

Center for Monitoring and Research CeMI

# MAPPING STUDY: IMPLEMENTATION OF OPEN GOVERNMENT PARTNERSHIP IN MONTENEGRO



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## EXECUTIVE SUMMARY

The Government of Montenegro has joined to the initiative of Open Government Partnership in September 2011. In line with this, Prime Minister Lukšić has stated that „Montenegro supports and it will further support and promote, culture of openness of governmental bodies. It will proactively publish information and encourage citizens to use their right to access to the information and, with its actions will enhance trust of citizens in system institutions”.

Council for Regulatory Reform and improvement of the business environment has formed Operational Team, which consists of representatives of the Government of Montenegro, as well as representatives of non-governmental organizations CDT, MANS, Institute of Alternative and CRNVO, that have drafted and prepared an Action Plan, and is responsible for the evaluation and monitoring and also for quarterly reporting on the implementation of the measures from the AP.

First Action Plan was adopted in March 2012 and it contained quite broad measures, without deadlines defined, or success indicators. However, after one year of its implementation, it was clear that effects of this Action Plan aren't sufficient, especially in regards to its measures which were not included in the Program of Work of the Government, or in other action plans brought in this period.

Action Plan has encompassed 48 measures, out of which 26 were intended for continuous implementation and 22 are single-action measures. In the first reporting period it was stated that 15 single action measures were implemented and 7 is not implemented. Measures for continuous implementation are on different levels of implementation.

Operational Team has created inputs for the draft for the second Action Plan, but working meeting is still not being scheduled by the Council for regulatory reform, so there is currently a time gap of 3 months in which first Action Plan expired and the draft of the second Action Plan is not being created and published.

Main shortcomings of the first Action Plan are:

- » Methodology : This Action Plan does not contain indicators of success, against which could be measured success of the implementation of measures. Also, deadlines for implementation of the measures defined by the Action Plan are not set. Action Plan was created for a period of one year, after which it should be implemented. Thus, a question arises in regards to continuous measures: in which timeframe they should be implemented and what it takes for a continuous measure to be assessed as implemented.
- » Inexistence of the effective monitoring mechanism: Institutions in charge of implementation of the Action Plan were not obliged to report on their results.

Each member of Operational Team was reporting from their institutions, while civil society organizations were monitoring implementation of measures in institutions which were not represented in the Operational Team.

- » Insufficient awareness of the Government on significance of this Action Plan and insufficient political will for its implementation: Implementation of this Action Plan is in responsibility of Council for Regulatory Reform. This institution lacks authority, which would provide efficient implementation of the Action Plan and regular reporting by institutions, which are in charge of implementation.
- » Lack of coordination with other strategic documents in the area of transparency and accountability of the Government: Although it was proposed to introduce measures from the Action Plan of OGP in Program of the work of the Government, Action Plan for the Fight against Corruption and Organized Crime and Action Plan for Chapter 23, important measures such as adoption of the Law on whistleblowers, have remained outside of these strategic documents.

Four civil society organizations were included in creation of the Action Plan for OGP, and in course of the work of Operational Team, they were provided with information relevant for their work. Dynamic of the work of Operational Team was satisfying and almost all of the suggestions of NGOs were accepted in the process of Action Plan drafting. However, in the process of innovation of the Action Plan, recommendation for introduction of effective reporting, monitoring and evaluation system was categorically rejected. Organizations which are participating in the work of the Operational Team are not satisfied with results of the first year of implementation of the Action Plan, especially in the area of protection of whistleblowers protection and conflict of interests.<sup>1</sup>

This implicates that Government of Montenegro still complies to international commitments only formally, while essential efforts for reform and activities on implementation of concrete measures are lacking.

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<sup>1</sup> Information on participation of NGOs was provided through questionnaire, created by CeMI, Which was filled by each representative of NGOs in the Operational Team

## APPROACH TO OPEN GOVERNMENT

### 2.1 Actions and Interventions

Montenegro has joined to Open Government Partnership in September 2011 and, in cooperation with civil society and representatives of the US Embassy in Montenegro, it has drafted first Action Plan to meet commitments undertaken by the Declaration of the Open Governments Partnership. This initiative was evaluated by the Government as a strong incentive in Implementation of good governance concept in Montenegro.

#### 2.1.1 Important achievements for the Open Government

**Transparency** – Since September 2011, important changes were made in Montenegrin legislative and institutional framework in order to increase transparency of all processes: laws on financing of political parties and conflict on interests came into force, new Law on Free Access to the Information was adopted and came into force, majority of Ministries have employed moderators for their web portals and their web sites are updated regularly. However, there are serious shortcomings that are limiting positive effects of these changes, which will be addressed in detail in remainder of the document.

Information on institutions and their systematization are available on the website of each state institution, as well as adopted decisions, plans, policies, rules and regulations – which is ensured through bylaws. On the other hand, information on financing of these institutions, salaries of staff, extra budgetary revenues and expenditures and data on public procedures are selectively published and often completely inaccessible.

Published information often is not user friendly, in regards to format, search criteria or the language in which it is presented. This is particularly valid for financial and audit reports.

**Participation of public** - Participation of public and civil society in policy making is enhanced, in regards to participation in working groups, public discussions and consultations, but it is still limited when it comes to acceptance of evidence based policy suggestions. In the previous Constitution of Montenegro, citizens had the opportunity to initiate legislative procedure with 6000 signatures. This institute is renewed through service of e-petitions, which was initiated in November 2012.

**Accountability of the Government** – Law on Financing of Political Parties, Law on Prevention of Conflict of Interests and Law on Free Access to the Information should have provided mechanisms for more effective monitoring of the governments' actions

and increase its accountability. However, in these areas are still missing effective and independent monitoring and sanctioning mechanisms. System of appeals and complaints

Openness of the government should be improved through amendment of the legislative framework in the manner which would provide:

- » Clear rules and procedures regarding public finances
- » Independent and efficient control of financing of political parties, conflict of interests and public procurement
- » Clear criteria of access to the information
- » Possibility of complaint and getting a timely response
- » Full protection of whistleblowers

Also in the implementation of the laws further steps need to be taken to ensure:

- » Unified implementation of all rules and regulations at national and local level
- » Implementation of ex-officio possibilities of opening cases of corruption, which remains unused by many institutions
- » Improvement of the format of the posted data and increase of search criteria

## 2.2 Legal and administrative institutions created

**Secretariat for Development Projects** is established in 2012, as a state body that deals with: monitoring of status and dynamics of development projects, implementation of administrative activities aimed at acceleration of procedures and providing conditions for more efficient work on publishing of new and implementation of signed investment programs; definition of modalities of valorization of development resources; preparation and evaluation of investment and development programs; registry keeping of planned investments in accordance with undertaken commitments, as well as other duties in its jurisdiction. Even though this Secretariat was established in November 2012, up to this date it had no activities. On its website [www.srp.gov.me](http://www.srp.gov.me), there are no information on their organization, such as organizational chart, regulations or reports.

**The Regulatory Impact Assessment** is formally introduced in Montenegro regulatory system Rules of Montenegro from 01.01.2012. It provides a detailed analysis of the effects of regulations on citizens, economy, and government administration. It



is planned that RIA on each proposed regulation contains not only an assessment of costs, but also the assessment of impacts on the environment, social groups, gender equality, and society in general. The Government of Montenegro adopted the Action Plan for Regulatory Reform and improvement of business environment. By establishment of the Department of Business Environment in the Ministry of Finance the process of introducing RIA has begun. Since the formal introduction of RIA, until the end of 2012, Ministry of finance provided opinion for 119 bylaws and 69 laws with regards to influence of the business environment and budget of Montenegro.<sup>2</sup> However, the only law that was thoroughly assessed through RIA, before its adoption, was Law on Traffic.

**The guillotine of regulations** –presents an analysis of regulation in Montenegro in terms of its impact on the economy and citizens, and after which certain regulations will be abolished, and some modified. Action Plan for implementation of guillotine of regulations was adopted in May of 2012. So far, it was analyzed about 650 regulations and 250 administrative procedures in the following areas: internal trade and the protection of competition, consumer protection, intellectual property, standardization, accreditation, public utilities, budget and treasury, general security and defense, industry and entrepreneurship, human and minority rights, meteorology and precious materials, technical regulations, hunting, tobacco and tobacco products, culture and media, social and child protection, water, wine and olive oil, education, vocational rehabilitation and employment of persons with disabilities, strategic impact assessment, geology and hydrocarbons, concessions, mining, tourism and hospitality, property, interior space and the construction of facilities, pension and disability insurance, labor regulations and safety at work, employment and work of foreigners, veteran and disability insurance, international cooperation.

**E-petitions** - The Government of Montenegro has introduced the system of e-petitions. It grants that any legislative initiative will be considered in the Parliament if it collects 6000 signatures of citizens. Until the end of 2012, 14 electronic petitions were submitted, out of which 1 was adopted – petition for urgent building and/or reparation of kindergartens in Podgorica, Bar and other municipalities where exists the problem of limited capacities. In 2013, e-petition for rejecting of the Law on Social and Children Protection was adopted with 6796 signatures, collected in less than two days. Few issues have occurred in regards to this new institute: namely, number of 6000 signatures is quite big for the population of Montenegro – it represents almost 1% of its entire population. It is difficult to raise 6000 signatures when there is initiative to change issue that occurred on the local level- where one of the most drastic examples is setting of the waste land in inhabited location in North of Montenegro. Thus, there was several initiatives of civil society to introduce e-petitions for the local level as well, but this initiative so far remained without response of relevant institutions.<sup>3</sup>

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2 Free Access to the Information demand to the Ministry of Finance, 02.02.2013

3 Free Access to the Information demand to the Ministry for Information Society and technologies, sent on 03.03.2013 No. 150/13

**Ethic Board** - By adoption of the Code of Ethics of Public Servants and Employees (Official Gazette of Montenegro No. 20/12), preconditions were created to establish Ethic Board, as an independent body, where citizens and public servants can file complain in regards to violation of the standards and rules of the Code of Ethics. Ethic Board has a President and four members. All the members are employees in the area of justice, state administration, Parliament of Montenegro and syndical organization. Code of Ethics is being enforced since the January of 2013. Periodical reports on implementation of the Code of Ethics are available only for bodies which are particularly sensitive for violation of Code of Ethics. However, only Directorate of Police and Prosecutors Council have had processed cases of violation of Ethic Code. Directorate of Customs and Tax Administration have only conducted activities which are related to adoption of the internal Ethic Code, Integrity Plan and on training of their employees in accordance with these documents. It is very important that all other institutions submit reports on processing of cases of violation of Ethic Code, and to insist on its effective implementation.

### 2.3 Incorporation of multi-ethnic consideration into action plans

There were no references to multi-ethnic considerations into any Action Plan. However, Action Plan has encompassed a set of measures for more effective implementation of the Law on anti-discrimination, especially in regards to the LGBT population and persons with disabilities in the country.

Through this Action Plan is foreseen that Directorate of Police conducts measures related to increase of sensitivity of their employees to the LGBT issues, through a set of trainings. So far, no activity was taken in this regard. It is foreseen that representatives of police pass trainings in order to improve their conduct towards the persons with disabilities. Since 2011, there were no activities in this regard. Also, it was planned to appoint a contact persons within the Directorate for Police and define regulations according to which will be regulated conduct of traffic policemen in cases when drivers of vehicles are persons with disabilities. This measure also remained unimplemented.<sup>4</sup>

Taking in consideration that all single action measures in this area remained unimplemented and continuous measures haven't marked any progress in regard to 2011, we can conclude that Action Plan for OGP hasn't brought any effects in regards to implementation of anti-discriminatory policies.

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4 Free Access to the Information Demand, sent to the Directorate of Police 17.02.2013 No. 98/13

## 2.4 Stakeholder analysis

In the current Action plan, following institutions were in charge of implementation: Ministry of Finance 15 measures, State Audit Institution 2 measures, Directorate for Public Procurement 3 measures, Directorate for Anti-Corruption Initiative 2 measures, Directorate of Police 6 measures, Tax Administration – 2 measure, Ministry of Interior Affairs 11 measures, Department for the Support to National Council for Sustainable Development 4 measures, Governmental Bureau for Communication with citizens 2, Ministry of Culture 1 measure, Commission for Prevention of Conflict Interests 1 measure, Directorate for Human Resources Management – 4 measures, Customs Administration – 2 measures, Directorate for Inspection Control – 2 measure, NGO – 2 measures, Council for Privatization – 2 measures, Ministry of Sustainable Development and Tourism -1 measure, Ministry of Information Society and Technology – 2 measures, Secretariat for Developmental Projects – 1 measure. Majority of these measures are in jurisdiction of 2 or more state institution

Stakeholders	Importance of OGP to stakeholder	Influence of stakeholder	Positive impacts	Concerns
Ministry of Finance	Crucial	High	More transparent procedures of budgeting –planned, not implemented -E registry of licences	Lack of transparency in fiscal policy and budgeting Lack of legal framework for public private partnerships
State Audit Institution	Moderate	High	Audit of state aid	Lack of cooperation with prosecutor
Directorate for Public Procurement	Moderate	High	None	Lack of independence
Directorate for Anti-Corruption Initiative	High	Low	None	Lack of authority
Directorate of Police	Moderate	High	Education on protection of LGBT and people with disabilities	Non-existing measures for general provision of stakeholder communities
Tax Administration	Moderate	High	Publishing of white and black list of tax payers	Insufficient possibilities to collect tax revenues from legal entities which seized to exist

Stakeholders	Importance of OGP to stakeholder	Influence of stakeholder	Positive impacts	Concerns
Ministry of Interior Affairs	High	High	Creation of Ethic Board Memoranda on understanding of necessity for protection of LGBT and PWD	Lack of concrete effects of established institutional and legislative framework
Secretariat for Developmental Projects	High	Low	None	Inexisting structure
Bureau for Communication with citizens	High	Low	Promotional activities	No concrete results
Directorate for Human Resources Management	High	Low	Educational activities, proposal of criteria for employment of civil servants	Lack of authority to influence selection of civil servants based on objective criteria
Commission for Prevention of Conflict Interests	High	High	Improved legal framework, verification of data from property cards of public functionaries	Inadequate sanctions, lack of control of illegal enrichment
Customs Administration	Low	low	Implementation of Ethic Codes	Lack of procedures against higher customs officials
Ministry of Information Society and Technology	High	High	E-government portal E petitions project	Inadequate managing of Voters' lists
Ministry of Sustainable Development and Tourism	High	Low	None	Lack of strategic framework for socially responsible enterprising, lack of transparency of big developmental projects
Council for Privatization –	High	Low	None	Lack of transparency in privatization procedures and insufficient legal framework for its regulation
Directorate for Inspection Control	High	High	First phase of unification of inspection controls Report on illegal construction	None

## THE GRAND CHALLENGES OF THE OPEN GOVERNMENT PARTNERSHIP

### 3.1 Improvement of public services

Transparency in the area of public services is very important, because it influences their quality and availability for citizens. In the recent years, Montenegro has undertaken few steps to improve transparency in this area.

#### 3.1.1. Merit based public services

- a) Rules of establishment of institutions and improvement of the business environment:
  - » The one-window principle for registration of companies is established- which provided companies the opportunity to register company, apply for tax registration, obtain VAT, excise and customs code;
  - » The Bankruptcy Law is adopted, which defines basic procedures of bankruptcy and affirms principle of urgency and efficiency of bankruptcy procedure;
  - » The Law on Execution and Security Provision is adopted – in order to increase efficiency of the current system of execution;
  - » Procedures for issuing building licenses are simplified through modification of sets of laws. In addition – in the Ministry of Space Planning and in local self-governments a “One stop Government” system is established for minimal technical preconditions and issuing of the building permits;
  - » Efficiency of cadastral authorities has increased.<sup>5</sup>

According to the initial Action Plan for Implementation of the OGP in Montenegro, in 2012-2013 it was planned to: establish the system of electronic registration of companies; complete I phase of reform of inspection service – where all inspection controls would be integrated into an independent body; Implementation of new legal solutions for process of issuing of building permit; Establishing of special governmental body with an aim to support investment and development programs.

Electronic registration of companies is functioning since May 15<sup>th</sup>, 2012. Directorate for Inspection Control, which encompasses 26 different inspections is established and Secretariat for Development Programs was established in December 2012

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<sup>5</sup> Government of Montenegro Action Plan for Implementation of the Open Government Partnership, March 2012

However, in practice, there is a number of issues for concern:

- » Central Registry of Companies, which is electronically accessible to all citizens, is not being regularly updated. Key information on some companies is missing or wrong, such as names of persons who are in the managing board, is company still active, etc. Additionally, ownership of shareholder companies is not entirely transparent: on the web site of Central Depository Agency it is possible to see only 10 major shareholders of each company, while minor owners and transactions remain non transparent. This represents a problem in big shareholder companies, where small percentages of ownership have great financial value.
- » Reform of inspection services, although foreseen by the Strategy for Reform of Public Administration (AURUM 2010-2016) and Amendments and Supplements to the Law on Inspection Control, hasn't still given any results. In Montenegro in 2011 there were 39 inspections in 13 ministries, which are employing 444 inspectors which are controlling implementation of 268 laws and 32 bylaws.<sup>6</sup> In 2012, 27 inspections was integrated into Directorate for Inspection Control. However, this hasn't resolved major problems of inspection control in Montenegro, which were listed in AURUM and Proposal for Reform of Inspections: behavior and professionalism of representatives of inspection controls is often unacceptable, susceptibility to bribery and extortion of bribery, deviations from rules and regulations of procedure, unequal treatment of subjects of inspection, etc.<sup>7</sup>
- » There are no official reports or statistic on implementation of new regulation in the area of space planning and building issues. Monitoring in this highly sensitive area, remains inefficient and it mainly relies on few NGO, operating in this area.

b) Creation and planning of policies

In the previous period Government has introduced several mechanisms for participation of citizens, such as: Decision on publishing materials from Government sessions – “As soon as possible to citizens”; Electronic administration portal – eAdministration Portal – “All services at one place”; Social networking presence of the government – “Government is where the citizens are”- on Twitter; Public Consultations– the Government of Montenegro passed the Decree on the Manner and Procedure of Implementation of Public Consultations in Preparation of Laws. Also, the Government has established a Bureau for Communication with Citizens.

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6 Government of Montenegro- Proposal for Establishing Directorate for Inspection 14./4/2011, page 2

7 Ibid, page 5

Four out of sixteen ministries haven't nominated moderator for the eAdministration Portal: Ministry of Defense, Ministry of Human and Minority Rights, Ministry of Traffic and Marine and Ministry of Foreign Affairs and European integrations.<sup>8</sup>

As mentioned above, institute of electronic petitions was promoted by the Ministry of Information Society and Technologies. Through this institute citizens can vote for legislative proposals or initiatives. Every proposal which reaches 6 000 of signatures will be placed on agenda of the Parliament. So far, only two proposals were adopted. Main flaws of this project are:

- » High number of signatures requested for adoption of the initiative, unsuitable for interventions at the local level
- » ePortal is available only on Montenegrin. This service should be available on Albanian and Roma languages as well.

Regarding public discussions in 2012, according to monitoring of Regulation on Procedure and Modalities of Conducting of Public Discussion, implemented by the CRNVO, in 2012 only 3 ministries out of 16 (Ministry of Interior Affairs, Ministry of Traffic and Marine and Ministry for Human and Minority Rights) have published a list of laws which will be placed onto a public discussion. Also, 6 ministries have published 12 announcements of public consultations, only 3 ministries have published 4 reports on consultations.<sup>9</sup> 8 out of 16 ministries have announced 16 public discussions, and only 3 reports on public discussion were adopted. However, there are numerous public discussions that are not being announced on the web sites of ministries, or they are being published only in the short time period and removed swiftly. This practice is noticed especially when laws and issues which are put to discussion are quite sensitive as, for example, issue of criminalization on unjust enrichment. The process of public hearings before adopting the law in our country is not taken hold enough. Obligation of ministries is that on its website publish a list of laws that will be discussed in public debate, but the ministries often don't meet that obligation.<sup>10</sup> In addition there is a problem with lack of possibility of citizens to influence policies within these public discussions. There is no track record on how many suggestions was heard during public discussions, nor how many of such suggestions was accepted.

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8 DURBIN project of CDT – Monitoring of public administration electronic efficiency, available at: [www.cdt.org.me](http://www.cdt.org.me)

9 „Report on Monitoring of the Implementation of the Regulation on Public Discussions“ CRNVO, 2012. Available at: [www.crnvo.me](http://www.crnvo.me)

10 On the site of the Government there is only public hearing on the Draft Law on Administrative Procedure, on the site of the Ministry of Finance of the public discussion regarding the draft National Development Plan 2013 - 2016, the draft law on the budget and fiscal responsibility (which lasted from the 12th of October 2012. to 31st of January 2013. year), the bill payment system and the draft law on savings banks. On the website of the Ministry of Justice's public discussion regarding the Draft Law on Administrative Procedure and on the website of the Ministry for Information Society and Telecommunications has set a public hearing on the text about the Law on Electronic Communications. At the sites of other ministries is no information about the public hearings.



c) Control over provision of services

Quality control is not a subject of the first Action Plan for the OGP standards implementation. However, this issue is particularly important for areas of healthcare and education, where quality check mechanisms are quite feeble, and it should be addressed in following Action Plan.

d) Financing control and audit

Ministry of finances, in order to increase fiscal transparency, publishes Macroeconomic monthly overview, which follows changes in macroeconomic and fiscal indicators on monthly level. Area of financing of state institutions is scarcely covered by the Action Plan for the Open Government. Data on financing of institutions can be collected from various sources, but they are often incomplete.

Data on budgetary financing are available through Law on State Budget adopted each year, while data on spending of these funds are available in annual reports of those institutions. Assets from private sources and business activities are invisible in the reports of institutions, which is alarming especially in the area of higher education, where revenues from private sources and business activities sometimes reach sums of several millions.<sup>11</sup>

Audit information is not publicly disclosed, except annual reports from State Audit Institution, which can be found on their website. However, SAI is not conducting annual audits of all public institutions. It has discretionary right to choose subjects of audit each year and there are several subjects which haven't been audited since establishing of SAI, among which are political parties. Additionally, even though SAI has repeatedly reported irregularities in work of certain institutions,<sup>12</sup> it is not reported whether those institutions revised their financial management, nor has prosecution initiated any concrete steps in this direction.

Tenders for public procurement are being regularly published on websites of institutions. However, decisions taken are available only on site of Directorate for Public Procurement. New Law on Public Procurement, adopted in 2012 has increased transparency in this area, however it is still not fully aligned with European practices, especially in the area of harmonization of certain procedures.<sup>13</sup> Also, Strategy for Development of the Public Procurement System 2012-2015 lacks anti-corruption measures. Public procurement officers are not obliged to report their assets, under the Law on Conflict of Interests. Although they are signing declaration that they are not

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11 Out of 25 faculties, 10 refused to disclose their finances from private sources and business activities to our Free Access to the Information demands, while three of remaining 15 reported revenues of 1 to 3 million of euros for business activities (space rent, consultancy jobs)

12 Annual Report of SAI 2009, 2010, 2011.

13 Working group for negotiations - the Chapter 23, Screening Report 2013



in conflict of interests during public procurement processes, there is no procedure in place to verify if there was conflict of interest in specific cases of public procurement.<sup>14</sup>

e) Users' feedback

Service monitoring is still not developed in Montenegro. In dependence of public service in question, there are different complaint mechanisms in place. First instance are always institutions to which user is complaining, which represents obstacle to objectivity of a person who decides about complaint. There has been an attempt to create independent system of receiving complaints, in the case of Protector of Rights of Patients, yet Protector is employee of the hospital, appointed by the Director, which doesn't give him necessary independence in making decisions about complaints.

Second instance is Administrative Court, which has shown efficiency and impartiality in its work. However, decisions of the Administrative Court are often violated, without any sanction imposed.

### 3.1.2 Infrastructure

a) Establishment rules

As mentioned above Central Registry of Companies contains electronic list of all registered companies, but it is not reliable, as the database is not regularly updated. List of infrastructure service providers is publicly available, both on websites and in media.

b) Development planning

Development planning in the area of infrastructure services in Montenegro is not transparent. Taking in considerations that major infrastructure services, such as telecommunications and electric energy, are in hands of foreign investors, majority of planning is done through negotiations between the Government, through regulatory agencies, and these investors. Public has insight only in final decisions and has no possibility of influence on their outcome.

Citizens have the opportunity to attend public discussions regarding specific strategies of development, however their participation in working groups for creation of these strategies is not noted, partly due to lack of professional capacities to contribute to a strategy and partly due to lack of political will to include citizens in drafting of strategic documents in this area.

One of the persistent problems is lack of transparency of the work of Council for Privatization and Investments. It is not clear on the basis of which criteria this body

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<sup>14</sup> Institute Alternative: „Public Procurement Procedures in Montenegro“, Podgorica, November 2012

brings the decisions, which are of utmost public importance, and the composition of this body is created on the basis of representation of political parties. One of the measures in the Action Plan for OGP was inclusion of the representatives of civil society in this body, but it remained unimplemented and without any indicator will it be implemented in the future.

c) Service contracts

Contracts between the Government and infrastructure service providers are available online to citizens. However, these contracts are being amended after their conclusions, and those annexes are often hidden from public and protected by clause of “economic interest” in the Law on Free Access to the Information. Additional obstacle is clause of confidentiality placed on many contracts of privatization.

Action Plan for OGP has foreseen that, in the future, efforts to publish all of the privatization contracts should be undertaken. However, in the reporting period, only one contract of privatization was made without this clause. Bylaw for Registry of Contracts should have been created in this period, but no activities were taken in this regard.

d) Environment influence

Data on emissions of pollutants, influence on environment are not available. In cases of waste land, feasibility studies contain these data, but in recent case of waste land “Vasove vode” it is shown that these studies are not done by professionals.<sup>15</sup>

e) User feedback possibilities

Each of infrastructure service providers has complaint system. Complaint is submitted to provider, who is obliged to reply in course of 15 working days. There is no statistic of complaints accepted or rejected, or any kind of analysis of information on complaints and dissatisfaction of users.

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<sup>15</sup> Just a month asfter establishment of the waste land in the village Vasove vode, flood has dispersed potentially harmful waste on a large inhabited teritorry. Citizens were actively campaigning month before this event, not to create a waste land on that location, because it is too close to water. Nonetheless, after the water has withdrawn, govenrment decided to continue disposal of the waste on that land.

### 3.1.3. Public administration

#### a) Recruitment and employment

Montenegrin public administration has clear criteria of recruitment and employment. This area is under jurisdiction of Directorate for Human Resources Management. Directorate for Human Resources Management is directly responsible for: execution of the first phase of the process of employment (announcing public and internal vacancies for state bodies and institutions) up until bringing the decision on selection of the candidate for employment, keeping central human resources registry and registry of internal labor market, provision of expert help to the Government in jobs related to human resources management and policy, as well as other duties related to HRM, in accordance with the Law. Employer state bodies and institutions are in charge of the following aspects of the HRM: final phase of employment in public administration, decisions on rights and duties of their workers, including stimulation, advancement and rewarding, determining their responsibility for their work and its results.

Area of employment in public administration is regulated by the Law on Civil Servants and Employees and general labor regulations. Upon announcement of the vacancy, Directorate for HRM is assessing candidates according to their qualifications and verifies their knowledge, through tests, which are prepared in accordance with Regulations on Testing of Candidates for Work in The Public Administration. After initial testing of candidates, they are sent to respective institutions, where they are interviewed and employed.<sup>16</sup>

Ministry of Internal Affairs has prepared Proposal of Regulation on Criteria, modalities of testing and evaluation of candidates for public administration vacancies, but it hasn't been adopted still.

Despite clear procedures for employment in the public administration, Montenegrin public administration suffers from cronyism and nepotism. Party affiliation remains one of the key preconditions for employment in public administration, which is proven in January of 2013, through releasing of audio recordings from the session of the Main Board of the Democratic Party of Socialists (leading party in ruling coalition). On 5 hours of audio tape it could be heard, among other numerous topics which were indicating abuse of state resources, high officials of the ruling party who were discussing about employment of more members of their party in public administration on state and local levels.<sup>17</sup>

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<sup>16</sup> Rules and Regulations of Procedure of the Directorate for Human Resources Management, 2007

<sup>17</sup> Affair „Recordings“ (Snimak) is available in audio format, and transcripts on websites of daily newspapers: [www.dan.co.me](http://www.dan.co.me), [www.vijesti.me](http://www.vijesti.me)

In order to prevent employment of public servants on the basis of the party affiliation, in Law on Financing of Political Parties, adopted in 2011, was set a provision which bans employment in state institutions in the period from announcement of elections until end of Election Day.<sup>18</sup> Affair “Recordings”, mentioned above, has shown that these regulations didn’t influence traditional practice of institutions in Montenegro to employ on the basis of the political party affiliation.

#### b) Assets disclosure

Reporting of assets is done by public functionaries in Montenegro. According to the new Law on Prevention of Conflict of Interests in Montenegro, public functionaries are: “Nominated, elected and appointed person, in the body of state administration, in the body of local self-government, judiciary institution, independent body, regulatory body, public institution, public enterprise and other legal entities, who performs public authorities, i.e. activities of public interests, or is in the state property, as well as person appointed by the relevant state institution”<sup>19</sup>

Definition of public functionary has been expanded by the new Law, but it still doesn’t encompass important categories of persons, particularly prone to corruption, such as public procurement officers and professors at the University of Montenegro.

Also, according to this new Law, Commission for Prevention of Conflict of Interests, has for the first time obtained jurisdiction for verification of allegations in Assets Reports of public functionaries. However, increase of its jurisdiction and same operational capacities of this body, who were insufficient even for implementation of provisions of the previous law, are preventing this institution to provide concrete results in control over assets of public functionaries and to provide sufficient transparency for citizens.

New Law on Conflict of Interests has brought some limited improvements in this area. Namely, through verification of allegations in property cards of public functionaries it has been determined that 56 of public officials are falsely reporting on their property and that 22 officials has increased their savings in amount which exceeds 5000 euro, but they didn’t report this change to the Commission for Prevention of Conflict of Interests.

Even though public officials have admitted that they falsely reported on their property, they were not sanctioned for this, nor it was further investigated why they hid part of their assets. It is simply stated that, by adding discovered property, these officials have corrected the violation and they are not breaking anymore the Law on Conflict of Interests.

Also, it is not requested from those 22 officials, who increased their property in amount higher than 5000, to explain origin of this increase, which might potentially

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18 Law on Financing of Political Parties, Article, „Official Gazette of Montenegro“ No. /11, Article 32

19 Law on Prevention of Conflict of Interests, „Official Gazette of Montenegro No. 41/11“, July 2011., Article 3

indicate on corruptive activities, especially taking in consideration that some of these officials are prosecutors and judges.

So far, number of published property reports is 67% of complete number of submitted reports, although the deadline for their submission was March 31<sup>st</sup>.<sup>20</sup>

The problem of political and functional independency of the Commission remains the cause of concern, as well as its capacities. Manner of appointment of the Chairman and members of the Commission doesn't preclude the possibility of political interference in the work of this body, as the ruling majority in the Parliament arbitrarily decides, on the one hand, on the composition of the Commission (the ruling majority can appoint the most desirable candidates from their own political lines) and, on the other hand, the total amount of funds that are necessary for the functioning of the Commission (they can reduce the budget of the Commission, thereby disrupting its regular functioning).

Furthermore, authority of the Commission doesn't guarantee that their proposals for dismissal of public officials will be respected, nor the Commission has the power or capacity to further investigate false allegations in property cards and their origin.

### c) Operation and Management

Independence of institutions, particularly those conducting anti-corruption policies, remains cause of concern. In the field of anti-corruption there is 9 institutions, out of which is only one partially independent – State Audit Institution. Existing institutions-especially those covering area of political corruption are characterized with low independence in their work, lack of capacities and lack of authorities to efficiently implement legal provisions in this area.

The Directorate for Anti-Corruption Initiative undertakes most efficiently preventive-educational activities; however it is too narrow field of action for one institution. On all other fields, the Directorate faces serious problems, such as lack of capacity, unclear place in the hierarchy of institutions and lack of mechanisms to act. Even though propagandist-education role of the Directorate has been successful so far, it can in no way represent the only *raison d'être* of an entire institution.

Role of the legal advice center and channel for reporting corruption is also significant – but it is done by all other anti-corruption institutions in country, as well. Formal transmission of reports and giving legal non binding opinions, without possibility of administrative investigation, without data on cases processed, opens to the citizens another channel for reporting the cases of corruption – but does not provide significant results.

State Electoral Commission, in addition to control of the electoral process, publishes

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<sup>20</sup> Data taken from the last report of the Commission for Prevention of Conflict of Interests from May 15th.

on its website reports of political parties and electoral campaigns financing. In this process, the State Electoral Commission represents only a mechanism for transmission of information from state institutions to the public. The Commission does not have the capacity to undertake audit of financial reports by itself, nor to initiate proceedings against parties that have not submitted reports. The lack of human capacities negatively impacts efficiency of this institution. Usually these capacities, during the electoral process, are “borrowed” from other government institutions, in order to smoothly carry out all planned activities.

Jurisdictions of the Commission are administrative and procedural and relate mainly to the period of elections. Income of members and president of the Commission varies greatly: in the period between elections is about 150 €, while during the period of elections it can reach up to 7000 €.

The work of Commission is regulated by the Rules of Procedure, while only three articles of Law on Election of Committee Members and MPs stand to represent legal framework of this institution’s functioning. Conduct of the Commission is not regulated by the Code of Conduct, thus there is no definition on which principles the work of its members should be based, nor there are sanctions provided for unethical actions.

Until the decision of the Administrative Committee of the Parliament of Montenegro was adopted, in April 2010, by which function of the SEC’s President was professionalized, State Electoral Commission did not have permanently employed workers, and now it has only one - President. This institution is the only body, which has not implemented even one of measures foreseen by the Innovated Action Plan. In new composition, Commission started with realization of those measures which do not require changes of the legislative frame.

Commission for Prevention of Conflict of Interests is facing the problem of insufficient powers, and with lack of functional independence. Particularly problematic is provision from Law on prevention of conflict of interests contained in article 24, stipulating that instigation of procedure, by which it is decided whether there is breach of this law, is initiated by Commission on demand of authorities in which public official executes or has already executed public function. Commission can also initiate the procedure ex officio. Taking in consideration that members of the Parliament do not have direct superior, and bearing in mind the mode of appointment of the members of Commission, question arises whether these members will be able to conduct procedures impartially, ex officio, against those who appointed them.

The problem with membership in governing boards still persists, since the Law still allows public

National Commission, is not using entrusted powers in an adequate way .Namely, besides monitoring of the Action Plan implementation, National Commission had authorization to dispose with entire funds for fight against corruption and to control

the implementation in all institutions. However, Commission is exclusively following and evaluating realized measures, without influence to their realization. Also, despite the fact that Commission is the body of strong political authority, it doesn't have specialized knowledge to monitor implementation in individual sectors, in order to properly evaluate the quality of measures that were realized.

However, the Government of Montenegro has included the measure of establishment of an independent Agency for the Fight against Corruption in the Action Plan for the Chapter 23, so it remains to see how this instrument will be implemented.

### 3.1.4 Security and defense

Most of the reforms in the Montenegrin security sector took place after the country regained statehood, following the referendum on independence in 2006. The process of SSR started only after independence, with support of the international community and had to account for the presence of long-lasting elites who remained in positions of power. Inherited legal and institutional framework from state union with Serbia, was soon adapted to the new legal and political circumstances of the state of Montenegro. Also, it is important to note the formation of its own army and adoption of national strategic documents (National Security Strategy and Defence Strategy), without which the SSR could not be initiated.

When it comes to the democratic oversight of the security sector, all the mechanisms for parliamentary, judicial, independent, government and internal control are in place. There were some positive examples when it comes to democratic reviews but overall, there is a huge need for improvements. Also, what is necessary to mention is that reactivity is a rule, and acting proactively is an exception in the work of different control and oversight mechanisms. Great expectations after the adoption of a separate law on Parliamentary Oversight were followed by the politicization and insufficient use of the authorities given to them by the law. Internal and Judicial mechanisms have also failed to contribute to the advancement in the SSR. A light spot in the field of democratic oversight were independent state institutions (State Audit Institution, Council for Civil Control of the Police Work, Agency for Protection of Personal Data) and the civil society (media, NGOs). The first have produced different findings about deficiencies of security actors and provided for relevant recommendations (which have been taken into consideration in almost all cases), and the other ones have been contributing to the overall debate of the democratization of the security sector.

The success of the security sector reform will depend on reducing the influence of politics, increasing accountability and transparency, but also the involvement of civil society. By this we mean not only the involvement of NGOs and the media, but also of academic community, which support lacked in the initial stages of the reform.



Therefore, the role of civil society will be crucial for achieving the social legitimacy of security system institutions in Montenegro.

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All the activities in the field of defense have been focused on achieving different standards for joining NATO.

Membership in NATO and the European Union are the main foreign policy priorities of the Government of Montenegro in the period after gaining independence 2006. Although this foreign-policy course emerged before independence, Montenegro has, as an internationally recognized entity, acquired the right to actively fulfill its obligations in the European and Euro-Atlantic path.

The issue of joining the Alliance in 2012 was in the shadow of Government's intense activity directed towards meeting their obligations to the EU, so that the state could finally begin with the negotiations. Since we are on the verge of negotiations with the EU, a process that will take several years, conditions are met for the Government to focus more actively on the foreign policy priority that had been "left behind". This question occurred again "big time" during the election campaign in the last quarter of 2012.

However, although the state has fulfilled a number of requirements within the accession process to both of these two international organizations, the nature of issues EU and NATO deal with, but above all visibly different commitment of the Government to these priorities, resulted in Montenegrin public support for NATO membership being almost twice lower (35-38 percent) than it is regarding EU membership (over 60 percent). Although Montenegro has achieved significant results in the field of Euro-Atlantic integrations (participation in the ISAF mission in Afghanistan, MAP, etc) and was repeatedly mentioned as the first next NATO member, from the relevant, leading addresses of NATO it was indicated that the Montenegrin public support must be higher. Many experts believe that 2013 will be a very important year regarding possible membership of Montenegro in NATO, and that support of the Montenegrin public will largely depend on the attitude of the Government towards such a complex and important issue for society as a whole.

The central problem in addressing this issue is the results of Government's i.e. Coordination Team's work in terms of informing the citizens and promoting this issue. The campaign has mainly been propagandistic, with very superficial argumentation considering various benefits (economic, above all) that NATO membership can bring to Montenegro. It can obviously be concluded, and this influenced the level of public support, that membership in the Alliance was not primarily presented as an interest of all citizens, but as a political project of the Government, which all together resulted in the support of Montenegrin citizens not exceeding 40 percent in the last 6 years.



## 3.2 Building public integrity institutions and increasing their effectiveness

National Integrity System of Montenegro resides at the very weak foundations of judiciary which is not fully independent, audit institutions whose recommendations remain unimplemented without any sanctions and fragile regulation of the areas of financing of political parties, electoral laws and free access to the information.

### 3.2.1 Integrity plans and Codes of Ethic

State bodies who have adopted integrity plans so far are: Directorate for anti-corruption initiative, Ministry of Finance, Tax Administration, Real Estate Administration, and Customs Directorate.<sup>21</sup>

By adoption of the Code of Ethics of Public Servants and Employees (Official Gazette of Montenegro No. 20/12), preconditions were created to establish Ethic Board, as an independent body, where citizens and public servants can file complain in regards to violation of the standards and rules of the Code of Ethics. Ethic Board has a President and four members. All the members are employees in the area of justice, state administration, Parliament of Montenegro and syndical organization. Code of Ethics is being enforced since the January of 2013.

Implementation of the Code has had few results so far:

- » Employees of the Customs Directorate are familiarized with this Code through trainings and they have signed Declaration of Acceptance.
- » Department of internal control of Directorate of Customs conducts measures with the aim to discover and prevent cases of corruption, and reports on them.
- » Ethic Board has held three meetings where 24 cases of violation of the Code of Ethics, by employees of the Directorate of Police were processed.
- » Commission of the Prosecutors Council for Monitoring of Code of Ethics was established. It had three meetings to process two cases of violation of the Code, both of which were rejected.<sup>22</sup>

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21 VII Report on implementation of the measures from the Action Plan for the Fight against Corruption and Organized Crime – National Commission for Fight Against Corruption and Organized Crime, April 2013. Available at: [www.antikorupcija.me](http://www.antikorupcija.me)

22 Internal documents, provided by institutions to the National Commission for Fight Against Corruption and Organized Crime in order to assess degree of implementation of measures from the the Action Plan for the Fight against Corruption and Organized Crime for VII Report on its implementation.

### 3.2.2 Free Access to the Information

New Law on Free Access to the Information was adopted in the July of 2012, and it is implemented from February of 2013. Law has defined the system of monitoring of its implementation – Council of the Agency for Protection of Personal Data will be ensure that institutions are implementing this law adequately and. Agency will decide as a second complaining instance, when institutions deny access to the information in cases when it is not allowed by the Law.

The Law prescribes proactive publishing of information of public importance. This concept affirms determined public interest and ensures simultaneous access to information to indefinite number of persons and it is reflected through obligation of governing institutions to publish, on their web pages, documents from their jurisdiction, defined by the Article 12, Paragraph 1 of the Law on Free Access to the Information. One of the novelties is introduction of electronic system of the access to the information regarding information on implementation of this Law. Agency for Protection of Data is publishing on their website, data on: 1) governing institutions; 2) Free Access to the Information Demands, sorted by appellant, state bodies, types of information, and requested methods of access to the information; 3) decisions of state institutions regarding demands for the free access to the information; 4) appeals on these decisions; 5) litigation processes on the basis of denied access to the information; 6) court decisions in these litigations; 7) sanctions undertaken against the state body who denied access to the legally accessible information. This Law has also set obligation to state bodies to regularly provide Agency with data on requests, acts and measures undertaken on updating of this electronic system. Council of the Agency is obliged to annually submit to the Parliament of Montenegro report on the general situation in the area of the access to the Information.

It should be noted, however, that the Law contains some ambiguous solutions:

- » A public authority may refuse access to information if it determines that such action is in line with the broader public interest. It is unclear based on what criteria such decisions are made, and such situation can contribute to the arbitrariness in decision making of authorities.
- » The appeal is possible in the event of a negative response of authorities; however, it is unclear what happens when the authority fails to respond to the request entirely, which is most often the case in Montenegro.
- » Access to information may be restricted in order to protect security, defense, monetary and foreign policies of Montenegro. While the defense and security are already covered by the Law on Confidentiality of Data, thereby rendering this provision superfluous, the protection of economic and monetary interests of Montenegro is not prescribed in a clear manner, which can lead to abuses by authorities.

- » Definition of state body, which is responsible for providing of data is too narrow, and in that sense it does not encompass enterprises which are privatized, but still great percentage of ownership is in the hands of the state.<sup>23</sup>

Although the new law on free access to information represents a significant improvement in comparison to the previous version of the law, it fails to regulate numerous issues that should be addressed if this law is to be harmonized with international standards and practices and provide comprehensive access to information.

However, there are problems in the transparency of certain processes, for which it is very difficult to obtain information from responsible institutions. Most often, we are talking about processes of public procurement, concessions, extra-budgetary revenues of institutions and the like. A number of institutions continue with the practice of denying information to the requests for free access to information, despite the decisions endorsed by the Administrative Court. 1. The criteria, based on which decisions are made for the approval or denial of information, under the pretext of the public interest, need to be established in a clear and a comprehensive manner.

2. It is necessary to determine sanctions for bodies that do not provide responses to requests for free access to information.

3. It is necessary to determine the precise exceptions to the exemption from the principle of transparency. We believe that the criterion of “foreign and economic policy” is not sufficiently clear and leaves room for arbitrary decisions of the authorities.

### 3.3 Effective public resource management

#### 3.3.1 Managing of fiscal policy

All the legal documents regulating area of fiscal policy are publicly available. Concerning the effective management of public resources, the focus is on the transparency of the budget (the Ministry of Finance in order to increase fiscal transparency, publishes monthly Macroeconomic Review, a publication that tracks trends in macroeconomic and fiscal indicators on a monthly basis, but in the newly adopted Law on Audit of EU

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23 It is necessary to mention the case where Agency for Protection of Data has refused complaint of the NGO MANS regarding denied access to the information from Aluminum Plant Podgorica, with justification that it is not a state body as it is not in majority possession of the state, nor financed from public funds. It is necessary to stress that KAP has brought the state to the verge of bankruptcy and that citizens are paying debts created from that company, through special type of taxes on bills of electric energy and phone bills.

funds Union is not precisely defined by the transparency of the Audit authority).

Under the Guidelines, the fiscal policy for the medium-term, new goals to ensure the establishment of sustainable public finances, were defined. The main fiscal targets in the 2013-2015 period are reflected in the growth of budget revenues by reducing the gray economy and the intensification of collection of tax claims, reduction of budget expenditures, reducing the budget deficit and balancing the budget in the medium term, the capital budget to maintain a stable level, the abolition of issuing guarantees except for development projects, and creating fiscal reserves. Budget for 2013 provided more detailed information for specific groups of expenditures that have not been sufficiently analyzed so far.

Action Plan foresees inclusion representatives of the civil society into the work of the Council for Privatization and Capital Investments. So far, no progress has been made in regards to defining objective criteria and procedures of inclusion of CSOs into this body, nor did the Council have had any kind of reaction to this measure.

### 3.3.2 Open and participative budgeting

According to the Action Plan, Law on Budgeting should have been amended in order to provide enough time for the stakeholders to give their inputs. Also, it is planned to undertake efforts in direction of adoption of mid-term budgeting documents, which would increase transparency of the process of budgeting and public participation in its creation. Draft Law was on public discussion until January 31<sup>st</sup> of 2013. New draft law doesn't represent a step forward in regards to the budgetary calendar. Also, a number of problematic solutions of the previous law, still remains in place:

- » Procedure of creation of the capital budget remains the same. Parliament of Montenegro doesn't participate in its creation, nor does the public. Once the list of capital priorities is set, Parliament has just the option to adopt or reject the capital budget.
- » Execution of the budget is not transparent enough. The Government submits report on execution of the budget only one month before submitting draft of the new budget.
- » Instead of the commitment of the Government, undertaken by the Stability and Association Agreement, to develop a system of internal financial control –PIFC, new draft Laws foresees establishment of the budgetary inspection by the Ministry of Finances
- » Management of the public debt remains in the hands of the Government and Ministry of Finance while Parliament and SAI have no influence in this matter.

- » Sanctions for mismanagement of budget are not deterrent enough, they don't cover enough forms of mismanagement and it is not clear which institution is initiating judicial procedure. This can lead to transfer of accountability among institutions in Montenegro – which is a common practice with implementation of other laws as well.<sup>24</sup>

According to the Action Plan, Ministry of Finance should have provided internal structures for monitoring of the report of State Audit Institution, findings, recommendations and their implementation by subjects of the audit.

Within the Ministry of Finance, Budget Sector 13 budget analysts are considering recommendations of SAI and, within domain of their jurisdiction are implementing them. Action Plan for implementation of the recommendations of SAI is being adopted and all institutions should submit plan of activities on implementation of recommendations with the deadlines. This is in direct opposition to the provisions of the Law on Public Internal Control of Financing, which foresees establishing of internal control in each institution, that would deal with recommendations of SAI.

### 3.3.3 Public procurement

New Law on Public Procurement was adopted in 2012. It has addressed numerous problems of the previous Law that were noted by the international organizations, such as:

1. The vagueness and lack of major institutes in the field of public procurement;
2. Undefined jurisdictions of competent authorities in the public procurement procedures;
3. The lack of precise criteria for the selection of bidders, insufficiently defined process contract award procedure for all types of public procurement;
4. The lack of a unified database on public procurement;
5. The lack of implementation of penalties for offenses in the field of public procurement against all stakeholders (commissioners and bidders);
6. The lack of expertise of both contractors and bidders (providers).<sup>25</sup>

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24 Institute Alternative, „Commentary on the Draft Law of Budgetary and Fiscal Responsibility“ Podgorica, 2013. Available at: <http://media.institut-alternativa.org/2013/01/IA-Komentar-na-nacrt-Zakona-o-bud%5BEtu-i-fiskalnoj-odgovornosti.pdf>

25 “Analysis of Risks of Corruption in Montenegro in the Field of Public Procurement” OSCE 201

However, several problems remained in the legislative framework, such as:

1. Legislative inconsistency in the area of public procurement, in relation to the EU directives, especially in the area of harmonization of procedures.
2. Lack of independent body controlling this area – two bodies regulating area of public procurement are Directorate for Public Procurement – directly under supervision of the Government and State Commission for Control of the Public Processes – whose members are appointed by the Government
3. Public Procurement Officers are not obliged to report their assets, which brings into question validity of signed declarations on inexistence of conflict of interests of these workers. It is not clear who should control area of conflict of interests of public procurement officers and in which manner.

In addition problems with the low number of reported cases of corruption by the Directorate for Police, and low number of investigated cases, despite the fact that reports of SAI are indicating large number of irregularities in the processes of public procurement. Strategy for Development of Public Procurement Processes 2011-2015 and its Action Plan, are lacking anti-corruption measures.

### 3.3.4 Resources management

Even though resources management is the important part of OGP, it was not addressed by any measure in National Action Plan for OGP in Montenegro. This issue should be carefully considered and new measures should be adopted for the national Action Plan, especially in the area of energy and valorization of natural potentials.

### 3.3.5 Transparent aid procedures

The Government of Montenegro proposed the Law on the Audit of European Union Funds in 2011 and adopted in 2012. The newly adopted law provides for the establishment of the Audit Authority, as an independent institution or independent body responsible for the management of efficient and stable functioning of the system of utilization, management and control of EU funds. The Audit Authority was first established in 2010, as a separate body within the SAI<sup>26</sup> but, according to the opinion of the European Commission, such a solution would endanger not only its independent functioning, but also the independence in the work of the SAI. The Audit body for the audit of IPA funds that has, until the mid-March of 2012,

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<sup>26</sup> Agreement between the Government and the SAI on forming of the Audit Authority was signed on January, 13th, 2010.

functioned as a separate unit within the SAI, did not conduct audits, but instead conducted educational programs and trainings for an independent audit of IPA funds. In this sense, the SAI has in 2011 and 2012, organized and conducted numerous trainings and study visits, at which employees of the Audit Authority gained experience in the area of audit approach, audit methodology and specificities related to the audit of IPA funds.

The Audit Authority currently employs 6 persons. Over the last year, this body produced a Work load analysis and a recruitment plan, based on the necessity of the Audit Authority for specific staff, depending on the number of projects and resources in the ensuing period.<sup>27</sup>

The Ministry of Finance has, in December 2009, formed a Department for Combating Irregularities and Fraud, which employed 2 persons. The primary task of this department is the coordination of legislative, administrative and operational activities between bodies and institutions that, according to their responsibilities, should be included in the system for combating frauds (AFCOS system), with the aim of protecting financial interests of the European Union, thereby implying a direct cooperation with the European Commission Anti-Fraud Office (OLAF). Since its establishment, the Department did not conduct any significant activities, because basic conditions for the implementation of its authority have not been provided. The Montenegrin government has not yet adopted an act that would precisely define bodies and institutions that would constitute the AFCOS network, appoint representatives of these bodies and identify tasks of the AFCOS network.

### 3.4 Safer communities

In the area of improving safety, a number of measures were adopted by the Action Plan to be implemented continuously. These measures are, however, mainly oriented to adequately protect the integrity of LGBT people and rights of people with disabilities..

The police department will take further concrete steps to raise awareness of Police Officials for the professional treatment of LGBT people. The Police will provide the opportunity to police officers from all regional offices, who did not attend training on LGBT rights, to attend informative and educational activities on the subject of LGBT rights.

Action Plan foresees training activities for police officers on how to deal in the people with disabilities. Around 30 police officers were late 2011.organized by the Association of the Deaf and Hard of Hearing (SOGIN) and the Police, to facilitate direct communication with the deaf and hard of hearing citizens trained – school sign

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27 „Analysis of effects of Anti-Corruption Policies in Montenegro and Recommendations for their Improvement“, CeMI, Podgorica 2012 available at: [www.cemi.org.me](http://www.cemi.org.me)



language.

Improving the media freedom is intended to be implemented continuously, including the clarification and detection of perpetrators and the principals of all crimes targeting journalists.

These measures are scarce and limited on particular groups of people, whereas they should include more broad approach to safety of citizens and their protection.

### 3.5 Increasing corporate accountability, taking into account the special position of the politically managed SOEs.

#### 3.5.1 Identification of companies

Regarding identification of companies, as we have mentioned earlier, existence of Central Registry provides information to the public about all active and inactive companies, which can be browsed by multiple criteria: the name of the person in management, PIN of the company, founder, authorized person location, etc. However, data of Central registry are often outdated and inaccurate.

There is also an issue of lack of transparency in ownership of companies. Namely, on the web site of Central Depository Agency it is possible to see only 10 major shareholders of each company, while minor owners and transactions remain non transparent. This represents a problem in big shareholder companies, where small percentages of ownership have great financial value.

#### 3.5.2 Connections in public sector

Legal framework for Public-private partnership in Montenegro is still consisted of the Law on participation of private sector in the procurement of public services<sup>28</sup> and the Law on concessions.<sup>29</sup>

Law on concessions from 2009 lacks clarity in differentiating the terms of the concession contracts and public contracts that refer to public procurement, as well as the precision in defining concessions for public works. Definitions of limited procedure and competitive dialogue, set in this law, are not adequately transposed

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28 Official Gazette of the R. of Montenegro, No. 30/02 dated 26/06/2002

29 Official Gazette of Montenegro, No. 08/09 dated 04/02/2009



from the EU's directives.<sup>30</sup>

New legal framework is still not adopted, and its preparation and adoption is scheduled by the Government Program of Work for 2013.

In addition to the problem of inadequate legal framework, there is also a problem of unclear division of authorities and jurisdictions among institutions, which are managing and granting concessions. As a result of such unclear and imprecise legislative framework for public-private partnerships concessions in Montenegro, there is no expert center for this area, while Commission for Concessions decides on insignificant number of appeals in the second instance and has no other jurisdictions in this area.<sup>31</sup>

UNDP and Department for Support of National Council of Sustainable Development (NSzOR), in coordination with Office of the vice-president of the Government of Montenegro for Economic policy and financial system, are developing Study on Level of Inclusion of Socially Responsible Management (SRM) in national policies of Montenegro, which will be put on the agenda of the Government during IV quarter of 2013. One of the main recommendations of this study is adoption of the Strategy for SRM and further development of SRM mechanisms. This is announced by the Government as an activity for the following period, although it is not included in any strategic or otherwise binding document. Strategic framework for socially responsible management is in course- this Strategy should include defining of areas of sponsorships and donations.

One of the key activities in this period is establishment of the Government network for socially responsible management which is created 12th of april 2012 within the project "Encouraging dialogue and partnerships for sustainable development, between the Government and business sector in Montenegro". The network currently had 30 members, representatives of state and academic institutions, professional and civil society organizations. Network was financed for the period of one year, after which it is inactive, due to lack of mechanisms for its further existence.

General concept of Corporate Social Responsibility remains insufficiently known and implemented in Montenegro.

### 3.5.3 Management of SOEs

As for the management of SOEs, building of the strategic framework for corporate social responsibility, which will include regulation of sponsorship and donations,

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30 „Public-Private Partnerships in Montenegro“ Institute alternative, 2009

31 Shadow Report on Situation in the area of Judiciary and Human Rights (Chapter 23) – Coalition of NGOs for monitoring of the Chapter 23

is not finished. Study on the level of involvement of the concept of Corporate Social Responsibility (CSR), is finalized and it will be considered by the Government in the fourth quarter. However, one of the main recommendations of this study is just preparation and adoption of a national strategy for CSR and mechanisms to stimulate CSR, without concrete measures and instructions on how to do this task.



## IV PUBLIC OPINION SURVEY

*Fig 1 Trust in the Government of Montenegro*

*Fig 2 Trust in ministries*

	I have great trust	Generally I trust	Generally I do not trust	I have no trust	I do not know/do not have an opinion
Ministry of Economy	9,9	31,5	22,1	21,4	15,1
Ministry of Transport and Maritime Affairs	12,2	27,2	21,1	23,6	15,9
Ministry of Foreign Affairs and European Integration	15,7	25,4	19,1	24,3	15,6
Ministry of Interior Affairs	13,3	23,8	20,4	24,8	17,8
Ministry of Finance	10,3	22,4	19,6	26,7	20,9
Ministry for Information Society and Telecommunications	11,0	23,7	17,2	22,9	25,3
Ministry of Justice	11,4	22,1	18,5	27,2	20,9
Ministry of Education	14,2	26,1	17,5	22,5	19,7
Ministry of Health	16,7	31,1	17,0	21,0	14,1
Ministry of Sustainable Development and Tourism	11,4	25,5	21,3	24,1	17,7
Ministry of Culture	13,7	24,2	18,1	21,8	22,2
Ministry of Defence	12,9	26,9	20,1	22,6	17,4
Ministry for Agriculture and Rural Development	12,8	26,0	19,4	21,9	19,9
Ministry of Science	13,4	26,3	18,8	17,9	23,6
Ministry of labor and social welfare	11,6	26,9	20,7	23,6	17,2

Fig 3 Trust in ministries – SUM great and generally %

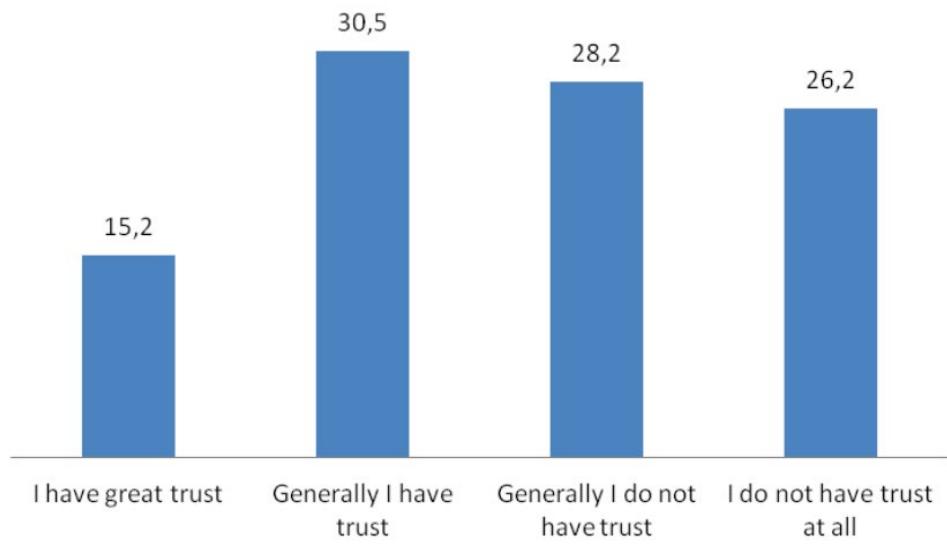
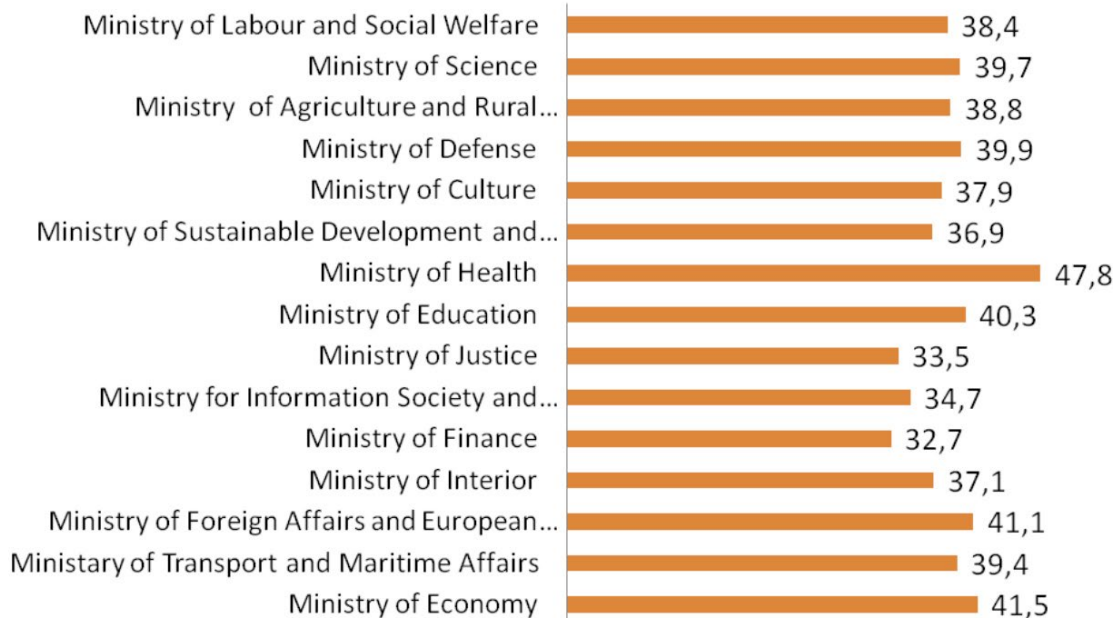


Fig 4 To what extent do you agree with the following statements?

Claims	I totally agree	Generally I agree	Generally I do not agree	I do not agree	I do not know/do not have an opinion
Too much public information about the work of the Government can make our country more vulnerable.	11,4	21,7	21,0	21,1	24,7
MPs and councilors have a right to keep private and confidential information about their income and assets.	5,5	9,9	24,3	40,4	20,0



All financial and technical details of the agreements concluded by the government, as well as information on the implementation of these contracts, should be available to public.	30,1	27,4	14,2	9,6	18,7
Data on ethnic origin and religious orientation should be collected for the purpose of fair employment in public administration.	17,7	22,3	18,1	17,5	24,4
A civil servant who reveals the confidential information should be punished.	27,3	28,8	10,8	11,0	22,2

Fig 5 Agreement with claims - % SUM: fully and generally agree

Fig 6 Have you ever submitted an official request for free access to information?

Fig 7 How many times have you submitted an official request for free access to information? – N



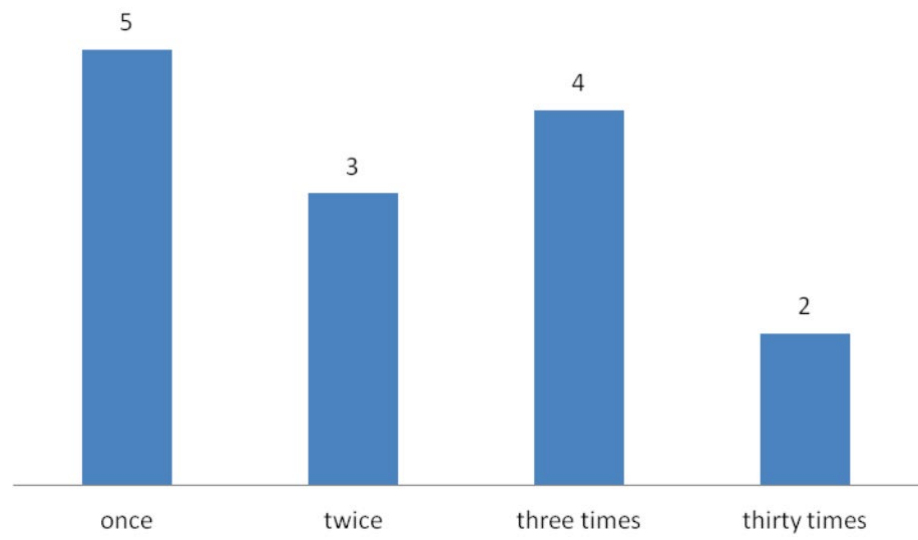
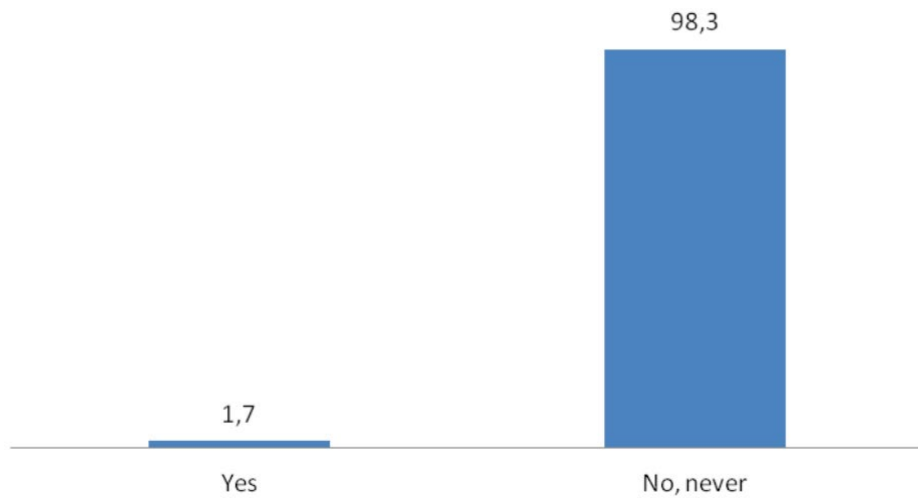




Fig 8 When was the last time you submitted such request? N

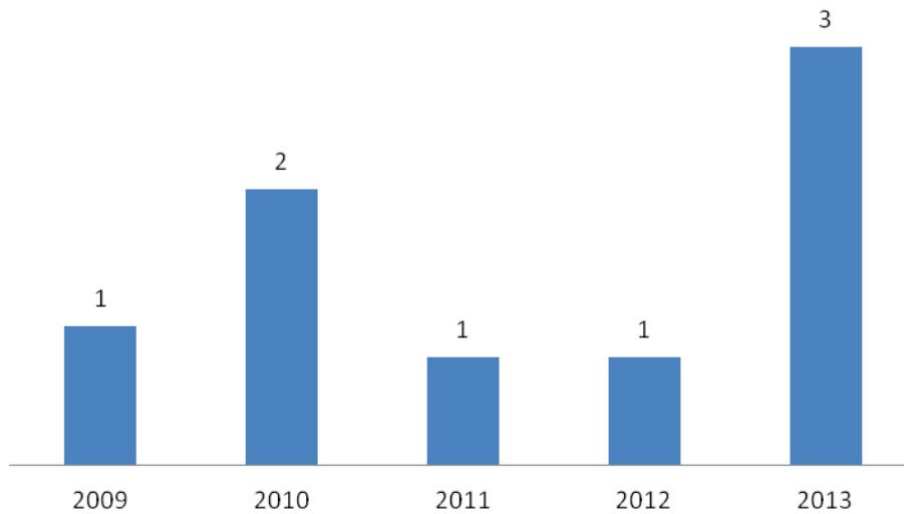


Fig 9 To what extent do you agree with the following statements? %

Claims	I totally agree	Generally I agree	Generally I do not agree	I do not agree	I do not know/do not have an opinion
Ordinary citizen does not have enough knowledge to estimate whether a particular government decision is good or not.	14,8	29,7	22,3	16,6	16,6
MP takes the responsibility for conducting public affairs.	17,8	32,1	13,0	14,4	22,6
Lobbying (impact on the decision of the MPs) is bad for society.	19,7	22,2	15,5	15,4	27,1
Public hearings, organized at the local level, have a formal character and limited impact on the decisions of local government.	17,0	29,3	14,6	7,5	31,6
Blogs and comments on the internet do not reflect the political public opinion in the proper manner.	13,9	24,1	17,4	9,0	35,5

Fig 10 To what extent do you agree with the following statements? % SUM: totally and generally agree

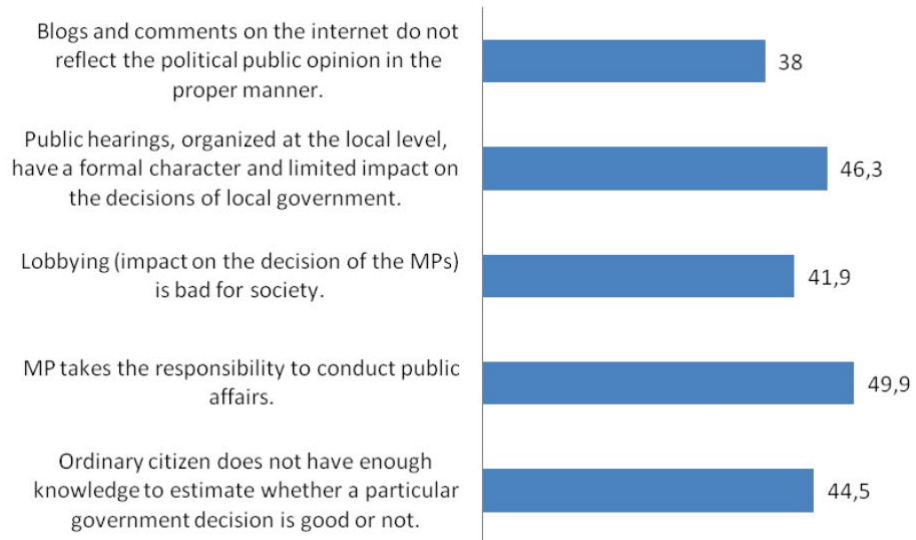


Fig 11 Have you ever participated in demonstrations or street protests?

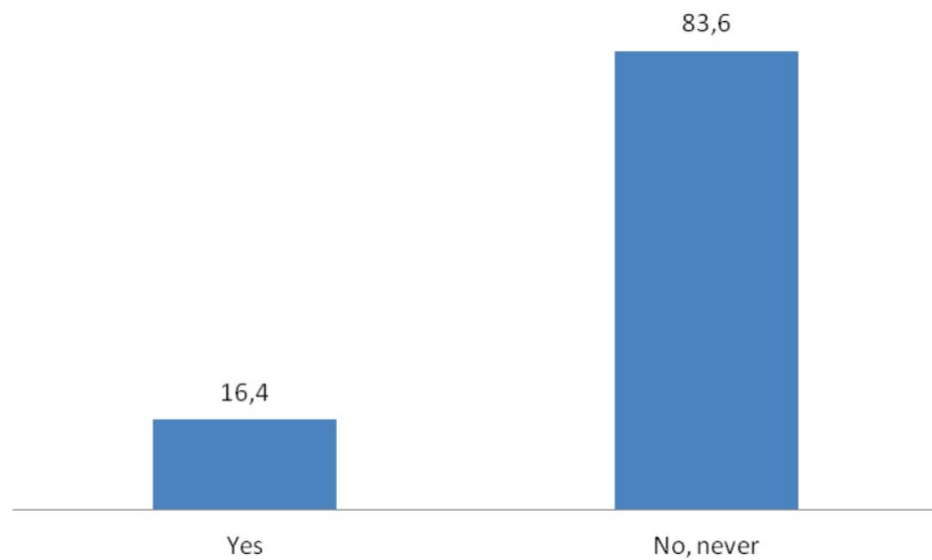


Fig 12. How many times have you participated in such events? (sum 122)?

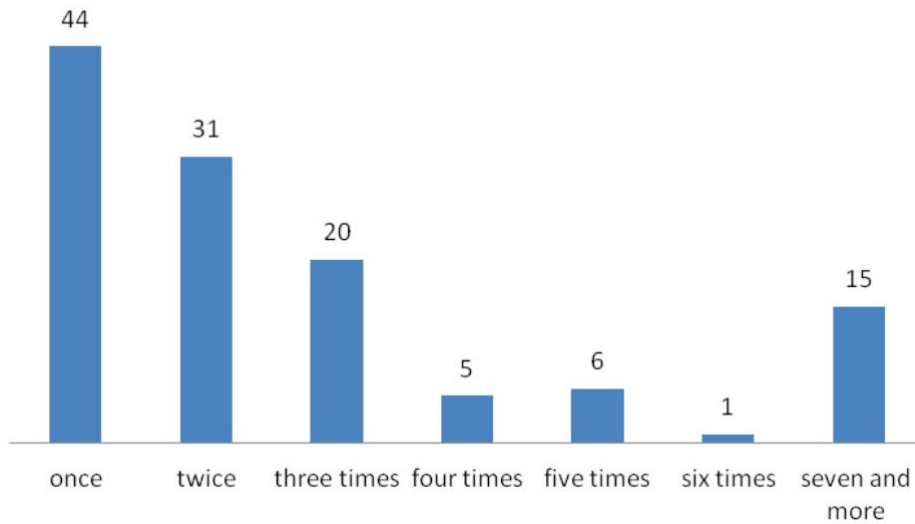


Fig 13 When was the last time you participated in such event? – N (sum 75)

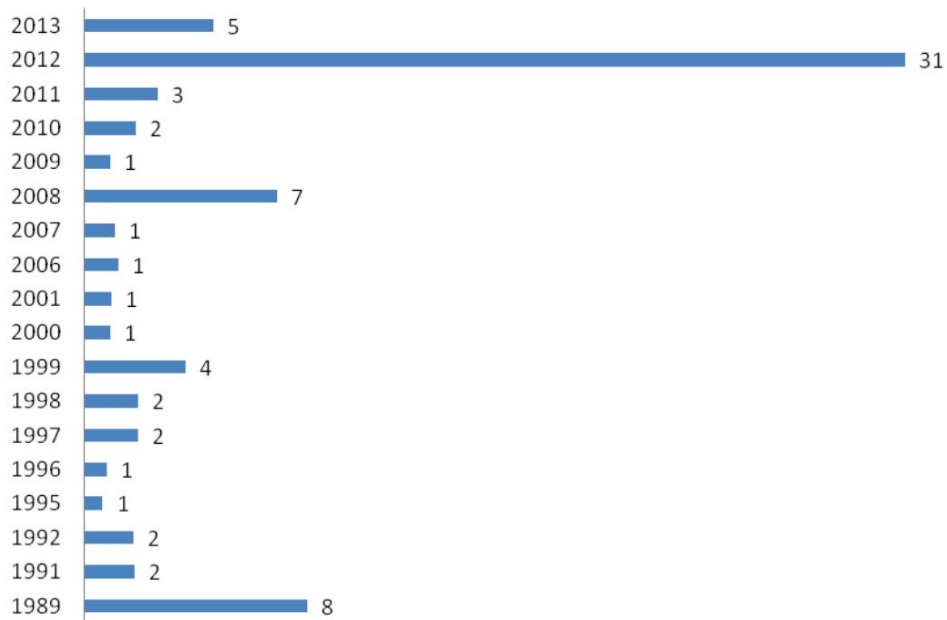


Fig 14 In your opinion, which organizations or institutions have the greatest impact on the government's decisions? %

	Great impact	Moderate impact	Low impact	No impact	I do not know, I can not assess
Parliamentary committees	16,4	32,4	18,9	10,2	22,1
Individual MPs	10,8	28,4	22,4	17,3	21,0
Opposition parties	5,8	16,3	29,2	26,5	22,2
State Audit Institution	7,9	23,1	23,1	18,1	27,8
Protector of Human Rights and Freedoms (Ombudsman)	5,9	19,7	23,9	21,8	28,5
Private TV stations and private press media	5,4	17,9	24,4	23,1	29,2
Trade unions	5,5	18,7	25,4	23,4	27,0
Local self-governments (municipalities)	7,3	19,9	25,5	21,1	26,2
Non-governmental organizations and citizens' associations	3,5	15,8	29,1	24,1	27,5
Church	3,7	13,2	23,6	28,6	30,9
Big international companies	14,0	21,9	21,7	16,1	26,3
Domestic entrepreneurs and foreign companies	8,9	21,1	27,1	18,1	24,9

*Fig 15 In your opinion, which organizations or institutions have the greatest impact on the government's decision? % SUM: great and moderate impact*



*Fig 16 Does your municipality has a website?*

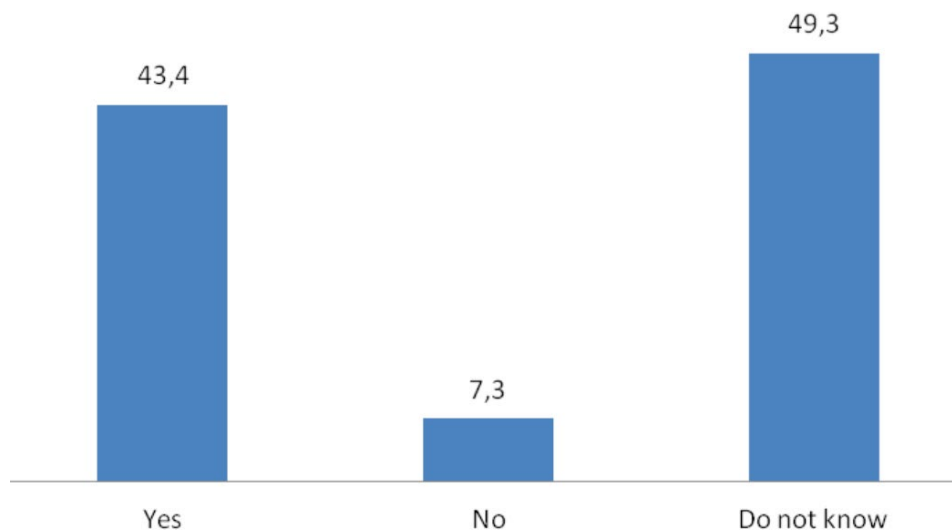


Fig 17 Have you ever visited a website of your municipality?

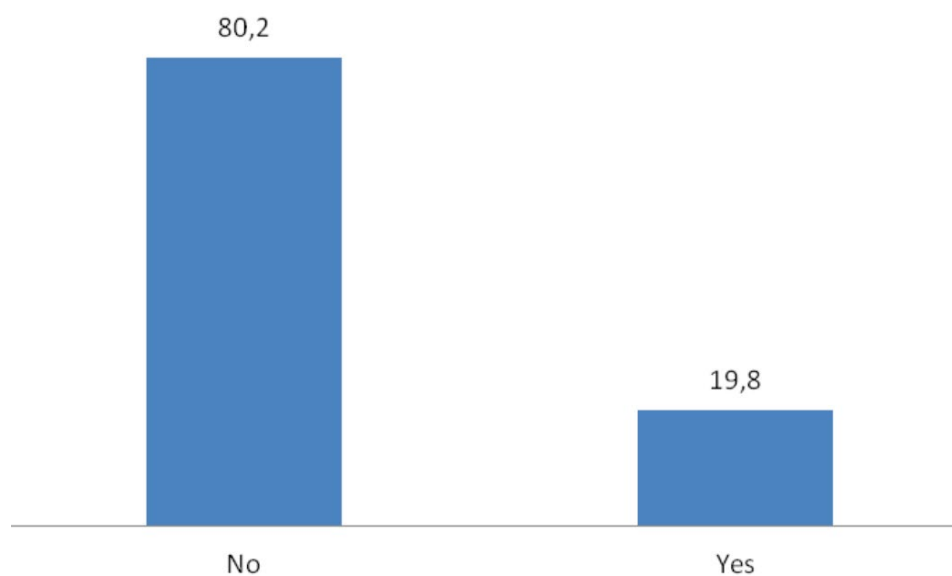
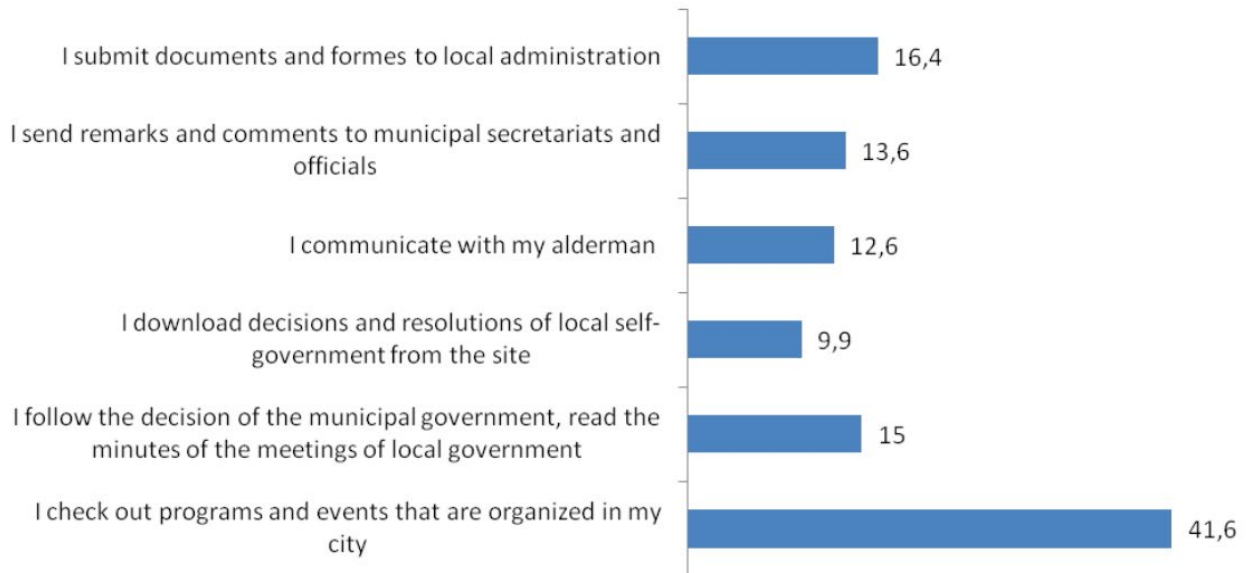


Fig 18 If you have visited a website, please tell us which information have you checked and how often (% of those who visited the web site)

	Very often	Often	Occasionally	Never
I check out programs and events that are organized in my city	13,4	28,2	37,2	21,2
I follow the decision of the municipal government, read the minutes of the meetings of local government	6,3	8,7	29,4	55,5
I download decisions and resolutions of local self-government from the site	3,2	6,7	20,2	69,9
I communicate with my committee member	5,3	7,3	13,1	74,3
I send remarks and comments to municipal secretariats and officials	6,3	7,3	17,4	69,0
I submit documents and forms to local administration	5,5	10,9	18,0	65,6

*Fig 19 If you have visited the website, please tell us which information have you checked and how often % SUM: very often and often*







## CONCLUSIONS

First year of implementation of the OGP Action Plan in Montenegro, hasn't given noteworthy results, partially due to the limited scope of proposed measures and lack of monitoring and evaluation mechanisms for their implementation, and partially due to lack of political will to achieve progress in certain areas.

We can group deficiencies of Action Plan in several areas:

1. The most significant problem is that, on the first place, Action Plan for implementation of OGP in Montenegro **hasn't covered certain areas of OGP, at all**: resource management, security and defense, state aid, control over provision of services, users' feedback, environment influence, politically managed SOE's and their status.
2. In addition, **a lot of issues were addressed only superficially**, such as issue of safer communities, public procurement, development planning, as well as the merit-based employment.
3. Finally, some areas, such as fiscal transparency, were addressed quite well and in detail, but those **measures were not implemented**.
4. Action Plan for Implementation of the OGP has **expired**, and the Action Plan for new period is not prepared yet.
5. Report on Implementation of the first year of OGP is **not public**.
6. The Action Plan is **not aligned** completely with other strategic documents, and even Laws.
7. **Enforcement mechanisms**, for implementation of measures defined, are **non-existent**.

Currently, stakeholders haven't shown enough readiness to prepare a new strategic document, which would represent improvement and reflect lessons learned from annual period of implementation of the previous Action Plan. In the future, special attention should be paid to include all areas of OGP in this strategic document, instead of making it a compilation of individual interests of institutions and NGO. Measures in areas which are already covered should be defined in more result-oriented way and they should be aligned with main strategic documents of Montenegro.

Overall conclusion is that implementation of OGP, by Montenegrin stakeholders was accepted loosely, as non-binding promise, rather than constructive plan for improvement of transparency and accountability in all areas.

