Warsaw, 2 October 2023

Opinion-Nr.: LEGIS-MNE/464/2023 [NS]

PRELIMINARY OPINION ON THE LEGAL FRAMEWORK GOVERNING THE LEGISLATIVE PROCESS IN MONTENEGRO

Montenegro

This Preliminary Opinion has been prepared as part of the comprehensive assessment of the lawmaking process in Montenegro and has benefitted from contributions made by Dr. Marta Achler, Expert with the Centre for Judicial Co-operation, European University Institute; Dr. Victor Chimienti, Senior International Lawmaking & Legislative Reform Expert; and Mr. Primoz Vehar, Senior International Legal Expert.

Based on an unofficial English translation of several pieces of legislation and other relevant documents commissioned by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and provided by the OSCE Mission to Montenegro.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw

Office: +48 22 520 06 00, Fax: +48 22 520 0605

www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Despite some shortcomings, the existing normative framework governing the legislative process in Montenegro provides a comprehensive legal basis for the adoption of laws and advancing on the path of the EU-oriented reforms. Montenegro's EU integration efforts have been a decisive driving force in the recent years for shaping its national policy and legislative framework but also constitute a challenge, often requiring the fast-paced drafting of acquis-compliant legislation. In this context, due account should be given to ensuring the quality of legislation through evidence-based, open, transparent, inclusive procedures and practices, as well as public accountability, which are essential cornerstones to strengthen democratic institutions and processes.

The existing legal framework would benefit from certain improvements to better comply with democratic governance and human rights standards, OSCE human dimension commitments and good practices and ensure better quality of legislation and enhanced implementation of adopted laws. Ultimately, this should strengthen public trust in the abovementioned procedures and democratic institutions in general.

In particular, the framework regulating policymaking should be further elaborated to ensure that a coherent and logically interconnected policy cycle is in place. The inter-institutional co-operation on legislative and EU integration matters should be enhanced along with regulatory oversight mechanisms within both the government and the parliament. To ensure evidence-based policy- and lawmaking and qualitative regulatory impact assessments (hereinafter "RIA"), though without imposing extensive burdens on public institutions, policy- and lawmakers, the modalities of the ex ante and ex post evaluation of draft and adopted laws respectively should be re-assessed. Legislators should also further elaborate the legal provisions to ensure inclusiveness of the legislative process and due consideration of gender and diversity, from the initial stages of the policymaking to the preparation, drafting, impact assessment, discussions, consultations, adoption, publication, communication, monitoring of implementation and evaluation.

More specifically, and in addition to what is stated above, ODIHR makes the following key recommendations in order to enhance the legal framework governing the legislative process in Montenegro:

A. Regarding legislative planning and policymaking:

1. to enhance relevant legal provisions to ensure that, in general, newly formed governments draft their work programmes and policy/legislative plan in a timely manner and report on it to the Parliament on a regular basis, while specifying the manner of implementing, amending and monitoring legislative plans; [para. 36]
2. to further elaborate the provisions of the Rules of Procedure (hereinafter "RoP") of the Government governing the policy development stage, including

by requiring, before initiating the drafting of a law, the development and approval of policy papers by the Government; [para. 45]

3. to enhance in a law the co-operation modalities between the Government and the Parliament throughout the policymaking and lawmaking processes between both actors, including through the regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and formalising a proper co-ordination arrangement between them; [para. 49]
4. to specify in the RoP of the Government the minimum duration of the inter-ministerial consultation process, while retaining the possibility, with respect to complex matters, to extend the duration beyond the existing maximum of 14 days; [para. 51]
5. to mandate, in the Government RoP, the General Secretariat of the Government (hereinafter "GSG") to review the content of draft policies and draft laws to assess their coherence with the Government's priorities as well as the substantial quality of the drafts, or return them to the initiators; [para. 52]

B. Regarding regulatory impact assessments:

1. to elaborate, in the RoP of the Government and MoF Instruction, clear criteria for exempting certain legislative proposals from the RIA requirements, including in case of the limited impact of the planned intervention, in addition to the already existing exemptions concerning certain specific pieces of legislation; [para. 56]
2. to consider distinguishing between different types of RIA - such as a "full RIA, "simplified"/"basic"/"initial" RIA, or a RIA focusing on specific, limited impacts, while specifying their respective scopes and standards of analysis for each type; [para. 57]
3. to envisage in the legislation a clear list of impact assessments that need to be mandatorily conducted, covering as appropriate and relevant, human rights, gender equality and environmental impact, and the methodology for carrying them; [para. 61]
4. to amend Article 130 of the RoP of the Parliament by requiring that the RIA report, or justification for not preparing it, should accompany the draft law submitted to the Parliament whilst the absence of one should justify the draft's return to the initiator; [para. 64]
5. to consider the feasibility of introducing a system of ex post evaluation, at least for certain major pieces of legislation or sector, while clearly defining the scope and methodology of such evaluation and closely linking it with the ex ante phase of RIA; [para. 67]

C. Regarding parliamentary legislative procedure:

1. to envisage in the RoP of the Parliament the minimum time required between parliamentary readings, except for the adoption of draft laws under the urgent procedure in exceptional circumstances; [para. 83]

2. to provide for shorter timeframes and simpler procedure to be used for the passage of minor and/or uncontroversial legislation or amendments, while clearly defining and strictly circumscribing such cases in the legislation; [para. 83]
3. to amend Article 151 of the parliamentary RoP by introducing clear and strictly defined criteria and circumstances when the urgent procedure may or may not be used, embedding specific safeguards to avoid the over-use of such procedures and clear rules enabling the Parliament to reject the request to apply such urgent procedures, as well as specific oversight mechanism; [para. 94]

D. Regarding public consultations:

1. to clearly outline in the legal framework instances where public consultations can be omitted, whilst also ensuring that there is an authority at the centre of government level scrutinizing the application of such exceptions; [para. 99]
2. to amend Article 130 of the RoP of the Parliament by envisaging that, if a public consultation was conducted, the consultation report should accompany the draft law submitted to the Parliament and that the absence of one should justify the draft's return to the initiator under Article 132 of the RoP of the Parliament; [para. 102]
3. to enhance the legal framework governing public hearings and consultations by the Parliament, to ensure public consultations throughout the parliamentary stage; [para. 113]
4. to reconsider the requirements for NGOs to participate in the government working bodies by making them less burdensome and more transparent while ensuring that the composition of the WGs is inclusive and gender-balanced; [para. 114]

E. Regarding publication and accessibility of adopted legislation:

1. to envisage in the legal framework an obligation to ensure that all primary and secondary legislation is consolidated and available online, free of charge; [para. 120]
2. to consider establishing a comprehensive legislative database which should be available for free; [para. 121]

F. Regarding regulatory oversight mechanisms:

1. to enhance the regulatory oversight mechanisms within the government, including by strengthening the role of the GSG, while ensuring that the scope of the quality control over RIA is not limited to budget or fiscal considerations and that the internal procedures and institutional framework within the Ministry of Public Administration are in place to check compliance with the requirements for public consultation, ensuring that draft laws that do not comply with quality standards are returned to the initiator; [para. 123]
2. to strengthen the capacities of the Legislative Committee or consider establishing a parliamentary Legal Department as a robust, apolitical service

which would take over certain responsibilities of the Legislative Committee and support all MPs in the exercise of their legislative functions; [para. 128]

3. to envisage in the legal framework a comprehensive mechanism of ex post evaluation of legislation allowing for the Parliament to assess retrospectively the outcomes of existing legislation to determine whether it should be maintained, amended or repealed; [para. 131]

G. Regarding EU integration and approximation:

1. to amend Article 42a of the RoP of the Parliament by mandating the European Integration Committee to consider draft laws which are transposing the EU *acquis* and provide opinion on the extent of the harmonization, as well as on the consequences for Montenegro regarding their implementation; [para. 143]
2. to develop and adopt a law regulating the relations between the Government and Parliament, particularly in the area of EU affairs, to ensure a more effective institutional framework and co-operation in support of the European integration process, including greater co-operation and co-ordination in the delivery of policymaking and legislative development; [para. 145]

H. Regarding gender mainstreaming and diversity considerations:

1. to strengthen the institutional arrangements for gender mainstreaming throughout the policy- and lawmaking process, while enhancing the role of the Gender Equality Committee in the legislative process by mandating it to consider all draft laws' compliance with national and international gender equality commitments prior to their consideration in the sitting of the Parliament; [para. 150]
2. to introduce a requirement to obligatory conduct gender impact assessment of draft laws (as a part of RIA) before submitting them to the Parliament, as well as elaborating the methodology for this based on sex-disaggregated data and a review of the potentially direct or indirect discriminatory impact of the proposed provisions on different groups; [para. 151]
3. to ensure that lawmaking rules and practises reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation as well as *ex post* evaluation, inclusiveness of public consultation processes, accessibility of the policy- and lawmaking process and of adopted legislation. [para. 156]

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENT

I. INTRODUCTION 7

II. SCOPE OF THE PRELIMINARY OPINION 8

III. PRELIMINARY ANALYSIS AND RECOMMENDATIONS 9

1. Relevant International and Regional Standards and OSCE Commitments 9

2. Background and General Comments 11

3. Constitutional System, Normative Framework and Sources of Law 13

4. Legislative Planning and Policymaking 15

4.1. Policy and Legislative Planning 15

4.2. Policymaking 17

4.3. Inter-Institutional Co-ordination 19

5. Regulatory impact assessments 22

5.1. Ex ante RIA 22

5.2. Ex post Evaluation 25

6. Preparation of Draft Laws and Legislative Procedure 27

6.1. Legal Drafting 27

6.2. Legislative Initiatives 27

6.3. General Legislative Procedure 29

6.4. Urgent legislative procedure 31

7. Public Consultations 33

7.1. Public Consultations by the Government 33

7.2. Public Consultations by the Parliament 36

7.3. Participation of NGOs in Policy- and Lawmaking 37

8. Publication and Accessibility of Adopted Legislation 39

9. Regulatory Oversight Mechanisms 40

9.1. Regulatory Oversight Within the Government 40

9.2. Parliamentary Scrutiny of Government Policy- and Lawmaking 41

10. EU Integration and Approximation 43

10.1. Harmonization with EU acquis 43

10.2. Government-Parliament Co-operation on European Integration Affairs 45

11. Gender Mainstreaming and Diversity Considerations 47

11.1. Gender Mainstreaming 47

11.2. Diversity Considerations 50

I. INTRODUCTION

1. On 22 February 2023, the Secretary General of the Parliament of Montenegro and the Head of the OSCE Mission to Montenegro jointly requested ODIHR to conduct a comprehensive assessment of the lawmaking process in Montenegro.

2. On 1 March 2023, ODIHR confirmed its readiness to conduct such an assessment and to proceed with the first step which consists of analysing the national legal framework regulating the legislative process in Montenegro and to issue a Preliminary Opinion on its compliance with international democratic governance and human rights standards and OSCE human dimension commitments.

3. The Preliminary Opinion is based on a desk review and analysis of excerpts from the applicable constitutional, legislative and sub-legislative legal texts governing the legislative process in the country.[1] Some of its findings and recommendations are also based on the results of interactive discussions with the staff of the Parliament of Montenegro that ODIHR experts had during two workshops on democratic lawmaking organized by the OSCE Mission to Montenegro in November 2022 and May 2023, with a specific focus on the approximation of the legislation with the EU *acquis*.

4. The Preliminary Opinion's main purpose is to assess the compliance of the legal and institutional framework with relevant international standards and good practices, and to formulate initial recommendations for possible improvements of the legal framework. It also aims to inform the preparation of the *Comprehensive Assessment of the Legislative Process in Montenegro*, which will review both legal and practical aspects of the entirety of the lawmaking process from the initial stages of the policymaking to the preparation, drafting, impact assessment, discussions, consultations, adoption, publication, communication, monitoring of implementation and evaluation. Information for the preparation of the Comprehensive Assessment will be based on the Preliminary Opinion and additional information collected through semi-structured field interviews with pre-identified interlocutors, as well as through compiling additional relevant domestic legislation, regulations, reports and other information and statistics on the practice of lawmaking in the country. The main findings and recommendations from the Preliminary Opinion will therefore be revisited and fine-tuned when preparing the Comprehensive Assessment based on the information collected during the country visit. The purpose of such a Comprehensive Assessment is to collect, synthesize and analyse information with sufficient objectivity and detail to support credible recommendations for reform tailored to the particular needs and context in Montenegro.

5. The recommendations contained in the Comprehensive Assessment Report may then serve as a working basis for, upon the request and in close consultation with all relevant stakeholders: (i) discussing and initiating regulatory reform, including amendments to relevant legal documents; (ii) developing and/or conducting capacity development initiatives, and/or (iii) supporting relevant stakeholders to develop tools and other guidance documents for lawmakers, to render the lawmaking process more effective, transparent, accessible, inclusive, accountable and efficient.

[1] For the preparation of the Preliminary Opinion, excerpts from the following legal documents were reviewed, as applicable and relevant to the legislative process: (i) Constitution of Montenegro; (ii) Rules of Procedure of the Government of Montenegro; (iii) Rules of Procedure of the Parliament of Montenegro; (iv) Law on the Constitutional Court of Montenegro; (v) Law on State Administration; (vi) Law on Publication of Regulations and Other Acts; (vii) Legal and Technical Rules for drafting Regulations; and (viii) Regulation on the Election of Representatives of Non-governmental organizations to the Working Bodies of State Administration Bodies and the Conduct of Public Hearings in the Preparation of Laws and Strategies.

6. This Preliminary Opinion was prepared in response to the above request and will serve as the basis for the comprehensive assessment of the legislative process in Montenegro, which will assess both the law and the practice of lawmaking. ODIHR conducted this legal analysis within its general mandate as established by the relevant OSCE human dimension commitments.[2]

II. SCOPE OF THE PRELIMINARY OPINION

7. This Preliminary Opinion covers excerpts from the legal framework governing the lawmaking process that were identified by the OSCE Mission to Montenegro as relevant for the preliminary legal analysis and submitted to ODIHR for review. Thus limited, the Preliminary Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework as well as practices regulating the lawmaking process in Montenegro that will be the subject of the Comprehensive Assessment that will follow as a next step.

8. The Preliminary Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the relevant legal framework. The ensuing legal analysis is based on international and regional democratic governance, rule of law and human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Preliminary Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national practices, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable standards, while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as the country's context and political culture.

9. Given the EU candidate status of Montenegro, the Preliminary Opinion also places a strong emphasis on the process of harmonizing national legislation with the EU *acquis* and suggests some procedural solutions for this within the lawmaking process, to support Montenegro's efforts for the successful conclusion of EU negotiations in all 33 chapters, which remains a key priority for the country.

[2] ODIHR conducted this assessment within its general mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments and specific human dimension commitments relating to law-making, including the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), which states: "*Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (…) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone*" (para. 5.8); and Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), which provides: "*Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (para. 18.1). OSCE participating States also specifically committed to ensure equal opportunities for the effective participation in political and public life of women, persons belonging to national minorities, Roma and Sinti, especially of Roma and Sinti women, persons with disabilities; see e.g., OSCE, *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d); *2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, para. 88; OSCE Ministerial Council, *Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children* (2013), para 4.2; *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 1991); OSCE/CSCE *1991 Moscow Document*, para. 41.

10. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[3] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Preliminary Opinion integrates, as appropriate, a gender and diversity perspective.[5]

11. This Preliminary Opinion is based on an unofficial English translation of the relevant excerpts of the legal framework governing the legislative process in Montenegro commissioned by ODIHR or provided by the OSCE Mission to Montenegro.[6] Errors from translation may result. The Opinion is also available in the Montenegrin language. In case of discrepancies, the English version shall prevail.

12. Given the preliminary nature of this Opinion, ODIHR would like to stress that the findings and recommendations contained therein are without prejudice to the analysis and written and/or oral recommendations and comments to the related legislation and lawmaking process that ODIHR will make as part of the upcoming Comprehensive Assessment when evaluating the practice of lawmaking and any follow-up activities.

III. PRELIMINARY ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL AND REGIONAL STANDARDS AND OSCE COMMITMENTS

13. Legislation has a profound impact on everyday life, on people's rights and livelihoods and it is thus fundamental that laws are of good quality meaning that they should be consistent, clear and intelligible, foreseeable, transparent, accessible, human rights-compliant, effective, non-discriminatory, gender-responsive and reflective of diverse groups in society, both in terms of wording and in practice, once implemented. The quality of laws is a direct consequence of the manner in which they are developed, discussed and adopted. Thus, lawmaking procedures and practices should follow democratic principles, adhere to the rule of law and be human-right compliant. At the same time, they should be evidence-based, open and transparent, participatory and inclusive, and subject to effective oversight. In principle, a democratic lawmaking process not only leads to better quality laws but also tends to improve the implementation of adopted laws and should ultimately enhance public trust in the abovementioned processes and democratic institutions in general. More generally, OSCE participating States have committed to build, consolidate and strengthen democracy as the only system of government,[7] and have recognized it as an inherent element of the rule of law.[8]

---

3 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Montenegro acceded to the Convention on 23 October 2006.

4 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

5 For the purpose of this Opinion, a guiding definition of "diversity" encompasses both "workplace diversity" (i.e., fair representation in the parliamentary bodies and staff of the different groups of society within a setting that recognizes, respects and reasonably accommodates differences, thereby promoting full realization of the potential of all its members and employees) as well as respect for and promotion of diversity in its procedures and practices, and in the outcomes of the Parliament's work. This does not preclude other diversity considerations, as contextually appropriate and possible, to be taken into account by the Parliament when reforming its working environment and work procedures, and more generally when performing all its functions.

6 For the list of documents that have been reviewed for the preparation of this Preliminary Opinion, see footnote 1.

7 Preamble, CSCE Charter of Paris for New Europe, 21 November 1990.

8 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (1990 OSCE Copenhagen Document), 5 June-29 July 1990, para. 3.

Democracy is likewise one of the universal core values and principles of the United Nations,[9] the Council of Europe,[10] the Organization for Economic Co-operation and Development (OECD)[11] and the European Union (EU).[12] Respect for human rights and fundamental freedoms is an essential part of democracy and the rule of law.

14. There are no international or regional legally binding norms and instruments focusing specifically on the lawmaking process as such, although this topic is intrinsically linked to the right to participate in public affairs, as reflected in Article 25 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR").[13] The UN Human Rights Committee in its General Comment No. 25 (1996) noted that the right to participate in public affairs requires that *"[c]itizens also take part in the conduct of public affairs by exerting influence through public debate*".[14] In addition, the modalities of citizens' participation, which include public debate and dialogue, should be established by the constitution and other laws of the state concerned. The UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention),[15] to which Montenegro is a State Party is also of relevance, especially Article 7 on public participation concerning plans, programmes and policies relating to the environment.

15. As Montenegro is a Member State of the Council of Europe (hereinafter "CoE"), the relevant case law of the European Court of Human Rights and documents of the European Commission for Democracy through Law of the CoE (hereinafter "Venice Commission") are also of relevance to this Preliminary Opinion. In particular, the Venice Commission's Rule of Law Checklist[16] provides useful guidance regarding the process of enacting laws, which should be transparent, accountable, inclusive and democratic.

16. The need for open and democratic lawmaking procedures is clearly set out in relevant OSCE commitments. The 1990 Copenhagen Document speaks of legislation, adopted at the end of a public procedure, as being "*essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings*".[17] The 1991 Moscow Document echoes these findings, by committing OSCE participating States to formulate and adopt legislation "*as a result of an open process reflecting the will of the people*".[18] OSCE participating States also specifically committed to ensure equal opportunities for the effective participation in political and public life of women, persons belonging to national minorities, Roma and Sinti, especially Roma and Sinti women, young people,

---

9 As stated on the website of the UN Office of the High Commissioner for Human Rights, at <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/Democracy.aspx>.

10 European Commission for Democracy through Law (Venice Commission) of the Council of Europe: *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, 24 June 2019, para. 10. See also European Court of Human Rights (ECtHR),: *Hyde Park v. Moldova (No. 1)*, no. 33482/06, 31 March 2009, para. 27, where the Court reiterates that democracy "*is the only political model contemplated in the Convention and the only one compatible with it*."

11 Organization for Co-operation and Development in Europe (OECD), *Recommendation of the Council on Open Government* (2017), as well as the *Recommendation of the Council on Regulatory Policy and Governance* (22 March 2012).

12 See Article 2 of the Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390, which states: "*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*", as well as Title II.

13 See the *UN International Covenant on Civil and Political Rights* (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Montenegro acceded to the Covenant on 23 October 2006.

14 UN Human Rights Committee, *General Comment No. 25*, 1996, para. 8.

15 • *UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*, adopted on 25 June 1998. Montenegro acceded to the Convention on 2 November 2009.

16 Council of Europe's Venice Commission, *Rule of Law Checklist*, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), para. 18.

17 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (*1990 OSCE Copenhagen Document), 5 June-29 July 1990, para. 5.8.

18 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 18.1.

and persons with disabilities,[19] among others. OSCE participating States should also seek to "*secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society*"[20] as well as to enable non-governmental organizations to contribute to matters of public debate and, in particular, to the development of the law and policy at all levels, whether local, national, regional or international.[21] Furthermore, the importance of pluralism with regard to political organizations[22] along with institutional and individual integrity of parliament and parliamentarians and public accountability have been recognized by OSCE participating States as core aspects of political life.[23]

17. A number of other documents of a non-binding nature elaborated in various international and regional *fora* are useful as they provide more practical guidance and examples of practices to enhance national lawmaking processes, including rendering them more gender- and diversity-sensitive.[24]

2. BACKGROUND AND GENERAL COMMENTS

18. The ongoing EU negotiations of Montenegro have been a decisive driving force for shaping its national policy and legislative framework since the entry into force of the Stabilisation and Association Agreement on 1 May 2010. This has been even more significant since the opening of the EU accession negotiations in June 2012. Since then, formal mechanisms and procedures for the harmonization of legislation with the EU *acquis* and the assessment of the effects/impacts of newly introduced legislation have been established.

19. At the same time, the requirements for EU accession have become stricter following the recent adoption of the new EU enlargement methodology in 2020,[25] as formally accepted

---

[19] See OSCE, *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d); *2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, para. 88; OSCE Ministerial Council, *Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children* (2013), para 4.2; *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 1991); OSCE/CSCE *1991 Moscow Document*, para. 41. See also OSCE High Commissioner on National Minorities (HCNM), *Ljubljana Guidelines on Integration of Diverse Societies*, 7 November 2012, where it is noted that *"[d]iversity is a feature of all contemporary societies and of the groups that comprise them*" and which recommend that the legislative and policy framework should allow for the recognition that individual identities may be multiple, multi-layered, contextual and dynamic.

[20] *OSCE Maastricht Document 2003*, para. 36.

[21] CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 43.

[22] CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 5.

[23] See e.g., OSCE, *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990, which states that *"[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially".* See also *1999 OSCE Istanbul Document*, 19 November 1999, where OSCE participating States committed to strengthen their efforts to *"promote good government practices and public integrity"* in a concerted effort to fight corruption.

[24] See e.g., ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, including a checklist with further detailed guidance on pages 110-117; ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific *Tool 2 on Addressing Violence against Women in Parliament* (2022); ODIHR, *Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region* (2021); ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017). See also e.g., Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Regulatory Policy and Governance* (2012); *OECD Good Practice Principles for Deliberative Processes for Public Decision Making;* OECD, *Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment (2020);* OECD, *Better Regulation Practices Across the European Union* (2022); Inter-Parliamentary Union (IPU), *Gender-responsive Law-making, Handbook for Parliamentarians (2021);* IPU, *Plan of Actions for Gender-sensitive Parliaments* (2012), IPU, *Global Parliamentary Report 2022 - Public engagement in the work of parliament*; IPU and UNDP, *Diversity In Parliament: Listening To The Voices Of Minorities And Indigenous Peoples*, 2010. See for further reading, e.g., <Public governance - OECD>, as well as OECD-EU Joint Initiative Support for Improvement in Governance and Management in Central and Eastern European. Countries (SIGMA), Monitoring Report – The Principles of Public Administration, Montenegro (2021).

[25] See European Commission, *Communication on Enhancing the accession process - A credible EU perspective for the Western Balkans*, 5 February 2020.

by Montenegro,[26] and which puts a stronger focus on fundamental reforms commitments and producing tangible results in their implementation, including with respect to the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform. A number of findings and recommendations from the European Commission's 2022 Report on Montenegro are relevant to the lawmaking process, including in terms of the need:

- to further regulate by law the co-operation between the Government and Parliament while strengthening the central co-ordination and quality control role of the General Secretariat of the Government in policymaking;
- to enhance the quality of regulatory impact assessments (RIA), while systematically including financial assessment when preparing bills;
- to improve the quality of the public consultation process in terms of both set-up and follow-up, while improving the current legal and institutional framework to strengthen the consultation and co-operation mechanisms between state institutions and civil society to render them more useful and effective;
- to revise the legislation on access to information, especially to address the concerns relating to information classified by public institutions and withheld from the public;
- to enhance the Parliament's capacity to scrutinise draft legislation for compliance with the EU *acqui*s and to integrate and oversight gender equality issues;
- to address systemic shortcomings in order to better prevent and combat violence against women in politics;
- to further strengthen public scrutiny of the government's work;
- to ensure gender mainstreaming at all levels of decision-making, policy planning and implementation, among others.[27]

20. Given the country's stated strategic goal of EU integration, special attention has been given in this Preliminary Opinion to the issue of drafting EU acquis-compliant legislation and compliance with the requirements from the new EU enlargement methodology.

21. It is also worth noting that according to the European Commission (EC) Report, after the 2020 elections, the relationship between the Government and the Parliament has become more challenging, which has significantly affected the policy- and lawmaking process[28]. The purpose of the Preliminary Opinion is to provide recommendations to strengthen the legal and institutional framework to be, to the extent possible, resilient to political and other types of crises in the long run.

---

[26] See European Commission: <https://ec.europa.eu/neighbourhood-enlargement/news/enlargement-new-enlargement-methodology-will-be-applied-montenegro-and-serbia-2021-05-11_en>.

[27] See European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy.

[28] See European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, page 11.

3. CONSTITUTIONAL SYSTEM, NORMATIVE FRAMEWORK AND SOURCES OF LAW

22. The Constitution of Montenegro provides the overall framework for a unitary parliamentary system. It is based on the principle of the separation of powers between the legislative, executive and judicial branches being exercised respectively by the parliament, the government and by the courts (Article 11 of the Constitution).

23. The Parliament of Montenegro is a unicameral legislature consisting of 81 members, elected by direct and universal suffrage, by secret ballot for a four-year term using proportional representation (Articles 83-84 of the Constitution). The Government of Montenegro is the highest executive body of Montenegro. The responsibility and accountability of the Government towards the Parliament are established in Article 82(12) of the Constitution, which states that the Parliament elects and dismisses the Government; Article 107, giving the Parliament the right to vote no confidence in the Government; and Articles 108 and 109, establishing the parliamentary institutions of interpellation and parliamentary inquiry. Through the adoption of the budget and its final statement, the Parliament exercises also indirect control over the executive power (Article 82(5)). At the same time, unlike the majority of constitutions of European countries, which provide a very detailed outline of the role and functioning of parliaments, the Montenegrin Constitution does not provide such a level of detail concerning the work of its Parliament. There are no provisions related to the right of Parliament to demand information from state administration and other institutions,[29] as well as to demand the presence of certain governmental representatives at parliamentary sessions,[30] which are one of the preconditions for the successful fulfilment of parliament's basic exercise of oversight functions over the executive and to ensure accountability.

24. The President, who is elected by direct and universal suffrage, by secret ballot, represents Montenegro in the country and abroad, promulgates laws, proposes to the Parliament a candidate for Prime Minister, proposes the holding of a referendum, among others (Article 95).

25. It is important to highlight that the Government of Montenegro has broad regulatory powers according to Article 93(1) of the Constitution, which entitles it to propose laws and other acts. Article 100 specifies that the Government "*adopts decrees, decisions and other acts for the enforcement of laws*". Article 24 of the Law on State Administration specifies that ministries may issue decrees, orders, instructions and rulebooks for the implementation of laws and other regulations based on and within the limits of law. The *Legal and Technical Rules for Drafting Legislation* (hereinafter "the Drafting Rules") further clarify what types of secondary legislation may be issued by the Government and by the ministries.[31]

---

[29] For instance, Article 82 of the Italian Constitution grants to parliamentary commissions of inquiry the authority to conduct investigations with the same powers and limitations of judicial authorities.

[30] See, e.g., Article 64, paragraph 4 of the Italian Constitution, which stipulates that *"(t)he Members of Government, even if they do not belong to the Chambers, have the right, and if so requested, the obligation, to participate in the sessions*." Provision on interpellation and/or right to submit questions to respective governments can be also found in constitutions of Armenia, Georgia, , Ukraine, Finland, Hungary, Poland.

[31] The Legal and Technical Rules for Drafting Legislation (hereinafter "the Drafting Rules") further clarify what types of secondary legislation may be issued by the Government and by the ministries: particularly, the Government adopts decrees, decisions and other implementing acts when it is expressly authorized by law to do so - which is the general rule, - or on the basis of the authorisation enshrined in the Constitution, when it judges that a certain issue should be regulated by secondary legislation - a constitutional authority that shall be used restrictively. Government secondary legislation may also authorize ministries to adopt implementing rules for such regulations. On the other hand, ministries may issue rulebooks, orders and instructions for the implementation of laws and other regulations. Secondary legislation issued by a ministry cannot authorize the adoption of another piece of secondary legislation, either

26. Under Article 93(1) of the Constitution, the right to propose legislation belongs to Members of the Parliament (hereinafter "MPs") and to the Government, as well as to 6,000 voters (see more in the Sub-Section 6.2 on Legislative Initiatives *infra*). The Parliament adopts laws – the majority required depending on the subject-matter of the law – and ratifies international treaties (Article 82). The normative framework that regulates the legislative function of the Government and the Parliament are further elaborated in the Rules of Procedure (hereinafter "RoP") of the Government and the RoP of the Parliament.

27. Under Article 94 of the Constitution, the President of Montenegro shall proclaim a law within seven days (or three in case of fast-track procedure), or send the law back to the Parliament for a new decision-making process; once the law is adopted again by the Parliament, the President shall proclaim it. Article 95(3) of the Constitution, which lists the powers of the President, provides that s/he "*proclaims laws by Ordinance*".

28. According to Article 9 of the Constitution, the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, have supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.[32] Article 145 of the Constitution of Montenegro states that "*[t]he law shall be in conformity with the Constitution and ratified international agreements, and other regulations shall be in conformity with the Constitution and the Law.*" This provision is commendable as defining a hierarchy of sources of law, which is fundamental to the rule of law principle. At the same time, and as recommended by the Venice Commission in its 2007 Opinion on the Constitution of Montenegro, "*it would have been useful to define the various normative acts below the level of a law in the formal sense (regulations, general acts, decrees) as well as their hierarchy*".[33]

29. Adopted laws shall be in conformity with the Constitution and international ratified agreements (Article 145 of the Constitution). The Constitutional Court decides, among others, on the conformity of laws with the Constitution and ratified international agreements, as well as on individual complaints regarding the violation of human rights and liberties granted by the Constitution, after all the effective legal remedies have been exhausted (Article 149 of the Constitution).

30. The Constitution may be amended by the Parliament if two-thirds of the total number of MPs vote in favour of it (Article 155). Article 156 of the Constitution requires that the responsible working body of the Parliament prepares the amendment and subsequently, puts it to a public hearing which shall last no less than a month.

31. While the mention of a public hearing on amendments to the Constitution is welcome in principle, it is questionable whether a one-month minimum timeline is sufficient. On several occasions, ODIHR has warned against holding constitutional referenda without a meaningful parliamentary debate and sufficient time for meaningful public discussions.[34] In any case, the competent state authorities must direct their efforts towards

---

by the same or another ministry. Exceptionally, if secondary legislation issued by a ministry regulates specific issues that necessarily require a more detailed elaboration of a technical nature or that would require frequent amendments, such secondary legislation can determine the basis for issuing instructions. Furthermore, there is a form of legislation based directly on the constitutional authority of the Government: decrees with the legal power (Article 101 of the Constitution). Decrees with the force of law are an exception and the Government may pass those acts only in the cases explicitly described by the Constitution (in the event of war or a state of emergency) and in conditions prescribed by the Constitution (if the Parliament cannot convene). The Government has to submit such acts to the Parliament for confirmation as soon as possible.

32 In its 2007 Opinion on the Draft Constitution of Montenegro, the Venice Commission underlined that while Article 9 is a welcome provision, *"[a] reference to the need to implement human rights treaties in the light of the practice of the respective monitoring bodies would have been welcome"*; see Venice Commission, *Opinion on the Constitution of Montenegro*, CDL-AD(2007)047-e, para. 8.

33 See Venice Commission, *Opinion on the Constitution of Montenegro*, CDL-AD(2007)047-e, para. 115.

34 See e.g., ODIHR-Venice Commission, *Joint Opinion on the draft law "on introduction of changes and amendments to the Constitution" of the Kyrgyz Republic*, CDL-AD(2015)014, para. 25.

ensuring inclusive discussions on the intended constitutional amendments, and provide a necessary period for reflection and discussions as well as adequate time for the preparation when constitutional are introduced through a referendum.[35] Transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and meaningful, wide and substantive debates on controversial issues are key requirements of a democratic constitution-making process and help ensure that the text is adopted by society as a whole, and reflects the will of the people and support of the public.[36] These consultations should involve political institutions, non-governmental organisations and civil society, academia, the media and the wider public,[37] offer equal opportunities for women and men to participate, and should involve proactively reaching out to persons or groups that would otherwise be marginalized, such as national minorities.[38] Overall, the process should offer sufficient time for proper voter education on the proposed amendments to allow them to make an informed choice when voting at the referendum, in line with international recommendations and good practice.[39] **Therefore, the minimum timeline for organizing public hearings on the proposed draft constitutional amendments should be increased.**

4. LEGISLATIVE PLANNING AND POLICYMAKING

32. The great majority of draft laws in Montenegro is proposed by the Government[40], although the number of those submitted by members of parliament (MPs) has been increasing in recent years. Since the 2020 elections, the substantial change of the relationship between the Government and the Parliament has significantly affected the policy- and lawmaking process and shown the need to further regulate Parliament-Government co-operation[41] (see also Sub-Section 4.3 *infra*). In general, the planning of the Parliament had traditionally been reactive, driven by the legislative programme of the Government and the requirements arising out of the EU accession process, largely affecting decisions on timetabling at the level of the plenary, and the work plans adopted at the beginning of the year by committees.[42]

4.1. Policy and Legislative Planning

33. The government and parliament should ensure proper advance planning of policies and legislation to help keep their respective workloads at reasonable levels and allow for realistic budgeting and preparation.

---

35 *Ibid.* para. 24 (2015 Joint Opinion).

36 See ODIHR-Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic*, CDL-AD(2021)007, para. 32. See also, in relation to the adoption of legislation, the *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991), para. 18.1 , which provides that "*legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*". See also e.g., Venice Commission, *Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary*, CDL-AD(2011)001, 28 March 2011, para. 18; and Venice Commission, *Compilation of Venice Commission Opinions concerning Constitutional Provisions for Amending the Constitution*, CDL-PI(2015)023, 22 December 2015, Section C on pages 5-7.

37 See e.g., Venice Commission, *Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary*, CDL-AD(2011)001, 28 March 2011, para. 19.

38 See OSCE High Commissioner on National Minorities (HCNM), *Ljubljana Guidelines on Integration of Diverse Societies* (2012), Principle 2 on page 9 and Principle 23 on page 32.

39 See e.g., ODIHR-Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic*, CDL-AD(2021)007, para. 27. See also Venice Commission, *Code of Good Practice on Referendums*, CDL-AD(2007)008rev-cor, point I.3.1.d and paras. 13-14 of the Explanatory Memorandum, which emphasize that *"[v]oters must be able to acquaint themselves, sufficiently in advance, with both the text put to the vote and, above all, a detailed explanation".*

40 See e.g., Vujović and others, *Strengthening of the Role and Function of the Parliament of Montenegro in the Decision-Making Process – Recommendations for improvement*, University of Montenegro, 2020, p. 15.

41 See European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy.

42 Joint OECD-EU SIGMA, *Policy Making Review – Montenegro*, 2014, p. 47.

34. According to Articles 28 and 30 of the RoP of the Government, the General Secretariat of the Government (hereinafter "GSG") prepares the annual work program of the Government (hereinafter "GAWP"), based on the proposals of the ministries, the mid-term work programme of the Government (hereinafter "GMTWP") and the economic policy measures for the current year. GAWP is adopted by the end of the current year for the following year, whilst GMTWP is adopted for a period of up to four years. The starting points for the preparation of the GMTWP are the Prime Minister's program accepted by the Parliament, economic policy measures for the mid-term period and obligations arising from laws, strategic documents and the process of Montenegro's accession to the EU. Article 30 of the RoP of the Government specifies that the mid-term and annual work programme of the Government shall be submitted to the Parliament and published on the Government's web portal.

35. Notably, in 2021, for the first time, the Government introduced outcome-level indicators for each Government priority included in the 2021 GAWP.[43] This is a positive development that will help measure progress towards achieving policy objectives. In January 2022, the Government adopted its mid-term work programme covering 2022-2024, with a detailed annual work plan for 2022. However, after the fall of the 42nd Government in 2022, the new minority 43rd Government did not adopt a work programme following the programme of the Prime Minister-designate.[44] The last report on the implementation of the Government's work programme published in February 2022 refers to the 42nd Government.[45]

36. In principle, proper policy planning allows for longer-term planning of the key legislative initiatives, which in turn should result in qualitatively better, more sustainable legislation. In this respect, it is crucial to ensure that the government has its own policy/legislative plans and informs the parliament early on about policy measures and legislative proposals that will be submitted within the coming months and years. **The relevant legal provisions should be enhanced to ensure that newly formed governments draft their work programmes and policy/legislative plan in a timely manner and report on it to the Parliament on a regular basis, while specifying the manner of implementing, amending and monitoring legislative plans**.

37. Notably, the Law on Budget and Fiscal Responsibility of Montenegro foresees the Fiscal Policy Guidelines (hereinafter "FPG") as the medium-term (three-year) fiscal plan and provides instructions for the preparation of the budget.[46] However, the priority pillars and objectives of the GAWP are still neither interlinked nor aligned with the programme structure of the budget. Therefore, there is an overall disconnect between the processes of policy planning and budget planning, as shown for instance when the GAWP 2021 priorities were not reflected in the FPG 2021-2023, as updated in March 2021.[47] It is essential, however, that the planning process is consistent with a state's budgetary cycle and that it reflects relevant budget allocations and expenditures. This will help ensure that the planned policy/legislative initiatives comply with the annual budget and will allow parliament and its committees to monitor the allocation and spending of budget allocations when reviewing the planning and implementation of laws. **It is, therefore, recommended to ensure alignment between the objectives and content of policy and fiscal plans**.

---

43 See also recommendation from the SIGMA, Monitoring Report – *Montenegro* (2021), p. 34.

44 On 3 March 2022, a new government (43rd) was formed following a no-confidence vote in early February. In August 2022, the government collapsed and political parties either had to form a new coalition or a new election would have had to be called. On 16 March 2023, the President dissolved the Parliament, after the parliamentary majority was unable to form a new government for several months. Parliamentary elections will be held in Montenegro on 11 June 2023.

45 See Institut Alternativa, *Overview of Parliamentary Oversight in Montenegro: From Talking to Working*, 2022, p. 6.

46 Articles 18, 22 and 29 of the Law on Budget and Fiscal Responsibility of Montenegro.

47 See also recommendation from the SIGMA, Monitoring Report – *Montenegro* (2021), p. 34.

38. Furthermore, it should be noted that there is a high share of planned draft laws being carried forward from one year to the next. For instance, 72% of draft laws planned in the 2020 GAWP were carried forward – a share which almost doubled compared to 2017 (37%). The same applies to the share of planned sector strategies carried forward (52%), which has almost tripled compared to 2017 (19%).[48] This may suggest that goals that are formulated are non-achievable goals and/or deadlines unrealistic. As a consequence, the responsible governmental agencies may simply be unable to comply with the requirements of the legislative plans. It is important to ensure that legislative plans are properly prepared and implemented to adequately organize and space out legislative projects and ensure their timely implementation. In particular, enough time should be allocated for each stage of the policy and legislative cycles of the various legislative projects of a given ministry or other government agency,[49] also taking into account the length and/or complexity of the legislative initiatives or whether it involves wide-ranging reforms that may significantly impact large parts of the population.[50] This also includes sufficient time for initial policymaking discussions, verification processes, impact assessments and public consultations.[51] The policy and legislative planning should be enhanced, and further recommendations will be provided as part of the Comprehensive Assessment.

39. Finally, **it is important to further specify the manner of implementing, amending/updating and monitoring legislative plans,** an aspect that is currently not addressed in the legal framework of Montenegro. Regular monitoring of the implementation of legislative plans is useful to ensure the effectiveness of the next cycle of legislative planning and to provide timely and reasonable changes to the current plan. In this regard, the development of an electronic and user-friendly tool may help facilitate the tracking of draft laws at different stages of the legislative process by both lawmakers and civil society representatives, or the public in general.

4.2. Policymaking

40. The Government's *Decree on the Modalities and Procedure of Drafting, Aligning and Monitoring the Implementation of Strategic Documents* ("hereinafter "Strategic Documents Decree")[52] lays down the requirements and procedures for drafting the strategies and programmes proposing internal and external policies in a given field that are adopted by the Government of Montenegro,[53] which are further clarified by the *Methodology for the Development, Drafting and Monitoring of the Implementation of Strategic Documents*. It is noted that the GSG recently amended the said Methodology to include practical guidelines to ensure that all of the government's strategic and policy documents address the needs of women and men equally,[54] which is a welcome step in principle. All the line ministries are responsible for the drafting and implementation of sector-based strategies, with the specific competence of the GSG concerning the co-ordination, alignment and monitoring of their implementation.

---

48 *Ibid.*

49 ODIHR, *Assessment of Law-making and Regulatory Management in North Macedonia*, as revised in 2008, p. 31.

50 ODIHR *Assessment of the Legislative Process in the Kyrgyz Republic*, 2015, para. 13 and paras. 35-39.

51 ODIHR *Assessment of the Legislative Process in the Republic of Armenia*, 2014, para. 39.

52 Adopted on 19 July 2018, Official Gazette 54/2018.

53 The Decree follows a sector-based approach to the strategic planning of policies, whereby the following seven sectors, within whose scope strategy documents are developed, are identified: 1) democracy and good governance; 2) financial and fiscal policy; 3) transport, energy and information infrastructure; 4) economic development and environment; 5) science, education, culture, youth and sport; 6) employment, social policy and health; and 7) foreign and security policy and defense.

54 The process of amending the Methodology and development of related capacity development initiatives were supported by the OSCE Mission to Montenegro, see <Ensuring that gender is mainstreamed in public administration strategic documents the focus of an OSCE-supported workshop | OSCE>.

41. According to Article 40(3) of the RoP of the Government, the GSG and the Ministry of Finance (hereinafter "MoF") issue opinions on proposals for strategic documents in accordance with the Strategic Documents Decree, which are submitted along with each proposal of a strategy document that is being put forward to the Government for adoption. While the MoF reviews the financial affordability of the planned measures, the GSG is responsible to ensure the alignment of draft sector strategies with other strategic and planning documents.[55] However, it is not clear how the objectives in the Strategy Documents Decree relate to the goals of the Montenegro Development Directions (hereinafter "MDD"),[56] which determine the strategic development goals of Montenegro, given that the MDD 2018-2021 are based on a completely different framework of pillars than the seven sectors stipulated in the Strategy Documents Decree. As a consequence, the strategic planning documents are not logically linked.[57] It is, therefore, recommended, that **the hierarchy of planning documents, including the role and position of the MDD, should be clearly established in the Strategic Documents Decree**.

42. Furthermore, according to Article 23 of the Law on State Administration, ministries[58] are responsible for domestic and foreign policy development by proposing internal and external policies, normative activity and administrative supervision in the area for which they are competent. However, while there are rules governing the preparation of strategies, there are no internal regulations concerning the policy development process in line ministries.[59]

43. Importantly, in Montenegro, two of the main functions of ministries in policy development can be distinguished: the formulation of strategies and the drafting of legislation. However, the link between these two functions is not well developed as there are no specific rules governing the development of policy papers (stemming from strategic documents and guiding the preparation of laws). Article 40(4) of the RoP of the Government provides that the draft law should be submitted to the Government along with "*an analysis of the situation, phenomena and problems in the area regulated by the proposed law*", with no reference to the consideration of legislative and non-legislative options and the justification for the preferred option. Policy papers (unlike the explanatory statement) should be approved by the government before initiating the drafting of legislation, rather than being submitted to the government together with the proposed law, given that their purpose is to inform the legislative development, not to explain it.

44. As discussed in greater detail below (see Sub-Sections 5 on RIA and 7 on Public Consultations *infra*), the Montenegrin legal framework includes references to important elements of good policy- and lawmaking such as RIA and consultation, but the different elements are not fully integrated into the policymaking process. As such, a coherent and logically interconnected policy cycle is still not in place[60] and it appears that the

---

55 The GSG is in charge of ensuring the implementation of the provisions concerning the required structure and content of the strategy documents. This entails verification of the alignment of the strategy documents with other planning and strategy documents, including the GMTWP and GAWP, the strategy documents defining the general development directions of Montenegro, the obligations stemming from the EU accession process, main EU sector-based policies and conditions for the use of EU funds.

56 The MDD is the umbrella development implementation document which elaborates Montenegro's vision of social and economic development as required in the context of the European integration process. MDD define the sector and inter-sector development directions for a financial period of three years. The MoF is responsible for the preparation of the MDD.

57 SIGMA, Monitoring Report – *Montenegro* (2021), p. 34.

58 The new Government that took office in December 2020 reorganized the former 17 line ministries into 12.

59 In this regard, it would be useful to recall the distinction between the terms "policy" and "strategy". The term "strategy" is usually referred to documents with broad objectives that cut across a number of ministries and have at least a medium-term horizon. In this sense, a strategy cannot be, in and of itself, directly implemented. Rather, in order for its goals to be achieved, a strategy requires a number of policies to be developed. A policy is often given a formal framework through legislation and/or secondary regulations, although it may also take the form of non-regulatory approaches. Thus, an economic development strategy would have a time horizon of approximately five to ten years, and would require that a large number of ministries develop policies that, taken together, would promote the objectives of the strategy.

60 SIGMA, Monitoring Report – *Montenegro* (2021), p. 8.

framework governing the policy development stage is somewhat under-developed. While much emphasis is placed on RIA accompanying all draft laws, there is very little focus on the development of policy papers before the drafting of legislation.[61] The RoP of the Government require that every draft law or regulation must be accompanied by RIA but do not envision that RIA should be conducted at the early stages of the policymaking process, even before a decision to formulate a regulatory proposal is made. The risk with this approach is that RIA reports at a later stage could be prepared as a bureaucratic add-on to a legislative proposal just for the sake of justification and with no added value for the policymaking process. Principle 4 of the 2012 OECD Recommendation on Regulatory and Policy Governance[62] clearly stipulates that RIA should be conducted at the early stages of the policymaking process. This means that after policy goals are identified, policymakers should evaluate all possible options and whether regulation is necessary and how it can be most effective and efficient in achieving those goals; means other than regulation should also be identified and the trade-offs of the different approaches analysed to identify the best approach. **Therefore, it is recommended to clearly provide in the RoP of the Government that RIA should be conducted at the early stages of scrutiny and selection of policy proposals, although with due consideration of the principle of proportionality to avoid extensive burdens on the state and policymakers** (see also Sub-Section 5 on RIA). At the same time, the preparation of policy papers such as concept notes or other policy documents should always precede the drafting of legislation.[63]

45. In light of the foregoing, **the provisions of the RoP of the Government governing the policy development stage, should be further elaborated and enhanced. This could be done by requiring, before initiating the drafting of a law, the development and approval by the Government of policy papers addressing the recognition and definition of a significant public problem requiring government action and the elaboration of possible legislative and non-legislative approaches and solutions, justifying the chosen option as the best approach. The policy document should then inform the development of the legislative proposal. The RoP of the Government should also integrate ex ante RIA into the early stages of the policymaking process for the formulation of new regulatory proposals.**

4.3. Inter-Institutional Co-ordination

46. The fact that the Government and the Parliament may initiate draft laws and that the Parliament then discusses and adopts the laws necessitates proper co-ordination between them at the different stages of the policy- and lawmaking processes, including by aligning their respective legislative plans and strategies. According to Article 30(4) of the RoP of the Government, the GAWP and GMTWP shall be submitted to the Parliament and published on the Government's web portal, which is commendable. It is also mentioned in Article 135 of the RoP of the Parliament that the President of the Parliament shall forward the draft law to the Government (unless the Government is its proposer) so that it would provide its opinion. Also, Article 9 of the RoP of the Government specifies that the Deputy Prime Minister for the Political System, Internal and Foreign Policy shall co-ordinate the participation of members of the Government in the work of the Parliament of Montenegro. It further states that "*a member of the Government designated as a*

---

61 These two aspects may be interrelated: the policy formulation stage is not sufficiently developed probably because there is an overproduction of RIAs, which act as a substitute for policy-development.

62 OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), Recommendation I. 4. See also OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, 2014, para. 47.

63 See e.g., SIGMA, *Functioning of the Centres of Government in the Western Balkans*, 2017, p. 21, which refers to a system of concept papers that usually precedes the drafting of legal acts and also evaluates the need to have an impact assessment.

Government representative is obliged to take part in the work of the Parliament and its working bodies in person".

47. As mentioned in the *2021 Monitoring Report on the Principles of Public Administration in Montenegro* as part of the joint OECD-EU initiative SIGMA (Support for Improvement in Governance and Management in Central and Eastern European. Countries, hereinafter "2021 SIGMA Monitoring Report"), the Government consistently shares its annual work plans with the Parliament to provide advance information on its legislative initiatives.[64] However, in 2020, 69% of draft laws proposed by the Government to the Parliament did not originate from the GAWP, although this could be explained by a need to adjust the focus of legislative proposals that helped address the challenges of the COVID-19 pandemic. To facilitate co-ordination, it is advisable **to formalise co-ordination arrangements between the administrations of the Government and the Parliament** (e.g., regular meetings to discuss upcoming proposals in advance)[65] **and ensure that updates of policy and legislative plans are regularly published and shared via clear, visible and easily locatable and accessible channels.**

48. Furthermore, according to the 2021 SIGMA Monitoring Report,[66] the inter-institutional co-ordination has regressed in the country. The EU Annual Report (2022) confirms that *"(r)elations between Parliament and Executive need to be regulated by an Act of Parliament, as the current RoP were not enacted in the form of a law*", further adding that "*Government and Parliament co-operation should be further regulated to enhance Parliament's participation in and oversight of the accession process*."[67]

49. Bearing the above in mind, it is **recommended to enhance in a law the co-operation modalities between the Government and the Parliament throughout the policy and lawmaking processes, including through the regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and enhanced formalised co-ordination arrangement between them**.

50. With respect to inter-ministerial co-operation, the Law on State Administration and the RoP of the Government set out the internal consultation procedure, including the general obligation of line ministries to co-operate during the development of policy proposals and the list of the centre of government bodies[68] that have to provide a mandatory opinion on the proposal before its submission to the Government.[69]

51. The RoP of the Government stipulate a *maximum* duration for the inter-ministerial consultation process, i.e., 14 days (Article 41(1)). As noted in the 2021 SIGMA Monitoring Report, the fact that no *minimum* duration is defined can hinder the effectiveness of the process due to a lack of adequate time for the review of drafts proposed by other ministries.[70] It is, therefore, recommended that **the RoP of the Government specify the minimum duration of the inter-ministerial consultation process, while retaining possibility, with respect to complex matters, to extend the duration beyond the existing maximum of 14 days**.

---

64 SIGMA, Monitoring Report – *Montenegro* (2021), p. 42.
65 SIGMA, Monitoring Report – *Montenegro* (2021), p. 42.
66 SIGMA, Monitoring Report – *Montenegro* (2021), p. 29.
67 European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, p. 11.
68 The term "centre of government" is used to refer to those administrative organs at the central level that serve the head of the executive and/or the Cabinet of Ministers of Montenegro.
69 The bodies listed in Article 40 of the Government RoP include: Secretariat for Legislation (hereinafter "SfL"), the MoF, the Office for European Integration and the Ministry of Public Administration, as well as the Ministry of Justice (hereinafter "MoJ").
70 SIGMA, Monitoring Report – *Montenegro* (2021), p. 50.

52. Finally, apart from the review of draft sector strategies,[71] there is no review of the content of draft policy proposals submitted to the Government. The proposals are discussed at the sessions of the Government commissions, which are the political-level bodies administratively supported by the GSG. When preparing materials for the sessions of these committees, the GSG focuses on procedural compliance of received policy proposals,[72] not on the substance (i.e., compliance with Government's priorities). As a result, there seems to be no requirements or procedure for the review of the coherence of draft policies and draft laws with Government priorities at the administrative level, nor is there any review of the substantial quality of the draft laws, as the review of proposals takes place only during (political level) Government commissions meetings, which decide whether to submit the items to the Government session for decision (see also Sub-Section 9 regarding Regulatory Oversight). It is, therefore, **recommended to strengthen the GSG's role by mandating it to review the coherence of draft policies and draft laws with Government priorities as well as the substantial quality of the draft policies or laws, and return them to the initiators in case their substance needs to be improved and aligned with the previously established policy priorities**.[73]

RECOMMENDATION A.

1. To enhance relevant legal provisions to ensure that newly formed governments draft their work programmes and policy/legislative plan in a timely manner and report on it to the Parliament on a regular basis, while specifying the manner of implementing, amending and monitoring legislative plans.

2. To further elaborate the provisions of the RoP of the Government governing the policy development stage, including by requiring, prior to initiating the drafting of a law, the development and approval of policy papers by the Government.

3. To enhance in a law the co-operation modalities between the Government and the Parliament throughout the policymaking and lawmaking processes between both actors, including through the regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and formalising a proper co-ordination arrangement between them.

4. To specify in the RoP of the Government the minimum duration of the inter-ministerial consultation process, while retaining the possibility, with respect to complex matters, to extend the duration beyond the existing maximum of 14 days.

5. To mandate, in the Government RoP, the GSG to review the content of draft policies and draft laws to assess their coherence with Government's priorities as well as the substantial quality of the drafts or return them to the initiators.

[71] Article 4 of the Rulebook on Internal Organisation and Systematisation of the General Secretariat stipulates the responsibility of the GSG to conduct expert analysis of draft strategies with respect to their compliance with Government policies established in relevant areas and to oversee the quality of the strategy development process.

[72] The role of the GSG in checking the procedural compliance of draft proposals is outlined in Articles 19 and 49 of the Government RoP.

[73] See also the recommendation from SIGMA, Monitoring Report – *Montenegro* (2021), p. 28.

5. REGULATORY IMPACT ASSESSMENTS

5.1. Ex ante RIA

53. Article 33 of the RoP of the Government establishes the obligation for ministries to conduct RIA "*in the process of preparing laws and other regulations*" (as well as strategic documents),[74] and to submit draft laws and regulations to the Government along with the RIA report (Article 40(1), indent 6). RIA should be prepared in accordance with the instruction issued by the MoF,[75] which is overseeing the RIA policy as part of its broader mandate to improve business environment and regulation. If the line ministry assesses that the RIA is not necessary, it needs to provide a proper justification (Article 33(2) of the RoP of the Government). Furthermore, with the 2018 amendments to the Law on Local Self-government,[76] the obligation to carry out RIA for local level regulations is established by Article 71, requiring local government bodies to prepare and evaluate the analysis of the impact of decisions and other regulations passed by the local councils and the president of municipalities.

54. The current legal framework of Montenegro requires that all draft laws and secondary legislation – unless an exemption is requested – be subject to RIA. As a result, the setup of the RIA system in Montenegro appears rather burdensome for both the line ministries and the MoF. Moreover, quantity might be achieved at the expense of quality, both with respect to producing quality assessments and to ensuring high performance quality checks.

55. In accordance with the principle of proportionality and to avoid extensive burdens on the state and policy- and lawmakers, full RIA should not necessarily be undertaken with respect to all draft laws, but mainly in those cases where this is deemed necessary,[77] for instance for main policy proposals with major impacts. As noted above however, the preparation of policy papers such as concept notes or other policy documents should always precede the drafting of legislation.[78] While 33(2) of the RoP of the Government provides for the possibility not to prepare a RIA when not considered necessary, the legislation of Montenegro does not set out any clear criteria to determine whether ministries may justify not to perform RIA, apart from specific types of legislation which are exempted.[79] This may give rise to different interpretations by ministries and contribute to legal uncertainty. Moreover, it is unclear what the consequences are if the MoF determines that the justification provided by the ministry for not conducting the RIA is inadequate.

56. In light of the foregoing, it is recommended to review the scope and model of RIA, considering the available resources, workload and capacity constraints in ministries. In accordance with the principle of proportional analysis, it is **advisable that the RoP of the Government and MoF Instruction clearly elaborate the criteria for exempting**

---

74 Article 33 of the Government RoP does not mention strategic documents; however, Article 41(3), which provides for the compulsory opinion of the MoF, expressly refers to the RIA form "concerning the draft law or *strategic document*".

75 MoF, *Instruction for preparing the report on conducted RIA* (Official Gazette of Montenegro 09/2012).

76 Law on Local Self-government (OG MN, No. 02/18)

77 See OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), Annex, stating that states shall "*adopt ex ante impact assessment practices that are proportional to the significance of the regulation*", and OECD: *Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy*, 2020, Best Practice Principles for Regulatory Impact Assessment, Annex: A closer look at proportionality and threshold tests for RIA. See further OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, 2014, para. 48; and Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, 18 March 2016, Benchmark A.5.v. for a general requirement stating that where appropriate, impact assessments shall be made before laws are adopted.

78 See e.g., SIGMA, *Functioning of the Centres of Government in the Western Balkans*, 2017, p. 21, which refers to a system of concept papers that usually precedes the drafting of legal acts and also evaluates the need to have an impact assessment.

79 The RIA Manual lists several possible exemptions from the obligation to carry out RIA for specific types of legislation, e.g., the budget bill, legislation dealing with the aftermath of emergencies, national security legislation, and legislation transposing the acquis, where no considerations on how to implement the legislation are available.

certain legislative proposals from the RIA requirements, including in case of limited impact of the planned intervention. Several countries have elaborated criteria to help them decide whether RIA is necessary for a given piece of legislation or not. Some countries have formal threshold tests for determining whether RIA should be applied (e.g., depending on the expected costs/resources or on the overall economic, social or environmental impact). Draft laws covering new topics or those that are expected to impose considerable administrative or regulatory burdens, or otherwise have wide-ranging effects on significant parts of the population, the economy, the state budget, or the environment, should always undergo some form of RIA, though the particular threshold is up to each individual country itself. The RIA thresholds should not automatically exclude secondary laws from the scope of RIA, given that they help bring primary legislation to life and thus are often equally responsible for administrative or regulatory burdens.[80]

57. In addition, **it may also be useful to distinguish between different types of RIA – such as a "full RIA", a so-called "simplified"/"basic"/"initial" RIA, or a RIA focusing on specific, limited impacts.** This will help ensure that the most significant regulatory proposals, such as those that are likely to have significant impacts on the public administration, citizens, fundamental rights and businesses, receive more attention by the scrutiny body throughout the process, from the initial analysis and policy development to the final quality check, for more optimal planning and allocation of resources. In such case, **the scope and standards of analysis for different types of RIAs, as well as the criteria and thresholds for identifying the most significant regulatory proposals, should be clearly established within the regulatory and methodological frameworks**. Fewer and more focused RIAs should lead to a more efficient process and better results, both in terms of improving the quality of RIA assessments in the daily policymaking practice and of achieving policy objectives.

58. The information requirements for the RIA reports are specified in the MoF Instruction for Compiling the Regulatory Impact Assessment Report of 2012 (hereinafter "MoF Instruction"), which also includes the RIA Template. The RIA Template comprises seven sections: 1) Problem Definition; 2) Goals Description; 3) Options; 4) Impact Assessment; 5) Detailed Fiscal Impact Assessment; 6) Stakeholder Consultations; and 7) Monitoring and Evaluation. Each section includes several questions that need to be answered. It is commendable that the RIA Template includes a dedicated section on stakeholder consultations that have already been conducted, which allows to present the outcome of the discussion with the interested and affected stakeholders before the actual start of the legislative procedure.

59. Article 6 of the MoF Instruction foresees that the initiator shall "*assess the likely economic, social and other impacts for each of the options, including the assessment of administrative burdens, specify which social groups, economic sectors or special areas are affected and consider the implementation risks and obstacles when acting in accordance with the option*". At the same time, the Instruction does not clearly determine the whole range of impacts that shall or may be assessed.

60. Those countries that apply some sort of RIA usually foresee an assessment of the economic, budget or fiscal impact of draft policies or laws, particularly the costs and benefits involved. Indeed, it is essential that the costs are evaluated for policies and laws and how they relate to the benefits that they bring with them. It is reported that the line ministries in Montenegro mostly submit only rough cost estimates of administrative burdens and business barriers, while other financial impacts, including costs arising from

[80] OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 3: Regulatory Impact Assessment Across the European Union.

the implementation of regulations, may be disregarded.[81] In its Montenegro 2022 Report, the EC noted that "*bills were often discussed [in parliament] in the absence of basic financial assessments"*.[82] Importantly, an assessment of financial implications should particularly take into account, already during the planning process, the costs of legislative work and harmonization with the EU *acquis*, such as the costs related to: 1) drafting (e.g., engagement of local/international experts), 2) harmonization, including costs related to expert revision of translated *acquis*, and/or potential costs of legal revision (where appropriate); 3) implementation and enforcement, 4) follow-up activities, and 5) monitoring. This aspect should be further strengthened, and interviews with relevant stakeholders will help identifying the most appropriate measures for doing so.

61. At the same time, other impact assessments should include social impact, including impact on employment and local communities, impact on business environment (e.g., impact on SMEs, competition and administrative burdens), human rights impact as well as impact on gender equality, environmental impact and sometimes anti-corruption impact. In this respect, and in line with good practice, human rights impact assessments (hereinafter "HRIA") should generally be part of *ex ante* RIA, to ensure that legislation does not unduly interfere with the human rights of individuals or groups.[83] It appears, however, that in the legal framework of Montenegro there is no express requirement to assess the impact of the draft laws on gender equality, human rights, environments and other important areas. The 2021 SIGMA Monitoring Report underlines that the RIAs cover the impacts on the state budget and the economy (including administrative burdens) but do not consistently focus on other areas like social and environmental impacts,[84] which means that fundamental aspects such as human rights or potentially discriminatory impact of draft laws may not be considered at all. Therefore, the general requirement of the MoF Instruction to analyse a broad range of "other impacts" might not be applied in practice. Gender assessment, as a horizontal concern relevant to legislation, should also be systematically included in *ex ante* RIAs[85] and prepared in consultation with the national machinery for the advancement of women (see Sub-Section 11 *infra*).[86] **It is thus recommended to envisage a clear list of impact assessments that need to be mandatorily conducted and to issue further methodological guidelines to assist in the conduct of those assessments, while ensuring that adequate training is provided to lawmakers** (see Sub-Section 9).

62. Article 67 the RoP of the Government requires that all draft laws initiated from the Government should be accompanied, in addition to the RIA form, by the opinion of the MoF on whether the RIA conducted by the initiator is adequate. The 2021 SIGMA Monitoring Report however notes that quality control primarily focuses on impacts to businesses and budget impacts but not wider economic, social or environmental

---

81 ReSPA, *Better Regulation in the Western Balkans*, 2018, p. 102.

82 Montenegro Report 2022.pdf (europa.eu), p. 12.

83 See e.g., World Bank, Study on Human Rights Impact Assessments (2013), p. 4. HRIAs help assess the short-, medium- and long-term human rights impacts of proposed policies and draft laws. These types of assessments are concerned with how the proposed policy or regulatory proposal complies with the state's international legal obligations to respect, protect and fulfil the human rights of individuals. The process of conducting HRIAs should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or under-represented groups and those particularly at risk. HRIAs can be both stand-alone assessments or can be incorporated into broader environmental and social impact assessments.

84 SIGMA, Monitoring Report – *Montenegro* (2021), p. 46.

85 See e.g., ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), pp. 49-50. Gender and diversity impact assessment help assess how distinct legislative solutions are likely to impact women and men, girls and boys, and specific groups, based on their personal characteristics, differently. They also include an analysis of gender roles, but also of possible structural and historical discrimination and of the potential discriminatory impact of the existing legal framework in this field on certain groups. Relevant groups may include persons with disabilities, youth, older persons, and national or ethnic minorities. Overall, gender and diversity assessments estimate the (positive, negative or neutral) effects of a policy or activity in terms of gender and other forms of equality and aim at adapting the policy and legislative proposals to make sure that direct or indirect discriminatory effects are neutralized and that gender equality and diversity are promoted.

86 See CEDAW Committee, *Concluding Observations on the second periodic report* (2017), para. 13.

impacts.[87] It is recommended to specify in the RoP that quality control over the RIA should cover all key impact areas, including economic, environmental and social impacts.

63. Finally, Article 130 of the RoP of the Parliament does not explicitly mention the RIA report among the documents necessary to initiate the legislative procedure in the Parliament (while still requiring each law to be accompanied by a number of elements that constitute RIA in the explanatory statement to the draft law). The lack of a formal requirement to include the RIA form in the parliamentary RoP would make it possible, in principle, to register the draft law in the Parliament without the RIA report.

64. In order to avoid any uncertainty, and for the sake of regulatory coherence, it is recommended **to amend Article 130 of the RoP of the Parliament by specifically requiring the submission of the RIA report, or justification for not submitting it, to accompany the draft law submitted to the Parliament and that the absence of such a document should justify the draft's return to the initiator.**

65. Importantly, the Parliament of Montenegro has not set up rules for conducting RIA and public consultations for laws initiated by MPs, or for impact analysis of substantial amendments to government-proposed laws. Such omissions can hamper the quality of the legislation initiated by MPs as well as implementation of the adopted law at a later stage and make monitoring and evaluation more difficult. Although this is rather common in other countries of the region, the RoP of the Parliament could require that draft legislative initiative proposals for substantial amendments to Government's draft laws that are initiated by individual MPs should comply with RIA requirements, similar to those applied by the Government when preparing draft laws. At the same time, this means that adequate support should be provided to individual MPs to conduct such RIAs.

5.2. Ex post Evaluation

66. To ensure that legislation remains appropriate, adopted legislation needs to be assessed and evaluated after some time, to see whether it adequately responds to its intended aim and whether there have been any unforeseen or unintended consequences. In particular, *ex post* evaluation should always integrate a gender and diversity perspective, meaning that such assessment should analyse how the adopted legislation have impacted women and men, and other specific groups. [88]As such, *ex ante* RIA and *ex post* evaluation are strongly linked and mutually reinforcing, representing different yet interconnected steps of the policy- and lawmaking cycle, where each stage feeds off the other.[89] While *ex post* evaluation is still an underdeveloped practice in most countries and far less common than *ex ante* RIAs, some aspects of *ex post* evaluation are generally integrated into regulatory management systems, although they often lack a systematic adoption of ex post evaluation or a sound methodological framework for conducting it.[90] As part of their

---

87 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28.

88 See OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), which calls on governments to *"[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.*". Within the EU, see also the *2015 Better Regulation Package*, whereby according to the "evaluate first" principle, the EC has committed to evaluate all regulations before making a new proposal in a related area; major ex post evaluations and reviews are subject to quality control by the Regulatory Scrutiny Board, contributing to strengthened oversight of ex post evaluations; The EC employs a range of review approaches, combining systematic evaluations of individual regulations with in-depth reviews of specific policy sectors. While ex post evaluation is still an underdeveloped practice in most EU Member States and far less common than RIA, the majority of EU Member States have integrated some aspects of ex post evaluation into their regulatory management systems, although they often lack a systematic adoption of ex post evaluation or a sound methodological framework for conducting it.

89 Ex post evaluation may benefit from the RIA report in determining whether a given law was effective or not and the reasons of potential regulatory failure; RIA may also benefit from taking into account the results of any ex post evaluation of the implementation of existing legislation, when discussing and formulating new regulations.

90 For instance, within the EU, as of 2019, out of 28 EU Member States, 14 countries have provisions for mandatory periodic evaluation of existing primary laws in place, while 11 countries do so for subordinate regulations. This largely confirms the general picture across

general oversight role, parliaments (generally respective parliamentary committees) should also engage in *ex post* RIA of adopted laws falling within their sphere of competence, as part of their general oversight role.

67. The legal framework of Montenegro does not envisage a system of *ex post* evaluation of the implementation of existing legislation. While the RoP of the Government set the procedural framework and the main requirements for new legislative proposals, there is no obligation for the ministries to analyse and evaluate the implementation of existing policies and legislation. As for *ex ante* RIAs, and while carrying our *ex post* evaluation is a recognized evolving good practice and is being increasingly used in the Western Balkans,[91] this should also not create an unreasonable burden on policy- and lawmakers in light of current capacities in Montenegro. Hence, **lawmakers should discuss and assess the feasibility of introducing a system of *ex post* evaluation, at least for certain major pieces of legislation or certain sector, while clearly defining the scope and methodology of such evaluation. The *ex post* evaluation of adopted laws could be more clearly linked with *ex ante* RIAs of the draft amendments to them,[92] and this could be better reflected in the RoP of the Parliament and Government and/or formal guidelines.**

RECOMMENDATION B.

1. To elaborate, in the RoP of the Government and MoF Instruction, clear criteria for exempting certain legislative proposals from the RIA requirements, including in case of limited impact of the planned intervention, in addition to the already existing exemptions concerning certain specific pieces of legislation.

2. To consider distinguishing between different types of RIA – such as a "full RIA, "simplified"/"basic"/"initial" RIA, or a RIA focusing on specific, limited impacts, while specifying their respective scopes and standards of analysis for each type.

3. To envisage in the legislation a clear list of impact assessments that need to be mandatorily conducted, covering as appropriate and relevant human rights, gender equality and environmental impact, and the methodology for carrying them.

4. To amend Article 130 of the RoP of the Parliament by requiring that the RIA report, or justification for not preparing it, should accompany the draft law submitted to the Parliament whilst the absence of one should justify the draft's return to the initiator.

5. To consider the feasibility of introducing a system of *ex post* evaluation, at least for certain major pieces of legislation or sector, while clearly defining the scope and methodology of such evaluation and closely linking it with the *ex ante* phase of RIA.

OECD members: only 26% require periodic ex post evaluation for existing primary laws and 21% for subordinate regulations. In most of the 14 EU countries, the ex post evaluation requirement only applies to primary laws in specific policy areas. Only Austria, Denmark, Germany, Hungary, Italy, the Netherlands and the United Kingdom have a requirement in place to conduct periodic ex post evaluation across all policy areas. See OECD, *Better Regulation Practices across the European Union*, 2019, p. 104.

[91] For example, North Macedonia was the first country in the region to adopt, in 2012, a *Methodology and Manual on Ex-post Evaluation of Regulation*. A few years later, in 2015, the Government of Kosovo* adopted the Guidelines for Ex-Post Evaluation of Legislation. On their part, Serbia and Bosnia and Herzegovina (at state level) are also about to start a systemic approach to *ex-post* evaluation in practice. See ReSPA, *Better Regulation in the Western Balkans*, 2018, pp. 24, 76, 45, 83, 102 and 123. *[*There is no consensus among OSCE participating States on the status of Kosovo and, as such, the Organization does not have a position on this issue. All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.]*

[92] OECD, *Better Regulation Practices Across the European Union*, 2019, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union.

6. PREPARATION OF DRAFT LAWS AND LEGISLATIVE PROCEDURE

6.1. Legal Drafting

68. As in most OSCE participating Sates, in Montenegro, the preparation of draft laws generally takes place within the executive. Therefore, ministries are primarily responsible for drafting legislation that falls within their fields of work. There are no central government drafting services (for instance within the government cabinet) taking on this task. While ministries would normally have experts on the subject matter that is being regulated, they will not always have specialist legal drafters at their disposal. It is important to acknowledge however that drafting legislation is a specialized area of expertise that not everyone with a legal background is proficient in.

69. It is commendable that in 2010, Montenegro has adopted the unified Drafting Rules, which are applicable to the Government and to "*other entities, when drafting legislation and other general enactments that they pass within their powers*". This means that draft laws initiated by MPs should in principle be guided by the same rules. Having unified drafting rules should help ensure consistency of the format, structure and style of laws, and other technical elements. Adequate and continuous training on the use of drafting manuals and application of legislative techniques should also be provided to relevant staff in ministries and staff supporting MPs in developing legislative initiatives and proposing amendments. Additionally, there should be some sort of quality check within the government to ensure that all draft laws that are initiated by the government are of the same quality, style and structure (see also Sub-Section 9 on Regulatory Oversight Mechanisms).

70. Importantly, legal drafting should be seen as a dialogue, and an iterative process, marked by extensive co-operation between policy developers and the drafters or, if policymakers and drafters are the same people, by extensive policy discussions with external stakeholders that are only later put on paper.

71. Article 12 the RoP of the Government envisages a possibility of forming expert working group (hereinafter "WG") to examine proposed laws, and strategic and planning documents, and give expert opinions on these. Furthermore, involvements of non-governmental organisations (hereinafter "NGOs") is mandatory based on the *Decree on Selection of Representatives of NGO's in Working Bodies of Public Administration and Conducting the Public Consultations in Process of Preparing the Laws and Strategies* (see more in the Sub-Section 7 on Public Consultations *infra*).

72. It is commendable that the abovementioned legal provisions presuppose involving not only governmental staff, but also stakeholders such as external experts and civil society representatives, among others, to be consulted during the preparation of drafts laws. Such WGs would work better if created from the very conceptual stage, when developing policies. Early engagement between policy development and legislative drafting is usually beneficial for the quality of the legislative end-product, as in such cases the drafter has a better understanding of the policy rationale behind a new law, and sub-optimal policies can be discarded at an early stage.

6.2. Legislative Initiatives

73. Article 93 of the Constitution stipulates that the right to propose laws is granted to the Government, any MP, or at least 6,000 voters through the MP they authorized.[93] Article

[93] The Government's right to legislative initiative is reiterated by Article 36 of the RoP of the Government, which provides: "*The Government may submit to the Parliament a law regulating matters of special importance in the form of a draft law*."

131 of the RoP of the Parliament specifies that when six thousand voters propose a law, they shall, along with the proposal for a law, designate an authorised representative to submit the legislative proposal.

74. Whilst empowering citizens to initiate new legislation is commendable, it is understood from the applicable provisions that this would require to identify an MP who would agree to submit the proposal. Some additional information on the correct interpretation of the abovementioned provision will be collected through the interviews for the purpose of preparing the Comprehensive Assessment. At the same time, it should be mentioned at the outset that conditioning the exercise of this prerogative through the intermediation of an "authorized" MP appears unduly limiting and not in line with good practices from across the OSCE region.[94] Of note, the previous Constitution (1997) envisaged the possibility for at least 6,000 voters to propose draft laws directly, which was often used.[95] If the above interpretation is correct, subjecting citizens' legislative initiatives to the intermediation and prior agreement of an MP means that many of such initiatives may never be debated, for failure to find a sponsoring MP.

75. If this is indeed the case, **with the ultimate goal to strengthen participatory democracy and enhance civil society's active role in the lawmaking process, it is recommended to ensure a possibility for citizens to directly propose draft laws through the legislative initiative without a mandatory intermediation or prior agreement from an MP, while at the same time ensuring effective mechanism for further consideration of citizens' legislative initiatives in the parliament.**

76. The RoP of the Parliament (Article 130) stipulate that a draft law shall be submitted "*in the form in which the law is adopted*" and shall be accompanied by an explanatory statement. According to the RoP of the Parliament, the proposer of the law – unless the proposer is an MP – shall designate not more than two representatives for the purpose of discussing the draft in the Parliament. For citizens' legislative initiatives, an authorized representative is to be designated to submit the draft to the Parliament for discussion (Article 131). Even in the current modality (legislative initiative "through authorised MP"), the RoP do not, however, elaborate a separate procedure regulating the process of signature collection and co-ordination between the citizens and the authorized MP in the course of processing the legislative initiative through the parliament, giving an impression that the usual legislative process is to be followed. At the same time, these legislative proposals of citizens deserve particular attention or further details, especially as regards the modalities for actively engaging with the initiating citizens throughout the different stages of the parliamentary procedure. For instance, it is important to ensure that all amendments being proposed to the draft law at the later stages of the legislative process are properly communicated to and co-ordinated with the initiators and that the latter are effectively involved in all discussions in this respect.

---

94 While the comparative practice does not offer a uniform solution, there are frequent cases where citizens are entitled to initiate the procedure of consideration and adoption of laws upon collecting a defined number of signatures without any MP representation (see e.g., Article 81 of the Constitution of Albania (20,000 citizen for a population of 2.8 million), Article 71 of the Constitution of North Macedonia (10,000 citizens for a population of 2 million), Article 107 of the Constitution of Serbia (30,000 citizens for a population of over 6.8 million), Article 88 of the Constitution of Slovenia (5,000 citizens for a population of 2.1 million). All include provisions on legislative initiatives by citizens without any MP representation. Constitution of other European countries outside the region recognize the possibility for the citizens to formulate a law and request that it be formally debated in Parliament without any party intermediation, including Austria (Article 41 of the Constitution), Italy (Article 71 of the Constitution), Poland (Article 118 of the Constitution), Spain (Article 8 of the Constitution), and many others. The Constitution of the Kyrgyz Republic also determines that 10,000 voters have the right to legislative initiative.

95 The possibility for a law to be proposed by at least 6,000 citizens under the former Constitution was used quite often and was considered to have positive effects, enabling expansion of the civic space for the design of new legislative interventions. See Vujović and others, *Strengthening of the Role and Function of the Parliament of Montenegro in the Decision-Making Process – Recommendations for improvement*, University of Montenegro, 2020, pp. 12-13.

77. In addition, the RoP do not envisage any assistance in the formulation of the citizens' legislative initiative and its submission, while at the same time there is a requirement to comply with the usual rules established for the introduction of draft laws (Article 130 of the RoP of the Parliament). It is generally recognized as a good practice that support mechanisms are in place to ensure that draft laws submitted by a statutory number of citizens are drafted according to the applicable legal and drafting standards.[96] These may include support from certain government bodies, or from a special unit within parliament.[97] This should generally help ensuring that the exercise of this prerogative to initiate popular initiatives does not remain burdensome and ineffective.

6.3. General Legislative Procedure

78. The legislative procedure within the Government, as a major initiator of draft laws, is governed by the RoP of the Government. Overall, such rules appear not well-structured, and often lack logical order. Moreover, they tend to follow a drafting technique that makes it challenging for the reader to clearly understand the sequencing of steps of the lawmaking process, as well as to differentiate between the process of preparation of primary laws and that of preparation of sub-legal acts and government regulations.

79. Pursuant to Article 34(3) of the RoP of the Government, the proposal for a draft law is first submitted for consideration and decision to the Government, along with a proposal for the appointment of representatives of the Government who will participate in the work of the Parliament and its working bodies. The proposal shall be accompanied by the text of the provisions that are to be amended if an amendment to existing legislation is proposed (Article 37(3) of the RoP).

80. In accordance with Article 40 of the RoP of the Government, along with the proposed law or regulation, the initiator is also obliged to submit:

1) the opinion of the Secretariat for Legislation (hereinafter "SfL") on the compliance of the draft law with the Constitution and the legal system of Montenegro;
2) a statement on the compliance of the drafts with the relevant European Union law (hereinafter "Statement of EU Compliance"), with the accompanying table of concordance (hereinafter "ToC"), drawn up in accordance with the instructions of the Office for European Integration (hereinafter "EIO") and confirmed by that Office;[98]
3) the opinion of the Ministry of Justice for the drafts governing court proceedings, as well as for the provisions of the drafts governing sanctions and misdemeanour proceedings;
4) the opinion of the Ministry of Public Administration, Digital Society and Media for the draft governing the procedure before state authorities, the state administration organisational setup, and local self-government;
5) the opinion of the Commission for State Aid Control for the drafts containing certain provisions regarding the granting of any type of state aid;
6) the RIA form, drawn up in accordance with the MoF Instruction, or the opinion of the MoF on the initiator's view that no RIA is required or whether the RIA conducted by the initiator is adequate (see Sub-Section 5 on RIA *supra*).

---

96 See e.g., ODIHR, *Assessment of the Legislative Process in the Republic of Armenia* (2014), para. 53.

97 See e.g., ODIHR, *Assessment of Lawmaking and Regulatory Management in North Macedonia*, as revised in 2008, p. 29. See also e.g., the case of Canada: Private Members' Business - Introduction (ourcommons.ca).

98 The EIO verifies the accuracy of the information provided in the Statement and the Table and issues its approval. Since January 2014, the obligation to submit draft regulations to the European Commission for an opinion before their adoption by the Government has also been introduced. This obligation applies to all regulations transposing the EU *acquis* and regulations related to benchmarks in certain chapters.

81. After approval of the Government, the initiator of the draft law (line ministry) is entitled to submit the draft law to the Parliament accompanied by the RIA form, as well as the abovementioned opinion of the MoF and with a Statement of EU compliance (Article 67 of the RoP of the Government).

82. Article 130 of the RoP of the Parliament requires the draft law to be submitted in the form in which the law is adopted and "*must be reasoned in writing, and delivered in the required number of copies and in electronic form*". According to Article 132 of the RoP of the Parliament, if the proposal for a law is not prepared in line with the requirement of Article 130, the President of the Parliament shall request the initiator to adjust the draft law to comply with the provisions of the RoP. At the same time, the screening of the legislative initiatives is unlikely to be effective is there is no strong mechanism and uniform procedure in place within a well-organized entry office to check the fulfilment of the conditions provided in Article 130 of the RoP of the Parliament. Similarly, the possibility for the initiator of the draft law to oppose the refusal to accept the draft law because of non-compliance with the requirements of Article 130, to be discussed during the next plenary (Article 132 of the RoP of the Parliament) appears unworkable and should be reconsidered.

83. There are three so-called "readings" for the Parliament to consider a draft law.[99] It is understood that, in practice, however, too little time is allocated for detailed and meaningful discussions on legislative proposals. .[100] At the same time, the sufficiency of time for parliamentary debates may only be assessed in the specific context, and no uniform standard is appropriate in this respect. It is important to consider that there is an adequate time to discuss the draft taking into account the complexity and importance of the draft law that would normally require longer time, including time needed for meaningful public consultations. In this respect, the Venice Commission has stated that, while it is difficult to define *in abstracto* how much time is necessary for debating a bill in Parliament, *"[t]he legislation or the RoP may provide for certain basic rules preventing rushed adoption of laws, such as intervals between readings and deliberations in a committee.*"[101] **It would be advisable to envisage in the RoP of the Parliament the minimum time required between parliamentary readings except for the adoption of draft laws under the urgent procedure in exceptional circumstances** (see Sub-Section 6.4 *infra*). **Shorter timeframes and simpler procedure may also be used for the passage of minor and/or uncontroversial legislation or amendments, and such cases shall be clearly defined and strictly circumscribed in the regulations**.

84. In addition, in its Montenegro 2022 Report, the EC emphasized with respect to the Parliament's legislative role the weakened quality of the debates, where "*bills were often discussed in the absence of basic financial assessments and without an adequate opinion*

---

99 These are: the first reading, during which the proposal for the law is considered in the relevant committees and thereafter referred to the Parliament; the second reading, which comprises the general consideration of the proposal for the law at the parliamentary session and includes discussions about: the constitutional basis for adoption of a law; the reasons for adopting a law; the question of alignment with the EU acquis and approved international conventions, the substance and effects of proposed solutions and estimation of necessary budgetary funds for the enforcement of the law; after the general debate has been completed, the Parliament decides on the proposal for the law; and the third reading, which consists in the detailed consideration of the proposal for the law, encompassing exploration of details in conclusions of the proposal for the law, submitted amendments, but those not accepted by the proposer (amendments which are not part of the proposal for the law), opinions and suggestions of committees.

100 In 2022, the Committee on Political System, Judiciary and Administration did not allocate sufficient time to reviewing major legislative proposals. For example, the review of the draft Law on the Processing of Air Passenger Records for the Purpose of Preventing and Detecting the Criminal Offences of Terrorism and Other Serious Crime took a little longer than seven minutes. The representative of the proposing authority presented the introductory remarks, and the draft Law was adopted without any discussion. Instances where there was no meaningful discussion on major legislation were also identified in 2021, when the meeting devoted to the draft Law Amending the Law on Civil Servants and State Employees lasted only 25 minutes. The draft Law and the nine amendments tabled in the meantime were adopted by the Committee on Political System, Judiciary and Administration without any discussion (Institut Alternativa, *Are Parliamentary Committees up to the Task? Analysis of the Performance of Five Parliamentary Committees*, 2022, p. 11).

101 ODIHR–Venice Commission, *Joint Opinion on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020 of Albania* (2020), para. 71.

of the government".[102] As underlined in Sub-Section 5.1 *supra*, the mechanism for assessing the financial or budgetary impact of planned interventions should be further enhanced. Proper regulatory oversight mechanism should also be in place to ensure the quality of the documents accompanying legislative proposals, and return them if/as appropriate (see also Sub-Section 9 *infra*).

85. Finally, it is reported that the Government is not adopting the sub-legal acts that are necessary for implementing the laws in a timely manner, which postpones the achievement of policy goals and creates legal uncertainty among the stakeholders.[103] It is generally good practice that the legislative and work plans also include instructions on drafting secondary legislation to implement primary laws, along with the necessary timelines; ideally, secondary legislation should be prepared in tandem with primary legislation, to ensure consistency and avoid delays in implementation. **The RoP of the Government should be supplemented in this respect**.

6.4. Urgent legislative procedure

86. Where laws need to be passed urgently due to a pressing social need, the relevant framework usually foresees some forms of urgent, accelerated or fast-track proceedings, generally with no requirement for RIA, reduced time limits for discussion in or with the government and in parliament, both at the committee stage and in plenary. Laws passed in this manner may raise doubts as to their quality,[104] as the lack of evidence-based process, consultations and proper parliamentary review may lead to gaps and inconsistencies of legislation that can then only be addressed during review proceedings after adoption, once the moment of urgency has passed. For this reason, it is important that such processes are not abused and remain exceptions. Relevant legal framework needs to clearly circumscribe the criteria and circumstances where such urgent procedures may apply, while also installing sufficient safeguards to ensure that the use of accelerated procedures for passing legislation is only reserved for cases where this is absolutely necessary. In addition, special oversight and *ex post* evaluation should be in place.

87. It is reported that a high number of Government-sponsored draft laws are adopted in extraordinary proceedings thereby limiting the possibilities for parliamentary debate and scrutiny[105] (see also Sub-Section 9 *infra*). In its Annual Report (2022), the EC observed that the ruling majority frequently initiated or passed legislation through the fast-track procedure, which hindered EU-related reform progress, risking reversing earlier achievements.[106] Hence, the relevant provisions of the parliamentary RoP require particular attention.

88. According to Article 151 of the parliamentary RoP, the urgent procedure may be applied for adoption of a law that is to regulate issues and relations resulting from circumstances that could not be foreseen and whose failure to be adopted could cause adverse effects, as well as a law that needs to be harmonised with European legislation or international treaties and conventions. The criteria for applying the urgent procedure potentially offer such a possibility in a variety of instances. In principle, the use of accelerated procedures should be the exception, and should not be used to introduce important, complex or wide-

---

102 Montenegro Report 2022.pdf (europa.eu), p. 12

103 See SIGMA, Monitoring Report – *Montenegro* (2021), p. 52.

104 Venice Commission, *Romania - Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice*, CDL-AD(2019)014-e, 24 June 2019, paras. 11-12.

105 SIGMA, Monitoring Report – *Montenegro* (2021), pp. 42-43, which reports that 31% of Government-sponsored bills were adopted in fast-track proceedings in 2020.

106 European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, pp. 4 and 11.

ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms or introducing permanent structural changes to the legal institutions, procedures and mechanisms.[107] Moreover, the processing of draft laws in urgent procedure should also not be used for the regular adoption of the state budget.[108] **It is recommended to more clearly define and strictly circumscribe the criteria and circumstances where the urgent procedure may be used and those where it should not.**

89. Additionally, there are no safeguards to avoid the excessive use of the urgent procedure. It would thus be advisable to supplement the RoP of the Parliament to introduce **safeguards to prevent misuse or overuse, for example, by limiting the number of instances the government may use fast-track proceedings during a plenary session or during a certain time-frame**.[109] At the same time, by streamlining the regular legislative procedure (e.g., through eliminating formalities, using IT solutions/electronic means, etc.), and by introducing an abbreviated/ shortened procedure for specific legislation[110], this should also help reducing the misuse of urgent procedures outside of cases where this is absolutely necessary.

90. Further, the existing legal framework does not foresee a **specific oversight mechanism in cases where laws are adopted via accelerated procedures**. It is important that these laws that generally could not be consulted or debated in-depth prior to adoption undergo robust ex post evaluation, including consultations on implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and potential discriminatory impact on certain groups of society. **The legal framework should be supplemented in this respect**.

91. The initiator of the law is obliged to give reasons for proposing an urgent procedure in the Explanatory Memorandum to the draft law. The draft law for which an urgent procedure has been proposed can be placed on the agenda of a sitting of Parliament only if it has been submitted not later than seven days prior to the beginning of the sitting. However, a draft law regulating matters related to a state of emergency, disease pandemic, natural disaster or hazards, or regulating defence and security matters, may be submitted until 24 hours prior to the beginning of the sitting (Article 152(1) and (2)). In this respect the question arises whether the abovementioned time-frame should be considered sufficient for the Parliament to verify the urgency of the matter.

92. If the Parliament accepts that the draft law is adopted under the urgent procedure, it determines the timeframe for the responsible committee to consider the draft and to submit the written report, as well as when the draft law is proposed by an MP, the timeframe for the Government to issue its opinion on the draft law (Article 152(3)). If the responsible committee fails to submit the report within the established timeframe, the Parliament can decide to start with the consideration of the draft immediately, even without a written report of the responsible committee. In this case, the rapporteur presents the draft law orally at the sitting (Article 153). It is not clear, however, how the responsible committee and/or the Government are expected to prepare the report and the opinion within the very tight time-frame available before the sitting. For example, in case the draft law is submitted to the Parliament within 7 days or 24 hours prior to the parliamentary sitting, the responsible committee and the Government would normally have very little time to prepare and substantiate their views on the matter of the draft law.

---

107 See e.g., Venice Commission, *Turkey - Opinion on Emergency Decree Laws N°s 667-676*, CDL-AD(2016)037, para. 89.

108 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28.

109 For example, in Albania the Assembly cannot apply the accelerated procedure for more than three bills over a 12-week work programme, and more than one bill over its three-week work programme (see Article 28(5), Assembly Rules of Procedure).

110 See e.g., Article 95 of the Rules of Procedure of the National Assembly of Serbia and Article 170 of the Rules of Procedure of the Assembly of North Macedonia.

93. The procedure for consideration by the Parliament whether to apply the urgent procedure or not is not defined. There is no clearly envisaged opportunity for rejecting the request to apply the expedited procedure and no particular procedural modality for such consideration, e.g., regarding the required parliamentary majority etc. Hence, there are no sufficient safeguards in place to prevent the Parliament from applying the urgent procedure for many important draft laws, which could lead to diminishing the essential legislative role of the parliament, as well as parliamentary scrutiny and oversight.

94. In light of the above, **it is recommended that Article 151 of the parliamentary RoP defines more clearly and strictly circumscribes the criteria and circumstances when the urgent procedure may or may not be used, embedding specific safeguards to avoid the over-use of such procedures and clear rules enabling the Parliament to reject the request to apply such urgent procedures, as well as specific oversight mechanism.**

RECOMMENDATION C.

1. To envisage in the RoP of the Parliament the minimum time required between parliamentary readings, except for the adoption of draft laws under the urgent procedure in exceptional circumstances.
2. To provide for shorter timeframes and simpler procedure to be used for the passage of minor and/or uncontroversial legislation or amendments, while clearly defining and strictly circumscribing such cases in the legislation.
3. To amend Article 151 of the parliamentary RoP by introducing clear and strictly defined criteria and circumstances when the urgent procedure may or may not be used, embedding specific safeguards to avoid the over-use of such procedures and clear rules enabling the Parliament to reject the request to apply such urgent procedures, as well as specific oversight mechanism.

7. PUBLIC CONSULTATIONS

7.1. Public Consultations by the Government

95. The legal requirements for public consultations are set forth in the Law on State Administration, the RoP of the Government and, are further elaborated in Section III of the *Decree on Appointment of NGO Representatives to Working Bodies of State Administration Authorities and the Conduct of Public Consultations in the Preparation of Laws and Strategies* (Articles 10-18).

96. Article 52 of the Law on State Administration requires ministries to carry out a public discussion during the preparation of laws. A public discussion is optional when issues in the field of defence and security and the annual budget are regulated by law or strategy; in extraordinary, urgent or unpredictable circumstances; and in the case of minor amendments to the law that do not regulate any issue in a significantly different manner. If a ministry determines that a public consultation is not necessary, it is obliged to submit to the Government, along with the proposed law, a justification explaining the reasons for not carrying out public consultations. It is commendable that the Law introduces some sort of distinction here between laws that have effects on different stakeholder groups or individuals, and laws that merely contain minor amendments to the status quo. Indeed, in the case of the latter, or if there is no significant impact or consequence for individuals or certain bodies or entities, public consultations may not be necessary, especially

considering the efforts and resources that need to be put into conducting such consultations.

97. At the same time, the rationale for omitting public discussions "*when issues in the field of defence and security and the annual budget are regulated by law or strategy*" is not really clear. While exceptions might exist in case of confidential matters concerning national security, most significant laws that affect the lives of individuals, including laws on finance or budgetary matters, should undergo public consultations. Notably, the potentially negative impact of hurried laws and decrees on men and women, or on certain groups should be borne in mind during policy discussions at the highest levels. Concerning specifically the annual budget, there is growing recognition of the importance of public participation across the budget cycle (so-called "participatory budgeting"), which has been reflected in key global standards and principles.[111]

98. Moreover, the possibility to skip public consultations "*in extraordinary, urgent or unpredictable circumstances*" is also worrisome given the broad discretion it entails. Overall, states of emergency imply a situation marked by the need for quick reactions to live-endangering circumstances, which may be due to a pandemic, a natural disaster, an extensive economic crisis, or to a war or armed conflict, or large-scale simultaneous terrorist attacks. While different forms of accelerated lawmaking, skipping some elements of a normal legislative cycle, may at times be necessary, exceptions to rules on public consultations should be kept to a minimum.[112] Despite the urgency of certain decisions, care should be taken to involve experts and civil society representatives, affected individuals, including minority and other diverse groups, as much as possible in decision-making.

99. Bearing the above in mind, it would be desirable to reflect in the Law on State Administration that public consultations can only be curtailed or dispensed with in cases where this is absolutely necessary, and such cases need to be justified properly. **In this regard, it is recommended to clearly outline in the legal framework the instances where public consultations can be omitted, and to ensure that there is an authority at centre of government level scrutinizing the application of such exceptions.**

100. Furthermore, Article 35 of the RoP of the Government envisages that the initiator is obliged to submit to the Government, along with the draft law, a report on the "public discussion", conducted in accordance with the Government legislation or, if the public discussion was not held, a reasoned explanation for not holding public discussion.

101. At the same time, Article 67 of the RoP of the Government, which specifies which documents should accompany the Government's draft laws when submitted to the Parliament, while indicating the need to attach the RIA form – which includes a dedicated section on stakeholder consultations (see Sub-Section 5.1 *supra*), does not require the submission of the report on public consultation. **To enhance transparency and ensure full disclosure of the draft's underlying policymaking process, Article 67 of the RoP of the Government could be amended by adding the report on conducted public**

---

111 In 2012, for example, the Global Initiative on Fiscal Transparency (GIFT) outlined ten high-level principles on fiscal transparency, participation, and accountability. These principles include reference to public participation in fiscal policies; encouraging policy makers to ensure that citizens can exercise the right to participate directly in public debate and discussion over the design and implementation of fiscal policies. Similarly, in 2014, the International Monetary Fund (IMF) updated its' Fiscal Transparency Code (FTC) to include a principle (Principle 2.3.3) around public participation in budget preparation and execution. The *OECD's Principles of Good Budgetary Governance* (2015) also called on member states to "provide for an inclusive, participative, and realistic debate on budget choices. See also Transparency International, *Participatory Budgeting – Public Participation in Budget Processes*, 2022, pp. 8-9.

112 In Italy, for example, the public administration is always under an obligation to consult the recipients of a regulatory intervention, except in "extraordinary cases of necessity and urgency". See Article 16 of the Decree of the President of the Council of Ministers No. 169 'Regulation governing the analysis of the impact of regulation, the evaluation of the impact of regulation and consultation'.

consultation to the list of documents to be submitted to the parliament along with the draft law.

102. Similarly, Article 130 of the RoP of the Parliament does not mention the report on the public consultations among the documents to be submitted together with the draft law to the Parliament. A report summarizing the process and outcome of consultations held on individual draft laws and their outcomes should be part of the accompanying documentation submitted to the Parliament along with the draft law (irrespective of the initiator – whether it is Government or individual MPs) and **Article 130 of the RoP should be supplemented in this respect. The absence of one should justify the draft's return to the initiator pursuant to Article 132 of the RoP of the Parliament**.

103. The abovementioned *Decree on Appointment of NGO Representatives to Working Bodies of State Administration Authorities and the Conduct of Public Consultations in the Preparation of Laws and Strategies* elaborates in greater details the process of public consultations and its duration and provides the templates that have to be used.

104. According to Article 10 of the Decree, public consultations may be organized during the initial stage of the preparation of a law (referred to as "consultation with the interested public") or on the specific text of the draft law (so-called "public debate"). Article 12 of the Decree specifies that consultations with the interested public are announced on the ministry's website and e-Government portal, which invite all stakeholders to submit initiatives, proposals, suggestions and comments on the subject matter to be addressed in the future draft law or strategy. Public debate concerning a draft law or strategy may take diverse forms, including organizing roundtable discussions, panel discussions, presentations, as well as submitting comments, proposals and suggestions in paper or electronic form (Article 14). It is welcome that the Decree envisages public consultations early on, even before a draft law is prepared, as this allows more time to assess various different policy solutions, their practical usefulness and ability to be implemented.[113]

105. In addition, it is commendable that the Decree requires ministries to publish on their websites and the e-Government portal, within 15 days from the day of adoption of their Annual Work Plans, their consultations plan i.e., the list of laws that will be subject to public consultation, along with an explanation of the need for adopting them and other information relevant for the drafting process. This should in principle allow the interested public to plan ahead and get acquainted with relevant documentation.

106. Where a policy paper or RIA report is available, posting them when conducting public consultations before any law drafting activity commences may improve the quality of submissions by the interested public. For this reason, Article 15 of the aforementioned Decree provides that the RIA report should be made available in case of conducting public debates, though no similar provision is envisaged in case of conducting public consultations at the initial stage of preparing the draft law, which may be due to the fact that the policy development stage is not well-developed and that RIA are not prepared at the early stages of the policy cycle (see Sub-Sections 4.2 and 5.1). Even where the RIA report is not available, it would be advisable to submit for the purposes of consultation with the interested public a preliminary document such as a policy paper, concept note or other policy document giving account, at least, of the relevant issues, the objectives of the intervention, and possible options.

107. To ensure the inclusiveness of public consultations, the legal drafters should also diversify the structures, methods, mechanisms, tools and types of public consultations, to reach out to a wider audience. Whilst placing the drafts for public consultations using

[113] See similar recommendations in *ODIHR Assessment of the Legislative Process in the Republic of Armenia*, October 2014, para. 30.

an internet portal is a good and common practice, there should also be some effort made by the public authorities to reach out to the public and make it aware that the amendments have been prepared and are open for comments other than just putting them on the website.[114]

108. Moreover, online tools should be tailored to enhance inclusiveness, transparency and make participation easier[115] in order not to exclude certain persons or groups. It is commendable that Article 16 of the Decree obliges the ministry, when conducting public debates as per Article 14, to take care that the venue is accessible for people with reduced mobility and that the discussions are held with the use of sign language or make the draft law or strategy available in audio recording form or in Braille in case of direct relevance for the rights, duties and legal interests of persons with auditory and visual impairments. The Decree could further specify

109. The current regulatory framework does not envisage the conduct of public consultations on draft secondary legislation. Although countries generally engage stakeholders in developing subordinate regulations less than in developing primary laws, many countries require to engage stakeholders in developing both primary and secondary legislation.[116] Since the development of secondary legislation does not involve the parliament, the process is less subject to public scrutiny than the processes for making primary laws. At the same time, secondary legislation, which are necessary to implement adopted laws represent a substantive proportion of the regulatory framework impacting citizens and businesses. **Therefore, it is important to engage the public when secondary legislation is developed, at least when it has a significant impact on citizens and businesses**.

7.2. Public Consultations by the Parliament

110. It should be noted that the abovementioned Decree applies only to governmental bodies initiating draft laws. There is no legal requirement to conduct public consultations for the drafts originating from individual MPs. This is especially worrisome since, as already mentioned above, Article 130 of the RoP of the Parliament does not require the report on public consultations to register the draft law in the Parliament that will lead in practice to the situating when draft laws of MPs will be accepted without such a report.

111. The Rules of Procedure of Parliament stipulate two kinds of hearings, i.e., "consultative" and "control" hearings, the latter being related to the general oversight functions of the Parliament. A consultative hearing is carried out "*for the realisation of tasks falling within its scope of activities (consideration of proposal of an act, preparation of proposal of an act or consideration of certain issues), and with the aim of obtaining necessary information and expert opinions, particularly on proposals of solutions and other issues of particular interest for citizens and the public*". The committee can, as needed, engage academics and experts in certain fields, representatives of state authorities and NGOs, without the right to vote.[117] There is however no requirement for public consultations on draft laws within the Parliament. This means that important amendments may be introduced to the draft laws, without additional consultations with the interested/affected stakeholders. It is important that **consultations take place throughout the various**

---

114 See e.g., ODIHR, *Urgent Comments on the Draft Criminal Offences against Honour and Reputation in the Republika Srpska* (2023), para. 67.

115 Council of Europe Conference of INGOs: Code of Good Practice for Civil Participation in the Decision-Making Process, adopted on 30 October 2019, p. 17. Online tools and websites should be in line with World-wide Web Consortium's guidelines on web content accessibility: <Home | Web Accessibility Initiative (WAI) | W3C>.

116 In the EU, most Member States have a requirement in place to systematically involve stakeholders when developing sub-legal acts, even though consultation requirements tend to be less stringent for subsidiary laws than they are for primary laws. Besides, 40% of Member States always require consultations on subordinate regulations to be conducted with the general public, see OECD, *Better Regulation Practices across the European Union*, 2019, pp. 41, 46,

117 RoP of the Parliament, Articles 75-77.

stages of the legislative process, including before the parliament, especially when a draft law undergoes various amendments and additions.[118] Once laws have been adopted, consultations should also be organized to assess their impact and implementation, which will then be used to evaluate such impact *ex post*.

7.3. Participation of NGOs in Policy- and Lawmaking

112. Article 79(1) of the Law on State Administration enables the participation of NGOs both in the procedure for conducting a public discussion during the preparation of laws and strategies as per Article 51 of this Law; and in the work of WGs and other working bodies formed by state administration bodies for the normative regulation of relevant issues.

113. The mandatory participation of representatives of NGOs in WGs established under ministries for the purposes of drafting laws (and strategies) is regulated in Section III of the *Decree on Appointment of NGO Representatives to Working Bodies of State Administration Authorities and the Conduct of Public Consultations in the Preparation of Laws and Strategies* (Articles 10-18). The selection starts with a public call for nomination published on the website of the Ministry or other public authority and the e-Government portal. An NGO is eligible to make nominations provided that it meets certain requirements.[119] Notably, the Decree envisages an overly formal procedure for the appointment of NGO representatives to government WGs that are established during the policymaking process. In particular, the requirement to submit, for each call for nomination, an extensive list of documents proving that the NGO possesses the necessary requirements and the nominee meets the eligibility criteria appears particularly burdensome. In order to reduce the paperwork for NGOs participating in WGs, a pre-registration procedure may be arranged in such a way as to identify from the outset, by sector of interest, the organizations eligible to propose candidates in the relevant domain in response to a call for nomination (pre-selected NGOs). Certain requirements applicable to the nominating NGOs, such as having a clean criminal record and having filed a tax return for the previous fiscal year, could be requested at the very initial stage of pre-selection of NGOs, and then regularly updated. The Decree also sets out onerous criteria for participation of an NGO representative in a WG, including the permanent residence requirement. Moreover, there are no clear rules governing the voting procedure, including deadlines, majority required, voting method, technology used, etc. for electing the NGO representatives to become members of the WG. It is only foreseen that the competent public authority shall select an NGO representative only in case of tie voting, i.e., if two or more suggested candidates have received an equal number of votes. **It is recommended to further elaborate the voting procedure for electing the NGO representatives to the WG**.

114. It is worth reiterating that participation of NGOs is an inherent part of the broader concept of public participation – that is, participation of individuals and civil society at large (non-state actors) at different stages of policy development. As underlined in the Joint ODIHR-Venice Commission Guidelines on Freedom of Association, "*In a participatory democracy with an open and transparent law-making process, associations should be*

---

118 *OSCE/ODIHR Assessment on Law Drafting and Legislative Process in the Republic of Serbia*, 2011, p. 72.

119 Such as: prior registration in the NGO Register, pursuit of goals in areas related to the relevant matter, and previous relevant experience. The NGO must also have a clean criminal record and be compliant with tax obligations. Furthermore, not more than half of its management bodies members may be members of political party bodies, public officials, managers in the public sector, civil servants, or state employees. An NGO may nominate only one representative to the working group, on condition that the nominee resides in Montenegro, has subject-matter experience, and is not a member of any political party bodies, a public official, a public sector manager, a civil servant, or a state employee. Nominations, accompanied by the required documentation, duly signed by the authorised representative and bearing the NGO's stamp, must be submitted within 10 days from the issuance of the public call. Within seven days from the expiry of this deadline, the ministry or other state authority publishes on its website and the e-Government portal the list of nominees, together with their nominating NGOs, who meet the requirements, as well as the list of NGOs that failed to submit orderly and complete nominations, i.e., which do not meet the requirements or whose nominee does not meet the eligibility criteria. The public authority is obliged to appoint an NGO representative whose public candidacy is supported by most votes of qualified NGOs.

able to participate in the development of law and policy at all levels, whether local, national, regional or international. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government. […] In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made."[120] Furthermore, there is also no mention that the composition of the WGs should be gender balanced and the nomination modalities should also take this aspect into account.[121] With a view to facilitate the inclusive participation of associations in policy- and lawmaking processes, it is recommended to **reconsider the requirements for NGOs to participate in the government working bodies by making them less burdensome and more transparent, while ensuring that the composition of the WGs is inclusive and gender balanced.**

115. As concerns the role of civil society in the design of policies and legislation in the context of the EU accession process specifically, the current legal and institutional framework needs to be further improved in order to strengthen the consultation mechanisms between state institutions and civil society.[122] In 2021, most ministries appointed representatives of NGOs to the WGs devoted to the chapters of the EU accession negotiations in charge of drafting laws and national strategies in their respective areas, in accordance with the abovementioned Decree; yet, not all ministries conducted public consultations when draft laws and strategies were prepared, with the result that a significant number of laws were adopted in 2022 without prior consultation of civil society.[123]

RECOMMENDATION D.

1. To clearly outline in the legal framework instances where public consultations can be omitted, whilst also ensuring that there is an authority at centre of government level scrutinizing the application of such exceptions.

2. To amend Article 130 of the RoP of the Parliament by envisaging that, if a public consultation was conducted, the consultation report should accompany the draft law submitted to the Parliament and that the absence of one should justify the draft's return to the initiator pursuant to Article 132 of the RoP of the Parliament.

3. To enhance the legal framework governing public hearings and consultations by the Parliament, to ensure public consultations throughout the parliamentary stage.

120 See ODIHR-Venice Commission, *Guidelines on Freedom of Association* (2015), paras. 183-187. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 12, 76 and 77; UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Article 8; United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* ("Aarhus Convention"), 25 June 1998, Articles 6 and 8; Council of Europe, *Framework Convention for the Protection of National Minorities* (ETS No. 157), 1 February 1995, Article 15.

121 For instance, the Serbian Guideline on Participation of NGOs in Working Groups Commissioned with Preparation of Draft Normative Acts and Policy Documents (2020) provides that the competent public authority may appoint an NGO representative in a working group, observing the principles of equality, non-discrimination and gender balance. See also Recommendation Rec (2003) 3 of the CoE Committee of Ministers on the Balanced participation of women and men in political and public decision-making and explanatory memorandum, Chapter II (items 8 and 9).

122 European Commission, *Montenegro 2022 Report*, pp. 4, 14-15.

123 Ibid.

4. To reconsider the requirements for NGOs to participate in the government working bodies by making them less burdensome and more transparent while ensuring that the composition of the WGs is inclusive and gender balanced.

8. PUBLICATION AND ACCESSIBILITY OF ADOPTED LEGISLATION

116. Article 51 of the Law on State Administration provides that public authorities are required to have an official website, where the texts of all laws and by-laws falling within their competence must be published.

117. The Law on Publishing Legislation and Other Acts regulates the procedure for making legislation available to the public via the Official Gazette of Montenegro. The legislation and other acts submitted to the Official Gazette are published, as a rule, in the next issue of the Official Gazette at most 10 days from the day of submission of the act.

118. All primary and secondary legislation is available free of charge on the publicly accessible online database of the Official Gazette. However, the perception of the availability and accessibility of laws and regulations is rather low among businesses, according to the results of the Balkan Barometer survey (40%), and has deteriorated compared with 2017 (52%).[124]

119. In particular, access to legislation is hampered by the absence of consolidated versions of legal acts free of charge.[125] Although Article 39 of the RoP of the Parliament obliges the Legislative Committee to establish consolidated text of laws and other regulations, the consolidated versions of legal texts are not duly prepared and are available online only through a paid service (offered by private service providers, as well as by the Official Gazette).[126] Thus, even the state institutions that use legal acts on a daily basis in their work (e.g., judges, prosecutors, officials in ministries and other administrative bodies) need to pay in order to get access to the up-to-date consolidated versions of legal acts for their officials.

120. It should be reminded that laws, draft laws and secondary legislation should be published, both online and offline, and easy to find. Draft laws, as well as adopted legislation, accompanied by supporting documents, need to be easily and publicly accessible for the entire population. This includes timely publication on publicly accessible official websites (but not exclusively because of the risk of digital divide[127] and official gazettes, and availability in the relevant national languages (including minority languages, particularly where necessary for accessibility), and in formats and contents accessible or adapted to persons with disabilities, including to persons with visual impairments or with mental disabilities. All relevant additional materials, such as court judgments on the law, secondary legislation, and amendments, should be accessible in the same place. The relevant websites and official gazettes should contain consolidated legal texts reflecting the latest amendments to legislation, as well as previous versions of the laws. There also needs to be proper and secure back-up in place for online official gazettes. **It is, therefore, recommended to ensure that all primary and secondary legislation is consolidated and available online, free of charge.**

121. Notably, Montenegro does not have an official database of the existing legislation in force which would allow citizens and economic operators to have free access to the valid

124 SIGMA, *Monitoring Report – Montenegro* (2021), p. 53.
125 Ibid, pp. 28, 53 and 90.
126 As per the information communicated to ODIHR experts in the course of two workshops for the staff of the Parliament of Montenegro conducted in November 2022 and May 2023.
127 i.e., the exclusion of certain categories of the population which may not have access to the Internet and new technologies.

laws and by laws. Access that ordinary citizens have to the web-pages of the Official Gazette, of the Parliament and of the line ministries cannot be a substitution for the legal base, and neither can be the paid legislative bases offered on the market by private providers. It is, thus, **recommended, to consider establishing a comprehensive legislative database which should be available for free for everyone**.

RECOMMENDATION E.

1. To envisage in the legal framework an obligation to ensure that all primary and secondary legislation is consolidated and available online, free of charge.

2. To consider establishing a comprehensive legislative database which should be available for free.

9. REGULATORY OVERSIGHT MECHANISMS

122. Regulatory oversight involve a variety of bodies to ensure that the competent bodies in charge of lawmaking do not go beyond their scope and authority, that they adhere to the respective laws and rules of procedure for the development of legislation, but also to ensure quality control of regulatory management tools (such as RIA, public consultations and ex post evaluations) and ultimately to evaluate and improve regulatory policy. Such systems of constant scrutiny and discussion, from policymaking to *ex post* evaluation of laws, involve many different actors. The majority of regulatory oversight bodies is located within government, either at the centre of government or at a line ministry, but other bodies are also increasingly involved in regulatory oversight and legal scrutiny functions, including parliamentary bodies, supreme audit institutions, bodies that are part of the judiciary or other bodies which may verify compliance of draft policies and laws with rules on lawmaking and constitutionality, while ensuring coherence with international human rights obligations (e.g., courts, independent and regulatory institutions, such as NHRIs). For the purpose of this Preliminary Opinion, the focus will be on the regulatory oversight functions of the Parliament. ODIHR remains at the disposal of the public authorities to carry out a more comprehensive review of the legal framework governing the Parliament's oversight functions more generally, including executive oversight and control for instance through parliamentary questions, interpellations and parliamentary inquiries and committee hearings.[128]

9.1. Regulatory Oversight Within the Government

123. The GSG and the MoFSW share the responsibility for checking the policy content of proposals, as the MoFSW scrutinises the quality of RIA reports attached to draft laws and regulations. As underlined in para. 52 *supra*, **the quality control role of the GSG need to be strengthened to focus not only on the procedural aspects, but also on the substance, including the coherence with Government's priorities but also the substantial quality of the draft proposals, with the possibility to return the draft laws to the initiators**.[129]

124. Regarding the control of the quality of RIA reports, it is understood that the MoF generally checks the quality of analysis on fiscal and business impacts (including the

[128] The legal framework for parliamentary oversight is mainly established in the RoP of the Parliament (Articles 73-77), the Regulation on the Government (Articles 28 and 29), which provide a solid basis for the Parliament to debate, monitor and amend Government policies and programmes, as well as the Law on Parliamentary Inquiry (Official Gazette of Montenegro 038/12).

[129] SIGMA, Monitoring Report – *Montenegro* (2021), pp. 26, 28, 34 and 38-39.

impact on the business environment and on SMEs), but there is no control over the quality of analysis covering wider economic, social or environmental impacts.[130] It is recommended that the quality control over the RIA cover all key impact areas, including economic, social and environmental impacts.[131] Oversight and quality control are essential elements for a well-functioning RIA system. They ensure that the formal processes, quality standards and requirements established in the policy- and lawmaking system are systematically followed, delivering the anticipated benefits of good quality policy- and lawmaking. **Processes and methodologies for quality oversight should be enhanced to ensure that all draft RIA reports are reviewed consistently, based on a set of objective standards and criteria**.[132] It would be advisable **to also require the centre of government institution responsible for checking the final package of legislative proposals – i.e. the GSG – to consistently check the final RIA report as well as the opinion issued by the quality-control body/the MoF**, to ensure that the final version addresses the major concerns and recommendations.[133] Oversight bodies should have the ability to conduct checks both on compliance with RIA procedures, including consultation procedures,[134] and on the content and quality of the analysis and conclusions presented in the draft RIA reports, before they are submitted to government for final approval. Opinions on individual RIAs should also provide concrete recommendations and practical suggestions for further improvement.

125. The Ministry of Public Administration is responsible for ensuring compliance with the requirements for public consultation.[135] The procedural aspects of conducting the quality control have been determined by the Government,[136] although it appears that the central quality control on the public consultation process is not yet functional in practice.[137] The Ministry of Public Administration should **establish the internal procedures and institutional framework for ensuring that all draft proposals from all ministries are reviewed prior to their submission to the Government to ensure their compliance with the requirements for public consultation**.[138]

126. The Secretariat for Legislation is responsible for the scrutiny of all draft legislation[139] and provides opinions on the legal quality of all laws and regulations prior to their submission to the Government for approval.[140] While the legal and institutional arrangements for ensuring legislative quality assurance seem to be in place, it is reported that a rather high share of laws is amended within a year after adoption (+17% in 2020), which raises questions about the overall quality and stability of legislation.[141]

9.2. *Parliamentary Scrutiny of Government Policy- and Lawmaking*

130 SIGMA, Monitoring Report – *Montenegro* (2021), pp. 27, 46-47. Cf. also ReSPA, *Better Regulation in the Western Balkans*, 2018, p. 102, and SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, pp. 74-75.

131 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28. See also SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, p. 75.

132 Currently, the review of RIAs in Montenegro involves a simple checklist with yes/no answers for different RIA sections.

133 A similar recommendation for the whole region may be found in SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, p. 85.

134 In Montenegro, the RIA-related oversight role is split between the MoF, which checks the RIA report, and the Ministry of Public Administration, which oversees the process of consultations.

135 The Decree on the Organization and Operation of State Administration, adopted by the Government on 7 December 2020, reaffirmed in Article 8 the mandate of the MPADSM to perform the quality scrutiny of public consultations in preparing laws and strategies, but it has not yet been operationalized.

136 The Information on the Status of Implementing the Process of Monitoring of the Quality of Public Consultations (including the List for checking the Compliance of Line Ministries' Procedures of Implementing Public Consultations with Established Public Consultation Standards).

137 SIGMA, Monitoring Report – *Montenegro* (2021), p. 48.

138 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28.

139 Articles 32, 40, 42 and 52 of the Government Rules of Procedure.

140 SIGMA, Monitoring Report – Montenegro (2021), p. 51.

141 The share of laws amended within one year after adoption increased considerably in 2020 compared with the previous years. See SIGMA, Monitoring Report – Montenegro (2021), pp. 27 and 51.

127. The Parliament of Montenegro oversees the technical quality of Government legislative proposals, the merits of such proposals and underlying policy, as well as the soundness of the policymaking process followed by the Government.

128. The Legislative Committee checks the compliance of government-sponsored laws and regulations with the Constitution and the legal system of Montenegro. It also ensures the consistent use of the legislative methodology, as well as compliance with legal and technical standards, in the preparation of the draft laws submitted to the Parliament. The Committee has very demanding tasks although its capacity is quite limited.[142] Notably, the Parliament of Montenegro does not have a Legal Department which could potentially take over the said responsibilities of the Legislative Committee as a robust, apolitical service which would be available to all MPs and would have a role in the legislative process. **It is recommended to consider such a possibility**.

129. In general, given the scale of lawmaking activity, the amount of legislation that (some but not necessarily all) committees have to deal with, the question arises whether the parliamentary committees may have enough time and resources to ensure an effective oversight, including in terms of annual monitoring and evaluation of implementation of laws.[143] While the resolution of the issue would require more time and in-depth analysis of the practice and institutional mechanism, one way to approach this matter as an initial step would be to enhance the capacity and resources of the committees.

130. When it comes to *ex post* evaluation of legislation, the Parliament of Montenegro does not go beyond classical parliamentary scrutiny tools at the level of committees. Some limited form of post-legislative scrutiny exists in the form of parliamentary hearings and control hearings in particular, which also allow committees to run inquiries about the implementation of a law,[144] although these are rather limited.

131. Nevertheless, there is nothing in place yet that could resemble a set of rules enabling the Parliament to assess retrospectively the outcomes of existing legislation so as to determine whether it should be maintained, amended or repealed. In this respect, consideration should be given to **increasing the parliamentary oversight over the implementation of laws, by establishing a system of reporting on major legislation**. In line with an emerging practice globally, such a system should also aim to assess the impacts of major legislation in force and determine whether such legislation has achieved its goals (see Sub-Section 5.2 *supra*).[145]

---

142 13 MPs with support of 5 staff members.

143 For example, the secretaries of the parliamentary committees have a task to send the final version of the adopted laws to the President of Montenegro for promulgation and to the Official Gazette for publishing, which puts additional obligation and responsibility on the secretaries, especially as majority of them are not lawyers. This procedure needs to be reconsidered.

144 Moreover, the RoP of the Parliament were amended in 2012 in order to strengthen the Parliament's oversight role vis-à-vis the process of approximation of domestic legislation to the EU acquis. The amendment, which concerns only those committees directly affected by EU legislation, sets out that, within their competences, the committees "*shall monitor and assess harmonisation of the laws of Montenegro with the Acquis Communautaire, and, based on the government reports, monitor and assess the implementation of the adopted laws, especially those which establish the obligations complied with the Acquis Communautaire*".

145 Two examples of good practice in this field are provided by the Committee on Gender Equality and the Committee on Human Rights and Freedoms, which have carried out comprehensive and detailed evaluations of the implementation of legislation. With the support of donors and the government itself, the Committee on Gender Equality was able to scrutinize the Law on Gender Equality for the third time. Moreover, the Committee on Human Rights and Freedoms has recently finalized the process of scrutinizing the Law on the Prohibition of Discrimination Against Persons with Disabilities. Even though most of the research activities were conducted by external consultants, these committees actively participated in the research and consultation process by signing endorsement letters and by organizing consultative hearings. The chairs of the committees led the process with substantial involvement from parliamentary staff. With the help of external experts and researchers, parliamentary staff used the process to increase their own capacity for future work. On the recent practice of both committees, see WFD, *Post-Legislative Scrutiny in the Parliaments of the Western Balkans*, 2021, p. 21.

RECOMMENDATION F.

1. To enhance the regulatory oversight mechanisms within the government, including by strengthening the role of the GSG, while ensuring that the scope of the quality control over RIA is not limited to budget or fiscal considerations, and that the internal procedures and institutional framework within the Ministry of Public Administration are in place to check compliance with the requirements for public consultation, ensuring that draft laws that do not comply with quality standards are returned to the initiator.

2. To strengthen the capacities of the Legislative Committee or consider establishing a parliamentary Legal Department as a robust, apolitical service which would take over certain responsibilities of the Legislative Committee and support all MPs in the exercise of their legislative functions.

3. To envisage in the legal framework a comprehensive mechanism of ex post evaluation of legislation allowing for the Parliament to assess retrospectively the outcomes of existing legislation so as to determine whether it should be maintained, amended or repealed.

10. EU INTEGRATION AND APPROXIMATION

10.1. Harmonization with EU acquis

132. The RoP of the Government prescribe that any legislative draft has to be prepared in accordance with the Drafting Rules. This also includes observance of the *Guidelines for Harmonizing the Legislation with the EU Acquis* which are annexed to it (hereinafter "Harmonization Guidelines"). Given the mandatory application of the Drafting Rules, the Harmonization Guidelines are expected to be mandatorily applied when drafting acquis-compliant legislation.

133. Furthermore, as already mentioned (see para. 80 *supra*), the RoP of the Government require the initiator to submit to the Government, along with the draft law, the Statement of EU compliance and ToC, approved by the EIO (Article 40(1), indent 2). Those documents have to be signed by the drafting authority and accompanied with the pieces of EU *acquis* and ratified international agreements which are subject to harmonization.[146] The initiator should also submit to the Government the opinion of the SfL on the draft law. However, there is no requirement for the initiator to also submit to the SfL the Statement of EU compliance and ToC, which would facilitate the process of preparing the SfL's legal opinion. To make the process more efficient, **it is recommended to specify in the RoP of the Government the list of documents that should be submitted to SfL for the purpose of preparing the opinion (beyond the text of the draft law and its rationale), which should include the Statement of EU compliance and ToC**.

134. The RoP of the Government provide that the draft law submitted to the Parliament should be accompanied with the Statement of EU compliance (Article 67), but do not mention

[146] The Statement of EU compliance and ToC have their own forms and guidelines on how to be prepared which can be found in the Instruction of the Ministry of European Affairs on Instruments for Harmonizing the Legislation of Montenegro with the EU acquis. As such, they represent the key tools in all phases of Montenegrin accession to EU, which need to be used in order to assess the fulfilment of legal criteria for accession, i.e. ability of the state to assume obligations from EU membership. These instruments facilitate the procedure of evaluating the level of harmonization, and they also lead to improved readiness of institutions vis-à-vis the negotiation process and quality monitoring of the alignment of Montenegrin legislation with the EU acquis.

the ToC, whereas this document is crucial for monitoring the quality of aligning with the EU *acquis*.

135. Notably, with the current regulatory and institutional system of drafting acquis-compliant legislation, Montenegro follows the experience from the states with a similar legal system, such as Slovenia and Croatia. However, since those foreign models were not fully implemented in practice, there are serious bottlenecks both in terms of quality and level of legal alignment with the EU *acquis* and time-consuming[147] legislative drafting process, which might prevent progress in negotiations.

136. In the first place, it has to be highlighted that the *EIO Instruction on Manner of Development and Submission of Legal Acts to EC* reveals the existence of a "bottleneck" in the harmonization/drafting process, which must be resolved by means of potential amendments to the legal framework.

137. Namely, the mechanism of two-stage consultations with the Secretariat for Legislation (otherwise rightfully introduced[148]), indicates that in practice, in the vast majority of cases, so-called second stage consultation results in the mandatory relaunch of the same mechanism from the beginning, whenever the Secretariat finds deviation from the text it once already approved under the first stage (due to mandatory consultations with EC services). In turn, this process rolls out as many times, leading up to 18 to 24 month-long consultations, until the draft law is fully aligned both with comments of the EC and separate comments of the Secretariat. Such a finding is reconfirmed in the 2022 Work Report of the Secretariat which states: "*It is noticeable that the number of given opinions with remarks and suggestions on drafts/proposals of laws is significantly higher than the number of laws received, which is expected especially in fulfilling the obligations arising from the process of accession to the EU*".[149]

138. Re-examination of submitted drafts/proposals of laws requires an extra effort and additional work for the officials of the Secretariat for Legislation, especially when those legal texts, in order to be harmonized with the opinions, suggestions and proposals of the EC, undergo significant changes in relation to the texts on which the Secretariat initially gave an opinion.

139. This negative situation, is to be attributed, among others, to time-consuming internal consultations of line ministries with the Secretariat for Legislation and the EC, which reportedly takes several rounds, drains capacities of all parties in the process, including EC services which are forced to comment several times on the same draft law. This is also one of the reasons why available data on implementation of the Montenegro Action Plan since 2016 shows extremely low level of realization of planned legislative harmonization measures.[150] For example, the most recent ones from 2022 (for quarters I to III) show that only 28.3% of measures were realized, whereas 71.7% stayed unfinished.[151]

---

147 Statement of Head of Cooperation to DEU in Montenegro, Ingve Engstrom, <http://prcentar.me/clanak/potroai-moraju-biti-zatieni-i-u-poziciji-da-iskoriste-prednosti-prosperitetne-ekonomije/1829>.

148 Originally, the mechanism was introduced to speed up the process of harmonization in segment of consultations with the Secretariat for Legislation, as a government body with highest legislative reputation, acting as a watchdog of constitutionality and legality of draft legislative acts.

149 Work Report of the Secretariat for Legislation for 2022, p. 3 and 4, available at: <https://www.gov.me/dokumenta/2f78e060-e08e-4a8e-a61b-81a52de4256d>.

150 As reported by SIGMA Monitoring Report 2021, this problems dates far in the past Montenegro e.g. implementation rate of legislative commitments from the MPA has been consistently below 60% since 2016. This is how, only 18% of the planned legislative commitments were approved in 2020, and 62% were carried forward to the next year, page 28. https://www.sigmaweb.org/publications/Monitoring-Report-2021-Montenegro.pdf

151 <https://www.eu.me/ppcg-2022-2023-realizacija-planiranih-obaveza-u-i-iii-kvartalu-2022/>.

140. It should be added that that the Harmonization Guidelines have somehow remained outdated. They should be updated in order to regulate or address some important matters concerning legal drafting and harmonization with the EU *acquis*, such as:

- the importance of the Preamble of a directive (everything between the title and the enacting terms of the act of the directive) or other piece of the EU *acquis*;
- the practical implications of new acquis trends - maximum harmonization clauses found in directives requiring Member States to introduce rules with minimum and maximum standards set in the directive;
- the relevance of recommendations, opinions and other types of "EU soft law" (Guidelines, Communications, etc.);
- the importance of judgments of the Court of Justice of the EU.

10.2. Government-Parliament Co-operation on European Integration Affairs

141. The co-operation between the Government and Parliament on European integration matters deserves specific attention, given the EU candidate status of Montenegro. Countries that have engaged in formal membership negotiations are required by the EU to set up mechanisms ensuring the participation of national parliaments in the preparation of negotiating positions regarding each policy field (chapter). Under the amended RoP of the Parliament, the Committee for International Relations and Emigrants and the Committee for European Integration (hereinafter "CEI") are now responsible for overseeing EU accession negotiations and for issuing relevant opinions and guidelines, and also for assessing the performance of the negotiating team.[152]

142. By contrast, the task of overseeing the process of legal harmonization is "decentralized", i.e., conducted by all sectoral committees rather than by a centralised one.[153] There are certainly sound arguments for such a solution, notably the advantages of topical specialization. On the other hand, a cross-cutting task such as the checking of compliance of draft laws with the EU *acquis* may point in the direction of a different solution.[154] In fact, the decision to separate the oversight of negotiation (done in the CEI) from the oversight of the approximation of legislation with the EU law and the implementation of the approximation plan (done by the line committees) may not be an effective one. Deciding negotiation positions is essentially about deciding the kind and timeframe of commitments a country should take, and the ability to implement these commitments and monitor this work effectively is part of the process; thus, separating those two functions might undermine the effectiveness of parliamentary scrutiny.[155] Besides, the limited capacity of the Parliament of Montenegro to scrutinize draft legislation for compliance with the EU *acquis* has been recently underlined by the EC.[156]

143. One possible solution is to entrust CEI with the oversight of both accession negotiations and legal approximation.[157] In this respect, **consideration should be given to amend**

---

152 Prior to the 2012 amendments to the Rules of Procedure of Parliament, these responsibilities were largely concentrated in the Committee for International Relations and European Integration. Since then, there has been a Committee for International Relations and Emigrants and a Committee for European Integration (hereinafter "CEI"). See Articles 42 and 42a of the RoP of the Parliament.

153 The Parliament changed its rules in 2012 to strengthen the parliament's legislative and oversight role over matters of European integration, which was one of the seven key priorities that the EU set out as the pre-condition for opening accession negotiations with Montenegro.

154 SIGMA, *Policy Making Review – Montenegro*, 2014, p. 46.

155 SIGMA, *Policy Making Review – Montenegro*, 2014, pp. 7 and 53.

156 European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, p. 12.

157 Likewise, the RoP (Article 64) of the Assembly of Serbia provide that the European Integration Committee reviews draft laws and other general acts from the standpoint of their harmonisation with the regulations of the European Union and monitors the realisation of the accession strategy.

Article 42a of the RoP of the Parliament and mandating CEI to consider draft laws which are transposing the EU *acquis* before the draft goes to the responsible (line) committee and provide opinion on the extent of the harmonization, as well as on the consequences for Montenegro regarding their implementation. As an alternative or concurrent option, the Parliament can consider institutionalizing the emerging practice whereby chairs (or vice-chairs) of line committees and political groups are also members of the CEI, thus ensuring a productive link between discussions held within the line committees and within the CEI.[158]

144. In addition, there is still no specific legal framework in Montenegro regulating government-parliament co-operation on EU affairs. The need to enhance the legislature's participation in and oversight of the accession process has been recently reiterated by the European Union.[159] Without clear rules of engagement on EU integration affairs, executive-legislative tensions in this domain are likely to rise in sensitive policy areas as Montenegro becomes more and more integrated into the EU multi-level governance structures.[160] Moreover, given the frequency of changes to a draft law by the parliament, there is a high risk that laws are adopted without being compliant with EU law if inter-institutional co-operation is not effective enough.[161]

145. Montenegro should consider adopting **a law to regulate the relations between Government and Parliament, particularly in the area of EU affairs, in order to ensure a more effective institutional framework and co-operation in support of the European integration process, including greater co-operation and co-ordination in the delivery of policymaking and legislative developments.**[162]

RECOMMENDATION G.

1. To amend Article 42a of the RoP of the Parliament by mandating the European Integration Committee to consider draft laws which are transposing the EU *acquis* and provide opinion on the extent of the harmonization, as well as on the consequences for Montenegro regarding their implementation.

2. To develop and adopt a law regulating the relations between Government and Parliament, particularly in the area of EU affairs, in order to ensure a more effective institutional framework and co-operation in support of the European integration

158 SIGMA, *Policy Making Review – Montenegro*, 2014, pp. 8 and 53.

159 European Commission (EC), Montenegro 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, p. 4.

160 In 2014, SIGMA determined that "(t)he Rules of Procedure of Parliament regulate the powers of the lead committees as regards legal harmonisation and compliance with the acquis, but they do not establish anything approaching a comprehensive framework for the effective parliamentarisation of the EU accession process." See SIGMA, *Policy Making Review – Montenegro*, 2014, p. 42.

161 When the Parliament decides for an amendment to a bill, the government should be consulted regarding the compliance of the amended law with the relevant EU legislation. At the same time, EU-related draft laws should not be amended without assessing the impact of such amendments in terms of compliance with the transposed *acquis*. On the other hand, the parliament's services should be aware when bills submitted for approval pertain to the EU *acquis* and should be well informed about the degree of EU compliance of draft legislation.

162 Approaches from the region differ with regard to both the scope and the legal force of the initiatives undertaken to improve government-parliament co-operation in the relevant area. While Albania has adopted a comprehensive law on the role of Parliament in the European integration process, Serbia has issued a more limited and non-binding parliamentary resolution (see Resolution on the Role of the National Assembly and Principles in the Negotiations on the Accession of the Republic of Serbia to the European Union (2013). Other Balkan countries which have adopted ad-hoc legislation on co-operation between government and parliament in the area of EU affairs include Croatia (see Law on Co-operation between the Croatian Parliament and the Government of the Republic of Croatia in European Affairs (Law no. 81/13)" (2013)) and Slovenia (see the Law on Cooperation between the National Assembly and the Government in EU Affairs was adopted in 2004, just before Slovenia's accession to the EU (Official Gazette of the Republic of Slovenia, No. 34/04 from 8 April 2004); it was then amended on three separate occasions (Official Gazette of the Republic of Slovenia, No. 43/10, 107/10, and 30/15), which have done so with a view to enabling the parliament to exercise the powers foreseen in the EU Treaties, including in relation to the participation in the 'ascending phase' of the formation of EU laws and policies.

process, including greater co-operation and co-ordination in the delivery of policymaking and legislative development.

11. GENDER MAINSTREAMING AND DIVERSITY CONSIDERATIONS

146. The legal framework governing the lawmaking process in Montenegro would benefit from more prominently reflecting gender and diversity perspectives. This Preliminary Opinion already addressed several aspects pertaining to gender equality and diversity considerations, which should be mainstreamed throughout the policy- and lawmaking process, including in relation to the policymaking stage, the preparation of *ex ante* RIA and *ex post* evaluation, the inclusiveness of public consultations and legal drafting (see the respective Sub-Sections for further details).

11.1. Gender Mainstreaming

147. Gender mainstreaming[163] implies ensuring that a gender equality perspective is incorporated into policy- and lawmaking so that women's as well as men's respective experiences, needs and concerns - recognizing the diversity of different groups of women and men, are built into the design, discussion, implementation, monitoring and evaluation of policy, legislation and programmes, and that both individual rights and structural inequalities are addressed. Gender mainstreaming implies actively supporting the inclusion of a gender perspective, gender balanced representation in public decision-making at all levels, and the promotion of equal opportunities in activities and procedures of government, parliament, judiciary and other public institutions, and underlying legal frameworks. In line with international obligations and commitments regarding gender balanced representation in public decision-making at all levels,[164] it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking process. Balanced representation is also fundamental in order to enhance the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation.

148. It is also essential that there are concrete institutional arrangements or mechanisms in place within all the actors of the policy- and lawmaking process to ensure the proper implementation of gender-based analysis (e.g., an inter-ministerial committee, a parliamentary committee, etc.), accompanied by appropriate budgetary allocations and resources and adequate support research services.[165] In addition, it is fundamental that public officials and staff involved in the policy- and lawmaking process are adequately trained or sensitized about gender-sensitive lawmaking.

149. When legislatures establish parliamentary committees, care should be taken that such bodies are not only composed of representatives of different political parties, but also of

---

163 Gender mainstreaming is an approach to policymaking and lawmaking that takes into account both women's and men's interests and concerns. At present, the concept of gender mainstreaming is firmly embedded in the EU Treaties and the EU Charter of Fundamental Rights.

164 See e.g., Article 7 of the UN Convention on the Elimination of Discrimination against Women, which deals with women's equal and inclusive representation in decision-making systems in political and public life, and Article 8, which calls on all States Parties to take appropriate measures to ensure such access; Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), Strategic Objective G.1. "Take measures to ensure women's equal access to and full participation in power structures and decision-making"; Council of Europe Recommendation Rec (2003)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making adopted on 30 April 2002; OSCE Ministerial Council Decision MC DEC/7/09 on Women's Participation in Political and Public Life, 2 December 2009.

165 See e.g., ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), pp. 40-46.

a balanced number of women and men. It is commendable that the RoP of the Parliament require that at least one vice-president shall be elected from among the underrepresented gender (Article 18(4)), while in the process of determining the composition of the committee, including the chairperson and deputy chairperson, due account shall be taken of the appropriate participation of the underrepresented gender (Article 34(5)). At the same time, it would be still advisable to supplement the RoP of the Parliament with the requirement that a certain balance between men and women, and an appropriate representation of diverse groups, should be ensured during the process of appointing the committee members as well. One way of doing this would be to introduce minimal representation rates for female and male MPs in all parliamentary working bodies and delegations.

150. A special emphasis needs to be placed on strengthening the respective roles of the national machinery for the advancement of women within the government, as well as Parliament's Gender Equality Committee (hereinafter "GEC"), in the legislative process, as underlined by the CEDAW Committee.[166] The CEDAW Committee specifically recommended to "*ensure the conduct of systematic gender impact assessments, in consultation with the [Gender Equality Department within the Ministry for Human and Minority Rights, National Council for Gender Equality, Parliamentary Committee for Gender Equality; coordinators on gender-related issues and councils and offices for gender equality], and actively involve them in the formulation and implementation of national and local legislation, policies and action plans*" and to "*increase[e] the human, technical and financial resources allocated to [such bodies]*".[167] It is thus essential **to envisage a mechanism whereby the national machinery for the advancement of women is systematically involved in the policy- and lawmaking processes, including *ex ante* and *ex post* impact assessments, while also allocating adequate resources for this purpose**. Moreover, currently, according to Article 45 of the RoP of the Parliament, the GEC "*considers proposals for laws, other regulations and general acts related to exercise of gender equality principles*". In practice this means that the GEC considers only those draft laws that directly relate to gender equality, i.e., mostly those stemming from the Law on Gender Equality of Montenegro. At the same time, to ensure a proper parliamentary gender sensitive scrutiny, the GEC **should be mandated to consider all draft laws' compliance with national and international gender equality commitments prior to their consideration in the sitting of the Parliament**. As for the Legislative Committee (Article 137 of the RoP of the Parliament), the respective opinions of the GEC should be submitted to the lead committee for consideration. This would however require enhancing the capacity of the GEC and its Secretariat to be able to perform the abovementioned tasks.

151. The existing lawmaking rules and practises should reflect gender perspectives, specifically those related to the impact assessment of draft legislation and inclusiveness of public consultation processes. The aim should be to introduce a more comprehensive approach to gender impact assessments that will include a review, based on sex-disaggregated data, of the potentially direct or indirect discriminatory impact of the proposed provisions on women and men and their different groups, a projection of desired outcome a law should have, aiming at reducing existing inequalities. It is understood that the second Action Plan for a more Gender Sensitive Parliament in Montenegro (2022-2024) adopted in January 2022, includes a practical tool to differentiate the effects that legislation has on women and men and that training of parliamentary staff has been organized in this respect,[168] which is welcome in principle.

---

166 See CEDAW Committee, *Concluding Observations on the second periodic report* (2017), para. 13.
167 *Ibid.* para. 13.
168 See <OSCE Mission to Montenegro supports adoption of new Action Plan for a Gender Responsive Parliament 2022–2024 | OSCE>.

At the same time, gender impact assessment should be a part of *ex ante* RIA prepared at the governmental level before submission to the Parliament. **A conclusion about conducting a separate gender impact assessment should be ideally among the documents envisaged by Article 130 of the RoP of the Parliament necessary for the draft's registration in the Parliament and the absence of one should justify the draft's return to the initiator**.

152. The process of conducting impact assessments, but also public consultation processes in general, should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or under-represented groups and those particularly at risk.[169] Wide-ranging, pro-active outreach measures by government and parliament help to identify and include all interested and relevant counterparts, including organizations promoting gender equality and representing historically marginalized or under-represented groups.

153. Gender- and diversity-responsive budgets that ensure that the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, location, etc.) are addressed in expenditure and revenue policies is also important to mitigate inequalities. It is understood that Guidelines for gender-responsive budgeting and reporting have been developed at the governmental level[170] and that at the parliament's level, the second Action Plan for a more Gender Sensitive Parliament promotes the incorporation of a gender-responsive approach into budget circulars. Interviews with relevant stakeholders will help assessing the impact of such tools and guidelines.

154. Finally, ensuring that gender-sensitive language is used not only in the legislative procedure but also in legislation is an important contribution to gender equality and inclusiveness. In this respect it should be noted that the Drafting Rules (Section II on Language, Style and Method of Legislative drafting) contain a clause on gender-sensitive language. In particular, it is indicated that *"legislation must be written in gender-sensitive language, either by using gender-neutral forms and words in the masculine and feminine genders or by introducing a clause stipulating that all provisions of the regulations apply equally to both men and women*." At the same time, the second option proposed ("*stipulating that all provisions of the regulations apply equally to both men and women*"), which may appear easier for the comprehension by avoiding overburdening the text with the repetition of all words in masculine and feminine genders (with a formulation like "he/she", etc.), seems to misinterpret the idea of gender-sensitive language[171] as such. The latter, as opposed to gender discriminatory language,[172] means

---

169 See e.g., World Bank, Study on Human Rights Impact Assessments (HRIAs) (2013), p. 4. HRIAs help assess the short-, medium- and long-term human rights impacts of proposed policies and draft laws. These types of assessments are concerned with how the proposed policy or regulatory proposal complies with the state's international legal obligations to respect, protect and fulfil the human rights of individuals. The process of conducting HRIAs should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or under-represented groups and those particularly at risk. HRIAs can be both stand-alone assessments or can be incorporated into broader environmental and social impact assessments.

170 See < OSCE Mission to Montenegro organizes training course on gender budgeting for 10 ministries | OSCE>.

171 See UN Guidelines for Gender-Inclusive Language in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context, available at: <UNITED NATIONS Gender-inclusive language>. European Institute for Gender Equality, *Toolkit on Gender-sensitive Communication - A resource for policymakers, legislators, media and anyone else with an interest in making their communication more inclusive* (2019); Council of the European Union, *Inclusive communication in the General Secretariat of the Council of the European Union* (2018).

172 Meaning language that includes words, phrases and/or other linguistic features that foster stereotypes, or demean or ignore women or men or those who do not conform to the binary gender system, jeopardizes inclusivity and sends out wrong messages. See Donald L. Revell, Jessica Vapnek, Gender-Silent Legislative Drafting in a Non-Binary World (2020) 48:2 Capital University Law Review 1-46; Office of the Parliamentary Counsel and the Government Legal Department (UK), Guide to Gender-Neutral Drafting 2019; Government of Canada, Department of Justice, Legistics Gender-neutral Language; Ruby King and Jasper Fawcett, The End of "He or She"? A look at gender-neutral legislative drafting in New Zealand and abroad (2018) NZWLJ; Parliamentary Counsel (Australia), Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling, 2016; Office of the Parliamentary Counsel (UK), Drafting Guidance, 2018.

that the language of the law should explicitly consider its audiences and make specific linguistic choices in each and every case, instead of using general clauses. Using in the law a general clause that all its provisions apply equally to both men and women would lead in practice to the situation when inclusive alternatives will not even be considered by the drafters nor used throughout the text of the draft law. **It is, therefore, recommended to reconsider the above provision of the Drafting Rules by removing the second option.**

11.2. Diversity Considerations

155. To ensure that laws also address the specific needs, perspectives and experiences of minority groups, or historically marginalized or under-represented groups, it is essential for diversity considerations to be mainstreamed throughout the legislative process. Legislative drafters may need to test their assumptions to ensure that they avoid default scenarios, majority representations or conscious or unconscious biases or stereotypes, and should ensure that laws are also drafted to cover everyone equally.

156. The existing lawmaking rules and practises should reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation as well as *ex post* evaluation, inclusiveness of public consultation processes, accessibility of the policy- and lawmaking process and adopted legislation. In this respect and in line with good practice, **human rights impact assessments should generally be part of *ex ante* RIA, and should include an analysis of the potential impact that the draft legislation may have on the human rights of individuals or groups, particularly minority groups, or historically marginalized or under-represented groups, which should also include looking at their potential impact on people with overlapping marginalized identities.**

157. Minority representation in decision-making bodies, and consequently in law-making, may be assured through various arrangements, such as reserved seats (by way of quotas, or other measures), or assured membership in relevant administrative/executive bodies or parliamentary committees, with or without voting rights, or through other mechanisms to ensure that minority interests are considered, or advisory or consultative bodies.[173] The inclusion of persons with disabilities in political life should also be promoted, by including them in key parliamentary and governmental bodies, and more generally, public decision-making processes, including policy- and lawmaking, as well as ensuring accessibility of the parliamentary and government website, documents as well as premises.[174]

158. Apart from specialized subject matter expertise, it is important to include stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups who can comment on drafts likely to impact them so that they may provide their own perspective. Wide-ranging, pro-active outreach measures by government and parliament help to identify and include all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups. When selecting means of consultation, the special situation of marginalized or under-represented groups should be taken into consideration[175] and consultation strategies need to adapt their timing and methods of consultation accordingly. In particular, and as

---

[173] See e.g., OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

[174] See *ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), Section V on Parliaments.

[175] See *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights, para. 19, with reference to the World-wide Web Consortium's guidelines on web content accessibility (1999), now updated here: <Home | Web Accessibility Initiative (WAI) | W3C>.

appropriate, reasonable accommodation needs to be provided to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures – such as communication of information in adjusted formats, easy-to-read language, physical access to events and venues for consultations, etc.[176]

159. Finally, the language used in legislation should not be demeaning or dismissive of forms of person's self-identification, such as with respect to a disability or to a national, ethnic, or indigenous identity or other characteristics. Diversity-sensitive language[177] is the only acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity.

RECOMMENDATION H.

1. To strengthen the institutional arrangements for gender mainstreaming throughout the policy- and lawmaking process, while enhancing the role of the Gender Equality Committee in the legislative process by mandating it to consider all draft laws' compliance with national and international gender equality commitments prior to their consideration in the sitting of the Parliament.

2. To introduce requirement to obligatory conduct gender impact assessment of draft laws (as a part of RIA) before submitting them to the Parliament, as well as elaborating the methodology for this based on sex-disaggregated data and a review of the potentially direct or indirect discriminatory impact of the proposed provisions on different groups.

3. To ensure that lawmaking rules and practises reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation as well as *ex post* evaluation, inclusiveness of public consultation processes, accessibility of the policy- and lawmaking process and of adopted legislation.

[END OF TEXT]

176 OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), pp. 87-88.

177 UN Guidelines for Gender-Inclusive Language in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context, available at: <UNITED NATIONS Gender-inclusive language>. European Institute for Gender Equality, *Toolkit on Gender-sensitive Communication - A resource for policymakers, legislators, media and anyone else with an interest in making their communication more inclusive* (2019); Council of the European Union, *Inclusive communication in the General Secretariat of the Council of the European Union* (2018).