under the General Agreement on Trade in Services (GATS) in December 2008, and both horizontal limitations and sector-specific commitments are generally in accordance with those undertaken by the EU. However, the final commitments will have to be verified when the last outstanding bilateral negotiation is concluded. Whether Montenegro will have to consider modifying or withdrawing its WTO commitments upon accession to the EU depends on the final terms of accession to the WTO.

The average Montenegrin most favoured nation (MFN) *ad valorem* tariff rate for agricultural products is 13.16%, for fish and fishery products 8.6%, and for industrial goods 3.9%, with an overall average of 5.9%. The EU average MFN *ad valorem* tariff rate for agricultural products is 9.74%, for fish and fishery products 10.02%, and for industrial goods 3.75%, with an overall average of 4.83%. Upon accession to the EU, Montenegro will have to apply the EU Common Customs Tariff.

Montenegro foreign trade Law and implementing bylaw include provisions on anti-dumping and countervailing measures. Upon accession, Montenegro will have to repeal national legislation related to its trade defence instruments and measures based on this legislation and apply the EU rules and measures.

Montenegro does not apply any GSP scheme. Upon accession Montenegro will need to apply the EU GSP scheme.

Montenegro does not yet operate any formal *export credits* scheme. Upon accession Montenegro will have to ensure that its short-term export credit insurance system is in line with EU competition rules. As far as medium- and long-term export credits are concerned, the country will need to align its legislation with EU legislation and the EU's international obligations.

Montenegro has legislation in place concerning *dual-use* export controls, which is not yet fully in line with the *acquis*. Some elements of this legislation are different from Regulation 428/2009.

As regards *free trade agreements* with third countries, Montenegro is a member of the Central European Free Trade Agreement (CEFTA). It has free trade agreements with Turkey and Russian Federation.

*Bilateral investment agreements* (BIT) subscribed by the former State Union of Serbia and Montenegro have been confirmed by Montenegro upon its independence. Montenegro has 14 BITs and currently is negotiating agreements of the same type with several other countries. Some of the provisions included in Montenegro's BITs will need to be aligned with the *acquis* in conformity with the obligations of the Treaty on the Functioning of the European Union and relevant case-law. Some BITs are not in line with the *acquis* in so far as they do not provide for exemptions to free transfer of funds relating to investments between the signatory countries and feature pre-establishment national treatment for third-country investors with respect to services. Montenegro has also signed three agreements on trade and economic cooperation and currently is negotiating agreements of the same type with several other countries. These agreements would need to be brought into line with EU *acquis*, upon Montenegro's accession to the EU

With regard to administrative capacity, participation in the EU trade decision-making mechanisms and implementation and enforcement of the *acquis* will require strengthening of the Department for multilateral trade cooperation and international economic relations in the Ministry of Economic Affairs. The coordination mechanism in place between various ministries needs to be further strengthened.

As regards **development policy and humanitarian aid policies**, Montenegro is an aid recipient country and has so far not been involved in any donor activities. There is no legislation on development policy and no relevant administrative structure in place. Humanitarian contributions are decided on a case-by-case basis, without a legislative framework.

### *Conclusion*

*Overall*, if it continues its efforts, Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis*. In preparing for membership, Montenegro will need to ensure that its actions and commitments concerning international organisations are aligned and coordinated with those of the EU.

It is important that Montenegro is aware of the obligations in respect of development and humanitarian policy, and it needs to work to establish capacity to fulfil the obligations of EU membership in this area.



### 3.31. Chapter 31: Foreign, security and defence policy

The common foreign and security policy (CFSP) and the common security and defence policy (CSDP) are based on legal acts, including legally binding international agreements, and on political documents. The *acquis* consists of political declarations, joint actions, common positions and agreements. Member States must be able to conduct political dialogue in the framework of the CFSP, align with EU declarations, take part in EU actions and apply agreed restrictive measures. Applicant countries are required to progressively align with EU declarations, and to apply restrictive measures when and where required.

Montenegro fully supports the efforts of the European Union to strengthen its role as a cohesive force in international relations and its ability to promote European interests and values on the international scene. Montenegro commits to full and active participation in the CFSP and the CSDP, as defined in the Treaty on European Union, by the date of accession.

The Ministry of Foreign Affairs coordinates all activities related to foreign policy; its EU directorate is responsible for and has a coordinating role regarding the CFSP and CSDP. The administrative structures are small, but adequate: Montenegro has 21 embassies, 6 permanent missions and 2 consulates-general. The diplomatic service consists of 238 civil servants in Podgorica (89) and abroad (149). In the EU accession process, the Ministry of Foreign Affairs aims to further develop its capacities (a one-third expansion of its staff is planned by 2012) and upgrade the organisation of its EU directorate.

With regard to **political dialogue**, Montenegro has established close political consultations with EU Member States since it gained independence in 2006. Following the entry into force of the Stabilisation and Association Agreement on 1 May 2010, a Stabilisation and Association Council was set up, providing an institutionalised framework for political dialogue. Montenegro has in most instances, when invited, aligned itself with Council decisions and EU declarations and demarches. However, in April 2007 it concluded an agreement on Article 98 of the Rome Statute with the United States which is not in line with the EU position. Montenegro will have to change legislation in this field before its accession.

There are no notable problems in Montenegro's relations with other countries. However, there are 66 countries that have not yet recognised Montenegro since it gained independence in 2006.

The development of good neighbourly relations and regional cooperation is a very important feature of Montenegro's foreign policy. Montenegro participates actively in regional organisations involving the South-Eastern region of Europe and is chairing the Central European Initiative (CEI), the South-East European Cooperation Process (SEECP) and the Adriatic-Ionian Initiative (AII) in 2010.

With regard to *restrictive measures*, Montenegro has implemented all United Nations Security Council restrictive measures and EU restrictive measures. It plans to adopt by the end of 2010 a law on restrictive measures that would regulate the application of such measures and the competences of specific state bodies in this field.

In relation to *non-proliferation* and strategy on weapons of mass destruction/small arms and light weapons (WMD/SALW), Montenegro participates in some, but not all, international export control regimes and instruments concerning the non-proliferation of weapons of mass destruction. It is very active in arms export. It complies through national laws and control systems with international commitments on small arms and light weapons, including the aims

of the EU strategy on SALW. Montenegro has also communicated its intention to join the Wassenaar Arrangement on export controls for conventional arms and dual use goods and technologies.

Regarding nuclear safeguards, Montenegro has signed the Comprehensive Safeguards Agreement and its Additional Protocol with the IAEA. Montenegro is a member of the main non-proliferation treaties.

With regard to *cooperation with international organisations*, Montenegro is a member of the UN, the Council of Europe, the OSCE and other main international organisations and agreements. Montenegro was invited to join the NATO Membership Action Plan (MAP) in December 2009.

Montenegro has introduced the legal basis and practical arrangements necessary to comply with the Council decisions on information security, including on handling of classified information. Montenegro has concluded the Agreement on Security Procedures for the Exchange and Protection of Classified Information with the EU.

On *civil and military crisis management*, Montenegro participates in international peacekeeping operations such as UNMIL, ISAF and UNFICYP. Since August 2010, Montenegro participates with three navy officers in the EU NAVFOR Atalanta peace mission in Somalia. The Montenegrin army consists of 1996 personnel and will grow by one fifth over the next three years.

### *Conclusion*

*Overall*, assessment of Montenegro's foreign and security policy to date indicates that it should be able to fulfil its obligations under the CFSP and CSDP in the medium term, provided it takes the necessary legal and administrative measures and makes the necessary adjustments.

## **3.32. Chapter 32: Financial control**

The *acquis* on financial control relates to the following policy areas: *public internal financial control (PIFC)*, which covers internationally agreed standards and EU good practice on internal control across the entire public sector, and *external audit*, which covers the operational and financial independence of the external audit function (national audit office). PIFC is made up of three pillars: Financial Management and Control systems, functionally independent internal audit systems; and a Central Harmonisation Unit for developing methodologies and standards relating to the first two pillars.

Management and control of EU funds are discussed in the other relevant chapters (e.g. on agriculture and rural development, regional policy, coordination of structural instruments or fisheries). This chapter covers the more general aspects of internal control and external audit of national funds. It also covers protection of the EU's financial interests, including administrative cooperation and criminal law protection (the PIF Convention and its protocols). Finally, the section on protection of the euro against counterfeiting deals with the first-pillar aspects of this issue.

Montenegro is still at an early stage in implementing its **public internal financial control (PIFC)** system. However it has adopted a strategy for the development of public internal control which maps out the future development actions necessary. The legal framework,

including a law on PIFC and specific implementing legislation, is broadly in place. The PIFC law applies to all users of the national budget.

Regarding financial management and control (FMC), a Rulebook on the manner and procedure for establishing and implementing FMC in the public sector has been adopted. Also, amendments have been introduced to the Treasury Directions on the handling of financial transactions, in order to coordinate them with the PIFC law.

Considerable training and awareness-raising efforts will be required to explain the new control framework and encourage positive acceptance by public sector managers and staff.

The PIFC Law stipulates that internal audit is to be performed in accordance with national regulations and international standards. Various pieces of secondary legislation on internal audit are in place. Internal audit units have not yet been established in all budget users where there is a legal obligation to do so.

While some specialised internal audit training has been delivered, Montenegro still has to develop a training and certification programme to allow staff to obtain certification as a public internal auditor. Montenegro is encouraged to recruit an adequate number of persons to internal audit posts in order that internal audit can be fully operational.

The existing internal audit units perform compliance audits and systems audits. Further effort will be required in order to enhance capacity for undertaking performance auditing.

A central harmonisation unit (CHU) has been established in the Ministry of Finance for the development and coordination of PIFC throughout the public sector. The principal role of the CHU is to draft legislation, manuals, methodologies and standards; to prepare, organise and carry out training; and to monitor and report on PIFC implementation.

Regarding **external audit**, the State Audit Institution (SAI) of Montenegro is making progress with institutional reform, but does not yet fully comply with international standards. Montenegro has established an Audit Authority (AA) for the control of EU funds, as a body within the SAI. This jeopardises the operational independence of the SAI in exercising its role as external auditor of the executive (of which the Audit Authority is a part). Montenegro has outlined that this is, however, a temporary situation and it intends to separate the Audit Authority from the State Audit Institution before the end of 2011. In any case, full independence will need to be ensured before the management of EU funds can be transferred to Montenegrin authorities. (*see also chap 22*)

Article 144 of the Constitution of Montenegro contains provisions on the State Audit Institution and defines it as an independent body and the supreme national audit authority. It also provides that it is to report to parliament. In addition, external audit is performed on the basis of the Law on the State Audit Institution, which established the SAI as an independent body for the objective control of the spending of budget funds and the management of state property.

The SAI Law provides for a wide-ranging audit remit and for regularity, effectiveness and efficiency audits. The SAI has unrestricted access to information, it has the right and obligation to report on its work and it is free to publish its reports. Its annual report is submitted to parliament. The SAI is currently drawing up a five year development strategy, in order to guide further reform.

The scope of the PIFC Law encompasses, *inter alia*, Montenegrin ‘budget users’. The State Audit Institution is defined in the Budget Law as being a ‘budget user’ and it therefore falls under the scope of the PIFC Law. However, the scope of the PIFC Law needs to be limited to governmental bodies and not independent organisations such as the SAI. These independent organisations need to follow the general PIFC principles, but should be regulated separately.

The SAI budget is sent to the Ministry of Finance for submission to parliament as part of the state budget. Should the Ministry of Finance amend the draft budget received, this could interfere with the financial independence of the SAI.

The Lima Declaration on international standards for supreme audit institutions contains a provision that the independence of the members of the institution should be guaranteed in the constitution. However, members of the SAI do not have functional immunity from prosecution for any act that results from the normal discharge of their duties.

The overall need for SAI independence, in line with the third principle of the Mexico Declaration on the independence of supreme audit institutions, represents part of the formal benchmarking criteria for this chapter during any future accession negotiations. As such, Montenegro does not meet the criteria regarding external audit.

Finally, Montenegro needs to ensure, through a strategic external audit plan that all budget entities are regularly subject to audit.

In the fields of protection of the EU’s financial interests and protection of the euro against counterfeiting, Montenegro needs to pass relevant legislation proving that it is able to enforce legislation directly applicable after accession. Moreover, it needs to show a record of administrative cooperation with the Commission’s Anti-fraud Office, OLAF. Finally, legal and administrative provisions need to be in place to guarantee the effective protection of the euro against counterfeiting.

Montenegro indicates that its national penal legislation already contains many elements of the PFI legislation (Convention on the protection of the EU’s financial interests and its protocols). The information provided in the questionnaire submitted is comprehensive, including obligations and procedures with regard to the treatment of cases of suspected fraud and other irregularities affecting national or international financial resources, the definitions of active and passive bribery, penalties, liability of legal entities, abuse of official status, various types of fraud, smuggling, money laundering, etc.

However, in order to properly analyse the current situation and suggest further steps for reinforcing Montenegrin criminal legislation to protect the EU’s financial interests, the Commission needs to be supplied with a reliable translation of the criminal code and of the criminal procedure code. Montenegro needs to establish continuous bilateral contacts with the Commission in order to provide such in-depth analysis of the national criminal provisions considered to implement the PIF obligations.

There are several authorities in place relevant to the **protection of the EU’s financial interests** and the fight against fraud; all have a legal basis describing their scope of competencies. Montenegro now needs to set up an effective and efficient coordination service (AFCOS) to guarantee the fulfilment of obligations arising from Article 325(3) of the TFEU and application of the provisions of Regulation (EC) No 2185/96 concerning on-the-spot checks and inspections carried out by the Commission, in particular the obligation to provide assistance to Commission inspectors from the day of accession at the latest.

Montenegro's current legislation covers protection of the euro against counterfeiting, but only to a certain extent. For further alignment of Montenegro's legislation with Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting, the Commission should be supplied with a reliable translation of the criminal code and other laws and regulations on the subject.

Further progress also needs to be made in respect of the roles of national authorities in the detection, analysis and processing of counterfeit currency.

### *Conclusion*

Montenegro is at an early stage in the process of aligning itself with the *acquis* relating to the requirements under this chapter, but in the area of PIFC has developed well.

Montenegro is now entering the key phase of implementing the PIFC legislation. Attention needs to focus on developing an understanding of greater accountability within line ministries and other budget beneficiaries. Considerable training and awareness-raising efforts will be required in order to embed the new control environment and the new culture in terms of the way in which public finance is managed and implemented.

The establishment of the Audit Authority within the SAI jeopardises SAI independence and is against international standards. The proposed strategic development plan is needed to further help the SAI to strengthen its institutional and staff capacities.

The Commission welcomes Montenegro's intention to establish an AFCOS system in order to allow efficient and effective coordination of operational cooperation between respective national authorities and the Commission as well as between the national authorities themselves.

Montenegro uses the euro as legal tender. This makes full compliance with the EU *acquis* in the area of the protection of the euro against counterfeiting an urgent priority. *Overall*, Montenegro will have to make considerable and sustained efforts to align with the *acquis* and to implement it effectively in the medium term.

### **3.33. Chapter 33: Financial and budgetary provisions**

This chapter covers the rules concerning the financial resources necessary for funding the EU budget ('own resources'). These own resources are made up mainly of contributions from Member States based on traditional own resources deriving mainly from customs duties and sugar levies; resources based on VAT; and resources based on the level of GNI (gross national income).

The *acquis* under this chapter consists of EU legislation that is directly binding on the Member States and does not require transposition into national law. However, all necessary steps should be taken to ensure, from accession, full and correct application of the rules on own resources.

The basic principles and institutions for the underlying policy areas shaping the **own resources** system are in place in Montenegro. A national **VAT** system is in operation, customs duties are levied on imports, and national accounts and GDP are based on ESA95 standards. **GNI** is not yet compiled by the National Statistical Institute. Further progress is

needed for full implementation of the ESA 95 standards to ensure that the GNI resource is measured appropriately.

As regards operational management of the own resources system, Montenegro will need to ensure, in due course, the human and **administrative resources** necessary to apply the EU rules concerning payments to the EU budget. Member States must have appropriate administrative capacity to coordinate adequately and ensure correct forecasting, calculation, accounting, collection, payment and control of own resources.

### *Impact*

Given its GDP level, the impact of Montenegro's accession on the EU budget is expected to be limited. This applies both in terms of its likely receipts under the various EU expenditure programmes as well as its expected contribution to the EU budget based on application of the own resources rules.

### *Conclusion*

There are no significant divergences between the systems in Montenegro and the EU in terms of the basic principles and institutions in the policy areas underlying application of the own resources rules. *Overall*, if it continues its efforts, Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis*.

## **3.34. General evaluation**

The ability of Montenegro to assume the obligations of membership has been evaluated according to the following indicators:

- the obligations set out in the Stabilisation and Association Agreement;
- progress with adoption, implementation and enforcement of the EU *acquis*.

Montenegro has overall smoothly implemented the obligations under the Stabilisation and Association Agreement. However, there have been some gaps in certain areas (state aids, transit traffic).

Montenegro adopted in 2008 a National Programme for Integration, which is a comprehensive and ambitious plan providing for the approximation of national legislation to the EU *acquis*. Important progress in adopting legislation aligned with the EU *acquis*, particularly in some areas of the internal market, trade-related provisions, customs and taxation has been made. However the country faces major challenges in implementing and enforcing legislation. Administrative and judicial capacities remain overall limited and the country will need to make sustained efforts to strengthen them in order to assume the obligations of membership in the medium-term.

If it continues its efforts Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis* in the following fields:

- Taxation
- Enterprise and industrial policy

- Science and research
- Education and culture
- Customs union
- External relations
- Foreign, security and defence policy
- Financial and budgetary provisions

Montenegro will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term in the following fields:

- Freedom of movement for workers
- Right of establishment and freedom to provide services
- Free movement of capital
- Public procurement
- Company law
- Competition policy
- Financial services
- Information society and media
- Transport policy
- Energy
- Economic and monetary policy
- Trans-European networks
- Consumer and Health Protection

Further adjustments of the legal and institutional framework and in particular strengthening of administrative and implementation capacities are needed in the above areas.

Montenegro will have to make considerable and sustained efforts to align with the EU *acquis* and to implement it effectively in the medium term in the following fields:

- Free movement of goods
- Intellectual property law
- Agriculture and rural development
- Food safety, veterinary and phyto-sanitary policy

- Fisheries
- Statistics
- Social policy and employment
- Regional Policy and coordination of structural instruments
- Judiciary and fundamental rights
- Justice, freedom and security
- Financial control

Considerable adjustments of the legal and institutional framework and significant strengthening of administrative and implementation capacities are needed in these areas.

Regarding environment, further coordinated and significant efforts will be needed to align with the EU *acquis* and to implement it effectively. These should include substantial investments and strengthening administrative capacity for the enforcement of legislation in order to achieve compliance on the most important issues, including climate change, in the medium term. Full compliance with the *acquis* could be achieved only in the long term and would necessitate increased levels of investment.



## Statistical Annex

### STATISTICAL DATA (as of 14 October 2010) Montenegro

<b>Basic data</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Population (thousand)		612	615	617	619	621	623	624	625	628	630
Total area of the country (km <sup>2</sup> )		13 812	13 812	13 812	13 812	13 812	13 812	13 812	13 812	13 812	13 812

<b>National accounts</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Gross domestic product (GDP) (million national currency)		1 066	1 295	1 360	1 510	1 670	1 815	2 149	2 681	3 086	2 981
GDP (million euro)		1 066	1 295	1 360	1 510	1 670	1 815	2 149	2 681	3 086	2 981
GDP (euro per capita)	1)	1 750	2 113	2 208	2 435	2 684	2 912	3 443	4 280	4 908	4 720
GDP (in Purchasing Power Standards (PPS) per capita)		:	:	:	:	:	6 900.0	8 500.0	10 000.0	10 700.0	10 200.0
GDP per capita in PPS (EU-27 = 100)		:	:	:	:	:	30.7	35.9	40.2	42.6	43.2
Real GDP growth rate (growth rate of GDP volume, national currency, % change on previous year)		:	1.1	1.9	2.5	4.4	4.2	8.6	10.7	6.9	-5.7
Employment growth (national accounts, % change on previous year)		:	:	-19.9e	-8.9e	2.7e	-11.4e	-5.0	-11.7	:	:
Labour productivity growth: GDP growth per person employed (% change on previous year)		:	:	21.8	11.4	1.7	15.6	13.6	22.4	18.1	:
Real unit labour cost growth (national accounts, % change on previous year)		:	:	:	:	:	:	:	:	:	:
Labour productivity per person employed (GDP in PPS per person employed, EU-27 = 100)		:	:	:	:	:	:	:	:	:	:
Gross value added by main sectors (%)											
Agriculture and fisheries		12.4	11.9	12.2	11.6	10.9	10.4	10.1	9.2	9.3	10.0
Industry		19.2	20.7	20.0	19.2	18.7	17.1	16.0	13.6	13.4	13.6
Construction		4.3	3.9	4.0	3.4	3.5	3.6	4.3	7.3	7.7	6.5
Services		64.1	63.4	63.8	65.8	66.9	68.9	69.5	70.1	69.6	69.9
Final consumption expenditure, as a share of GDP (%)		91.9	100.2	105.8	101.0	99.4	99.8	104.2	108.5	113.8	106.2
Gross fixed capital formation, as a share of GDP (%)		16.9	17.5	14.6	13.3	17.0	18.0	21.9	32.3	38.3	26.7
Changes in inventories, as a share of GDP (%)		5.5	5.9	4.1	2.1	-0.4	-0.3	3.6	1.5	2.3	0.4
Exports of goods and services, relative to GDP (%)		36.8	38.4	35.4	30.6	42.0	43.6	49.4	44.4	39.6	32.1
Imports of goods and services, relative to GDP (%)		51.1	62.0	59.9	47.0	58.1	61.1	79.1	86.7	94.0	65.4

<b>Industry</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Industrial production volume index (2000=100)		100.0b	99.0	100.0	102.0	116.0	114.0	115.0	115.0	113.0	77.0

<b>Inflation rate</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Annual average inflation rate (CPI, % change on previous year)		:	:	:	:	:	:	:	:	7.4	3.4

<b>Balance of payments</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Balance of payments: current account total (million euro)		:	:	-175	-102	-120	-154	-531	-1 061	-1 564	-896p
Balance of payments current account: trade balance (million euro)		:	:	-433	-359	-416	-514	-849	-1 574	-2 082	-1 371
Balance of payments current account: net services (million euro)		:	:	100	112	148	196	197	439	399	385
Balance of payments current account: net income (million euro)		:	:	76	88	86	18	31	15	46	5
Balance of payments current account: net current transfers (million euro)		:	:	83	58	62	147	90	59	73	85
of which government transfers (million euro)		:	:	:	:	:	6	7	2	9	5
Net foreign direct investment (FDI) (million euro)		:	:	76	39	51	381	467	558	552	911
Foreign direct investment (FDI) abroad (million euro)	2)	:	:	0	-5	-2	-4	-26	-115	-74	-33
of which FDI of the reporting economy in EU-27 countries (million euro)		:	:	0	0	-1	-3	-78	-72	-58	-74
Foreign direct investment (FDI) in the reporting economy (million euro)	2)	:	:	76	44	53	384	493	673	625	944
of which FDI of EU-27 countries in the reporting economy (million euro)		:	:	73	32	38	319	377	527	430	854

<b>Public finance</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
General government deficit/surplus, relative to GDP (%)		:	:	:	-2.4	-2.0	-2.0	2.9	6.6	-0.4	-3.5
General government debt relative to GDP (%)		:	:	:	:	:	:	:	:	:	:

<b>Financial indicators</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Gross foreign debt of the whole economy, relative to GDP (%)		:	:	:	:	:	:	:	:	:	:
Gross foreign debt of the whole economy, relative to total exports (%)		:	:	:	:	:	:	:	:	:	:
Money supply: M1 (banknotes, coins, overnight deposits, million euro)	3)	:	:	:	285	291	351	484	592	512	:
Money supply: M2 (M1 plus deposits with maturity up to two years, million euro)	4)	:	:	:	403	437	615	1 099	1 557	1 209	:
Money supply: M3 (M2 plus marketable instruments, million euro)	5)	:	:	:	494	547	867	1 587	2 728	2 339	:
Total credit by monetary financial institutions to residents (consolidated) (million euro)		:	:	125	199	279	374	843	2 213	2 754	2 358
Interest rates: day-to-day money rate, per annum (%)		:	:	:	:	:	:	:	:	:	:
Lending interest rate (one year), per annum (%)		:	:	:	:	:	12.1	10.3	9.3	9.4	9.4
Deposit interest rate (one year), per annum (%)		:	:	:	:	:	:	:	3.3	4.1	3.9
euro exchange rates: average of period - 1 euro = ... national currency	6)	:	:	:	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Effective exchange rate index (2000=100)		:	:	:	:	:	:	:	:	:	:
Value of reserve assets (including gold) (million euro)		:	:	55	50	60	173	329	490	337	397

<b>External trade</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value of imports: all goods, all partners (million euro)		:	:	:	:	:	974.3	1 482.7	2 317.8	2 527.2	1 652.2
Value of exports: all goods, all partners (million euro)		:	:	:	:	:	460.6	627.5	600.8	433.2	287.9
Trade balance: all goods, all partners (million euro)		:	:	:	:	:	-513.7	-855.2	-1 717.0	-2 094.0	-1 364.3
Terms of trade (export price index / import price index)		:	:	:	:	:	:	:	:	:	:
Share of exports to EU-27 countries in value of total exports (%)		:	:	:	:	:	53.5	62.2	71.1	61.3	48.3
Share of imports from EU-27 countries in value of total imports (%)		:	:	:	:	:	45.3	45.5	35.7	41.2	37.8

<b>Demography</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Natural growth rate: natural change (births minus deaths) (per 1000 inhabitants)		6.1	5.5	4.8	4.3	3.4	2.4	2.5	3.0	4.1	:
Infant mortality rate: deaths of children under one year of age per 1000 live births		11.1	14.6	10.8	11.0	7.8	9.5	11.0	7.4	7.5	5.7
Life expectancy at birth: male (years)		71.1	71.4	70.9	70.4	71.0	70.4	70.7	71.2	71.2	71.7
Life expectancy at birth: female (years)		76.3	76.5	75.7	74.9	75.3	74.9	74.8	76.1	76.1	76.6

<b>Labour market</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Population (15-64): total of population aged 15-64 (thousand)		:	:	:	:	:	431.2	430.7	428.6	431.6	434.3
Population in economic activity (15-64): total of population aged 15-64 that is economically active (thousand)		:	:	:	:	:	254.3	251.5	261.5	264.2	262.1
Total employment (15-64): total of population aged 15-64 that is employed (thousand)	7)	181.8	176.6	177.6	168.5	187.3	176.5	176.7	210.7	219.4	211.7
Economic activity rate (15-64): share of population aged 15-64 that is economically active (%)	7)	60.4	57.1	59.1	58.9	51.7	59.0	58.4	61.0	61.2	60.3
Employment rate (15-64): share of population aged 15-64 in employment (%)	7)	38.5	37.1	37.7	36.2	37.4	40.9	41.0	49.2	50.8	48.7
Employment rate male (15-64) (%)	7)	46.2	45.6	46.6	44.5	46.5	46.2	47.8	56.6	58.3	56.0
Employment rate female (15-64) (%)	7)	30.6	29.0	29.0	28.1	28.8	35.6	34.8	41.9	43.5	41.6
Employment rate of older workers (55-64): share of population aged 55-64 in employment (%)		:	:	:	:	:	:	:	:	:	:
Employment by main sectors (%)											
Agriculture		3.4	3.1	3.0	1.8	10.9b	8.6	6.8	8.1	7.6	6.5
Industry		22.4	25.8	26.0	25.7	16.5b	16.3	14.8	13.8	15.3	14.0
Construction		3.5	2.1	2.1	2.0	3.4b	2.9	4.7	3.8	6.1	6.7
Services		70.8	69.1	68.8	70.6	69.2b	72.1	73.7	74.3	71.0	72.8
Unemployment rate: share of labour force that is unemployed (%)		19.3	21.2	20.7	22.7	27.7	30.3	29.6	19.3	16.8	19.1
Share of male labour force that is unemployed (%)		:	:	:	:	:	:	:	18.1	15.9	18.0
Share of female labour force that is unemployed (%)		:	:	:	:	:	:	:	20.9	17.9	20.4
Unemployment rate of persons < 25 years: share of labour force aged <25 that is unemployed (%)		:	:	:	:	:	:	:	:	:	:
Long-term unemployment rate: share of labour force that is unemployed for 12 months and more (%)		:	:	:	:	:	:	:	:	:	16.7

<b>Social cohesion</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Average nominal monthly wages and salaries (national currency)		181.0	211.0	149.1	173.9	195.3	213.1	246.0	338.0	416.0	463.0
Index of real wages and salaries (index of nominal wages and salaries divided by the CPI) (2000=100)		100.0	91.6	109.7	119.3	130.9	139.7	156.4	179.9	195.2	:
Early school leavers - Share of population aged 18-24 with at most lower secondary education and not in further education or training (%)		:	:	:	:	:	:	:	:	:	:

<b>Standard of living</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of passenger cars per 1000 population		185.3	161.0	166.8	171.8	176.1	190.9	244.7	285.6	298.5	284.0
Number of subscriptions to cellular mobile telephone services per 1000 population		:	639.6	775.5	674.4	778.7	872.0	1 127.5	1 097.9	1 611.5	:

<b>Infrastructure</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Density of railway network (lines in operation, per 1000 km <sup>2</sup> )		18.1	18.1	18.1	18.1	18.1	18.1	18.1	18.1	18.1	18.1
Length of motorways (thousand km)		:	:	:	:	:	:	:	:	:	:

<b>Innovation and research</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Spending on human resources (public expenditure on education in % of GDP)		:	:	:	:	:	:	:	:	:	:
Gross domestic expenditure on R&D in % of GDP		:	:	:	:	:	:	:	:	:	:
Percentage of households who have Internet access at home (%)		:	:	:	:	:	:	:	:	:	:

<b>Environment</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Greenhouse gas emissions, CO2 equivalent (tons, 1990=100)		:	:	:	:	:	:	:	:	:	:
Energy intensity of the economy (kg of oil equivalent per 1000 euro GDP)		:	:	:	:	:	:	493.8	384.4	436.9e	:
Electricity generated from renewable sources in % of gross electricity consumption		:	:	:	:	:	:	:	:	:	:
Road share of inland freight transport (% of tonne-km)		:	:	:	:	:	:	:	:	:	:

<b>Energy</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Primary production of all energy products (thousand TOE)		:	:	:	:	:	:	982	795	1 136	:
Primary production of crude oil (thousand TOE)		:	:	:	:	:	:	:	:	:	:
Primary production of hard coal and lignite (thousand TOE)		:	:	:	:	:	:	982	795	1 136	:
Primary production of natural gas (thousand TOE)		:	:	:	:	:	:	:	:	:	:
Net imports of all energy products (thousand TOE)		:	:	:	:	:	:	-49	9	-25	:
Gross inland energy consumption (thousand TOE)		:	:	:	:	:	:	933	804	1 111	:
Electricity generation (thousand GWh)		2.7	2.5	2.3	2.7	3.3	2.9	3.0	2.1	2.8	2.8

<b>Agriculture</b>	Note	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Agricultural production volume index of goods and services (producer prices, previous year=100)		95.0	107.0	106.0	101.0	104.0	99.0	102.0	89.0	:	:
Total utilised agricultural area (thousand hectare)	8)	518e	518e	518e	518e	518e	517e	517	516	516	516
Livestock: cattle (thousand heads, end of period)	9)	179e	178e	183e	175e	169e	118	115	109	106	101
Livestock: pigs (thousand heads, end of period)	9)	19e	21e	22e	24e	27e	11	13	10	10	12
Livestock: sheep and goats (thousand heads, end of period)	9)	293e	244e	241e	252e	254e	255	249	222	209	200
Production and utilisation of milk on the farm (total whole milk, thousand tonnes)	10)	197e	194e	198e	203e	209e	186	178	173	160	152
Crop production: cereals (including rice) (thousand tonnes, harvested production)	11)	3e	4e	5e	4e	3e	3e	3	2	3	3
Crop production: sugar beet (thousand tonnes, harvested production)		:	:	:	:	:	:	:	:	:	:
Crop production: vegetables (thousand tonnes, harvested production)		:	:	:	:	:	:	:	:	:	:

: = not available

p = provisional value

e = estimated value

1) The data are without Financial Intermediation Services Indirectly Measured (FISIM). FISIM is calculated separately and at the total level of GVA. Value of FISIM for 2000 is -1622 (in 1000 euro). Value of FISIM for 2001 is -1885 (in 1000 euro). Value of FISIM for 2002 is -2700 (in 1000 euro). Value of FISIM for 2003 is -2119 (in 1000 euro). Value of FISIM for 2004 is -1353 (in 1000 euro). Value of FISIM for 2005 is -1842 (in 1000 euro). Value of FISIM for 2006 is -4118 (in 1000 euro); mid-year estimate of population used to calculate per capita values.

2) The balance of payments sign conventions are used. For FDI abroad a minus sign means investment abroad by the reporting economy exceeded its disinvestment in the period, while an entry without sign means disinvestment exceeded investment. For FDI in the reporting economy an entry without sign means that investment into the reporting economy exceeded disinvestment, while a minus sign indicates that disinvestment exceeded investment.

3) As of 31 December. Instead of standard M1, data under national definition of M0 are provided.

4) As of 31 December. Instead of standard M2, data under the national definition of M11 are provided. The monetary aggregate M11 comprises M1 increased by the Central Government's demand deposits in EUR and other currencies. The monetary aggregate M2 includes M1 and the non-banking sector's time deposits with banks, in EUR and other currencies, excluding deposits of the Central Government.

5) As of 31 December. Instead of standard M3, data under the national definition of M21 are provided. Monetary aggregate M21 comprises M2 increased by the Central Government's time deposits in EUR and other currencies.

6) No official national currency exists. Euro is the currency in use.

7) Age group refers to persons aged 15 or more years until 2004; from 2005 onwards age group 15-64 is used.

8) Agricultural area includes: arable land, area under pastures, fishponds and ponds.

9) Number of livestock in 1000; including enterprises, cooperatives and households.

10) Calculated net quantity in 1000 tonnes; including enterprises, cooperatives, and households.

11) Including households, enterprises and cooperative