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THE 2016 REPORT:

NEITHER GOOD NOR BAD

COUNTRY ANALYSIS | MONTENEGRO

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**EUROPEAN COMMISSION
REPORTS OF 2015 AND 2016
RECOMMENDATIONS?
COMPARATIVE ANALYSIS:
THE CASE OF MONTENEGRO**

GENERAL REVIEW AND CRITICAL ASSESSMENT

Montenegro started the EU accession negotiations in 2012, with a total number of 28 chapters opened thus far, out of which three are provisionally closed.¹ According to the European Commission's grading system, Montenegro made some progress in the area of rule of law, more specifically in fight against corruption and organised crime. Montenegro is considered to be the leader in the region when it comes to accession negotiations, as it is reiterated both from the European Commission's side and the Montenegrin Government.

Johannes Hahn, commissioner for European Neighbourhood Policy & Enlargement Negotiations continued the rhetoric from previous year on Montenegro's progress in the area of rule of law, emphasising that Montenegro is "undoubtedly a frontrunner" in EU negotiations.² However, he also added that more concrete progress is necessary in the area of rule of law.

Montenegro has shown the lowest average level of progress for all chapters in 2016. This does not go in line with the narrative that Montenegro is advancing in EU negotiations, at least not in all of the areas.

Aleksandar Andrija Pejović, Chief negotiator for the EU accession repeated the words of former Prime Minister, Milo Đukanović, from 2015, stating that the 2016 report is the most positive so far.³ He pointed out the report's findings on the establishment of institutions and development of legislative framework, which clearly show the scope of the progress Montenegro achieved thus far.⁴

Montenegro has opened four new chapters since the report on 2016 was published, which was further praised from both sides, stating that the opening of the chapters 11 and 19 (Agriculture and Rural Development, and Social Policy and Employment) in December 2016 is an indicator of the progress,⁵ as well as chapters 1 and 22 (Freedom of Movement and Regional Policy and Coordination of Structural instruments).⁶ According to the 2015 and 2016 European Commission's communications on enlargement strategies, the progress of the negotiations is going well and as planned.

This analysis is structured as the European Commission report and it seeks to provide a short overview and point out similarities and/or differences of Montenegro's progress achieved in 2015 and 2016. It compares recommendations from both years, and where possible, provides an analysis in the wider context of developments on the ground in each area. The analysis shows that there was general compliance with

1 Free movement of goods, Agriculture and Rural Development, Food Safety, Veterinary and Phytosanitary Policy, Fisheries, Energy, Social Policy and Employment, Regional Policy and Coordination of Structural Instruments, Right of Establishment and Freedom to Provide Services, Competition Policy, Economic and Monetary Policy are all chapters with opening benchmarks, while Judiciary and Fundamental Rights and Justice, Freedom and Security have interim benchmarks.

2 <http://www.euractiv.com/section/elections/news/hahn-all-sides-in-montenegro-should-show-restraint/>

3 "The most positive report so far for Montenegro as evidenced by the ratings of continuous progress in fulfilling political and economic criteria, and in terms of achieving readiness for membership of the 33 negotiating chapters."

4 <http://rtcg.me/english/montenegro/147079/report-on-montenegro-best-so-far.html>

5 <http://antenam.net/index.php/politika/item/20439-crna-gora-otvorila-pregovore-u-poglavljima-11-i-19>

6 <http://www.delme.ec.europa.eu/code/navigate.php?id=3893>

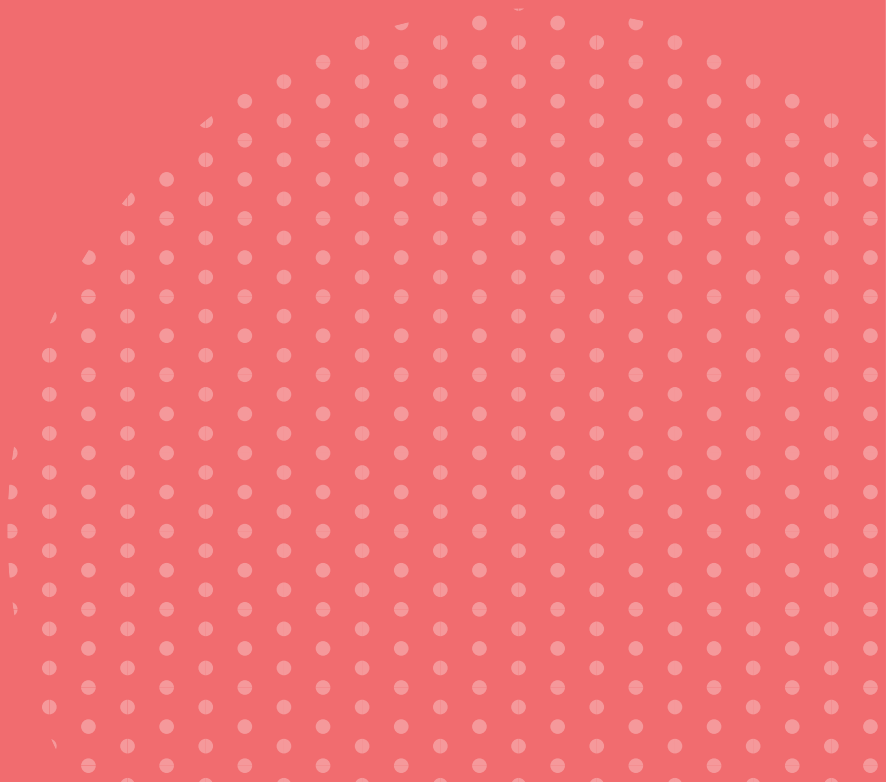
previous reports' recommendations and that the technical criteria of legislation, institution-building, strategies and action plans' adoptions were largely fulfilled. The new methodology introduced in 2015 made room for calculating the levels of progress and preparedness of Montenegro for accession, and according to IA's findings Montenegro has shown the lowest average level of progress for all chapters in 2016 in comparison to 2015.⁷

However, the overall comparison for all the criteria and the acquis shows repetitions in terms of "technical" requirements that have to be achieved, such as establishing track records, competent institutions strengthening, implementation of newly adopted laws, implementation of adopted strategies and action plans, further alignment with the acquis and its implementation, etc. Therefore, European Commission's findings suggest that institution-building process was formally completed, while recommendations largely entail tangible results in their performance.

⁷ Institute Alternative, European Commission Report: Poor Grade for Montenegro, November 2016, available at: <http://institut-alternativa.org/izvjestaj-evropske-komisije-slaba-trojka-za-crnu-goru/?lang=en>



KEY FINDINGS



POLITICAL CRITERIA

The year of 2016 has been marked with high political tensions given that it started with the vote of confidence to the prime minister at the beginning of the year, where a single party's vote was decisive in voting the confidence. Following the vote, the Government of Electoral Trust was established prior to October parliamentary elections. However, the outcome of the elections, and the alleged coup d'état happening on the day of elections, has sparked further reaction⁸ among the oppositional parties, which resulted in the boycott of the Parliament in the already shaken political climate. Despite the disruptions caused by parliamentary elections, the comparison of the 2015 and 2016 country reports' recommendations shows very little difference. The emphasis is on further strengthening of institutional capacities and increase of proactivity of competent institutions. In addition to that, the "audio recording affair",⁹ which now represents a somewhat synonym for the lack of judicial follow-up of misuse of power that should be of primary concern, is repeated throughout all the reports. The reports do not address the issue of electoral legislation, the comprehensive reform of which is deemed necessary according to OSCE report on parliamentary elections of 2016.¹⁰ However, the European officials have called for the swift implementation of OSCE recommendations upon their release.

The need for enhancement of control mechanisms of the Parliament is also constant, particularly taking into account the boycott of the Parliament by the opposition which further weakened its oversight function. Even though the 2015 report called for incentives to create greater trust in the Parliament, the 2016 report reiterated the same issue by emphasising the need to engage wider public, besides MPs and parliamentary bodies, to influence its work by filing complaints in accordance with the Code of Ethics. Apart from that, when it comes to the alleged planned attack on the Election Day, the 2016 report addressed this issue in terms of calling for a "swift investigation". It also called for the resolution of the situation, caused by the opposition's boycott of the Parliament. However, the 2016 report did not follow-up on the issue of boycott in terms of providing recommendations, which is counterintuitive to what the Enlargement strategy envisioned in this regard.¹¹

During the continuing boycott of the Parliament by the opposition from parliamentary elections in 2016, an intense legislative activity took place, which included the adoption of the infamous amended laws on freedom of information and on public procurement. Taken as an illustrative and most prominent example, these two laws were amended in order to further restrict the free access to information and transparency

8 The oppositional parties have agreed, after a long discussion that followed the alleged coup d'état, that they do not accept the results, thus demanding the repetition of elections, given that the elections occurred amidst a disturbance that could have affected the voters' decisions.

9 "The audio-recording affair" was a case of leaked tapes from the sessions of the ruling party (DPS), where there was a discussion on misuse of public funds in order to offer jobs in public companies to buy votes, just prior to 2012 parliamentary elections.

10 Montenegro, Parliamentary Elections, 16 October 2016: Final Report, OSCE, 25 January 2017, available at: <http://www.osce.org/odhr/elections/montenegro/295511>

11 In its Communication, the European Commission integrally addresses the issue of incapacity of the parliaments in the Western Balkans to carry out its function in its full form.

of the public procurement procedure, instead of evolving in the opposite direction. Even though the opposition remains persistent in justifying the boycott by demand for the new elections, the effects of such decision have already proven to be insignificant in the domain of the legislative activity and in the overall political stability.

The troublesome public expenditure at the local level is highlighted in both 2015 and 2016 reports, especially the lack of transparency, efficiency and accountability of local self-governments. The 2016 report also strongly emphasised the role of civil society in policymaking and the necessity for the government to be more transparent and inclusive. The report has not addressed the fact that the role of civil society has been further side-lined in the negotiation process as the IA has described in its 2015 publication.¹² However, the EU officials continue to point out the essential role of CSOs and the necessity to acknowledge their efforts in their public addresses.

In the area of public administration reform, the stated progress regards the alignment of legislation to the EU standards, but there is a continuous need for establishing a track record in ensuring merit-based recruitment.¹³ The PAR Strategy and public financial management reform programme were adopted, which was one of the 2015 recommendations, and the 2016 report calls for their “full and adequate implementation”. The report failed to address the issue of postponement of the implementation of several laws, more specifically of the Law on Administrative Procedure, as well as delays in the adoption of the PAR Strategy and of its start-date.

The judiciary system was graded moderately prepared due to the intense legislative activity and establishment of new institutions, that are expected to bring about concrete results. However, there are many similarities in the recommendations given for both 2015 and 2016, as both call for the full implementation of the new recruitment, transparency in professional appraisal and promotion systems, and of criminal liability, disciplinary and ethical responsibility of judges. The novelty of the 2016 report is that it recognises the necessity to increase the administrative capacity of the Judicial Training Centre and the implementation of the new IT strategy replacing the previous judicial information system. The previous system has shown weakness in the random allocation of cases and overall communication within the entire judicial system. The new IT strategy is envisaged to overcome the security gaps of the previous system that and improve its operability.

This is a particular challenge for Montenegro, as the appointment and promotion of judges remains discretionary,¹⁴ despite the fact that the reform of the judiciary is especially directed towards strengthening independence and professionalism.

The beginning of 2016 was marked with the establishment of the Agency for Prevention of Corruption that was supposed to be fully operational as it was recommended

12 'Negotiations between Montenegro and the EU: Data Access for the Privileged Only', Jovana Marović and Stevo Muk, Policy brief, (Podgorica, Institute Alternative, October 2015), available at: <http://media.institut-alternativa.org/2015/10/ia-negotiations-between-montenegro-and-the-eu.pdf>

13 Recommended in Montenegro Reports for 2015 and 2016, as well as Progress Report for 2014

14 'Monitoring and Evaluation of the Rule of Law in Montenegro', Policy brief (Podgorica, Institute Alternative, November 2016), p. 16.

in the 2015 report. However, the work of the Agency was followed by many controversies regarding the transparency of its work and its proactivity. The 2016 report thus recommended that the politicisation of the Agency has to be abolished, human resources management strengthened, transparency and proactivity increased. The same recommendations are made for the Special State Prosecution, but the 2016 report failed to address the issue of the oppression this authority has been under while dealing with high-level corruption cases. As for the issue of terrorism, the situation seems to be stable as there was only one person arrested on the account of being recruited by foreign armed forces, but a track record still needs to be established.¹⁵

The fight against organised crime remains one of the most problematic areas. The report states that there is not enough progress when it comes to burning issues. Even though the statistics show that the number of organised crime groups (OCG) decreased from 32 to 20 from 2011, there is an evident lack in efficiency of the police and prosecution to put to stop formation of new groups.¹⁶ This is particularly evident, given that there were series of gunshots and explosions throughout Montenegrin cities that have remained unresolved. In this context, the recommendations of both reports (2015 and 2016) include continuous necessity to professionalise and train the police as well as to improve the track record in fight against organized crime. The novelty represents the emphasis that is put on the cases of human trafficking and money laundering, more specifically on establishing a track record and resolving specific cases which has been noted as troublesome by the IA as well.¹⁷

When it comes to human rights and freedom of expression, the competent institutions (Ombudsman, and the Ministry of Human Rights and Minorities) are lacking human resources and capacities, even though the necessary legislation was adopted and is being implemented. The reports reiterate the need for strengthening of institutions as well as of their knowledge and international practices on specific issues.

The unresolved cases of violence against media are still burning issues, and the European Commission continues to call for their immediate resolution, as well as for the alignment with EU and international standards, in terms of amendments of the Criminal Code to remove articles on insult and damage to reputation. On the ground, this is a particularly worrisome issue given that the working group of the Ministry of Justice for amending the Criminal Code is working towards further limiting the freedom of expression by not providing greater protection of the media representatives and adding criminalisation of “mockery of courts or state prosecution”.¹⁸

15 Ibid. p. 24

16 Serious and Organised Crime Threat Assessment of Montenegro, 2013.

17 Ibid. p. 23

18 Human Rights Action, 'On the draft law on amendments to the criminal code: no stronger protection for journalists & free speech regarding judiciary at risk', January 2017, available at: <http://www.hraction.org/?p=12149>
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ECONOMIC CRITERIA

Montenegro is deemed to be stagnant when it comes to the progress of establishing a functioning market economy, which according to the Enlargement Strategy is a precondition for all accession candidates in order to deal with strict EU competition policy. Due to the parliamentary elections frenzy, very little was done in terms of fulfilling Economic Reform Programme introduced in 2015, but the recommendations still remain consistent. Montenegro still needs to reduce its continuously rising public debt, as well as high unemployment rate, which is emphasised in the Enlargement Strategy as well.¹⁹ It also needs to “stabilise” its fiscal policy. The educational policy also still has to be aligned with labour market needs, and provision and range of fiscal and non-financial support services to SMEs should be established.

In the areas of free movement of goods, freedom of movement of workers and capital, rights of establishment and freedom to provide service, the recommendations are consistent in requiring more alignment with the EU legislation and adoption of respective strategies and action plans. As for the public procurement, the newly adopted strategy needs to be fully implemented and legislation has to be harmonised with the EU directive especially in the context of concessions. Better data management in track record, as well as better monitoring of contract awards are also required. However, in its reports, the European Commission does not address neither the substance of the strategies and actions plans nor their preparations and problematic adoption procedures.²⁰ In taxation, it is still necessary to adopt and implement an action plan to address the issues of Tax Administration Diagnostic Assessment Tool analysis that aimed to analyse the efficiency of the tax system and the services it provides, which has shown weak reliability of the taxpayers' base, risk assessment and the efficiency of the revenue collection system.

When it comes to financial control, the 2016 report calls again for defining managerial accountability and establishing a solid track record. Certain recommendations were modified, in terms of strengthening coordination capacity of National Anti-Fraud coordination service, adopting additional legislation besides the Law on Budget and Fiscal Responsibility, and strengthening of the internal control processes pilot mapping at both central and local levels. The chapter on financial and budgetary provisions contain several repetitive recommendations regarding coordination structures, administrative capacities, implementation of the EU legislation, but also involves some new recommendations regarding combat against VAT fraud, establishing an action plan for the implementation of EU's own resource system.

¹⁹ Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committees of the Region, 2016 Communication on EU Enlargement Policy, p.11

²⁰ 'Implementation of the Measures from the Strategy for Development of Public Procurement System is not improving this Area', Institute Alternative, September 2016, available at: <http://institut-alternativa.org/realizacija-mjera-iz-strategije-razvoja-sistema-javnih-nabavki-ne-vodi-unaprijedenju-ove-oblasti/?lang=en>

ACQUIS

The most pressing issues in the acquis part of the EC Reports, that also include a number of recommendations for 2016 that are new in comparison to the 2015, are related to judiciary and fundamental rights, justice, freedom and security and social policy and employment.

When it comes to judiciary and fundamental rights, the recommendations from the 2016 Report that are novel in comparison to the 2015 report include the improvement of the backlog of the constitutional court, strengthening of the Agency for Prevention of Corruption and its proactivity in uncovering irregularities, as well as the implementation of the Freedom of Information Act and the necessity of higher standards when it comes to investor citizenship in proving the connection between the country and the applicant. These recommendations do reflect the state of affairs to a certain extent. However, some recommendations are repetitive, such as the necessary public awareness raising on complaint mechanisms, and alternative dispute resolutions, as well as the introduction of the possibility of dismissal of complaints. Nevertheless, the repetition of these recommendations can be related to the establishment of new institutions for which awareness raising and promotion of proactivity are adequate, while at the same time the repetitions of the recommendations to the existing institutions can be regarded as an indicator for lack of follow-up on the previously detected issues. Inadequate treatment of the issues of minority rights is also reiterated, as well as of the rights of internally displaced persons. The lack of effective control and sanction of child labour is also highlighted.

The chapter on justice, freedom and security contains similar recommendations: establishment of a track record of investigations, prosecutions, seizures of assets, final convictions in organised crime (particularly involving money laundering and human trafficking).²¹ The capacity in dealing with minorities has still to be improved, as well as cooperation with neighbouring countries regarding border management.

The novelty is related to increasing awareness of human trafficking related crimes, and that track record has to be established in seizure of assets and confiscation of the proceedings in drug-related crimes and financial investigations. However, the report does not address the institutional insufficiency in these terms, such as the work of the Property Administration that is evidently lacking.²²

When it comes to social policy and employment, the repetition is evident in terms of increasing possibilities for youth, women and hard-to-employ people to be invited and encouraged to join the labour market. However, a whole new set of recommendations include the adoption of legislative measures that would be more inviting for women's participation in the labour market, raising awareness and social dialogue on these issues.

²¹ These were also singled out by IA in: 'Monitoring and Evaluation of the Rule of Law in Montenegro', Policy brief (Podgorica, Institute Alternative, November 2016), p. 22.

²² Ibid.

"The gender imbalance worsened as regulatory changes in the social care system, like the life-long benefits for mothers of at least three children, provided disincentives for women participation."

2016 EC Report on Montenegro

The 2016 report also emphasises that there should be more gender statistical analysis done, given that the women labour force declined for 2,6%, while men increased 1,2%.²³ This issue is rather worrisome, given that during 2015 the amendments to the Law on Social and Child Protection brought about lifelong subsidies to women with three or more children, which is contradictory to adopting measures that would increase the number of women participating in the labour market.

In terms of institutional capacity building, the European Commission calls for capacity building of Social Councils, as well as for the greater allocation of funds for implementation of local inclusion plans. More needs to be done when it comes to Roma inclusion within the Roma Inclusion Strategy 2016-2020 adopted in March 2016.

When it comes to the chapters on education and culture, environment, consumer and health protection and external relations, the recommendations remain the same for both years, all calling for greater alignment with the EU legislation, follow-up on adopted action plans and strategies, and raising awareness among greater public. For the consumer and health protection, the recommendations are more precise in terms of addressing vulnerable groups and their access to health protection. As for the customs union, the novelty regards introducing capacity building in terms of appropriate staffing in IT units.

As for the rest of the chapters, these mostly require further alignment to the EU legislation and improvement of track records. Full alignment with the *acquis* is also necessary in terms of transport policy, financial services, fisheries, economic and monetary policy, with a focus on improving administrative capacity, and strategic frameworks. The chapter on statistics again addresses the strengthening of human and financial resources of the Statistical Office of Montenegro, Monstat, continuing data transmission from Eurostat and alignment with ESA, and further strengthening of coordination of procedures of official statistics.

²³ 2016 EC Report on Montenegro, p. 27.

CONCLUSION

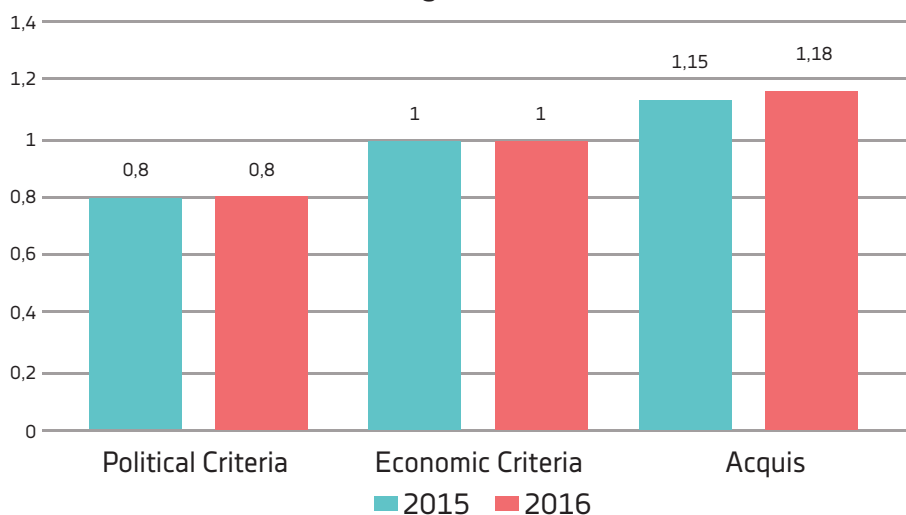
The overview of the recommendations provided by the European Commission in its 2015 and 2016 Reports shows that Montenegro is at the stage where most of the institution building in the most of the areas has been achieved. In some cases these institutions require further strengthening of administrative and human resources capacities, while in others a track record represents a prerequisite for further progress.

Nevertheless, notwithstanding the years of 2015 and 2016, some burning issues were persistent even prior to 2015 and to this day they saw no resolution. Such issues include the persistent problem of politicisation of the public administration, unresolved issues of attacks on journalists and media intimidation, persistent lack of track record in final conviction in the areas of organised crime, high-level corruption, merit-based recruitment and promotion of public administration employees. In this context, the establishment of efficient and proactive institutions whose work should result in final convictions in organised crime, money laundering, attacks against journalists, corruption cases, etc. has not yet been achieved.

The overall narrative of Montenegro being the leader in the region in the European integration process from year to year should be put in the context of the starting points within the negotiation of all the countries involved, even though such statements serve the purpose of political stimulation for other countries. On the other hand, an emphasis should be put on the abovementioned persistent issues by the European Commission. A regular follow-up of the fulfilment of the recommendations from the previous year, in order to keep track of the most troublesome areas, should be provided. Based on such a follow-up system, the European Commission would have an opportunity to improve the reporting system and demand more concrete results in these areas.

Annex 1.

Progress



Preparedness

