Warsaw, 30 December 2024
Legis Paper-Nr: LEGIS-MNE/516/2024 [NS]

COMPREHENSIVE ASSESSMENT REPORT ON THE LAWMAKING PROCESS IN MONTENEGRO

MONTENEGRO

This Comprehensive Assessment Report has been prepared based on the *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro* and has benefitted from contributions made by **Dr. Marta Achler**, International Law Expert and Research Fellow at the University of Florence, **Dr. Victor Chimienti**, Senior International Lawmaking and Legislative Reform Expert and **Mr. Primož Vehar**, Senior International Legal Expert.

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

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

This Comprehensive Assessment Report provides an analysis of the legislative framework and practices related to lawmaking in Montenegro and offers concrete recommendations for improvement and to enhance their compliance with international human rights and democratic governance standards and OSCE human dimension commitments.

The goal of the Assessment is to improve the overall quality of the legislative process to foster the adoption of high-quality laws that are human rights-compliant, accessible, non-discriminatory, gender-responsive and sensitive to the needs of diverse social groups. The Report provides concrete recommendations on how to enhance the openness, transparency, accountability, inclusiveness and participation at all stages of the legislative cycle.

For this purpose, ODIHR has reviewed the legislative process from a legal, policy and practical perspective, as lawmaking is not a stand-alone matter but always requires combined efforts of various state and other actors and a meaningful interaction with those whom the laws aim to serve.

As noted in the Preliminary Opinion, the Comprehensive Assessment confirms that Montenegro benefits from a comprehensive legal framework and detailed legal and technical rules for drafting laws and advancing on the path of EU-oriented reforms. Montenegro's EU integration efforts continue to be a decisive driving force in the recent years for shaping its national policy- and lawmaking processes, but also constitute a challenge, often requiring the fast-paced drafting of EU acquis-compliant legislation. In this context, due account should be given to ensuring the quality of legislation through evidence-based, open, transparent, inclusive procedures and practices, as well as public accountability, which are essential cornerstones to strengthen democratic institutions and processes.

The Comprehensive Assessment Report tends to confirm most of the initial findings presented in the Preliminary Opinion, though noting some additional challenges linked to the practice of policy- and lawmaking. Generally, there tends to be limited coherence of key strategic documents and policymaking system as implemented in practice results in insufficient discussion of policy options and a legal framework that is very fragmented. There remains little co-operation between the government and the parliament on policy-making, legislative work, EU integration and international matters. While there are highly competent legal staff supporting the legislative work, the overall volume of legislative activities, especially linked to EU approximation, remains a challenge in terms of workload for all the actors of the lawmaking process.

A number of options could be considered to contribute to easing the burden on legal drafters, including by considering setting up dedicated, separate parliamentary and government services tasked to deal with law drafting, introducing a screening mechanism to assess the quality of legislative proposals submitted by the government to the parliament and rejecting at the outset those

not complying with procedural/technical requirements, including clear provisions in the Rules of Procedure to prevent or streamline the processing of several pieces of legislation dealing with the same subject, as well as enhancing the accessibility of adopted legislation, including by providing public access to consolidated, official versions of laws as done in other countries.

To ensure evidence-based policy- and lawmaking and qualitative regulatory impact assessment, though without imposing extensive burdens on public institutions, policy- and lawmakers, the modalities of the *ex ante* and *ex post* evaluation of draft and adopted laws should be re-assessed. Legislators should also further elaborate the legal provisions to ensure inclusiveness of the legislative process and due consideration of gender and diversity throughout the policy and lawmaking processes.

Regulatory oversight mechanisms within both the government and the parliament should be enhanced, and the rules and procedures of the government should require the submission of opinions on all draft laws initiated from within parliament, while a proper legal basis and procedure should be in place to compel Ministers to attend parliamentary control hearings.

The issue of implementation of legislation remains a challenge, which may be due to a combination of factors, including the lack of ownership of frequently externally driven lawmaking processes, the absence of formal requirements or mechanisms for planning implementation, delays in preparing secondary legislation which is not done concomitantly to the drafting of primary legislation, and the lack of a consistent system of *ex post* evaluation, at least of priority legislation or policies.

A comprehensive list of practical recommendations aimed to enhance the legal framework governing the legislative process in Montenegro and related practices is included throughout the report and is further compiled in **Annex I**.

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

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I. INTRODUCTION

1. BACKGROUND

1. This Comprehensive Assessment Report was prepared following a joint request of 22 February 2023 by the Secretary General of the Parliament of Montenegro and the Head of the OSCE Mission to Montenegro to conduct a comprehensive assessment of the lawmaking process in Montenegro. In its response of 1 March 2023, ODIHR confirmed its readiness to conduct such an assessment.

2. The first step of the assessment consisted of a desk review analysis of the national legal framework regulating the legislative process in Montenegro[1] and led to the publication, in October 2023, of a Preliminary Opinion.

3. The main purpose of this preliminary analysis was to assess the compliance of the legal and institutional framework with relevant international democratic governance, rule of law and human rights standards, OSCE human dimension commitments and good practices, and to formulate initial findings and recommendations for possible improvements of the legal framework. These initial findings and recommendations were then presented and discussed during a country visit that took place from 27 to 30 May 2024 with a view to inform the preparation of this *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (hereinafter "Comprehensive Assessment Report", "Report"), which focuses on the legal but also practical aspects of the entirety of the lawmaking process from the initial stages of the policymaking, including impact assessment, to the drafting, consultations, adoption, publication, communication, monitoring of implementation and evaluation.

4. During the visit, ODIHR held a series of semi-structured interviews[2] with representatives from the Parliament of Montenegro, Chairpersons and members of parliamentary committees, parliamentary staff, officials from the Government, representatives of the Ombudsperson's Office, the Official Gazette, non-governmental organizations (NGOs), international partners and other stakeholders.[3] ODIHR is extremely grateful to all those who took the time to meet and share their knowledge and experience and to the representatives of the Parliament and of the Ministry of Foreign Affairs as well as OSCE Mission to Montenegro who have facilitated the organization of these meetings.

5. The Comprehensive Assessment Report is also based on additional relevant domestic legislation, regulations, reports and other information and statistics on the practice of lawmaking in the country. The purpose of such a Comprehensive Assessment is to collect, synthesize and analyse information with sufficient objectivity and detail to support credible recommendations for regulatory reform tailored to the particular needs and context in Montenegro.

6. The recommendations contained in the Comprehensive Assessment Report may serve, in close consultation with all relevant stakeholders, as a working basis for: (i) discussing and initiating regulatory reform/developing an action plan, including amendments to

1 For the preparation of the Preliminary Opinion, relevant excerpts from the following legal documents were reviewed, as applicable and relevant to the legislative process: (i) Constitution of Montenegro; (ii) Rules of Procedure of the Government of Montenegro; (iii) Rules of Procedure of the Parliament of Montenegro; (iv) Law on the Constitutional Court of Montenegro; (v) Law on State Administration; (vi) Law on Publication of Regulations and Other Acts; (vii) Legal and Technical Rules for drafting Regulations; and (viii) Regulation on the Election of Representatives of Non-governmental organizations to the Working Bodies of State Administration Bodies and the Conduct of Public Hearings in the Preparation of Laws and Strategies.
2 See Annex 3: Basis for ODIHR's Lawmaking Reform Assistance Activities.
3 See Annex 2: List of Interlocutors Met during the Country Visit.

relevant legal framework; (ii) developing and/or conducting capacity development initiatives, and/or (iii) supporting relevant stakeholders to develop tools and other guidance documents for lawmakers, to render the lawmaking process more effective, transparent, accessible, inclusive, accountable and efficient.

7. ODIHR conducted this comprehensive assessment as part of its general mandate as established by the relevant OSCE human dimension commitments.[4]

2. SCOPE AND AIM OF THE COMPREHENSIVE ASSESSMENT REPORT

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

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

10. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[6] and related commitments to mainstream

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

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

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

gender into OSCE activities, programmes and projects, the Comprehensive Assessment Report integrates, as appropriate, a gender and diversity perspective.[7]

11. This Comprehensive Assessment Report is based on an unofficial English translation of the relevant excerpts of the legal framework governing the legislative process in Montenegro commissioned by ODIHR or provided by the OSCE Mission to Montenegro.[8] Errors from translation may result. The Report is also available in the Montenegrin language. In case of discrepancies, the English version shall prevail.

12. ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Montenegro in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL AND REGIONAL STANDARDS AND OSCE COMMITMENTS

13. For an overview of relevant international and regional human rights standards, norms and recommendations and OSCE human dimension commitments, reference is made to Sub-Section III.1 the *ODIHR Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro* of 2 October 2023.

14. In 2024, ODIHR published the *Guidelines on Democratic Lawmaking for Better Laws*[9] (hereinafter "ODIHR Guidelines"), which provide an overview of the guiding principles of democratic lawmaking and concrete, practical recommendations on how these principles can be adhered to at each stage of the legislative cycle to achieve good-quality laws.[10] These principles and standards underlie the process of preparing, discussing, adopting, implementing and evaluating laws. The structure of this Comprehensive Assessment Report mirrors the structure of the ODIHR Guidelines corresponding to the key elements of the legislative process and reflecting on the cross-cutting issues such as gender and diversity considerations, regulatory impact assessment (hereinafter "RIA") and public consultations.

15. In addition, a number of other documents that have been published since the preparation of the Preliminary Opinion provide some more updated information and additional detailed recommendations relevant to the lawmaking process in Montenegro, and are also taken into consideration in the text of the Comprehensive Assessment Report.[11]

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

8 For the list of documents that have been reviewed for the preparation of this Comprehensive Assessment Report, see footnote 1.

9 See, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, which were also presented before the Parliament of Montenegro on 27 May 2024.

10 *Ibid.* p. 10, where "good-quality laws" are defined as laws that are "*clear, intelligible, foreseeable, consistent, stable, predictable, accessible, compliant with rule of law and human rights standards, gender-responsive, diversity-sensitive and non-discriminatory, in both content and practice, while being proportionate and effective*".

11 These include in particular: European Commission, Staff Working Document *Montenegro 2024 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2024 Communication on EU Enlargement policy,* 30 October 2024; European Commission, *2024 Rule of*

2. BACKGROUND AND GENERAL COMMENTS

16. The ongoing EU negotiations of Montenegro continue to be a decisive driving force for shaping its national policies and legislative framework since the entry into force of the Stabilisation and Association Agreement on May 1st, 2010. This holds even more true after the opening of the EU accession negotiations in June 2012. Since then, formal mechanisms and procedures for harmonizing legislation with the EU acquis and assessing the effects/impacts of newly introduced legislation have been established. At the same time, the requirements for EU accession have become stricter following the recent adoption of the new EU enlargement methodology in 2020,[12] as formally accepted by Montenegro, which puts a stronger focus on fundamental reforms and producing tangible results in their implementation, including with respect to the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform.

17. To date, 33 negotiating Chapters have been opened, of which three have been provisionally closed. In June 2024, Montenegro was recognized to have overall met the interim benchmarks for chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security) and the closing benchmarks for these chapters were adopted.[13] The European Commission's 2024 Rule of Law Report published in July 2024 also covered Montenegro for the first time.[14] On 26 September 2024, Montenegro adopted its Reform Agenda, as envisaged under the Reform and Growth Facility, which covers reform milestones in the areas of (1) business environment and private sector development; (2) digital and green transition; (3) human capital development, and (4) fundamental rights and the rule of law.[15]

18. The 2024 Working Report of the European Commission (EC) on Montenegro (hereinafter "the EC 2024 Report") covers the period of 15 June 2023 to 1 September 2024.[16] It notes that since its formation in October 2023, the government has been operating in a generally stable political environment, with less polarization compared to recent years, though underlining that the country and its institutions remain fragile and vulnerable to political crisis and potential institutional blockages.

19. The EC 2024 Report noted a number of areas where good progress was achieved, including with respect to substantial reforms to the legislative and strategic frameworks governing justice reform, the fight against corruption, and freedom of expression and media freedom, as well as amendments to the Criminal Code to criminalize "racism" and "hate speech". At the same time, the EC 2023 and 2024 Reports, and the European Commission's 2024 Rule of Law Report, contain a number of findings and recommendations, that are or remain relevant to the lawmaking process, including in terms of the need:

Law Report - Country Chapter on the rule of law situation in Montenegro, 24 July 2024; CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, 6 June 2024; and SIGMA (Support for Improvement in Governance and Management) - Joint initiative of the OECD and the EU, *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024).

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

13 See European Commission, Commission Staff Working Document *Montenegro 2024 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2024 Communication on EU Enlargement policy*, 30 October 2024, Brussels, p. 3.

14 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro*, 24 July 2024.

15 See <a732b6c0-ae10-4bc6-b301-5db4a97994b3_en (europa.eu)>.

16 European Commission, Commission Staff Working Document *Montenegro 2024 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2024 Communication on EU Enlargement policy*, 30 October 2024,

- to strengthen co-operation between the Government and Parliament while enhancing the level of inter-ministerial co-operation;
- to ensure genuine and meaningful co-operation between the government and civil society, while improving the quality and effectiveness of public consultations;
- to enhance the quality of RIA, while systematically including financial assessment when preparing bills;
- to further align legislation with the EU acquis and ensure compliance with international human rights obligations, implementing the recommendations issued by international human rights monitoring bodies (and the Defender of Human Rights and Freedoms of Montenegro) as well as climate change and environmental commitments;
- to increase budget allocations for gender equality and strengthen legal and policy measures for achieving and improving gender equality, with adequate institutional arrangements in place, and introduce penalties for non-compliance with the Law on Gender Equality;
- to adopt and implement amendments to the Law on Access to Information, in line with the principles of good public administration;
- to enhance the Parliament's capacity to scrutinise draft legislation for compliance with the EU acquis and to integrate and oversee gender perspective;
- to ensure effective enforcement/implementation of adopted legislation, including by setting up post-legislative scrutiny of existing laws, strategies and action plans, effective accountability framework, ensuring appropriate and sufficient capacity, providing systematic monitoring and sufficient funding;
- prevent hasty legislative initiatives.

20. Given the country's stated strategic goal of EU integration, special attention has been given in this Comprehensive Assessment Report to the issue of drafting EU acquis-compliant legislation and compliance with the requirements from the new EU enlargement methodology. According to the EC 2024 Report, the country and its institutions remain "*fragile and vulnerable to political crisis and potential institutional blockages*".[17] Hence, the purpose of the Comprehensive Assessment Report is to provide recommendations to strengthen the legal and institutional framework with a view to enabling it to be, to the extent possible, resilient to political and other types of crises in the long run.

3. CONSTITUTIONAL SYSTEM, NORMATIVE FRAMEWORK AND SOURCES OF LAW

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

22. The Parliament of Montenegro is a unicameral legislature consisting of 81 members, elected by direct and universal suffrage, by secret ballot for a four-year term using proportional representation (Articles 83-84 of the Constitution). The Government of

17 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 3.

Montenegro is the highest executive body of Montenegro. The responsibility and accountability of the Government towards the Parliament are established in Article 82(12) of the Constitution, which states that the Parliament elects and dismisses the Government; Article 107, giving the Parliament the right to vote no confidence in the Government; and Articles 108 and 109, establishing the parliamentary institutions of interpellation and parliamentary inquiry. Through the adoption of the budget and its final statement, the Parliament exercises also indirect control over the executive power (Article 82(5)). At the same time, unlike the majority of constitutions of European countries, which provide a very detailed outline of the role and functioning of parliaments, the Montenegrin Constitution does not provide such a level of detail concerning the work of its Parliament. There are no provisions related to the right of Parliament to demand information from state administration and other institutions,[18] as well as to demand the presence of certain governmental representatives at parliamentary sessions,[19] which are one of the preconditions for the successful fulfilment of parliament's basic exercise of oversight functions over the executive and to ensure accountability. This particular challenge was specifically noted by several representatives of the Parliament during the country visit.

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

24. It is important to highlight that the Government of Montenegro has broad regulatory powers according to Article 93(1) of the Constitution, which entitles it to propose laws and other legal acts. Article 100 specifies that the Government "*adopts decrees, decisions and other acts for the enforcement of laws*". Article 24 of the Law on State Administration specifies that ministries may issue decrees, orders, instructions and rulebooks for the implementation of laws and other regulations based on and within the limits of law. The *Legal and Technical Rules for Drafting Legislation* (hereinafter "the Drafting Rules") further clarify what types of secondary legislation may be issued by the Government and by the ministries.[20]

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

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

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

20 Particularly, the Government adopts decrees, decisions, and other implementing acts when it is expressly authorized by law to do so - which is the general rule, - or based on the authorisation enshrined in the Constitution, when it judges that a certain issue should be regulated by secondary legislation - a constitutional authority that shall be used restrictively. Government secondary legislation may also authorize ministries to adopt implementing rules for such regulations. On the other hand, ministries may issue rulebooks, orders and instructions for implementing laws and other regulations. Secondary legislation issued by a ministry cannot authorize the adoption of another piece of secondary legislation, either by the same or another ministry. Exceptionally, if secondary legislation issued by a ministry regulates specific issues that necessarily require a more detailed elaboration of a technical nature or, those that would require frequent amendments, such secondary legislation can determine the basis for issuing instructions. Furthermore, there is a form of legislation based directly on the constitutional authority of the Government: decrees with the legal power (Article 101 of the Constitution). Decrees with the force of law are an exception and the Government may pass those acts only in the cases explicitly described by the Constitution (in the event of war or a state of emergency) and under the conditions prescribed by the Constitution (if the Parliament cannot convene). The Government has to submit such acts to the Parliament for confirmation as soon as possible.

of the Government, which have been last amended on 30 July 2024,[21] and the RoP of the Parliament.

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

27. According to Article 9 of the Constitution, the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, have supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.[22] Article 145 of the Constitution of Montenegro states that "*[t]he law shall be in conformity with the Constitution and ratified international agreements, and other regulations shall be in conformity with the Constitution and the Law.*" This provision is commendable as defining the hierarchy of sources of law is a crucial element of the rule of law principle.[23] At the same time, and as recommended by the Venice Commission in its 2007 Opinion on the Constitution of Montenegro, "*it would have been useful to define the various normative acts below the level of a law in the formal sense (regulations, general acts, decrees) as well as their hierarchy*".[24]

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

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

30. While the mention of a public hearing on amendments to the Constitution is welcome in principle, it is questionable whether a one-month minimum timeline is sufficient. On several occasions, ODIHR warned against holding constitutional referenda without a meaningful parliamentary debate and sufficient time for meaningful public discussions.[25] It is worth noting that during the country visit, the potential need for constitutional amendments was discussed, in particular before signing and ratifying the Treaty of Accession of the Republic of Montenegro to the EU. This will be necessary, among others, to allow for the transfer of certain state powers to supranational bodies as well as to regulate the new relations between Parliament and Government in the EU decision-making process (see sub-section 10.2 *infra*).

31. In any event, the competent state authorities must direct their efforts towards ensuring inclusive discussions on the intended constitutional amendments, and provide a

21 See <Rules of Procedure of the Government of Montenegro>.

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

23 See Venice Commission, *The Rule of Law: Concept, Guiding Principle*, CDL-UDT(2010)022, para 7, p. 11: "A substantive coherence of the legal framework means that the constitution (or the constitutional principles in case of an unwritten constitution) has priority over other laws, and that there is a clear hierarchy and consistency of norms. Since legal security for the citizens may also be endangered by a multitude of laws and over-regulation, just as through an unclear and confusing system of laws."

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

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

necessary period for reflection and discussions, as well as adequate time for preparation when constitutional are introduced through a referendum.[26] Transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for the expression of a variety of views and meaningful, wide and substantive debates on controversial issues are key requirements of a democratic constitution-making process and help ensure that the text is adopted by society as a whole, reflects the will of the people, and benefits from the support of the public.[27] Public consultations should involve political institutions, non-governmental organisations and civil society, academia, the media, and the wider public,[28] offer equal opportunities for women and men to participate, and should involve proactively reaching out to persons or groups that would otherwise be marginalized, such as national minorities.[29] Overall, the process should offer sufficient time for proper voter education on the proposed amendments to allow them to make an informed choice when voting at the referendum, in line with international recommendations and good practice.[30] **Therefore, the minimum timeline for organizing public hearings on the proposed draft constitutional amendments should be increased.**

4. LEGISLATIVE PLANNING AND POLICYMAKING

4.1. Policy and Legislative Planning

32. The great majority of draft laws in Montenegro is proposed by the Government: in the years 2018-2022, 291 laws were initiated by the Government and 97 by the Parliament.[31] This means that in practice, the Parliament's legislative agenda is heavily influenced by draft legislation initiated by governments. From the great majority of interlocutors met during the country visit, it became clear that it is therefore essential to ensure that the planning of the Parliament is not only a reaction to the plans of the government but that their respective plans are appropriately co-ordinated and that effective Government-Parliament co-operation mechanisms are in place. This is fundamental to facilitate efficient lawmaking and even more important in the context of the EU accession process. For example, it was noted during the country visit that many draft laws are subject to urgent procedure just because of their EU-related content, which affects decisions on timetabling at the level of the plenary and the work plans adopted at the beginning of the year by parliamentary committees.[32]

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

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

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

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

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

31 SIGMA (Support for Improvement in Governance and Management) - Joint initiative of the OECD and the EU, *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), page 22.

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

33. As a principle, the government and parliament should ensure proper advance planning of policies and legislation to help keep their respective workloads at reasonable levels and allow for realistic budgeting and preparation.[33]

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

35. In April 2024, the Government adopted its mid-term work programme covering 2024-2027, with a detailed annual work plan for 2024.[34] It also adopted reports on the implementation of the GAWP for the different quarters of 2024.[35]

36. In principle, proper policy planning allows for longer-term planning of the key legislative initiatives, which in turn should result in qualitatively better, more sustainable legislation. In this respect, it is crucial to ensure that the government has its own policy/legislative plans, informs the parliament early on about policy measures and legislative proposals that will be submitted within the coming months and years, and regularly updates on any changes to facilitate the Parliament's own planning.

37. Notably, the Law on Budget and Fiscal Responsibility of Montenegro foresees the Fiscal Policy Guidelines (hereinafter "FPG") as the medium-term (three-year) fiscal plan and provides instructions for the preparation of the budget.[36] However, the priority pillars and objectives of the GAWP are still neither interlinked nor aligned with the programme structure of the budget. Therefore, there is an overall disconnect between the processes of policy/legislative planning and budget planning,[37] as also confirmed during the country visit, including the practice of adoption of legislation without a proper budgetary estimation, which also impacts the implementation of the adopted legislation. Proper costing of strategic documents and their linkages to the budgetary process continue to require particular attention.[38] It is essential that the planning process is consistent with a state's budgetary cycle and that it reflects relevant budget allocations and expenditures. A proper planning process, with RIA included, will help ensure that the planned policy/legislative initiatives comply with the annual budget and will allow parliament and its committees to monitor the allocation and spending of budget allocations when reviewing the planning and implementation of laws. **It is, therefore, recommended to ensure alignment between the objectives and content of policy and budgetary plans**.

38. Furthermore, it should be noted that during the past years, there has been a relatively high share of planned draft laws and sector strategies being carried forward from one year to

33 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 26.
34 See <Proposal of the Medium-Term Work Programme of the Government of Montenegro 2024-2027 and the Government Work Programme for 2024 with the Report from the Public Hearing>.
35 See <Program rada vlade - Pretraga - GOV.ME>.
36 Articles 18, 22 and 29 of the Law on Budget and Fiscal Responsibility of Montenegro.
37 As was shown for instance when the GAWP 2021 priorities were not reflected in the FPG 2021-2023, as updated in March 2021, see also recommendation from the SIGMA, Monitoring Report – *Montenegro* (2021), p. 34.
38 See EC, Commission Staff Working Document *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*. Brussels, p. 18.

the next.[39] According to the latest report on the implementation of the 2024 GAWP for quarter 3 of 2024, it is indicated that the overall implementation of the GAWP for the first, second and third quarters of 2024 is 61.8%, which would suggest a reversal of the trend.[40] It remains to be seen whether this is confirmed in the final implementation report for the whole 2024. In any case, it is important that the goals that are formulated are achievable goals and/or deadlines realistic to ensure that legislative plans are properly prepared to adequately organize and space out legislative projects and ensure their timely implementation. In particular, enough time should be allocated for each stage of the policy and legislative cycles of the various legislative projects of a given ministry or other government agency,[41] also taking into account the length and/or complexity of the legislative initiatives or whether it involves wide-ranging reforms that may significantly impact large parts of the population.[42] This should also include sufficient time for initial policymaking discussions, verification processes, impact assessments and public consultations.[43]

39. Finally, **it is important to further specify the manner of implementing, amending/updating and monitoring legislative plans,** an aspect that is insufficiently addressed in the legal framework of Montenegro. It is welcome that Article 31 of the RoP of the Government requires the Government to review the implementation of the GAWP on a quarterly basis, and that the ministries not in a position to implement the commitments within the set timeline shall provide justifications. From the quarterly implementation reports published by the Government online,[44] the monitoring of the implementation of the legislative plan seems on track, which is useful to ensure the effectiveness of the next cycle of legislative planning and to provide timely and reasonable changes to the current plan. To enhance the openness, transparency, and accessibility of governmental legislative planning, **the development of an electronic and more user-friendly tool may help facilitate the tracking of draft laws at different stages of the legislative process by both lawmakers and civil society representatives, or the public in general**.

40. In addition, as mentioned in the Preliminary Opinion, it is reported that the Government is not adopting the sub-legal acts necessary for implementing the laws promptly, which postpones the achievement of policy goals and creates legal uncertainty among the stakeholders.[45] It is generally good practice that the legislative and work plans also include instructions on drafting secondary legislation to implement primary laws, along with the necessary timelines; ideally, secondary legislation should be prepared in tandem with primary legislation, to ensure consistency and avoid delays in implementation.[46] **The RoP of the Government should be supplemented in this respect.**

4.2. Policymaking

41. The Government's *Decree on the Modalities and Procedure of Drafting, Aligning and Monitoring the Implementation of Strategic Documents* ("hereinafter "Strategic

39 For instance, 72% of draft laws planned in the 2020 GAWP were carried forward to 2021 – a share which almost doubled compared to 2017 (37%) – largely due to the political situation impacting the legislative work of government and parliament (see SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 54); the same applies to the share of planned sector strategies carried forward (52%), which has almost tripled compared to 2017 (19%); see recommendation from the SIGMA, Monitoring Report – *Montenegro* (2021), p. 34.

40 See <Izvještaj o realizaciji Programa rada Vlade za III kvartal 2024. godine> published on 8 November 2024.

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

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

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

44 See <Program rada vlade - Pretraga - GOV.ME>.

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

46 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 26.

Documents Decree")[47] lays down the requirements and procedures for drafting the strategies and programmes, and proposing both internal and external policies in a given field adopted by the Government of Montenegro.[48] These are further clarified by the *Methodology for the Development, Drafting and Monitoring of the Implementation of Strategic Documents*. It is noted that the GSG recently amended the said Methodology to include practical guidelines to ensure that all of the government's strategic and policy documents address the needs of women and men equally,[49] which is a welcome step in principle. All the line ministries are responsible for the drafting and implementation of sector-based strategies, with the specific competence of the GSG concerning the co-ordination, alignment, and monitoring of their implementation.

42. According to Article 40(3) of the RoP of the Government, the GSG and the Ministry of Finance (hereinafter "MoF") issue opinions on proposals for strategic documents in accordance with the Strategic Documents Decree, which are submitted along with each proposal of a strategy document that is being put forward to the Government for adoption. While the MoF reviews the financial affordability of the planned measures, the GSG is responsible to ensure the alignment of draft sector strategies with other strategic and planning documents and coherence with the objectives of the EU integration process.[50] However, it is not clear how the objectives in the Strategy Documents Decree relate to other strategic goals of Montenegro, such as the National Strategy for Sustainable Development 2030, the UN Sustainable Development Gals (SDGs) or other UN/global strategic objectives. It is moreover noted that the GMTWP makes some references to some of these documents, which is welcome, although not mandated by the Strategy Documents Decree. As a consequence, the strategic planning documents may not always be logically linked. **It would be advisable that an explicit reference to these global strategic objectives/documents be made in the Strategic Documents Decree to better link the national strategic objectives to the global agenda**.[51]

43. Furthermore, according to Article 23 of the Law on State Administration, ministries are responsible for domestic and foreign policy development by proposing internal and external policies, normative activity and administrative supervision in the area for which they are competent. However, while there are some rules governing the preparation of strategies, there are no internal regulations in line ministries concerning the process of developing policies to implement the strategies. In this regard, it would be useful to recall the distinction between the terms "policy" and "strategy". The term "strategy" is usually used to refer to documents with broad objectives that cut across a number of ministries and have at least a medium-term horizon. In this sense, a strategy cannot be, in and of itself, directly implemented. Rather, in order for its goals to be achieved, a strategy requires a number of policies to be developed. A policy is often given a formal framework through legislation and/or secondary regulations, although it may also take the form of non-regulatory approaches. Thus, an economic development strategy would have a time horizon of approximately five to ten years, and would require that a large number of

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

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

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

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

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

ministries develop policies that, taken together, would promote the objectives of the strategy.

44. Importantly, the link between the formulation of strategies and the drafting of legislation is not well developed as there are no specific rules governing the development of policy papers (stemming from strategic documents and guiding the preparation of laws). Article 40 (4) of the RoP of the Government provides that the draft law should be submitted to the Government along with "*an analysis of the situation, phenomena and problems in the area regulated by the proposed law*", with no reference to the consideration of legislative and non-legislative options and the justification for the preferred option. In general, it is considered good practice that during the policymaking process, all potential alternative solutions are evaluated, including non-regulatory ones, to determine whether legislation is the appropriate route to ensure that legislation is only developed and adopted where necessary.[52] Policy papers (unlike the explanatory statement) should be approved by the government before initiating the drafting of legislation,[53] rather than being submitted to the government together with the proposed law, given that their purpose is to inform the legislative development, not to explain it.

45. As discussed in greater detail below (see Sub-Sections 5 on RIA and 7 on Public Consultations *infra*), the Montenegrin legal framework includes references to important elements of good policy- and lawmaking such as RIA and consultation, but the different elements are not fully integrated into the policymaking process that should precede the drafting of legislation. As such, a coherent and logically interconnected policy cycle is still not in place[54] and it appears that the framework governing the policy development stage is somewhat under-developed. While much emphasis is placed on RIA accompanying all draft laws, there is very little focus on the development of policy papers,[55] such as concept notes or other policy documents, that should always precede the drafting of legislation.[56]

46. The RoP of the Government require that every draft law or regulation must be accompanied by RIA but do not envision that RIA should be conducted at the early stages of the policymaking process, even before a decision to formulate a regulatory proposal/legislative initiative is made. The risk with this approach is that RIA reports at a later stage could be prepared as a bureaucratic add-on to a legislative proposal just for the sake of justification and with no added value for the policymaking process. Principle 4 of the 2012 OECD Recommendation on Regulatory and Policy Governance[57] clearly stipulates that RIA should be conducted at the early stages of the policymaking process. This means that after strategic goals are identified, policymakers should evaluate all possible options and whether regulation is necessary and how it can be most effective and efficient in achieving those goals; means other than regulation should also be identified and the trade-offs of the different approaches analysed to identify the best approach. **Therefore, it is recommended to clearly provide in the RoP of the Government that RIA should be conducted at the early stages of scrutiny and selection of policy proposals, although with due consideration of the principle of**

52 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 99.
53 *Ibid.* para. 102.
54 SIGMA, Monitoring Report – *Montenegro* (2021), p. 8.
55 These two aspects may be interrelated: the policy formulation stage is not sufficiently developed probably because there is an overproduction of RIAs, which act as a substitute for policy-development.
56 See e.g., ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 102; and SIGMA, *Functioning of the Centres of Government in the Western Balkans*, 2017, p. 21, which refers to a system of concept papers that usually precedes the drafting of legal acts and also evaluates the need to have an impact assessment.
57 OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), Recommendation I. 4. See also OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, 2014, para. 47.

proportionality to avoid extensive burdens on the state and policymakers (see also Sub-Section 5 on RIA).

47. In light of the foregoing, **the provisions of the RoP of the Government governing the policy development stage prior to the development of any legislative proposal, should be further elaborated and enhanced. This could be done by requiring, before initiating the drafting of a law, the development and approval by the Government of policy papers addressing the recognition and definition of a significant public problem requiring government action and the elaboration of possible legislative and non-legislative approaches and solutions, justifying the chosen option as the best approach. The policy document should then inform the development of the legislative proposal. The RoP of the Government should also integrate *ex ante* RIA and public consultations into the early stages of the policymaking process for the formulation of new regulatory proposals.** Especially in the case of major draft laws, **early consultation between the government and parliament may help develop a common understanding of the draft law's policy objectives and regulatory requirements**[58] (see also Sub-Section 4.3 *infra* on Inter-Institutional Co-ordination).

4.3. Inter-Institutional Co-ordination

48. The fact that the Government and the Parliament may both initiate draft laws and that the Parliament then discusses and adopts the laws necessitates proper co-ordination between them at the different stages of the policy- and lawmaking processes, including by aligning their respective legislative plans and strategies. According to Article 30 (4) of the RoP of the Government, the GAWP and GMTWP shall be submitted to the Parliament and published on the Government's web portal, which is commendable.[59] It is also mentioned in Article 135 of the RoP of the Parliament that the President of the Parliament shall forward the draft law to the Government (unless the Government is its proposer) so that it would provide its opinion. Moreover, Article 9 of the RoP of the Government specifies that the Deputy Prime Minister for the Political System, Internal and Foreign Policy shall co-ordinate the participation of members of the Government in the work of the Parliament of Montenegro. It further states that "*a member of the Government designated as a Government representative is obliged to take part in the work of the Parliament and its working bodies in person*". A dedicated Section X in the RoP of the Parliament provides further details regarding the Relations of the Parliament and the Government.

49. At the same time, during the country visit, several interlocutors raised the issue of poor co-operation and co-ordination between the Government and the Parliament during the legislative process, especially with respect to draft laws concerning approximation with the EU acquis or the ratification of international agreements (see further elaboration below), as well as the difficulties for the Parliament to exercise its oversight functions over the Government. This suggests that the existing provisions and co-ordination mechanisms are rather ineffective.

50. Several references were also made to the current discussion regarding the ongoing development of a separate Law on the Parliament (along with the Draft Law on the Government, which already exists) to ensure that the respective competencies of the two powers are clearly defined there, including the respective areas and modalities of co-operation between them. As underlined in the ODIHR Preliminary Opinion, unlike the majority of constitutions of European countries, which provide a very detailed outline of

58 SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 128.

59 As mentioned in the SIGMA *2021 Monitoring Report on the Principles of Public Administration in Montenegro* (2021 SIGMA Monitoring Report), the Government consistently shares its annual work plans with the Parliament to provide advance information on its legislative initiatives, see SIGMA, Monitoring Report – *Montenegro* (2021), p. 42.

the role and functioning of parliaments, the Montenegrin Constitution does not provide such a level of detail concerning the work of its Parliament, especially with respect to its oversight functions.[60]

51. The RoP of the Parliament contain a number of provisions on co-operation between the Parliament and the Government. Although Article 75 (6) of the RoP of the Parliament prescribes that invited authorized representatives of state bodies are obliged to respond to the invitation to a control hearing, it was reported during the country visit that this obligation is *de facto* not complied with. In practice, the government also fails to deliver its opinions on legislative initiatives introduced by MPs, as per Article 135 of the RoP of the Parliament.[61] Overall – and as confirmed during the country visit – there does not seem to be effective legal mechanisms in place to ensure the enforcement of the RoP of the Parliament in practice.

52. ODIHR thereby reiterates its recommendation from the Preliminary Opinion about the need **to enhance the co-operation modalities between the Government and the Parliament throughout the policy and lawmaking processes and to provide effective legal mechanisms to ensure that the Government also complies with them. Whatever form such legal mechanisms would take, it will be important to ensure that there is no overlap, duplication or inconsistencies with the RoP of the Parliament,** to ensure the principle of legal certainty.[62] **The legal drafters should assess whether a new piece of legislation is needed or whether the same goal could be achieved by strengthening and further elaborating the respective provisions of both RoP (of the Parliament and of the Government) requiring each of the institutions to regularly share and publish updates to their policy and legislative plans, align their respective legislative plans and strategies, and enhance formalised co-ordination arrangements between the administrations of the Government and the Parliament.**[63] Where necessary, the respective provisions from two sets of the RoP can be cross-referenced to ensure consistency.

53. Importantly, during the country visit, it was mentioned that the parliamentary Committee on International Relations and Emigrants is not consulted nor takes part in the process of negotiating international agreements by the Government. Although Article 6 of the Law on Foreign Affairs[64] specifically regulates the co-operation of the Government with the Parliament in this field, it only provides for a general information by the Ministry on "*important issues in the field of foreign policy and international relations of Montenegro*". Furthermore, the Law on the Conclusion and Execution of International Treaties[65] which regulates the procedure for concluding, confirming and executing international treaties, as well as other issues related to the publication, amendment and termination of international treaties has no provisions related to the role of the Parliament in concluding the international treaties.

54. There is no specific mention of an obligation to inform or to involve the competent parliamentary committee during the process of negotiating and signing international

60 In particular, there are no provisions related to the right of Parliament to demand information from state administration and other institutions, as well as to demand the presence of certain governmental representatives at parliamentary sessions, which are one of the preconditions for the successful fulfilment of parliament's basic exercise of oversight functions over the executive and to ensure accountability, see ODIHR Preliminary Opinion (2023), para. 23.

61 See European Commission, Staff Working Document *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*., p. 14.

62 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 15

63 E.g., regular meetings to discuss upcoming proposals in advance, see SIGMA, Monitoring Report – *Montenegro* (2021), p. 42.

64 See <New Law on Foreign Affairs 70-17 of 27 10 2017>.

65 The Law was published in the "Official Gazette of Montenegro", no. 77/2008 of 16.12.2008

agreements.[66] Therefore, the Committee is not informed in advance about the upcoming governmental legislative proposals for ratification of international agreements, which also impacts the planning work of the Committee. According to the Constitution of Montenegro (Article 82 (17)), the role of the Parliament is to "confirm international agreements", while the Government is mandated to "sign international agreements" (Article 100 (4) of the Constitution). At the same time, to strengthen the co-operation between the Parliament and the Government and ensure a proper legislative planning, **consideration could be given to enhance the involvement of the Parliament in the negotiation process by, at minimum, informing the Committee on International Relations and Emigrants about the international agreements which are going to be signed in the upcoming year.** This would allow the Committee on International Relations and Emigrants to be at least informed about the international agreements which will be negotiated and later ratified. Moreover, the option that the Committee should agree with the concluding the international agreement before it is negotiated and signed by the Government and later put on the parliamentary agenda for ratification, could be also considered. **The relevant amendments related to the role of the Parliament in concluding the international agreements should be introduced to the Law on Foreign Affairs or to the Law on the Conclusion and Execution of International Treaties or to the RoP of the Parliament. Such amendments would enhance the modalities of co-operation and coordination in the field of concluding the international agreements.**

55. With respect to inter-ministerial co-operation, the Law on State Administration and the RoP of the Government set out the internal consultation procedure, including the general obligation of line ministries to co-operate during the development of policy proposals and the list of the centre of government bodies[67] that have to provide a mandatory opinion on the proposal before its submission to the Government.[68]

56. The RoP of the Government stipulate a *maximum* duration for the inter-ministerial consultation process, i.e., 14 days (Article 41 (1)). At the same time, the fact that no *minimum* duration is defined can hinder the effectiveness of the process due to a lack of adequate time for a meaningfulreview of drafts proposed by other ministries.[69] Therefore, it is recommended that **the RoP of the Government specify the minimum duration of the inter-ministerial consultation process, while retaining possibility, with respect to complex matters, to extend the duration beyond the existing maximum of 14 days**.

57. Finally, apart from the review of draft sector strategies,[70] there is no review of the content of draft policy proposals submitted to the Government. The proposals are discussed at the sessions of the Government commissions, which are the political-level bodies administratively supported by the GSG. When preparing materials for the sessions of these commissions, the GSG focuses on procedural compliance of received policy proposals,[71] not on the substance (i.e., compliance with Government's priorities). As a result, there seems to be no requirements or procedure for the review of the coherence of draft policies and draft laws with Government priorities at the administrative level, nor is there any review of the substantial quality of the draft laws, as the review of proposals

66 As an example, in Slovenia, Article 70 of the Law on Foreign Affairs provides: "*The Government submits the initiative for concluding the international treaty for confirmation to the working body of the National Assembly responsible for the foreign policy.*"

67 The term "centre of government" is used to refer to those administrative organs at the central level that serve the head of the executive and/or the Cabinet of Ministers of Montenegro.

68 The bodies listed in Article 40 of the Government RoP include: Secretariat for Legislation (hereinafter "SfL"), the MoF, the Office for European Integration and the Ministry of Public Administration, as well as the Ministry of Justice (hereinafter "MoJ").

69 SIGMA, Monitoring Report – *Montenegro* (2021), p. 50.

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

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

takes place only during (political level) Government commissions meetings, which decide whether to submit the items to the Government session for decision (see also Sub-Section 9 regarding Regulatory Oversight). It is, therefore, **recommended to strengthen the GSG's role by mandating it to review the coherence of draft policies and draft laws with Government priorities as well as the substantial quality of the draft policies or laws, and return them to the initiators in case their substance needs to be improved and aligned with the previously established policy priorities**.[72]

RECOMMENDATION A.

1. To further elaborate the provisions of the RoP of the Government governing the policy development stage prior to the development of any legislative proposal, including by requiring the development and approval of policy papers by the Government while integrating ex ante RIA and public consultations in the early stages of the policymaking process.

2. To enhance the co-operation modalities between the Government and the Parliament throughout the policymaking and lawmaking processes between both actors, including through the regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and formalising a proper co-ordination arrangement between them while providing a legal mechanism to ensure compliance by the Government.

3. To ensure in the RoP of the Government that the Parliamentary Committee on International Relations and Emigrants is informed about the international agreements which will be negotiated/signed in the upcoming year and supplied with the original versions of the texts of these agreements.

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

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

5. REGULATORY IMPACT ASSESSMENTS

5.1. Ex ante RIA

58. Article 33 of the RoP of the Government establishes the obligation for ministries to conduct RIA "*in the process of preparing laws and other regulations*" (as well as strategic documents),[73] and to submit draft laws and regulations to the Government along with the RIA report (Article 40(1), indent 6). As recommended above, **RIA should be conducted at the early stages of policymaking even before the drafting of a legislative proposal is initiated, although with due consideration of the principle of proportionality to avoid extensive burdens on the state and policymakers.** For that purpose, **ministries should have clear processes to ensure the smooth initiation,**

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

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

planning, organization and completion of RIAs, including resource planning and allocation of internal analytical resources for RIA work, as well as internal quality checks.[74] It is also important that an appropriate support mechanism – for instance RIA co-ordinators – is in place to support the RIA preparation process.

59. RIA should be prepared in accordance with the instruction issued by the MoF,[75] which oversees the RIA policy as part of its broader mandate to improve business environment and regulation. If the line ministry assesses that the RIA is not necessary, it needs to provide a proper justification (Article 33(2) of the RoP of the Government). Furthermore, with the 2018 amendments to the Law on Local Self-government,[76] the obligation to carry out RIA for local-level regulations is established by Article 71, requiring local government bodies to prepare and evaluate the analysis of the impact of decisions and other regulations passed by the local councils and the president of municipalities. In April 2024, the MoF published a Report on the Implementation of Regulatory Impact Assessment (RIA) in Montenegro which provides a number of recommendations for enhancing RIA quality and informs about future reform of the methodology, form, and elaboration of new guidance.[77]

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

61. In accordance with the principle of proportionality and to avoid extensive burdens on the state and policy- and lawmakers, full RIA should not necessarily be undertaken with respect to all draft laws, but mainly in those cases where this is deemed necessary,[78] for instance for main policy proposals with major impacts. As noted above however, the preparation of policy papers such as concept notes or other policy documents should always precede the drafting of legislation.[79] While 33(2) of the RoP of the Government provides for the possibility of of not preparing a RIA when considered unnecessary, the legislation of Montenegro does not set out any clear criteria to determine in which cases ministries may justify not preparing a RIA, apart from specific types of legislation which are exempted.[80] This may give rise to different interpretations by ministries and contribute to legal uncertainty. Moreover, it is unclear what the consequences are if the MoF determines that the justification provided by the ministry for not conducting the RIA is inadequate.

62. In light of the foregoing, it is recommended to review the scope and model of RIA, considering the available resources, workload and capacity constraints in ministries. In accordance with the principle of proportional analysis, it is **advisable that the RoP of**

74 See SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, p. 41.
75 MoF, *Instruction for preparing the report on conducted RIA* (Official Gazette of Montenegro 09/2012).
76 Law on Local Self-government (OG MN, No. 02/18)
77 See 2023 qualitative report on the implementation of regulatory impact assessment (RIA) in Montenegro.
78 See OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), Annex, stating that states shall "*adopt ex ante impact assessment practices that are proportional to the significance of the regulation*", and OECD: *Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy*, 2020, Best Practice Principles for Regulatory Impact Assessment, Annex: A closer look at proportionality and threshold tests for RIA. See further OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, 2014, para. 48; and Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, 18 March 2016, Benchmark A.5.v. for a general requirement stating that where appropriate, impact assessments shall be made before laws are adopted.
79 See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 102; and SIGMA, *Functioning of the Centres of Government in the Western Balkans*, 2017, p. 21, which refers to a system of concept papers that usually precedes the drafting of legal acts and also evaluates the need to have an impact assessment.
80 The RIA Manual lists several possible exemptions from the obligation to carry out RIA for specific types of legislation, e.g., the budget bill, legislation dealing with the aftermath of emergencies, national security legislation, and legislation transposing the acquis, where no considerations on how to implement the legislation are available.

the Government and MoF Instruction clearly elaborate the criteria for exempting certain legislative proposals from the RIA requirements, including in case of limited impact of the planned intervention. Several countries have elaborated criteria to help them decide whether RIA is necessary for a given piece of legislation or not.[81]

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

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

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

66. Those countries that apply some sort of RIA usually foresee an assessment of the economic, budget or fiscal impact of draft policies or laws, particularly the costs and benefits involved. Indeed, it is essential that the costs are evaluated for policies and laws and how they relate to the benefits that they bring with them. It is reported that the line ministries in Montenegro mostly submit only rough cost estimates of administrative burdens and business barriers, while other financial impacts, including costs arising from the implementation of regulations, may be disregarded.[82]

67. Moreover, during the country visit, it became apparent that many draft laws initiated by the Government, including on EU-related matters, do not include a proper assessment of

81 Some countries have formal threshold tests for determining whether RIA should be applied (e.g., depending on the expected costs/resources or on the overall economic, social or environmental impact). Draft laws covering new topics or those that are expected to impose considerable administrative or regulatory burdens, or otherwise have wide-ranging effects on significant parts of the population, the economy, the state budget, or the environment, should always undergo some form of RIA, though the particular threshold is up to each individual country itself. The RIA thresholds should not automatically exclude secondary laws from the scope of RIA, given that they help bring primary legislation to life and thus are often equally responsible for administrative or regulatory burdens; see OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 3: Regulatory Impact Assessment Across the European Union.

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

financial consequences.[83] This may consequently impact the implementation of the respective laws, due to the lack of budget funds. As underlined in Sub-Section 5.1 *supra*, the mechanism for assessing the financial or budgetary impact of planned interventions should be further enhanced. In addition, it is also important to note that the lack of consultation with and engagement of relevant stakeholders and representatives of civil society in the lawmaking process tend to undermine the effective implementation of approximation legislation.[84] Proper regulatory oversight mechanisms should also be in place to ensure the quality of the documents accompanying legislative proposals, and to return such proposals if/as appropriate (see also Sub-Section 9 *infra*).

68. In this respect it is crucial to ensure, especially when it comes to the legislation deriving from the EU integration process, that a proper RIA is conducted, assessing also its potential effects on the budget. Importantly, an assessment of financial implications should particularly take into account, already during the planning process, the costs of legislative work and harmonization with the EU acquis, such as the costs related to: 1) drafting (e.g., engagement of local/international experts), 2) harmonization, including costs related to expert revision of translated acquis, and/or potential costs of legal revision (where appropriate); 3) implementation and enforcement, 4) follow-up activities, and 5) monitoring. To mitigate the potential budgetary consequences of certain draft laws necessary for the EU accession, consideration could be given to envisaging in those draft laws transitional provisions which give a certain period of time for proper implementation of the adopted EU related laws especially where significant financial consequences are obvious and the respective secondary legislation needs to be passed for a proper enforcement.

69. At the same time, other impact assessments should include social impact, such as impact on employment and local communities, impact on business environment (e.g., impact on SMEs, competition and administrative burdens), human rights impact as well as impact on gender equality, and, as needed, environmental impact and anti-corruption impact. In this respect, and in line with good practice, human rights impact assessments (hereinafter "HRIA") should generally be part of *ex ante* RIA, to ensure that legislation does not unduly interfere with the human rights of individuals or groups.[85] It appears, however, that in the legal framework of Montenegro there is no express requirement to assess the impact of the draft laws on gender equality, human rights, the environment and other important areas. The *2021 Monitoring Report on the Principles of Public Administration in Montenegro* as part of the joint OECD-EU initiative SIGMA (Support for Improvement in Governance and Management in Central and Eastern European. Countries, hereinafter "2021 SIGMA Monitoring Report") underlines that the RIAs cover the impacts on the state budget and the economy (including administrative burdens) but do not consistently focus on other areas like social and environmental impacts,[86] which means that fundamental aspects such as human rights or potentially discriminatory impact of draft laws may fail to be considered at all. Therefore, the general requirement of the MoF Instruction to analyse a broad range of "other impacts" might not be applied

83 A particular relevant case - due to its fiscal impact - was the draft Law on Compensation for Former Recipients of the Benefit for Mothers of Three or More Children, which was initiated and passed without a proper financial impact assessment and discussion, most notably with the Committee on Economy, Finance and Budget, and which as a consequence, could not be implemented.

84 See e.g., with respect to Eastern Partnership countries, European Parliament, DG for External Policies of the Union, Policy Department, Study on Approximation of the national legislation of Eastern Partnership countries with EU legislation in the economic field, May 2013, p. 16.

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

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

in practice. Gender assessment and integrated gender-responsive budgeting, as horizontal concerns relevant to legislation, should also be systematically included in *ex ante* RIAs[87] and prepared in consultation with the national machinery for the advancement of women (see Sub-Section 11 *infra*).[88] **It is thus recommended to envisage a clear list of impact assessments that need to be mandatorily conducted for all draft laws, as well as assessments that are mandatory depending on the topic including human rights and gender impact assessment, and to issue further methodological guidelines to assist in the conduct of those assessments, while ensuring that adequate training is provided to lawmakers** (see Sub-Section 9).

70. Article 67 the RoP of the Government requires that all draft laws initiated from the Government should be accompanied, in addition to the RIA form, by the opinion of the MoF on whether the RIA conducted by the initiator is adequate. The 2021 SIGMA Monitoring Report however notes that quality control primarily focuses on impacts on businesses and budget impacts but not wider economic, social or environmental impacts.[89] In addition, although Article 3 of the Law on Gender Equality requires that state administration bodies and other public entities are obliged to assess and evaluate the potential impact on women and men when planning, adopting and implementing their decisions and activities, there is no effective legal mechanism to ensure compliance with this obligation or sanctions in case of non-compliance.[90] **It is recommended to specify in the RoP that quality control over the RIA should cover all key impact areas, including economic, environmental and social impacts, as well as human rights and gender impact. There should be an effective mechanism to check both the compliance with RIA procedures and the content and quality of analysis and conclusions presented in the draft RIA reports, before they are submitted to government for final approval, and those not complying with quality requirements should be returned to the initiator.**

71. As mentioned in the Preliminary Opinion (paras. 63-64), Article 130 of the RoP of the Parliament does not explicitly mention the RIA report among the documents necessary to initiate the legislative procedure in the Parliament (while still requiring each law to be accompanied by a number of elements that constitute RIA in the explanatory statement to the draft law, such as "estimated financial resources for enforcement of the law"). The lack of a formal requirement to include the RIA form in the parliamentary RoP would make it possible, in principle, to register the draft law in the Parliament without the RIA report. In addition, during the visit, it was confirmed by interlocutors in the Parliament that in practice, the abovementioned requirements envisaged by Article 130 of the RoP of the Parliament are not complied with, when the draft law is initiated by an MP (see also Sub-Section 9.2 *infra*).

72. To avoid any uncertainty, and for the sake of regulatory coherence, it is recommended **to amend Article 130 of the RoP of the Parliament by specifically requiring the submission of the RIA report, or justification for not submitting it, to accompany the draft law submitted to the Parliament and that the absence of such a document**

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

88 See CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, 6 June 2024, paras. 11-12 and 16. See also CEDAW Committee, *Concluding Observations on the second periodic report* (2017), para. 13.

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

90 See CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, 6 June 2024, paras. 11-12.

should justify the draft's return to the initiator despite of who the initiator is. A proper parliamentary screening mechanism should be in place to effectively assess and return such draft laws.

73. Importantly, the Parliament of Montenegro has not set up rules for conducting RIA and public consultations for laws *initiated by MPs*, or for impact analysis of substantial amendments to government-proposed laws. Such omissions can hamper the quality of the legislation initiated by MPs as well as, the implementation of the adopted law at a later stage and make monitoring and evaluation more difficult. Although this is rather common in other countries of the region, the RoP of the Parliament could require that **draft legislative initiatives and proposals for substantial amendments to Government's draft laws that are initiated by individual MPs should comply with RIA requirements, similar to those applied by the Government when preparing draft laws**. At the same time, this means that adequate support should be provided to individual MPs, primarily from the political group the MP belongs to, from the Parliamentary Institute/Research Centre, or from the parliamentary Legal Department/Service in case one would be established (see also para 80 *infra*), to conduct such RIAs.

5.2. Ex post Evaluation

74. To ensure that legislation remains appropriate, adopted legislation needs to be assessed and evaluated after some time, to see whether it adequately responds to its intended aim and whether there have been any unforeseen or unintended consequences.[91] As such, *ex ante* RIA and *ex post* evaluations are strongly linked and mutually reinforcing, representing different yet interconnected steps of the policy- and lawmaking cycle, where each stage feeds off the other.[92] At the same time, *ex post* evaluation should always integrate a gender and diversity perspective, meaning that such assessment should analyse how the adopted legislation have impacted women and men, and other specific groups.[93] While *ex post* evaluation is still an underdeveloped practice in most countries and far less common than *ex ante* RIAs, some aspects of *ex post* evaluation are generally integrated into regulatory management systems, although they often lack a systematic adoption of ex post evaluation or a sound methodological framework for conducting it.[94] As part of their general oversight role, parliaments (generally respective parliamentary committees) should also engage in *ex post* RIA of adopted laws falling within their sphere of competence.[95]

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91 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 166.

92 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 160. Ex post evaluation may benefit from the RIA report in determining whether a given law was effective or not and the reasons of potential regulatory failure; RIA may also benefit from taking into account the results of any ex post evaluation of the implementation of existing legislation, when discussing and formulating new regulations.

93 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 163; and OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), which calls on governments to *"[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.*". Within the EU, see also the *2015 Better Regulation Package*, whereby according to the "evaluate first" principle, the EC has committed to evaluate all regulations before making a new proposal in a related area; major ex post evaluations and reviews are subject to quality control by the Regulatory Scrutiny Board, contributing to strengthened oversight of ex post evaluations; The EC employs a range of review approaches, combining systematic evaluations of individual regulations with in-depth reviews of specific policy sectors. While ex post evaluation is still an underdeveloped practice in most EU Member States and far less common than RIA, the majority of EU Member States have integrated some aspects of ex post evaluation into their regulatory management systems, although they often lack a systematic adoption of ex post evaluation or a sound methodological framework for conducting it.

94 For instance, within the EU, as of 2019, out of 28 EU Member States, 14 countries have provisions for mandatory periodic evaluation of existing primary laws in place, while 11 countries do so for subordinate regulations. This largely confirms the general picture across OECD members: only 26% require periodic ex post evaluation for existing primary laws and 21% for subordinate regulations. In most of the 14 EU countries, the ex post evaluation requirement only applies to primary laws in specific policy areas. Only Austria, Denmark, Germany, Hungary, Italy, the Netherlands and the United Kingdom have a requirement in place to conduct periodic ex post evaluation across all policy areas. See OECD, *Better Regulation Practices across the European Union*, 2019, p. 104.

95 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 168.

75. The legal framework of Montenegro does not envisage a system of *ex post* evaluation of the implementation of existing legislation, although ODIHR was informed during the country visit that some parliamentary committees conduct such assessments on a selective basis, including with the support of international partners.[96] While the RoP of the Government sets the procedural framework and the main requirements for new legislative proposals, there is no obligation for the ministries to analyse and evaluate the implementation of existing policies and legislation. As for *ex ante* RIAs, and while carrying out *ex post* evaluation is a recognized evolving good practice and is increasingly used in the Western Balkans,[97] this should also not create an unreasonable burden on policy- and lawmakers in light of current capacities in Montenegro. Hence, **lawmakers should discuss and assess the feasibility of introducing a system of *ex post* evaluation, at least for certain major pieces of legislation or certain sectors, while clearly defining the scope and methodology of such evaluation. The *ex post* evaluation of adopted laws could be more clearly linked with *ex ante* RIAs of the draft amendments to them,[98] and this could be better reflected in the RoP of the Parliament and Government and/or formal guidelines.**

RECOMMENDATION B.

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

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

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

4. To introduce an effective mechanism to check both the compliance with RIA procedures and the content and quality of analysis and conclusions presented in the draft RIA reports, before they are submitted to government for final approval, while those not complying with quality requirements should be returned to the initiator.

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

6. To consider the feasibility of introducing a system of *ex post* evaluation, at least for certain major pieces of legislation or sectors, while clearly defining the

96 See e.g., SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 123.

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

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

scope and methodology of such evaluation and closely linking it with the *ex ante* phase of RIA.

6. PREPARATION OF DRAFT LAWS AND LEGISLATIVE PROCEDURE

6.1. Legal Drafting

76. As in most OSCE participating States, in Montenegro, the preparation of the majority of draft laws generally takes place within the executive.[99] There are no centralized government drafting services (for instance within the government cabinet) taking on the task of preparing RIAs, carrying out public consultations and drafting legislation. Therefore, ministries are primarily responsible for drafting legislation that fall within their fields of work, with some support from the Secretariat for Legislation of the Government (hereinafter "SfL").

77. It is commendable that in 2010, Montenegro has adopted the unified Drafting Rules, which are applicable to the Government and to "*other entities, when drafting legislation and other general enactments that they pass within their powers*". This means that draft laws initiated by MPs should, in principle, be guided by the same rules although written for executive. Having unified drafting rules should help ensure consistency of the format, structure and style of laws, and other technical elements.[100] Adequate and continuous training on the use of drafting manuals and application of legislative techniques should also be provided to relevant staff in ministries and staff supporting MPs in developing legislative initiatives and proposing amendments. Additionally, mechanism for quality checking should exist within the government to ensure that all draft laws that are initiated by the government are of the same quality, style and structure (see also Sub-Section 9 on Regulatory Oversight Mechanisms).

78. During the country visit, ODIHR met with the legal teams of several ministries who expressed concerns regarding the overall volume of legislative activities, especially linked to EU approximation, in light of the minimal human resources allocated for the tasks within each ministry. It is also understood that legal drafting of government-initiated laws is often carried out by lawyers of lead ministries, independently from other preparatory tasks, such as impact analysis or consideration of policy options.[101]

79. While in terms of legal drafting, the ministries benefit from the support of the SfL which is devoted to assessing constitutionality/and legality of draft laws and bylaws, supports ministries in law drafting, provides other research and assistance to ministries to ensure the clarity of legislation and coherence of the legal framework in general, the SfL is not involved at the stage of the policy work of each ministry. The SfL comprises 16 lawyers. While the legal specialists from the SfL work to ensure a strong check of the quality of draft laws prepared by line ministers, they might not necessarily have sufficient time and human resources at their disposal to ensure continuous support, guidance and quality control over legal drafting, especially given that special legal drafting expertise and skills may be lacking at the level of the line ministers. As underlined in the ODIHR Guidelines,[102] it is important to have not only experts on the subject matter of the law but,

99 See SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 22, indicating that in the period 2018-2022, 291 laws were initiated by the Government while 97 were initiated by the Parliament.
100 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 135-137.
101 This is also noted in SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 82.
102 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 123.

also, legal drafting specialists. It is, therefore, strongly advised **to strengthen the capacity of the legal drafting units at ministerial level and, in parallel, ensure that legal drafting support and expertise is provided by a specialized unit in central government, possibly within the Secretariat for Legislation –, while ensuring early involvement at the policymaking stage and close coordination with the experts on the subject matter of the law.** In light of this, SfL should be strengthened to increase its role beyond assessing legality and constitutionality of the draft laws only to be able to also provide stronger support to the line ministries in legal drafting of laws.

80. In the Parliament, all the draft laws submitted by the Government are reviewed by the Legislative Committee, which assesses the compliance of the draft legislation with the Constitution and other laws, in addition to the sectoral committee designated as the lead for the draft law. This task of ensuring legal compliance of draft laws appears challenging due to the high workload and limited allocation of human resources and administrative support, with the secretariat supporting the Legislative Committee being composed of only five staff. The Parliament has established a dedicated Parliamentary Institute/Research Centre (and a Parliamentary Budget Office) to conduct research on specific topics to support MPs' preparation of their legislative proposals, which is a positive step towards strengthening evidence-based lawmaking, although such bodies do not aim at support legal drafting *per se.* In this respect, **the establishment of a separate, dedicated parliamentary Legal Department/Service could be considered, which could take over some of the tasks of the Legislative Committee related to providing legal opinions and analysing the compliance of the draft law with the Constitution and other laws, as well as could offer expert legal drafting support to MPs to develop draft legislation and amendments, while ensuring that draft laws are in accordance with the drafting standards and rules**. This Legal Department/Service could be staffed with the staff of the Secretariat of the Legislative Committee, with the allocation of additional human resources and support to carry out their tasks.

81. Importantly, legal drafting should be seen as a dialogue, and an iterative process, marked by extensive co-operation between policy developers and the legal drafters or, if policymakers and drafters are the same people, by extensive policy discussions with external stakeholders that are only later put on paper.[103]

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

83. It is commendable that the abovementioned legal provisions presuppose involving not only governmental staff, but also stakeholders such as external experts and civil society representatives, among others, to be consulted during the preparation of drafts laws. Such WGs would work better if created at an earlier stage, from the very conceptual phase, when developing policies. Early engagement between policy development and legislative drafting is usually beneficial for the quality of the legislative end-product, as in such cases the legal drafter has a better understanding of the policy *rationale* behind a new law, and sub-optimal policies can be discarded at an early stage.[104]

103 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 127.
104 Ibid.

84. Finally, as recommended in the ODIHR Guidelines,[105] both governments and parliaments should provide initial and continuous training on legislative drafting, to create a corpus of well-trained legislative drafters who can work within ministries and other initiating bodies, as well as subject experts, when designing legislation. This should also include regular training in the use of drafting manuals and the application of legislative techniques. Sufficient government resources should be allocated to ensure such training and to provide sufficient legal drafting capacities, either within the parliament, ministries and government agencies, or in a centralized legal drafting unit. This also means that both the government and, as needed, parliament, should invest in high-quality staff who will be compensated adequately to ensure appropriate quality legislation and training for others.

RECOMMENDATION C.

1. To strengthen the capacity of the legal drafting units at ministerial level and, at the same time, ensure that legal drafting support is provided by a specialized legal drafting unit within the Government – possibly a reinforced Secretariat for Legislation – to provide more assistance to individual ministries, while ensuring early involvement of legal drafters at the policymaking stage and close co-ordination with the experts on the subject matter of the law within ministries.

2. To consider establishing a separate, dedicated parliamentary Legal Department/Service which may take over some of the tasks of the Legislative Committee related to providing legal opinions and analysing the compliance of the draft law with the Constitution and other laws, as well as offer expert legal drafting support to MPs to develop draft laws and amendments.

3. To provide both in the government and the parliament initial and continuous training on legislative drafting, to create a corpus of well-trained legislative drafters who can work with ministries and other initiating bodies, as well as subject experts, when designing legislation.

6.2. Citizens' Legislative Initiatives

85. Article 93 of the Constitution stipulates that the right to propose laws is granted to the Government, any MP, or at least 6,000 voters through the MP they authorized.[106] Article 131 of the RoP of the Parliament specifies that when six thousand voters propose a law, they shall, along with the proposal for a law, designate an authorized representative to submit the legislative proposal.

86. Whilst empowering citizens to initiate new legislation is commendable, it is understood from the applicable provisions, as confirmed during the country visit, that this requires identifying an MP who would be willing to submit the proposal to the Parliament. Conditioning the exercise of this prerogative through the intermediation of an "authorized" MP appears unduly limiting and not in line with good practices from across the OSCE region.[107] Of note, the previous Constitution (1997) envisaged the possibility

105 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 139.

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

107 While the comparative practice does not offer a uniform solution, there are frequent cases where citizens are entitled to initiate the procedure of consideration and adoption of laws upon collecting a defined number of signatures without any MP representation (see e.g., Article 81 of the Constitution of Albania (20,000 citizen for a population of 2.8 million), Article 71 of the Constitution of North Macedonia (10,000 citizens for a population of 2 million), Article 107 of the Constitution of Serbia (30,000 citizens for a population of

for at least 6,000 voters to propose draft laws directly, which was often used.[108] The interlocutors met during the country visit did not provide ODIHR with statistics regarding the actual number of such citizens' initiatives coming each year, as well as about practical implementation of the respective constitutional provision. As mentioned in the Preliminary Opinion, subjecting citizens' legislative initiatives to the intermediation and prior agreement of an MP may mean that many of such initiatives may never be debated, for failure to find a sponsoring MP.

87. If this is indeed the case, **with the ultimate goal of strengthening participatory democracy and enhancing civil society's active role in the lawmaking process, it is recommended to ensure that citizens have the possibility to directly propose draft laws through their right of legislative initiative without the mandatory intermediation or prior agreement of an MP, although this would likely require a constitutional amendment, while at the same time ensuring there is an effective mechanism for further consideration of citizens' legislative initiatives in the Parliament.**

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

89. In addition, the RoP do not envisage any assistance in the formulation of the citizens' legislative initiatives and their submission, while at the same time there is a requirement to comply with the usual rules established for the introduction of draft laws (Article 130 of the RoP of the Parliament). It is generally recognized as a good practice that support mechanisms are in place to ensure that draft laws submitted by a statutory number of citizens are drafted according to the applicable legal and drafting standards.[109] These may include support from certain government bodies, or from a special unit within parliament,[110] such as the Legislative Committee or the Legal Department/Service, if

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over 6.8 million), Article 88 of the Constitution of Slovenia (5,000 citizens for a population of 2.1 million). All include provisions on legislative initiatives by citizens without any MP representation. Constitution of other European countries outside the region recognize the possibility for the citizens to formulate a law and request that it be formally debated in Parliament without any party intermediation, including Austria (Article 41 of the Constitution), Italy (Article 71 of the Constitution), Poland (Article 118 of the Constitution), Spain (Article 8 of the Constitution), and many others. The Constitution of the Kyrgyz Republic also determines that 10,000 voters have the right to legislative initiative.

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

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

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

established. This should generally help ensure that the exercise of this prerogative to initiate popular initiatives, does not remain burdensome and ineffective.

6.3. General Legislative Procedure

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

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

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

    1) the opinion of the SfL on the compliance of the draft law with the Constitution and the legal system of Montenegro;
    2) a statement on the compliance of the drafts with the relevant European Union law (hereinafter, "Statement of EU Compliance"), with the accompanying table of concordance (hereinafter, "ToC"), drawn up in accordance with the instructions of the Office for European Integration (hereinafter, "EIO") and confirmed by that Office;[111]
    3) the opinion of the Ministry of Justice for the drafts governing court proceedings, as well as for the provisions of the drafts governing sanctions and misdemeanor proceedings;
    4) the opinion of the Ministry of Public Administration, Digital Society and Media for the draft governing the procedure before state authorities, the state administration organisational setup, and local self-government;
    5) the opinion of the Commission for State Aid Control for the drafts containing certain provisions regarding the granting of any type of state aid;
    6) the RIA form, drawn up in accordance with the MoF Instruction, or the opinion of the MoF on the initiator's view that no RIA is required or whether the RIA conducted by the initiator is adequate (see Sub-Section 5 on RIA *supra*).

93. As underlined above, Article 3 of the Law on Gender Equality requires that state administration bodies and other public entities are obliged to assess and evaluate the potential impact on women and men when planning, adopting and implementing their decisions. This should *a fortiori* be applied when developing draft laws. Hence, it is recommended **to supplement Article 40 of the RoP of the Government with an express requirement to include an assessment and evaluation by the initiating ministry of the potential impact of the draft law on women and men and gender equality** when submitting it for consideration by the Government. Alternatively, but only providing that the Department for Gender Equality under the Ministry of Justice, Human

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

and Minority Rights is granted increased human, technical and financial resources, an opinion of the Department could be listed among the required documents.

94. After approval of the Government, the initiator of the draft law (line ministry) is entitled to submit the draft law to the Parliament accompanied by the RIA form, as well as the abovementioned opinion of the MoF and with a Statement of EU compliance (Article 67 of the RoP of the Government). During the country visit, representatives of the Parliament indicated that when draft laws are submitted to the Parliament, they are often not accompanied by supportive documents that would enable the MPs to adequately scrutinize the draft law, or that some of the accompanying documents are of sub-standard quality. In particular, this is for instance the case with draft laws for harmonization with the EU acquis, which may not be submitted with the necessary ToC. It is hardly understandable why the ToCs, which in any case needs to be prepared to get the approval of the Government, is not also submitted to the Parliament together with the draft law. Moreover, a gender analysis of the draft law's potential impact on women and men and gender equality is very rarely, if ever at all included. It is recommended **to supplement Article 67 of the RoP of the Government to ensure that the other documents listed under Article 40 of the RoP are also attached to the draft law when being submitted to the Parliament, including the ToC, along with a gender assessment and evaluation and the report on conducted public consultation** (see Sub-Section 7.1 *infra*).

95. Article 130 of the RoP of the Parliament requires the draft law to be submitted "*in the form in which the law is adopted"* and to "*be reasoned in writing, and delivered in the required number of copies and in electronic form*". As indicated above, there should be **an express requirement for the Government to submit the RIA Report to the Parliament the RIA report. In addition, it would be advisable to also require the submission of the other documents listed under Article 40 of the RoP of the Government, including the ToC, as well as the above-mentioned gender assessment and evaluation to be attached to the legislative proposal**.

96. According to Article 132 of the RoP of the Parliament, if the proposal for a law is not prepared in line with the RoP of the Parliament, including the requirements of Article 130, the President of the Parliament shall request the initiator to adjust the draft law to comply with the provisions of the RoP.

97. During the country visit, it was confirmed by interlocutors in the Parliament that in practice, draft laws initiated by MPs tend to not be in compliance with the abovementioned requirements envisaged by Article 130 of the RoP of the Parliament and are not accompanied by a RIA, even though all initiators should comply with such requirements, irrespective of whether the draft law originates from the Government or individual MPs. **The screening of the legislative proposals to assess their compliance with the RoP is unlikely to be effective if there is no strong mechanism and standardized procedure in place within a well-organized and adequately resourced parliamentary entry office to check each legislative proposal against the fulfilment of the conditions provided in the RoP of the Parliament**, including Article 130. Entry office should be supported by the parliamentary professional staff, as well as equipped with necessary human and financial resources ensuring its capacity to perform the assigned tasks. The possibility for the initiator of the draft law to oppose the refusal to accept the draft law because of non-compliance with the requirements of the RoP of the Parliament, to be discussed during the next plenary (Article 132 of the RoP of the Parliament) appears unworkable and should be reconsidered. **The above-mentioned screening mechanism should similarly check draft laws initiated by MPs for**

compliance with the RoP of the Parliament. Every draft law/ a bill should be treated equally – notwithstanding who the initiator is.

98. According to the information received during the country visit, there have been situations in the past where several draft laws with the same or similar title and substance have been considered by the Parliament at the same time. In practice, it is frequent that the same topic will be the subject of several draft laws presented by different parliamentarians or different political groups, or possibly by different chambers. Dealing with this multiplicity of legislative initiatives can be done through a common discussion of the concurrent drafts to preserve the right of initiative of the different authors, while at the same time ensuring an efficient and effective use of parliamentary resources as well as progression of decision-making in the parliament. This could be ensured **by amending the RoP of the Parliament to specify the procedural rules that must apply in similar situations.**[112]

99. There are three so-called "readings" for the Parliament to consider a draft law.[113] It is understood that, in practice, however, too little time is allocated for detailed and meaningful discussions on legislative proposals.[114] At the same time, the sufficiency of time for parliamentary debates may only be assessed in the specific context, and no uniform standard is appropriate in this respect. It is important to ensure that there is adequate time to discuss the draft taking into account the complexity and importance of the draft law that would normally require longer time, including time needed for meaningful public consultations. In this respect, the Venice Commission has stated that, while it is difficult to define *in abstracto* how much time is necessary for debating a bill in Parliament, *"[t]he legislation or the RoP may provide for certain basic rules preventing rushed adoption of laws, such as intervals between readings and deliberations in a committee.*"[115] **It would be thus advisable to provide in the RoP of the Parliament a minimum time between parliamentary readings except for the adoption of draft laws under the urgent procedure in exceptional circumstances** (see Sub-Section 6.4 *infra*). **Shorter timeframes and simpler procedure may also be used for the passage of minor and/or uncontroversial legislation or amendments, and such cases shall be clearly defined and strictly defined in the regulations**.[116]

112 In Italy, for example, when the Parliament has to deal with more than one legislative initiative on the same matter, the relevant parliamentary commission shall have the discretion to select one which will be used as the basis for the discussions, whereas the other legislative initiatives will then be used as a basis for amendments. See Article 77, *Regolamento della Camera dei Deputati*: "1. If similar projects of law or projects relating to the same matter are on the agenda of a Commission at the same time, the examination must be combined. […] 3. After the preliminary examination of the combined projects, the commission proceeds to the choice of a basic text or the drafting of a unified text."

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

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

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

116 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 234.

RECOMMENDATION D.

1. To supplement Article 40 of the RoP of the Government with an express requirement to include an assessment and evaluation by the initiating ministry of the potential impact of the draft law on women and men and gender equality when submitting it for consideration by the Government.
2. To supplement Article 67 of the RoP of the Government to ensure that other documents listed under Article 40 of the RoP are also attached to the draft law when being submitted to the Parliament, along with a gender assessment and evaluation, and similarly supplement Article 130 of the RoP of the Parliament, including by requiring the submission by the Government of the RIA Report, the table of concordance with European Union law and a gender assessment and evaluation of the impact of the draft law.
3. To envisage in the RoP of the Parliament the establishment of a well-organized and adequately resourced parliamentary entry office/registration secretariat to check each legislative proposal, irrespective of the initiator, against the fulfilment of the conditions provided in the RoP of the Parliament, including Article 130
4. To specify in the RoP of the Parliament that there should not be two or more draft laws registered in the Parliament with the same or similar title and/or substance, which should be screened by the parliamentary entry office/registration secretariat.
5. To envisage in the RoP of the Parliament the minimum time required between parliamentary readings, except for the adoption of draft laws under the urgent procedure in exceptional circumstances.

6.4. Urgent legislative procedure

100. Articles 151-153 of the RoP of the Parliament regulate the urgent procedure for the adoption of laws. According to the 2024 European Commission Rule of Law Report on Montenegro, in 2023 and the first quarter of 2024, the Government identified 76 draft laws, 31 of which were proposed for urgent adoption,[117] as has also been the practice in the past.[118] In the EC 2024 Report, it was underlined that during the summer 2024, the Parliament took some hasty legislative initiatives failing to apply the necessary transparency.[119] The rather high number of legislative proposals that are adopted in extraordinary proceedings tend to limit the possibilities for parliamentary debate and scrutiny, and ultimately impact the quality of adopted legislation (see also Sub-Section 9 *infra*). Hence, the relevant provisions of the parliamentary RoP require particular attention.

101. Where laws need to be passed urgently due to a pressing social need, the relevant framework usually foresees some forms of urgent, accelerated or fast-track proceedings, generally with no requirement for RIA, reduced time limits for discussion in or with the

117 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro*, 24 July 2024, p. 20.
118 SIGMA, Monitoring Report – *Montenegro* (2021), pp. 42-43, which reports that 31% of Government-sponsored bills were adopted in fast-track proceedings in 2020. At the same time, it is noted in the SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 106, that in the period 2018-2022, standard legislative procedure was followed for 329 legislative proposals, while non-standard legislative procedure was used for 59 legislative proposals.
119 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 22.

government and in parliament, both at the committee stage and in plenary.[120] Laws passed in this manner may raise doubts as to their quality,[121] as the lack of evidence-based process, consultations and proper parliamentary scrutiny may lead to gaps and inconsistencies of legislation that can then only be addressed during review proceedings after adoption, once the moment of urgency has passed. For this reason, **it is important that such processes are not abused and remain exceptions.** Relevant legal framework needs to clearly circumscribe the criteria and circumstances where such urgent procedures may apply, while also installing sufficient safeguards to ensure that the use of accelerated procedures for passing legislation is only reserved for cases where this is absolutely necessary.[122] In addition, special oversight and *ex post* evaluation should be in place.[123]

102. According to Article 151 of the parliamentary RoP, the urgent procedure may be applied for adoption of laws "*to regulate issues and relations resulting from circumstances that could have not been foreseen and whose failure to be adopted could cause adverse effects*", as well as "*law[s] that need to be harmonized with European legislation or international treaties and conventions*". The criteria for applying the urgent procedure are rather broad, which means that such procedure may be used in a variety of instances where it would not always appear to be absolutely necessary. Notably, **the fact that a draft law is transposing the EU acquis does not *per se* mean that it has to be adopted by urgent procedure.** On the contrary, such laws are in the majority of cases more complex with significant impact on the budget, economy and society and thus, should require even more time for proper deliberation in parliament.[124]

103. In principle, the use of accelerated procedures should be the exception, and should not be applied to introduce important, complex or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms or introducing permanent structural changes to the functioning of democratic institutions, procedures and mechanisms.[125] Moreover, the processing of draft laws in urgent procedure should also not be used for the regular adoption of the state budget.[126] **It is recommended to more clearly define and strictly circumscribe the criteria and circumstances where the urgent procedure may be used and those where it should not.**

104. Additionally, there are no safeguards to avoid the excessive use of the urgent procedure. It would thus be advisable to consider supplementing the RoP of the Parliament to introduce **safeguards to prevent misuse or overuse, for example, by limiting the number of instances the government may use fast-track proceedings during a plenary session or during a certain time-frame**.[127] At the same time, by streamlining

120 *Ibid.* ODIHR Guidelines, para. 235.
121 Venice Commission, *Romania - Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice*, CDL-AD(2019)014-e, 24 June 2019, paras. 11-12.
122 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 238-240.
123 *Ibid.* ODIHR *Guidelines*, para. 242.
124 The RoP of the Parliament of Slovenia (Article 142), besides classic urgent procedure, allow also special shortened procedure but just for the:
− less demanding amendments and supplements to the law,
− termination of the validity of an individual law or its individual provisions,
− less demanding harmonisation of the law with other laws or with EU law,
− amendments and supplements to the law in connection with proceedings before the Constitutional Court or as a decision of the Constitutional Court.
125 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 241; see also e.g., Venice Commission, *Turkey - Opinion on Emergency Decree Laws N°s 667-676*, CDL-AD(2016)037, para. 89.
126 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28.
127 For example, Article 69 of the Regulation of the Chamber of the Italian Parliament provides: "Upon the presentation of a bill, or even subsequently, the Government, a Group President or ten deputies may request that its urgency be declared." In 1997, Article 69 was amended to include an additional provision stating that "[f]or each work programme, no more than five bills may be declared urgent if the programme is prepared for three months, or more than three if the programme is prepared for two months. The urgency of

the regular legislative procedure (e.g., through eliminating formalities, using IT solutions/electronic means, etc.), and by introducing an abbreviated/ shortened procedure for legal amendments that are minor and uncontroversial or not complex,[128] this should also help reducing the misuse of urgent procedures outside of cases where this is absolutely necessary.

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

106. The initiator of the law is obliged to give reasons for proposing an urgent procedure in the Explanatory Statement attached to the draft law (Article 151 of the RoP of the Parliament). The draft law for which an urgent procedure has been proposed can be placed on the agenda of a sitting of Parliament only if it has been submitted not later than seven days prior to the beginning of the sitting. However, a draft law regulating matters related to a state of emergency, disease pandemic, natural disaster or hazards, or regulating defence and security matters, may be submitted until 24 hours prior to the beginning of the sitting (Article 152(1) and (2) of the parliamentary RoP). In this respect the question arises whether the abovementioned time-frame should be considered sufficient for the Parliament to verify the urgency of the matter.

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

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

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constitutional bills and bills referred to in Article 24, paragraph 12, last sentence, may not be declared." Similarly, in Albania the Assembly cannot apply the accelerated procedure for more than three bills over a 12-week work programme, and more than one bill over its three-week work programme (see Article 28(5), Assembly's Rules of Procedure).

128 See e.g., Article 95 of the Rules of Procedure of the National Assembly of Serbia which refers to "*minor amendments to existing laws, not altering material provisions substantially*" and Article 170 of the Rules of Procedure of the Assembly of North Macedonia, which refers to the possibility to request a shortened procedure in case of "*not complex or extensive laws, termination of validity of a certain law or particular provisions of a law, or not complex or extensive harmonisation of a law with the European Union legislation*".

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

RECOMMENDATION E.

1. To provide for an abbreviated/shortened procedure for the adoption of minor and uncontroversial or not complex legislation or amendments, while clearly defining and strictly circumscribing such cases in the legislation.
2. To amend Article 151 of the parliamentary RoP by introducing clear and strictly defined criteria and circumstances when the urgent procedure may or may not be used, embedding specific safeguards to avoid the over-use of such procedures and clear rules enabling the Parliament to reject the request to apply such urgent procedures.
3. To supplement the parliamentary RoP by requiring a robust *ex post* evaluation of laws adopted via the urgent procedure, including consultations on implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and potential discriminatory impact on certain groups of society.

7. PUBLIC CONSULTATIONS

7.1. Public Consultations by the Government

110. The legal requirements for public consultations are set forth in the Law on State Administration, the RoP of the Government and, are further elaborated in Section III of the *Decree on Appointment of NGO Representatives to Working Bodies of State Administration Authorities and the Conduct of Public Consultations in the Preparation of Laws and Strategies* (Articles 10-18). There is a dedicated website of the government where centralized information is available to the public and non-governmental organizations about public consultations on draft strategies and laws, and public calls for nomination of NGO representatives in working groups for developing strategic documents or draft laws.[129] At the same time, it is reported that this e-portal is not widely used by citizens and stakeholders.[130]

111. Article 52 of the Law on State Administration requires ministries to carry out a public discussion during the preparation of laws. Article 52 (2) of the Law on State Administration provides a list of circumstances where a public discussion is optional.[131] If a ministry determines that a public consultation is not necessary, it is obliged to submit to the Government, along with the proposed law, a justification explaining the reasons for not carrying out public consultations (Article 52 (3)). It is welcome that the Law introduces some sort of distinction for laws that merely contain minor amendments to the *status quo*. Indeed, in the case of the latter, or if there is no significant impact or

129 See <eusluge.euprava.me/eParticipacija/Konsultacije/>.
130 See European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro*, 24 July 2024, p. 25.
131 i.e., "*when the law or strategy governs issues in the field of defence and security and the annual budget; in an emergency, urgent or unforeseeable circumstances; in the case of minor amendments to the law bearing no significant difference in how matters are regulated*".

consequence for individuals or public bodies or entities, public consultations may not be necessary, especially considering the efforts and resources that need to be put into conducting such consultations.

112. During the country visit, interlocutors informed that there are opportunities provided to civil society to comment on draft strategies/laws and to participate in the respective working groups, which is in principle positive. It was also mentioned that responses are given online to the relevant proposals of those parties who choose to comment. At the same time, it is also understood that in practice, there seems to be a certain consultation fatigue and that the avenues offered to participate in policy- and lawmaking processes are not necessarily widely used by stakeholders, reportedly due to the ongoing multiple processes and considering the available resources, workload and capacity constraints.

113. As indicated in the 2024 European Commission's Rule of Law Report, despite an established framework for inclusive legislative processes, persistent challenges exist in terms of effectiveness of public consultations.[132] As noted in this document, the government report from August 2023 indicates that ministries do not regularly conduct public consultations, and wide use is made of exemptions, while the state administration falls short of its obligation to publish an annual list of laws and strategies scheduled for public consultation.[133]

114. The rationale for omitting public discussions "*when issues in the field of defence and security and the annual budget are regulated by law or strategy*" is not really clear. While exceptions may be justifiable in case of confidential matters concerning national security, most significant laws that affect the lives of individuals, including legislation on finance or budgetary matters, should undergo public consultations. Notably, the potentially negative impact of laws and decrees adopted in urgent procedure on women and men, or on certain groups, should be borne in mind.[134] Concerning specifically the annual budget, there is growing recognition of the importance of public participation across the budget cycle (so-called "participatory budgeting"), which has been reflected in key global standards and principles.[135]

115. Moreover, the possibility to skip public consultations "*in extraordinary, urgent or unpredictable circumstances*", without further qualification, may be worrisome given the broad discretion it may entail. States of emergency are special, urgent and temporary legal regimes of a general nature triggered by the need for quick reactions to an extraordinary and temporary situation that poses a fundamental, real and current or imminent threat to a country, such as a war or armed conflict, large-scale terrorist attacks, a natural disaster, a public health emergency or a severe economic crisis.[136] In case a state of emergency is declared or proclaimed, the use of urgent legislative procedure – omitting the organization of public consultations may be justified. While different forms of accelerated lawmaking, or skipping some elements of a normal legislative cycle, may at times be necessary, exceptions to rules on public consultations should be kept to a

132 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro*, 24 July 2024, p. 20.

133 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 25. See also EC, Staff Working Document *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*, p. 18, which similarly reported that ministries are not consistently carrying out public consultations, with consultations being held with respect to only 45% of laws and strategies.

134 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 249.

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

136 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 243.

minimum.[137] Despite the urgency of certain decisions, care should be taken to involve experts and civil society representatives, affected individuals, including minority and other diverse groups, as much as possible in public decision-making processes, including lawmaking.[138]

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

117. Furthermore, Article 35 of the RoP of the Government envisages that the initiator is obliged to submit to the Government, along with the draft law, a report on the "public discussion", conducted in accordance with applicable legislation or, if the public discussion was not held, a reasoned explanation for not holding public discussion. However, Article 67 of the RoP of the Government, which specifies the documents that should accompany the Government's draft laws when submitted to the Parliament, while indicating the need to attach the RIA form – which includes in principle a dedicated section on stakeholder consultations (see Sub-Section 5.1 *supra*), does not require the submission of the report on public consultation. **To enhance transparency and ensure full disclosure of the draft's underlying policymaking process, Article 67 of the RoP of the Government should be amended to require the submission of the report on conducted public consultation to the Parliament along with the draft law**. Similarly, Article 130 of the RoP of the Parliament does not mention the report on the public consultations that have been carried out by the Government among the documents to be submitted to the Parliament together with the draft law, **and should therefore be supplemented in this respect. The absence of such a report, when there is no valid justification for not holding public consultations, should justify the draft law's return to the initiator pursuant to Article 132 of the RoP of the Parliament**.

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

119. According to Article 10 of the Decree, public consultations may be organized during the initial stage of the preparation of a law (referred to as "consultation with the interested public") or on the specific text of the draft law (so-called "public debate"). Article 12 of the Decree specifies that consultations with the interested public are announced on the ministry's website and e-Government portal, which invite all stakeholders to submit initiatives, proposals, suggestions and comments on the subject matter to be addressed in the future draft law or strategy. Public debate concerning a specific draft law or strategy may take diverse forms, including organizing roundtable discussions, panel discussions, presentations, as well as submitting comments, proposals and suggestions in paper or electronic form (Article 14). It is welcome that the Decree envisages public consultations early on, even before a draft law is prepared, as this allows more time to assess various different policy solutions, their practical usefulness and ability to be implemented.[139]

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

138 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 244.

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

120. In addition, it is commendable that the Decree requires ministries to publish on their websites and the e-Government portal, within 15 days from the day of adoption of their Annual Work Plans, their consultations plan i.e., the list of laws that will be subject to public consultation, along with an explanation of the need for adopting them and other information relevant for the drafting process. This should in principle allow the interested public to plan ahead and get acquainted with relevant documentation. At the same time, it is reported that this obligation is not always fulfilled in practice.[140]

121. Where a policy paper or RIA report is available, posting them when conducting public consultations before any law drafting activity commences may improve the quality of submissions by the interested public. For this reason, Article 15 of the aforementioned Decree provides that the RIA report should be made available in case of conducting *public debates*, though no similar provision is envisaged in case of conducting public consultations at the initial stage of preparing the draft law, which may be due to the fact that the policy development stage is not well-developed and that RIA is not prepared at the early stages of the policy cycle (see Sub-Sections 4.2 and 5.1). According to the EC 2023 Report, when public consultations were carried out, mandatory accompanying documents such as RIA were published for less than half of the drafts under consultation (48%). However, work is ongoing to improve the RIA process, including by developing a new RIA form, methodology and guidance.[141] As mentioned in the Preliminary Opinion, even where the RIA report is not available, it would be advisable to submit for the purposes of consultation with the interested public a preliminary document such as a policy paper, concept note or other policy document giving account, at least, of the relevant issues, the objectives of the intervention, and possible options.

122. To ensure the inclusiveness of public consultations, the legal drafters should also diversify the structures, methods, mechanisms, tools and types of public consultations, to reach out to a wider audience.[142] **Whilst placing the drafts for public consultations using an internet portal is a good and common practice, there should also be some effort made by the public authorities to reach out to the public, or at least to those potentially impacted as well as possible interested stakeholders**, and make them aware that the draft laws or amendments have been prepared and are open for comments, other than just publishing them on the website.[143]

123. Moreover, online tools should be tailored to enhance inclusiveness, transparency and make participation easier[144] in order not to exclude certain persons or groups. It is commendable that Article 16 of the Decree obliges the ministry, when conducting public debates as per Article 14, to take care that the venue is accessible for people with reduced mobility and that, in case of direct relevance for the rights, duties and legal interests of persons with auditory and visual impairments, the discussions are held with the use of sign language or the draft law or strategy is made available in audio recording form or in Braille. **The Decree could further specify the availability of such documents in adjusted formats or easy-to-read language. In addition, the Decree should also**

140 See European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 25, which notes that: "*state administration falls short of its obligation to publish an annual list of laws and strategies scheduled for public consultation*".

141 See MoF of Montenegro, *2023 Qualitative Report on the Implementation of Regulatory Impact Assessment (RIA) in Montenegro* (April 2024), p. 3. See, EC, Staff Working Document *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*,, p. 18.

142 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 25 and 80.

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

144 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 175. See also Council of Europe Conference of INGOs: Code of Good Practice for Civil Participation in the Decision-Making Process, adopted on 30 October 2019, p. 17. Online tools and websites should be in line with World-wide Web Consortium's guidelines on web content accessibility: <Home | Web Accessibility Initiative (WAI) | W3C>.

require that the e-Government portal should comply with guidance on web content accessibility for persons with disabilities.[145]

124. The current regulatory framework does not envisage the conduct of public consultations on draft secondary legislation. Although countries generally engage stakeholders in developing subordinate regulations less than in developing primary laws, many countries require to engage stakeholders in developing both primary and secondary legislation.[146] Since the development of secondary legislation does not involve the Parliament, the process is less subject to public scrutiny than the processes for making primary laws. At the same time, secondary legislation, which are necessary to implement adopted laws represent a substantive proportion of the regulatory framework impacting individuals and businesses. **Therefore, it is important to engage the public when secondary legislation is developed, at least when it has a significant impact on individuals and businesses**.

7.2. Public Consultations by the Parliament

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

126. The RoP of the Parliament envisage two kinds of hearings, i.e., "consultative" and "control" hearings, the latter being related to the general oversight functions of the Parliament. It is reported that public control hearings are not taking place.[147]

127. A consultative hearing is carried out by a parliamentary committee "*for the realisation of tasks falling within its scope of activities (consideration of proposal of an act, preparation of proposal of an act or consideration of certain issues), and with the aim of obtaining necessary information and expert opinions, particularly on proposals of solutions and other issues of particular interest for citizens and the public*". The committee can, as needed, engage academics and experts in certain fields, representatives of state authorities and NGOs, without the right to vote.[148] There is however no requirement for public consultations on draft laws within the Parliament. This means that important amendments may be introduced to the draft laws, without additional consultations with the interested/affected stakeholders. Some parliamentary committees met by ODIHR in the course of the visit emphasized their willingness to be open and inclusive in their work, including by ensuring participation of civil society representatives in their hearings,[149] or in meetings of the working groups they set up. At the same time, it is understood that public consultative hearings are rarely taking place and that more generally, there is no uniform practice or approach to the conduct of

145 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 209; and <Home | Web Accessibility Initiative (WAI) | W3C>.

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

147 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 61.

148 RoP of the Parliament, Articles 75-77.

149 For example, as indicated by the Committee for Human Rights and Freedoms during the country visit, it fosters the practice of multi-sector, participatory and inclusive work, as evidenced by the data that the meetings and all other activities of this Committee are regularly attended by representatives of the institution of the Defender of Human Rights and Freedoms of Montenegro, competent state bodies, as well as representatives of the non-governmental sector that deals with the protection of human rights and freedoms, as well as international organizations based in Montenegro. According to the Committee, in all activities (sessions, visits, meetings), it seeks to offer representatives of all competent institutions and representatives of NGOs and international organizations the opportunity to express their opinions, proposals and suggestions, which the Committee reported to very often accept.

parliamentary hearings.[150] ODIHR reiterates its recommendation from the Preliminary Opinion that **consultations should take place throughout the various stages of the legislative process, including before the Parliament, especially when a draft law undergoes various amendments and additions**.[151] Once laws have been adopted, consultations should also be organized to assess their impact and implementation, which will then be used to evaluate such impact *ex post* (see Sub-Section 5.2 *supra* on *ex post* evaluation). For that purpose, it is essential that **an infrastructure to organize and manage consultation processes and to document and assess their proceedings are in place; this also requires that ad-hoc legal rules and administrative procedures exist to ensure that all findings are fed into the committee and plenary stages of scrutiny, as well as appropriate training of parliamentary staff in handling such consultation processes**.[152]

7.3. Participation of NGOs in Policy- and Lawmaking

128. Article 79(1) of the Law on State Administration requires state administration authorities to co-operate with NGOs by enabling their participation both in the procedure for conducting a public discussion during the preparation of laws and strategies as per Article 51 of this Law and in the work of WGs and other working bodies formed by state administration bodies for the normative regulation of relevant issues.

129. The mandatory participation of representatives of NGOs in WGs established under ministries for the purposes of drafting laws (and strategies) is regulated in Section III of the *Decree on Appointment of NGO Representatives to Working Bodies of State Administration Authorities and the Conduct of Public Consultations in the Preparation of Laws and Strategies* (Articles 10-18). The selection starts with a public call for nomination published on the website of the Ministry or other public authority and on the e-Government portal.[153] An NGO is eligible to make nominations provided that it meets certain requirements.[154] Notably, the Decree envisages an overly formal procedure for the appointment of NGO representatives to government WGs that are established during the lawmaking process. In particular, the requirement to submit, an extensive list of documents proving that the NGO possesses the necessary requirements and that the nominee meets the eligibility criteria, for each call, appears particularly burdensome. In order to reduce the paperwork for NGOs participating in WGs, a pre-registration procedure may be arranged in such a way as to identify from the outset, by sector of interest, the organizations eligible to propose candidates in the relevant domain in response to a call for nomination (pre-selected NGOs).[155] During the country visit, it was also reported that NGOs participating in WGs are subject to additional, burdensome reporting obligations and scrutiny during a period of two years, which appears to play as a disincentive to engage in the lawmaking process. The Decree also sets out onerous

150 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 23.
151 *OSCE/ODIHR Assessment on Law Drafting and Legislative Process in the Republic of Serbia*, 2011, p. 72.
152 SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 127.
153 See <eusluge.euprava.me/eParticipacija/Konsultacije/>.
154 Such as: prior registration in the NGO Register, pursuit of goals in areas related to the relevant matter, and previous relevant experience. The NGO must also have a clean criminal record and be compliant with tax obligations. Furthermore, not more than half of its management bodies members may be members of political party bodies, public officials, managers in the public sector, civil servants, or state employees. An NGO may nominate only one representative to the working group, on condition that the nominee resides in Montenegro, has subject-matter experience, and is not a member of any political party bodies, a public official, a public sector manager, a civil servant, or a state employee. Nominations, accompanied by the required documentation, duly signed by the authorised representative and bearing the NGO's stamp, must be submitted within 10 days from the issuance of the public call. Within seven days from the expiry of this deadline, the ministry or other state authority publishes on its website and the e-Government portal the list of nominees, together with their nominating NGOs, who meet the requirements, as well as the list of NGOs that failed to submit orderly and complete nominations, i.e., which do not meet the requirements or whose nominee does not meet the eligibility criteria. The public authority is obliged to appoint an NGO representative whose public candidacy is supported by most votes of qualified NGOs.
155 Certain requirements applicable to the nominating NGOs, such as having a clean criminal record and having filed a tax return for the previous fiscal year, could be requested at the very initial stage of pre-selection of NGOs, and then regularly updated.

criteria for participation of an NGO representative in a WG, including the permanent residence requirement.

130. It is worth reiterating that participation of NGOs is an inherent part of the broader concept of public participation – that is, participation of individuals and civil society at large (non-state actors) at different stages of policy development. As underlined in the Joint ODIHR-Venice Commission Guidelines on Freedom of Association, "*In a participatory democracy with an open and transparent law-making process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government. […] In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made*."[156] There is no mention that the composition of the WGs should be gender balanced and the nomination modalities should also take this aspect into account.[157] To facilitate the inclusive participation of associations in policy- and lawmaking processes, it is recommended to **re-assess, in close consultation with NGO representatives, the criteria and modalities of NGO participation in government working bodies with a view to simplifying them and making them less burdensome and more transparent, while encouraging them to engage more, though being realistic of time and resource constraints for the civil society sector. Nomination and selection criteria and modalities could also be designed to ensure that the composition of the WGs is inclusive and gender-balanced,** for instance by requiring that two nominees be proposed by the nominating NGOs, one woman and one man, and that the nominee from the under-represented gender within the WG will be selected.[158]

131. As concerns the role of civil society in the design of policies and legislation, in the context of the EU accession process specifically, the latest European Commission's Report notes that while the main legal and institutional framework for civil society to operate freely is in place, its role in policymaking tends to remain symbolic and further efforts are needed to ensure genuine and meaningful cooperation between the government and CSOs.[159] In 2023, it is reported that some ministries appointed CSO representatives to working groups for draft laws and national strategies, in compliance with the Law on public

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

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

158 See ODIHR, *Comparative Note on Gender Equality Laws Across the OSCE Region*, 2024, para. 93 and footnote 188.

159 See European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 4. See also European Commission, Staff Working Document, *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*, p. 16, which emphasizes that "*the current legal and institutional framework needs to be further improved in order to strengthen the consultation mechanisms between state institutions and civil society*" referring to 2022 data according to which most ministries appointed representatives of NGOs to the WGs devoted to the chapters of the EU accession negotiations in charge of drafting laws and national strategies in their respective areas, in accordance with the abovementioned Decree; yet, not all ministries conducted public consultations when draft laws and strategies were prepared, with the result that a significant number of laws were adopted in 2022 without prior consultation of civil society.

administration; however, not all ministries conducted public consultations on draft laws.[160]

132. The information gathered during the country visit showed that the NGOs in Montenegro do not consider themselves properly involved in the consultation process, especially at the initial stage of the policy development but also later, when the draft law is being developed at the government level, and then when passed through the Parliament. Even when NGOs become members of the respective WGs, the updated drafts are often rarely shared with them. Also, as indicated above, the public consultative hearings at the Parliament seldomly happen, and hence, NGOs are not able to participate in the examining of the legislative proposal in the Parliament through this modality. At the same time, there is a growing practice to establish working groups on draft laws involving civil society at the parliamentary level, although – as reported during the country visit, – some NGOs may question the meaningfulness of their participation in such bodies. Furthermore, according to several interlocutors, there is a lack of engagement with civil society and interested and affected groups regarding the development of key pieces of legislation, such as the draft Laws on the Parliament and the Government, draft amendments to the Law of Montenegro on the Free Access to Information, as well as regarding anti-corruption and public administration reforms.

133. Consequently, **it is recommended to the Parliament to seek to ensure a more inclusive and meaningful consultation on the draft laws with affected and interested individuals, as well as with NGOs, including on the legislative proposals originated from individual MPs. As noted above, this will require the setting up of adequate infrastructure and procedural rules, as well as training of parliamentary staff to handle such consultation processes.**

RECOMMENDATION F.

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

2. To amend Article 67 of the RoP of the Government to require the submission of the report on conducted public consultations among the documents to be submitted to the Parliament together with the draft law, while also specifying in Article 130 of the RoP of the Parliament that, if a public consultation was conducted, the consultation report should accompany the draft law submitted to the Parliament and that the absence of one, without valid justification, should justify the draft law's return to the initiator pursuant to Article 132 of the RoP of the Parliament.

3. To enhance the legal and institutional framework governing public consultative hearings and consultations by the Parliament, while ensuring adequate training of parliamentary staff to strengthen their capacity to handle consultation processes, and to facilitate public consultations throughout the parliamentary stage, including on the legislative proposals initiated by MPs.

4. To re-assess, in close consultation with NGO representatives, the criteria and modalities of NGO participation in government working bodies with a

160 See European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 24.

view to simplifying them and by making them less burdensome and more transparent.

8. PUBLICATION AND ACCESSIBILITY OF ADOPTED LEGISLATION

134. Article 51 of the Law on State Administration provides that the public authorities are required to have an official website, where the texts of all laws and by-laws falling within their competence must be published. This also implies costs pertaining to the maintenance and updating of the website.

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

136. All primary and secondary legislation is available free of charge on the publicly accessible online database of the Official Gazette. However, the perception of the availability and accessibility of laws and regulations is rather low among businesses, according to the results of the Balkan Barometer survey (40%), and has deteriorated compared with 2017 (52%).[161]

137. In particular, access to legislation is hampered by the absence of up-to-date consolidated versions of legal acts free of charge.[162] The public access to the webpages of the Official Gazette, of the Parliament and of the line ministries, which includes free of charge access to adopted laws or amendments, or to bylaws or amendments to bylaws, cannot be a substitute for free access to consolidated legislation as it remains difficult to determine which legal provisions are applicable, especially when a piece of legislation has been amended multiple times. Neither can be the paid service of legislative databases offered on the market by private providers. It is, thus, **recommended, to consider establishing a comprehensive legislative database which should be accessible by everyone free of charge** (see also the comments regarding the accessibility of the e-Government portal in paras. 120-123 *supra*, which are similarly relevant).

138. Article 39 of the RoP of the Parliament obliges the Legislative Committee to "*establish consolidated text of a law, other regulation and general act of the Parliament* ***if authorized by law or other regulation***". During the country visit, it was indicated that the Legislative Committee is rarely formally mandated to do so by law or other regulation. Consequently, the consolidated versions of legal texts are not duly prepared and are available online only through a paid service (offered as unofficial consolidated versions by private service providers). Thus, even the state institutions that use legal acts on a daily basis in their work (e.g., judges, prosecutors, officials in ministries and other administrative bodies) need to pay in order to get access to the up-to-date unofficial consolidated versions of legal acts for their officials.

139. It should be reminded that laws should be publicly available to all, and easily accessible and available, free of charge, via the Internet or in an official bulletin.[163] This also means availability of legislation in the relevant national languages (including minority languages) and in formats and contents accessible or adapted to persons with disabilities, such as persons with visual impairments. All relevant additional materials, such as court

161 SIGMA, *Monitoring Report – Montenegro* (2021), p. 53.
162 *Ibid.*, pp. 28, 53 and 90.
163 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 209.

judgments on the law, secondary legislation, and amendments, should be accessible in the same place. Revised and consolidated versions of laws need to be published in a timely manner, ensuring that amended provisions are inserted into the existing legislation to create consolidated versions of the law, so that the published law reflects applicable law at all times.[164] There also needs to be proper and secure back-up in place for online official gazettes. **It is, therefore, recommended to ensure that all primary and secondary legislation is consolidated and available online, free of charge.**

140. There is a variety of approaches and mechanisms regarding the consolidation of legislation, ranging from countries where there is no consolidation,[165] countries where consolidation is undertaken on an *ad hoc* basis and has no legal value,[166] those where it is carried out on an *ad hoc* basis and the consolidated version may be then officially adopted as a law – as envisaged in Montenegro,[167] those where there is regular or systematic consolidation, but the consolidated versions have only informational value[168] or semi-official relevance,[169] as well as regular/systematic consolidation – generally undertaken by the official gazette or another official body with the consolidated version having legal force.[170] The most common model appears to be the systematic consolidation within a relative short timeframe carried out by the official gazette or the ministry of justice, with the consolidated version however having informational value, although it is widely used in practice as a reliable source of law. In some countries, for instance Georgia, Moldova or Estonia, the online consolidated version, updated on a systematic basis, has legal force.[171] It is a recognized good practice that bodies responsible for maintaining a country's official gazette or other relevant public bodies should be given the requisite competences to consolidate laws.[172]

141. To have an official version of the consolidated text of the law which can be used as a source of law, it has to be first professionally prepared and second, officially adopted and published in the Official Gazette, unless an official body is mandated to systematically consolidate and publish the consolidated version as an official version. As mentioned, according to Article 39 of the RoP of the Parliament, the Legislative Committee is tasked to prepare the consolidated texts only if this is "*authorized by law or other regulation*". Furthermore, as also learned during the country visit, the Legislative Committee might not necessarily have enough human resources in place to prepare the consolidated versions of all laws, especially given all other tasks which this Committee is entrusted with. Therefore, a possible solution could be **to establish a separate Legal Department within the Parliament which can then take care of consolidating legal texts, as well**

164 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 211.
165 For instance Cyprus, Greece, Czech Republic (although there is an ongoing project is to create a free-of-charge online database containing the consolidated versions of both valid and repealed acts) – see <Forum of Official Gazettes - Access to Official Journals in Europe>.
166 For instance, Slovenia – see <Forum of Official Gazettes - Access to Official Journals in Europe>.
167 For instance, in Ireland (no official collection of consolidated legislation exists but some areas of the law are consolidated from time to time in the form of a legally binding consolidated Act), North Macedonia and Albania; Serbia has a similar approach as Montenegro (unofficial consolidation and official consolidated versions decided on an ad hoc basis by law). In Poland, since 2012, consolidated text of a normative act shall be published at least once every 12 months if that normative act was amended and is then legally binding. See <Forum of Official Gazettes - Access to Official Journals in Europe>.
168 For instance, in Belgium, Spain, France (by a department under the SGG), Germany, Latvia, Lithuania, Luxembourg (save some exceptions; systemic consolidation started in 2020), Austria, Norway, Portugal, Romania (consolidation work started in 2008), Slovakia, Finland, Spain, Sweden, Türkiye – see <Forum of Official Gazettes - Access to Official Journals in Europe>.
169 For instance, in Croatia codifications are official but have no legally binding value; they are merely considered technical tools. – see <Forum of Official Gazettes - Access to Official Journals in Europe>. In Italy, although consolidation is official, it does not have (as a rule) legal effect. However, so-called 'single texts' can be both authoritative (normative texts) and non-authoritative (compilation texts) consolidations of law. Only normative texts are legally binding and replace the pre-existing acts. While normative texts are approved by the government in the form of legislative decrees on the basis of a delegation law from parliament, compilation texts, on the other hand, are approved by the government not on the basis of a delegation law, but rather through a mere authorisation.
170 For instance, Estonia (Ministry of Justice), Hungary (Ministry of Justice), Malta (Ministry for Justice, Culture and Local Government / House of Representatives), Moldova, Georgia – see <Forum of Official Gazettes - Access to Official Journals in Europe>.
171 See <Forum of Official Gazettes - Access to Official Journals in Europe>.
172 *Ibid.* ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 211.

as of certain other tasks (see also para 80 *supra*)**, or another public body under the Ministry of Justice – as commonly done in other countries**.

142. Consolidated versions of the secondary legislation adopted by the Government can be prepared by the SfL in co-operation with the responsible line ministry.

143. Currently, after a consolidated version is prepared, it has to be officially adopted by the Parliament, promulgated by the President and published in the Official Gazette as every law. As noted above, different approaches may be envisioned, depending on whether the consolidated versions are aimed to constitute official versions or are prepared for informational purpose, to enhance certainty of law and accessibility. Even if the purpose is to have the consolidated versions as official versions, it is possible **to envision simpler modalities for consolidating legislation – for instance, by legally empowering the authority responsible for managing a country's official gazette or other relevant public entities to consolidate laws, without requiring the formal adoption of the consolidated law by parliament** (see above). **If formal adoption of the consolidated version is nevertheless retained, at minimum, a simplified procedure, requiring simple majority voting, should be provided.**

RECOMMENDATION G.

1. To envisage in the legal framework an obligation to ensure that all primary and secondary legislation is consolidated and available online, free of charge, in a comprehensive legislative database which is publicly accessible.

2. To consider establishing a separate Legal Department within the Parliament, or empowering another public body, which should act as a professional service to prepare the consolidated versions of the laws either to be published for informational purpose, or to be adopted by the Parliament following a simplified procedure or according to other modalities envisaged by law or by amended RoP of the Parliament.

9. REGULATORY OVERSIGHT MECHANISMS

144. Regulatory oversight should generally involve a variety of bodies at different stages of the legislative process to ensure that the competent bodies in charge of lawmaking do not go beyond their role and authority, that they adhere to the respective laws and rules of procedure for the development of legislation, but also to ensure quality control of regulatory management tools (such as RIA, public consultations and *ex post* evaluations).[173] Ultimately, regulatory oversight mechanisms should help evaluate and improve regulatory policy. Such systems of constant scrutiny and discussion, from policymaking to *ex post* evaluation of laws, involve many different actors. The majority of regulatory oversight bodies is generally located within government, either at the centre of government or at a line ministry, but other bodies are also increasingly involved in regulatory oversight and legal scrutiny functions, including parliamentary bodies, supreme audit institutions, bodies that are part of the judiciary or other bodies which may verify compliance of draft policies and laws with rules on lawmaking and constitutionality, while ensuring coherence with international human rights obligations (e.g., courts, independent and regulatory institutions, such as NHRIs).[174] The focus of the

173 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 187.
174 *Ibid.* ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 187.

Comprehensive Assessment Report will be on the regulatory oversight mechanisms in place within the Government and the Parliament. ODIHR remains at the disposal of the public authorities to carry out a more comprehensive review of the legal framework governing the Parliament's oversight functions more generally, including executive oversight and control through parliamentary questions, interpellations and parliamentary inquiries and committee hearings.[175]

9.1. Regulatory Oversight Within the Government

145. The GSG and the MoFSW share the responsibility for checking the policy content of proposals, as the MoFSW scrutinises the quality of RIA reports attached to draft laws and regulations. As underlined in para. 57 supra, **the quality control role of the GSG would need to be strengthened to focus not only on the procedural aspects, but also on the substance, including the coherence with Government's priorities but also the substantial quality of the draft proposals, with the possibility to return the draft laws to the initiators**.[176]

146. Regarding the control of the quality of RIA reports, it is understood that the MoF generally checks the quality of analysis on fiscal and business impacts (including the impact on the business environment and on SMEs), but there is no control over the quality of analysis covering wider economic, social or environmental impacts.[177] In particular, there is no qualitative analysis of the potential impact on women and men as mandated by Article 3 of the Law on Gender Equality. **It is recommended that the quality control over the RIA cover all key impact areas, including economic, social and environmental impacts,**[178] **as well as human rights and gender impact.** Oversight and quality control are essential elements for a well-functioning RIA system. They ensure that the formal processes, quality standards and requirements established in the policy- and lawmaking system are systematically followed, delivering the anticipated benefits of good quality policy- and lawmaking. **Processes and methodologies for quality oversight should be enhanced to ensure that all draft RIA reports are reviewed consistently, based on a set of objective standards and criteria**.[179] It would be advisable **to also require the centre of government institution responsible for checking the final package of legislative proposals – i.e., the GSG – to consistently check the final RIA report as well as the opinion issued by the quality-control body/the** MoFSW, to ensure that the final version addresses the major concerns and recommendations.[180]

147. Oversight bodies should have the ability to conduct checks both on compliance with RIA procedures, including consultation procedures,[181] and on the content and quality of the analysis and conclusions presented in the draft RIA reports, before they are submitted to the Government for final approval.[182] Opinions on individual RIAs should also provide concrete recommendations and practical suggestions for further improvement. To be effective, oversight bodies in government (and parliament) should be able to reject sub-

175 The legal framework for parliamentary oversight is mainly established in the RoP of the Parliament (Articles 73-77), the Regulation on the Government (Articles 28 and 29), which provide a solid basis for the Parliament to debate, monitor and amend Government policies and programmes, as well as the Law on Parliamentary Inquiry (Official Gazette of Montenegro 038/12).
176 SIGMA, Monitoring Report – *Montenegro* (2021), pp. 26, 28, 34 and 38-39.
177 SIGMA, Monitoring Report – *Montenegro* (2021), pp. 27, 46-47. Cf. also ReSPA, *Better Regulation in the Western Balkans*, 2018, p. 102, and SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, pp. 74-75.
178 SIGMA, Monitoring Report – *Montenegro* (2021), p. 28. See also SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, p. 75.
179 Currently, the review of RIAs in Montenegro involves a simple checklist with yes/no answers for different RIA sections.
180 A similar recommendation for the whole region may be found in SIGMA, *Regulatory Impact Assessment and EU Law Transposition in the Western Balkans*, 2021, p. 85.
181 In Montenegro, the RIA-related oversight role is split between the MoF, which checks the RIA report, and the Ministry of Public Administration, which oversees the process of consultations.
182 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 187.

standard draft laws and/or RIA.[183] Hence, **the centre of government institution responsible for checking the final package of legislative proposals should return the draft laws to the initiator in such cases.**

148. The Ministry of Public Administration is responsible for ensuring compliance with the requirements for public consultation.[184] The procedural aspects of conducting the quality control have been determined by the Government,[185] although it appears that the central quality control on the public consultation process is not yet functional in practice.[186] The Ministry of Public Administration should **establish the internal procedures and institutional framework for ensuring that all draft proposals from all ministries are reviewed prior to their submission to the Government to ensure their compliance with the requirements for public consultation**.[187]

149. The SfL within the Government is responsible for the scrutiny of all draft legislation[188] and provides opinions on the legal quality of all laws and regulations prior to their submission to the Government for approval.[189] While the legal and institutional arrangements for ensuring legislative quality assurance seem to be in place, it is reported that a rather high share of laws is amended within a year after adoption (+17% in 2020), which raises questions about the overall quality and stability of legislation.[190]

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

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

151. The Legislative Committee checks the compliance of government-sponsored laws and regulations with the Constitution and the legal system of Montenegro. It also ensures the consistent use of the legislative methodology, as well as compliance with legal and technical standards, in the preparation of the draft laws submitted to the Parliament. The Committee has very demanding tasks and a consequent workload although it has only very limited human resources.[191] Notably, the Parliament of Montenegro does not have a Legal Department which could potentially take over the said responsibilities of the Legislative Committee as a robust, apolitical service that would be available to all MPs and could play a central role in the legislative process. **It is recommended to consider such a possibility following the good practices of some parliaments.**[192]

152. In general, given the scale of lawmaking activity, also in light of the EU accession process, the amount of legislation that (some but not necessarily all) committees have to deal with, the question arises whether the parliamentary committees may have enough time and resources to ensure an effective oversight, including in terms of annual

183 *Ibid.* para. 201.
184 The Decree on the Organization and Operation of State Administration, adopted by the Government on 7 December 2020, reaffirmed in Article 8 the mandate of the MPADSM to perform the quality scrutiny of public consultations in preparing laws and strategies, but it has not yet been operationalized.
185 The Information on the Status of Implementing the Process of Monitoring of the Quality of Public Consultations (including the List for checking the Compliance of Line Ministries' Procedures of Implementing Public Consultations with Established Public Consultation Standards).
186 SIGMA, Monitoring Report – *Montenegro* (2021), p. 48.
187 *Ibid*, p. 28.
188 Articles 32, 40, 42 and 52 of the Government Rules of Procedure.
189 SIGMA, Monitoring Report – *Montenegro* (2021), p. 51.
190 The share of laws amended within one year after adoption increased considerably in 2020 compared with the previous years. See SIGMA, Monitoring Report – *Montenegro* (2021), pp. 27 and 51.
191 13 MPs with the support of only five parliamentary staff members.
192 Poland and Slovenia could serve as positive examples.

monitoring and evaluation of implementation of laws.[193] This is notwithstanding the fact that all parliamentary committees met during the country visit demonstrated their strong professional capacity and willingness to ensure proper oversight functions.[194] While the resolution of the issue would require more time and in-depth analysis of the current practice and institutional mechanism, one way to approach this matter as an initial step would be to provide additional human and financial resources to the secretariat of the parliamentary committees.

153. When it comes to *ex post* evaluation of legislation, the Parliament of Montenegro does not go beyond classical parliamentary scrutiny tools at the level of committees. Some limited form of post-legislative scrutiny exists in the form of parliamentary hearings and control hearings in particular, which also allow committees to run inquiries about the implementation of a law,[195] although it is reported that public control hearings are rarely used[196] and rather limited. However, some parliamentary committees have taken the initiative to conduct post-legislative assessments on a selective basis, including with the support of international partners.[197] During the country visit, it was also reported that parliamentary committees face challenges when they summon ministers to report on certain issues, as there is no effective mechanism to ensure their presence.

154. Nevertheless, there is nothing in place yet that could resemble a set of rules enabling the Parliament to assess, retrospectively, the outcomes of existing legislation so as to determine whether it should be maintained, amended, or repealed. In this respect, consideration should be given to **increasing the parliamentary oversight over the implementation of laws, by establishing a system of post-legislative scrutiny at least for major pieces of legislation** to assess the impact of major legislation in force and determine whether such legislation has achieved its goals, in line with emerging practice globally[198] (see Sub-Section 5.2 *supra*). **The Parliament should discuss the feasibility of setting up a dedicated internal unit or team to support more systematic and detailed post-legislative reviews and assessments, along with the necessary methodology and guidelines to perform such tasks**.[199]

RECOMMENDATION H.

1. To enhance the regulatory oversight mechanisms within the government, including by strengthening the role of the GSG, while ensuring that the scope of the quality control over RIA is not limited to budget or fiscal considerations, but

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

194 One of the examples provided was the work of the Committee for Human Rights and Freedoms in conducting regular control hearings with subsequent recommendation to the responsible line ministers on improvement the relevant legislation.

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

196 European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 61.

197 Two examples of good practice in this field are provided by the Committee on Gender Equality and the Committee on Human Rights and Freedoms, which have carried out comprehensive and detailed evaluations of the implementation of legislation. With the support of donors and the government itself, the Committee on Gender Equality was able to scrutinize the Law on Gender Equality for the third time. Moreover, the Committee on Human Rights and Freedoms has recently finalized the process of scrutinizing the Law on the Prohibition of Discrimination Against Persons with Disabilities. Even though most of the research activities were conducted by external consultants, these committees actively participated in the research and consultation process by signing endorsement letters and by organizing consultative hearings. The Chairs of these committees led the process with substantial involvement from parliamentary staff. With the help of external experts and researchers, parliamentary staff used the process to increase their own capacity for future work. On the recent practice of both committees, see WFD, *Post-Legislative Scrutiny in the Parliaments of the Western Balkans*, 2021, p. 21. See also e.g., SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 123.

198 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 168.

199 See SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 136.

also covers economic, social, human rights, gender and environmental impacts, with the possibility to reject sub-standard draft laws and/or RIA and return them to the initiator.

2. To ensure that internal procedures and institutional framework within the Ministry of Public Administration are in place to check compliance with the requirements for public consultation.

3. To envisage the feasibility, in light of available human and financial resources, of a more systematic and comprehensive mechanism of ex post evaluation of legislation allowing the Parliament to assess retrospectively the outcomes of existing legislation so as to determine whether it should be maintained, amended or repealed, along with the development of adequate methodology and guidelines to perform such tasks.

10. EU INTEGRATION AND APPROXIMATION

155. Article 15 of the Constitution of Montenegro provides that "[t]he Parliament shall decide on the manner of accession to the European Union". At the same time, in practice and as reported during the country visit, the Parliament tends to have little role in national European integration co-ordination structures.[200] In general, **it would be advisable to streamline mechanisms to ensure a greater involvement of the Parliament in such co-ordination structures.**

10.1. Harmonization with the EU acquis

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

157. Furthermore, as already mentioned, the RoP of the Government require the initiator to submit to the Government, along with the draft law, the Statement of EU compliance and ToC, approved by the Office for European Integration (Article 40(1), indent 2). Those documents have to be signed by the drafting authority and accompanied with the pieces of EU *acquis* and ratified international agreements which are subject to harmonization.[201] The initiator should also submit to the Government the opinion of the SfL on the draft law. However, there is no requirement for the initiator to also submit to the SfL the Statement of EU compliance and ToC, which would facilitate the process of preparing the SfL's legal opinion. To make the process more efficient, **it is recommended to specify in the RoP of the Government the list of documents that should be submitted to the SfL for the purpose of preparing the opinion (beyond the text of the draft law and its rationale), which should include the Statement of EU compliance and ToC**.

200 As also confirmed in SIGMA *Parliaments and Evidence-based Lawmaking in the Western Balkans*, SIGMA Paper No. 68 (2024), p. 67.

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

158. The RoP of the Government provide that the draft law submitted to the Parliament should be accompanied with the Statement of EU compliance (Article 67), but do not mention the ToC, whereas this document is crucial for the Parliament to monitor the quality of alignment with the EU *acquis*. **Article 67 of the RoP of the Government should be supplemented in this respect.**

159. Notably, with the current regulatory and institutional system of drafting acquis-compliant legislation, Montenegro follows the experience from the states with a similar legal system, such as Slovenia and Croatia. However, since those foreign models were not fully implemented in practice, there are serious shortcomings both in terms of quality and level of legal alignment with the EU *acquis* and time-consuming[202] legislative drafting process, which might prevent progress in negotiations.

160. In the first place, it has to be highlighted that the *EIO Instruction on Manner of Development and Submission of Legal Acts to EC* reveals the existence of a "bottleneck" in the harmonization/drafting process, which should be resolved by means of potential amendments to the legal framework. Namely, the mechanism of two-stage consultations with the SfL (otherwise rightfully introduced[203]), indicates that in practice, in the vast majority of cases, so-called second stage consultation results in the mandatory relaunch of the same mechanism from the beginning, whenever the SfL finds deviation from the text it once already approved under the first stage (due to mandatory consultations with EC services). In turn, this process rolls out as many times, leading up to 18 to 24 month-long consultations, until the draft law is fully aligned both with comments of the EC and separate comments of the SfL. Such a finding is reconfirmed in the 2022 Work Report of the Secretariat which states: "*It is noticeable that the number of given opinions with remarks and suggestions on drafts/proposals of laws is significantly higher than the number of laws received, which is expected especially in fulfilling the obligations arising from the process of accession to the EU*".[204]

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

162. This negative situation is to be attributed, among others, to time-consuming internal consultations of line ministries with the SfL and the EC, which reportedly takes several rounds, drains capacities of all parties in the process, including EC services which are forced to comment several times on the same draft law. This is also one of the reasons why available data on implementation of the Montenegro Action Plan since 2016 shows extremely low level of realization of planned legislative harmonization measures.[205] For example, the most recent ones from 2022 (for quarters I to III) show that only 28.3% of measures were realized, whereas 71.7% stayed unfinished.[206]

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

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

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

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

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

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

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

while generally ensuring compliance with rule of law standards and international human rights law obligations.

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

164. The co-operation between the Government and the Parliament on European integration matters deserves specific attention, given the EU candidate status of Montenegro. Countries that have engaged in formal membership negotiations are required by the EU to set up mechanisms ensuring the participation of national parliaments in the preparation of negotiating positions regarding each policy field (chapter). As was confirmed during the country visit, the parliamentary Committee for European Integration (hereinafter "CEI") is now responsible for overseeing EU accession negotiations and for issuing relevant opinions and guidelines, and also for assessing the performance of the negotiating team.[207]

165. At the same time, as was also discussed during the country visit, the parliamentary CEI does not have the competence to review draft laws concerning EU approximation, nor the tables of concordance, which are not submitted to it. The task of overseeing the process of legal harmonization is "decentralized" in Montenegro, i.e., conducted by the competent sectoral committees rather than by a centralized one.[208] There are certainly sound arguments for such a solution, notably the advantages of topical specialization. On the other hand, a cross-cutting task such as the checking of compliance of draft laws with the EU acquis may point in the direction of a different solution.[209] In fact, the decision to separate the oversight of negotiation (done in the CEI) from the oversight of the approximation of legislation with the EU law and the implementation of the approximation plan (done by the line committees) may not be an effective one. Deciding negotiation positions is essentially about deciding the kind and timeframe of commitments a country should take, and the ability to implement these commitments and monitor this work effectively is part of the process; thus, separating those two functions might undermine the effectiveness of parliamentary scrutiny.[210] Besides, the limited resources available within the Parliament of Montenegro to scrutinize draft legislation

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

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

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

210 *Ibid*, 2014, pp. 7 and 53.

for compliance with the EU acquis has been underlined by the EC,[211] as also confirmed during the country visit.

166. One possible solution is to entrust the CEI with the oversight of both accession negotiations and legal approximation.[212] In this respect, **consideration should be given to amend Article 42a of the RoP of the Parliament and mandating the CEI to consider draft laws which are transposing the EU acquis before they go to the responsible (line) committee and to provide opinion on the extent of the harmonization, as well as on the consequences for Montenegro regarding their implementation; adequate resources would need to be provided to the CEI for that purpose**. As an alternative or concurrent option, the Parliament can consider institutionalizing the emerging practice whereby chairs (or vice-chairs) of line committees and political groups are also members of the CEI, thus ensuring a productive link between discussions held within the line committees and within the CEI.[213]

167. In addition, there is still no specific legal framework in Montenegro regulating government-parliament co-operation on EU affairs, although it has been recently reported that the coordination of the country's EU accession negotiations has greatly improved in 2024.[214] The need to enhance the legislature's participation in and oversight of the accession process has been raised by the EU,[215] and was also reconfirmed during the country visit. Without clear rules of engagement on EU integration affairs, executive-legislative tensions in this domain are likely to rise in sensitive policy areas as Montenegro becomes more and more integrated into the EU multi-level governance structures.[216] Moreover, given the frequency of changes to a draft law by the parliament, there is a high risk that laws are adopted without being compliant with EU law if inter-institutional co-operation is not effective enough.[217]

168. Montenegro should consider strengthening the **regulation of the relations between Government and Parliament, particularly in the area of EU affairs, in order to ensure a more effective institutional framework and co-operation in support of the European integration process, including greater co-operation and co-ordination in the delivery of policymaking and legislative developments.**[218]

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

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

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

214 See European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 4.

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

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

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

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

169. A new format of relations between the Parliament and the Government will arise with the accession of Montenegro to the EU as the Government will become a legislator in the EU decision-making process where Montenegrin Parliament will not be directly included. This fact might require further constitutional and legislative amendments in addition to those related to the transfer the implementation of certain sovereign powers to the EU, already mentioned above.[219]

RECOMMENDATION I.

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

11. Gender Mainstreaming and Diversity Considerations

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

11.1. Gender Mainstreaming

171. Gender mainstreaming[220] implies ensuring that a gender equality perspective is incorporated into policy- and lawmaking so that women's as well as men's respective experiences, needs and concerns – recognizing the diversity of different groups of women and men – are built into the design, discussion, implementation, monitoring and evaluation of policy, legislation and programmes, and that both individual rights and structural inequalities are addressed.[221] Gender mainstreaming implies actively supporting the inclusion of a gender perspective, gender balanced representation in public decision-making at all levels, and the promotion of equal opportunities in activities and procedures of government, parliament, judiciary and other public institutions, and underlying legal frameworks.[222] In line with international obligations and commitments

219 See the Constitution of the Republic of Slovenia, Article 3a as an example.
220 Gender mainstreaming is an approach to policymaking and lawmaking that takes into account both women's and men's interests and concerns. At present, the concept of gender mainstreaming is firmly embedded in the EU Treaties and the EU Charter of Fundamental Rights.
221 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 220.
222 *Ibid.* para. 220.

regarding gender balanced representation in public decision-making at all levels,[223] it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking processes. Balanced representation is also fundamental in order to enhance the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation.[224] In light of the latest General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems adopted on 23 October 2024, rules should be adopted to ensure parity in leadership positions in parliaments.[225]

172. As emphasized by CEDAW Committee in its recent Concluding Observations with respect to Montenegro, despite the women's increased participation in political life and the fact that the Electoral Law of Montenegro requires a minimum quota of 30 per cent for the representation of either sex in Parliament and local assemblies, not all legislative assemblies meet the 30 per cent quota,[226] while only four out of 23 ministers of the current Government and only 1 out of 26 municipality mayors are women.[227] Notably, as was also mentioned during the meeting with the Ministry for Human and Minority Rights of Montenegro, to achieve the parity in political representation, it is important to introduce the "zipper system", requiring political parties to create a candidate list alternating between female and male candidates,[228] with adequate sanctions in case of non-compliance. As underlined in the ODIHR-Venice Commission Guidelines on Political Party Regulation, effective quota laws require a high percentage of female candidates to be nominated by political parties; placement mandates to regulate the order in which candidates are put on an electoral list so that women may be in winnable positions; dissuasive sanctions for non-compliance; and monitoring by independent bodies.[229] As noted by the CEDAW Committee in its latest Concluding Observations on Montenegro, **there is no effective legal mechanism to ensure compliance with the obligation to assess the impact of public decisions, nor sanctions in case of non-compliance with such obligation provided in Article 3 of the Law on Gender Equality;[230] this Law should be supplemented in this respect**. As was discussed during the country visit, a number of other recognized mechanisms and measures to accelerate women's political participation could also be considered.[231]

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

224 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 220.

225 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (b).

226 There are 22 women MPs in the current Parliament of Montenegro out of 80 MPs in general, which is not 1/3 as required by the law.

227 See CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, CEDAW/C/MNE/CO/3, 6 June 2024, para. 29.

228 *Ibid.*

229 ODIHR-Venice Commission, Guidelines on Political Party Regulation (2nd edition, 2020), para. 169.

230 See CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, 6 June 2024, paras. 11-12.

231 These may include measures such as a combination of targeted political campaign financing, measures or incentives to attract, recruit, engage and promote female candidates, financial incentives for political parties, targeted media regulation, as well as other measures to combat discrimination and violence against women in politics, including awareness-raising and educational campaigns among politicians, in the media and among the general public about the need for the full, free and democratic participation of women on an equal basis with men in political and public life, among others; see, ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election*, 9 October 2024, Recommendation C1 and paras. 47-48, where ODIHR noted that despite of the fact that the Law on Financing of Political Entities and Election Campaigns of Montenegro (Article 14) allows parliamentary parties to receive public funding for women's organizations within their structure, some parties fail to report any expenditure related to their women's organizations; the Opinion also underlines that although by law the lack of such information on use of the funds in a party's annual financial report should be sanctioned with discontinuation of public funding, none of the parties faced any consequences for their non-compliance. See also e.g., among other, ODIHR *Opinion on Two Organic Laws of Georgia Amending the Election Code and the Law on Political Unions of Citizens in Relation to Gender Quotas (2024)*, para. 59.

173. It is also essential that there are concrete institutional arrangements or mechanisms in place within all the actors of the policy- and lawmaking processes to ensure the proper implementation of gender-based analysis (e.g., an inter-ministerial committee, a parliamentary committee, etc.), accompanied by appropriate budgetary allocations and resources and adequate support research services.[232] In addition, it is fundamental that public officials and staff involved in the policy- and lawmaking processes are adequately trained or sensitized about gender-sensitive lawmaking.

174. When legislatures establish parliamentary committees, care should be taken that such bodies are not only composed of representatives of different political parties, but also of a balanced number of women and men. It is commendable that the RoP of the Parliament require at least one vice-president to be elected from among the underrepresented gender (Article 18(4)), while in the process of determining the composition of the committee, including the chairperson and deputy chairperson, due account shall be taken of the appropriate participation of the underrepresented gender (Article 34(5)). At the same time, it would still be advisable to supplement the RoP of the Parliament to reflect the latest General Recommendation of the CEDAW Committee to pursue parity. In addition, an appropriate representation of diverse groups, should also be pursued during the process of appointing the committee members as well. One way of doing this would be to introduce minimal representation rates for female and male MPs in all parliamentary working bodies and delegations.

175. A special emphasis needs to be placed on strengthening the respective roles of the national machinery for the advancement of women within the government in the legislative process, as underlined by the CEDAW Committee.[233] The CEDAW Committee specifically recommended to "*increase the human, technical and financial resources allocated to the Department for Gender Equality [within the Ministry of Justice, Human and Minority Rights] and provide capacity-building to strengthen the gender-specific expertise of its staff to enable it to effectively coordinate efforts to mainstream gender across all government departments*"[234]. It is thus essential **to envisage a mechanism whereby the national machinery for the advancement of women is systematically involved in the policy- and lawmaking processes, including *ex ante* and *ex post* impact assessments, while also allocating adequate resources for this purpose**. In the course of the country visit, ODIHR was informed that despite the fact that all ministers are required to have a gender focal point by the Law on Gender Equality of Montenegro, not all of them have designated such focal points. With a view to ensure evidence-based gender-sensitive lawmaking, it is also fundamental to strengthen the existing data collection system and coordination mechanisms, expanding coverage to include local and sectoral gender disaggregated data, as also recommended by the CEDAW Committee.[235]

176. Moreover, currently, according to Article 45 of the RoP of the Parliament, the GEC "*considers proposals for laws, other regulations and general acts related to exercise of gender equality principles*". In practice and as also confirmed during the country visit, this means that the GEC considers only those draft laws that directly relate to gender equality, i.e., mostly those stemming from the Law on Gender Equality of Montenegro. As was indicated during the country visit, MPs from the GEC can participate in the

232 See e.g., ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), pp. 40-46.
233 See CEDAW Committee, Concluding observations on the third periodic report of Montenegro, CEDAW/C/MNE/CO/3, 6 June 2024, para. 15.
234 *Ibid.*
235 CEDAW Committee, Concluding observations on the third periodic report of Montenegro, CEDAW/C/MNE/CO/3, 6 June 2024, para. 16 (c).

discussions organised by any parliamentary committee, although GEC's opinions regarding a particular draft law are not considered as mandatory.

177. At the same time, to ensure a proper parliamentary gender-sensitive scrutiny, the GEC **should be mandated to consider all draft laws' compliance with national and international gender equality standards and commitments before their consideration in the sitting of the Parliament**. This would however require enhancing the capacity of the GEC and its Secretariat to be able to perform the abovementioned tasks. As for the Legislative Committee (Article 137 of the RoP of the Parliament), the respective opinions of the GEC should be submitted to the lead committee for consideration. Overall, as underlined in the EC 2024 Report, the Law on gender equality is not sufficiently aligned with the EU acquis and international standards and there is a strong downward trend of budget allocations for gender equality and the marginalisation of gender equality on the political agenda; in addition, policy measures for achieving and improving gender equality, the obligation to perform gender analysis in different sectors and the institutional framework for achieving gender equality are insufficiently defined.[236]

178. As underlined above, the existing lawmaking rules and practises should reflect gender perspectives, specifically those related to the regulatory impact assessment of draft legislation and inclusiveness of public consultation processes. **The aim should be to introduce a more comprehensive approach to gender impact assessments that will include a review, based on sex-disaggregated data, of the potentially direct or indirect discriminatory impact of the proposed provisions on women and men and their different groups, a projection of the desired outcome a law should have, aiming at reducing existing inequalities.** It is understood that the second Action Plan for a more Gender Sensitive Parliament in Montenegro (2022-2024) adopted in January 2022, includes a practical tool to differentiate the effects that legislation has on women and men and that training of parliamentary staff has been organized in this respect,[237] which is welcome in principle. At the same time, according to the information gathered during the country visit, gender impact assessments in practice do not always accompany draft laws and generally lack a qualitative gender impact assessment.

179. **As was recommended in the Preliminary Opinion, gender impact assessment should be an integral part of *ex ante* RIA prepared at the governmental level before submission to the Parliament. In those cases where RIA is not required, a separate gender impact assessment should be among the documents envisaged by Article 130 of the RoP of the Parliament as necessary for the draft's registration in the Parliament and the absence of one should justify the draft's return to the initiator**. Furthermore, effective and proportionate legal consequences in case of non-compliance with gender mainstreaming requirements should be envisaged in the legislation.

180. The process of conducting impact assessments, but also public consultation processes in general, should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or

236 See, European Commission, Staff Working Document, *Montenegro 2024 Report*, 30 October 2024, p. 38. See also EC, Staff Working Document Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. Brussels, 8.11.2023 SWD(2023) 694 final, p. 46, which also noted that the legislative framework on gender equality still has a limited impact due to insufficient political will to prioritise this issue in the overall governmental accountability mechanisms.

237 See <OSCE Mission to Montenegro supports adoption of new Action Plan for a Gender Responsive Parliament 2022–2024 | OSCE>.

under-represented groups and those particularly at risk.[238] Wide-ranging, pro-active outreach measures by government and parliament help to identify and include all interested and relevant counterparts, including organizations promoting gender equality and representing historically marginalized or under-represented groups.

181. Gender- and diversity-responsive budgets that ensure that the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, location, etc.) are addressed in expenditure and revenue policies is also important to mitigate inequalities.[239] In this respect, the CEDAW Committee specifically recommended to develop gender responsive budgets and allocate sufficient budgetary resources for the advancement of women's rights.[240] It is understood that Guidelines for gender-responsive budgeting and reporting have been developed at the governmental level[241] and that at the parliament's level, the second Action Plan for a More Gender Sensitive Parliament promotes the incorporation of a gender-responsive approach into budget circulars, although the effectiveness of these tools remains to be seen, given the reported downward trend in budget expenditures for gender equality and the lack of gender responsive budgeting.

182. Finally, ensuring that gender-sensitive language is used not only in the legislative procedure but also in legislation is an important contribution to gender equality and inclusiveness. In this respect, it should be noted that the Drafting Rules (Section II on Language, Style and Method of Legislative drafting) contain a clause on gender-sensitive language. In particular, it is indicated that *"legislation must be written in gender-sensitive language, either by using gender-neutral forms and words in the masculine and feminine genders or by introducing a clause stipulating that all provisions of the regulations apply equally to both men and women*" and the use of the latter clause appears to be generally preferred.[242]

183. At the same time, the second option proposed ("*stipulating that all provisions of the regulations apply equally to both men and women*"), which may appear easier to comprehend by avoiding overburdening the text with the repetition of all words in masculine and feminine genders (with a formulation like "he/she", etc.), seems to misinterpret the idea of gender-sensitive language[243] as such. The latter, as opposed to gender discriminatory language,[244] means that the language of the law should explicitly consider its audience and make specific linguistic choices in every case, instead of using

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

239 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 225.

240 CEDAW Committee, Concluding observations on the third periodic report of Montenegro, CEDAW/C/MNE/CO/3, 6 June 2024, para. 16 (b).

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

242 See ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election*, 9 October 2024, para. 23.

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

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

general clauses. In this way the law would not exclude persons who do not conform to the binary gender system. Using in the law a general clause that all its provisions apply equally to both men and women would lead in practice to the situation when inclusive alternatives will not even be considered by the drafters nor used throughout the text of the draft law. **It is, therefore, recommended to reconsider the above provision of the Drafting Rules by removing the second option.**

11.2. Diversity Considerations

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

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

186. Minority representation in decision-making bodies, and consequently in lawmaking, may be assured through various arrangements, such as reserved seats (by way of quotas, or other measures), or assured membership in relevant administrative/executive bodies or parliamentary committees, with or without voting rights, or through other mechanisms to ensure that minority interests are considered, or advisory or consultative bodies.[245] The inclusion of persons with disabilities in political life should also be promoted, by including them in key parliamentary and governmental bodies, and more generally, public decision-making processes, including policy- and lawmaking, as well as ensuring accessibility of the parliamentary and government website, documents as well as premises.[246]

187. Notably, on 20 June 2023, the Defender of Human Rights and Freedoms of Montenegro issued a statement supporting the complaint of the Union of the Blind that most municipal electoral commissions (MECs) did not guarantee an equal, secret and dignified voting process for persons with disabilities, even though in March 2022, the Central Election Commission had revised relevant by-laws and instructed all MECs accordingly.[247] Overall, as was also confirmed during the ODIHR country visit, the Defender's Office continues to be perceived as one of the most trusted institutions by Montenegrin citizens. While the regulatory and institutional framework for its appropriate functioning is largely in place, additional measures should be taken to better align this framework to fully comply with the UN Paris Principles; it is also noted that the decisions and

245 See e.g., OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).
246 See *ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), Section V on Parliaments.
247 See EC, Commission Staff Working Document *Montenegro 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*., p. 11.

recommendations of the Defender regarding draft laws remain non-mandatory, and Montenegro needs to improve their systematic follow-up across all public institutions.[248]

188. Apart from specialized subject matter expertise, it is important to include stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups who can comment on drafts likely to impact them so that they may provide their own perspective.[249] Wide-ranging, pro-active outreach measures by government and parliament help to identify and include all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups. When selecting means of consultation, the special situation of marginalized or under-represented groups should be taken into consideration[250] and consultation strategies need to adapt their timing and methods of consultation accordingly. In particular, and as appropriate, reasonable accommodation needs to be provided to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures – such as communication of information in adjusted formats, easy-to-read language, physical access to events and venues for consultations, etc.[251]

189. Finally, the language used in legislation should not be demeaning or dismissive of person's self-identification, such as with respect to a disability or to a national, ethnic, or indigenous identity or other characteristics. Diversity-sensitive language[252] is the only acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity.

RECOMMENDATION J.

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

2. To introduce a requirement to obligatorily conduct gender impact assessment of draft laws (as a part of RIA) before submitting them to the Parliament, as well as elaborating the methodology for this based on sex-disaggregated data and a review of the potentially direct or indirect discriminatory impact of the proposed provisions on different groups. In the absence of RIA a separate gender impact assessment should be among the documents envisaged by Article 130 of the RoP of the Parliament as necessary for the draft's registration in the Parliament, and failure to comply should justify the draft's return to the initiator.

3. To ensure that lawmaking rules and practises reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation

248 *Ibid*. p. 40.
249 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 231.
250 *Ibid.* para. 231. See also *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights, para. 19, with reference to the World-wide Web Consortium's guidelines on web content accessibility (1999), now updated here: <Home | Web Accessibility Initiative (WAI) | W3C>.
251 *Ibid.* para. 231. See also OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), pp. 87-88.
252 *UN Guidelines for Gender-Inclusive Language* in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context, available at: <UNITED NATIONS Gender-inclusive language>. European Institute for Gender Equality, *Toolkit on Gender-sensitive Communication - A resource for policymakers, legislators, media and anyone else with an interest in making their communication more inclusive* (2019); Council of the European Union, *Inclusive communication in the General Secretariat of the Council of the European Union* (2018).

as well as *ex post* evaluation, inclusiveness of public consultation processes, openness of the policy- and lawmaking processes and accessibility of adopted legislation.

[END OF TEXT]

ANNEX 1: KEY RECOMMENDATIONS

A. Regarding legislative planning and policymaking:

1. To further elaborate the provisions of the RoP of the Government governing the policy development stage prior to the development of any legislative proposal, including by requiring the development and approval of policy papers by the Government while integrating ex ante RIA and public consultations in the early stages of the policymaking process; [para. 47]
2. To enhance the co-operation modalities between the Government and the Parliament throughout the policymaking and lawmaking processes between both actors, including through the regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and formalising a proper co-ordination arrangement between them while providing a legal mechanism to ensure compliance by the Government; [para. 48]
3. To ensure in the RoP of the Government that the Parliamentary Committee on International Relations and Emigrants is informed about the international agreements which will be negotiated/signed in the upcoming year and supplied with the original versions of the texts of these agreements; [para. 54]
4. To specify in the RoP of the Government the minimum duration of the inter-ministerial consultation process, while retaining the possibility, with respect to complex matters, to extend the duration beyond the existing maximum of 14 days; [para. 56]
5. To mandate, in the RoP of the Government, the GSG to review the content of draft policies and draft laws to assess their coherence with Government's priorities as well as the substantial quality of the drafts or return them to the initiators; [para. 57]

B. Regarding regulatory impact assessments:

1. To elaborate, in the RoP of the Government and MoF Instruction, clear criteria for exempting certain legislative proposals from the RIA requirements, including in case of limited impact of the planned intervention, in addition to the already existing exemptions concerning certain specific pieces of legislation; [para. 62]
2. To consider distinguishing between different types of RIA - such as a "full RIA, "simplified"/"basic"/"initial" RIA, or a RIA focusing on specific, limited impacts, while specifying their respective scopes and standards of analysis for each type; [para. 63]
3. To envisage in the legislation a clear list of impact assessments that need to be mandatorily conducted, covering - as appropriate and relevant - human rights, gender equality and environmental impact, and the methodology for carrying them; [para. 69]
4. To introduce an effective mechanism to check both the compliance with RIA procedures and the content and quality of analysis and conclusions presented

in the draft RIA reports, before they are submitted to government for final approval, while those not complying with quality requirements should be returned to the initiator; [para. 70]

5. To amend Article 130 of the RoP of the Parliament by requiring that the RIA report, or justification for not preparing it, should accompany the draft law submitted to the Parliament, including for draft laws initiated by individual MPs, whilst the absence of one should justify the draft's return to the initiator; [para. 72]
6. To consider the feasibility of introducing a system of ex post evaluation, at least for certain major pieces of legislation or sectors, while clearly defining the scope and methodology of such evaluation and closely linking it with the ex ante phase of RIA; [para. 75]

C. Regarding legal drafting:

1. To strengthen the capacity of the legal drafting units at ministerial level and, at the same time, ensure that legal drafting support is provided by a specialized legal drafting unit within the Government – possibly a reinforced Secretariat for Legislation – to provide more assistance to individual ministries, while ensuring early involvement of legal drafters at the policymaking stage and close co-ordination with the experts on the subject matter of the law within ministries; [para. 79]
2. To consider establishing a separate, dedicated parliamentary Legal Department/Service which may take over some of the tasks of the Legislative Committee related to providing legal opinions and analysing the compliance of the draft law with the Constitution and other laws, as well as offer expert legal drafting support to MPs to develop draft laws and amendments; [para. 80]
3. To provide both in the government and the parliament initial and continuous training on legislative drafting, to create a corpus of well-trained legislative drafters who can work with ministries and other initiating bodies, as well as subject experts, when designing legislation; [para. 84]

D. Regarding legislative procedure:

1. To supplement Article 40 of the RoP of the Government with an express requirement to include an assessment and evaluation by the initiating ministry of the potential impact of the draft law on women and men and gender equality when submitting it for consideration by the Government; [para. 95]
2. To supplement Article 67 of the RoP of the Government to ensure that other documents listed under Article 40 of the RoP are also attached to the draft law when being submitted to the Parliament, along with a gender assessment and evaluation, and similarly supplement Article 130 of the RoP of the Parliament, including by requiring the submission by the Government of the RIA Report, the table of concordance with European Union law and a gender assessment and evaluation of the impact of the draft law; [para. 94]

3. To envisage in the RoP of the Parliament the establishment of a well-organized and adequately resourced parliamentary entry office/registration secretariat to check each legislative proposal, irrespective of the initiator, against the fulfilment of the conditions provided in the RoP of the Parliament, including Article 130; [para. 97]
4. To specify in the RoP of the Parliament that there should not be two or more draft laws registered in the Parliament with the same or similar title and/or substance, which should be screened by the parliamentary entry office/registration secretariat; [para. 98]
5. To envisage in the RoP of the Parliament the minimum time required between parliamentary readings, except for the adoption of draft laws under the urgent procedure in exceptional circumstances; [para. 99]

E. Regarding urgent legislative procedure:

1. To provide for an abbreviated/shortened procedure for the adoption of minor and uncontroversial or not complex legislation or amendments, while clearly defining and strictly circumscribing such cases in the legislation; [para. 104]
2. To amend Article 151 of the parliamentary RoP by introducing clear and strictly defined criteria and circumstances when the urgent procedure may or may not be used, embedding specific safeguards to avoid the over-use of such procedures and clear rules enabling the Parliament to reject the request to apply such urgent procedures; [para. 109]
3. To supplement the parliamentary RoP by requiring a robust *ex post* evaluation of laws adopted via the urgent procedure, including consultations on implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and potential discriminatory impact on certain groups of society; [para. 101]

F. Regarding public consultations:

1. To more clearly outline in the legal framework limited instances where public consultations can be omitted, whilst also ensuring that there is an authority at centre of government level scrutinizing the application of such exceptions; [para. 116]
2. To amend Article 67 of the RoP of the Government to require the submission of the report on conducted public consultations among the documents to be submitted to the Parliament together with the draft law, while also specifying in Article 130 of the RoP of the Parliament that, if a public consultation was conducted, the consultation report should accompany the draft law submitted to the Parliament and that the absence of one, without valid justification, should justify the draft law's return to the initiator pursuant to Article 132 of the RoP of the Parliament; [para. 117]

3. To enhance the legal and institutional framework governing public consultative hearings and consultations by the Parliament, while ensuring adequate training of parliamentary staff to strengthen their capacity to handle consultation processes, and to facilitate public consultations throughout the parliamentary stage, including on the legislative proposals initiated by MPs; [para. 133]
4. To re-assess, in close consultation with NGO representatives, the criteria and modalities of NGO participation in government working bodies with a view to simplifying them and by making them less burdensome and more transparent; [para. 130]

G. Regarding publication and accessibility of adopted legislation:

1. To envisage in the legal framework an obligation to ensure that all primary and secondary legislation is consolidated and available online, free of charge, in a comprehensive legislative database which is publicly accessible; [para. 139]
2. To consider establishing a separate Legal Department within the Parliament, or empowering another public body, which should act as a professional service to prepare the consolidated versions of the laws either to be published for informational purpose, or to be adopted by the Parliament following a simplified procedure or according to other modalities envisaged by law or by amended RoP of the Parliament; [para. 143]

H. Regarding regulatory oversight mechanisms:

1. To enhance the regulatory oversight mechanisms within the government, including by strengthening the role of the GSG, while ensuring that the scope of the quality control over RIA is not limited to budget or fiscal considerations, but also covers economic, social, human rights, gender and environmental impacts, with the possibility to reject sub-standard draft laws and/or RIA and return them to the initiator; [para. 147]
2. To ensure that internal procedures and institutional framework within the Ministry of Public Administration are in place to check compliance with the requirements for public consultation; [para. 148]
3. To envisage the feasibility, in light of available human and financial resources, of a more systematic and comprehensive mechanism of ex post evaluation of legislation allowing the Parliament to assess retrospectively the outcomes of existing legislation so as to determine whether it should be maintained, amended or repealed, along with the development of adequate methodology and guidelines to perform such tasks; [para. 154]

I. Regarding EU integration and approximation:

1. To amend Article 42a of the RoP of the Parliament by mandating the European Integration Committee to consider draft laws which are transposing the EU

acquis and provide opinion on the extent of the harmonization, as well as on the consequences for Montenegro regarding their implementation; [para. 166]

2. To develop and adopt a law regulating the relations between the Government and the Parliament, particularly in the area of EU affairs, in order to ensure a more effective institutional framework and co-operation in support of the European integration process, including greater co-operation and co-ordination in the delivery of policymaking and legislative development; [para. 168]

J. Regarding gender mainstreaming and diversity considerations:

1. To strengthen the institutional arrangements for gender mainstreaming throughout the policy- and lawmaking processes, while enhancing the role of the Gender Equality Committee in the legislative process by mandating it to consider all draft laws' compliance with national and international gender equality commitments prior to their consideration in the sitting of the Parliament; [para. 177]
2. To introduce a requirement to obligatorily conduct gender impact assessment of draft laws (as a part of RIA) before submitting them to the Parliament, as well as elaborating the methodology for this based on sex-disaggregated data and a review of the potentially direct or indirect discriminatory impact of the proposed provisions on different groups. In the absence of RIA a separate gender impact assessment should be among the documents envisaged by Article 130 of the RoP of the Parliament as necessary for the draft's registration in the Parliament, and failure to comply should justify the draft's return to the initiator; [para. 179]
3. To ensure that lawmaking rules and practises reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation as well as *ex post* evaluation, inclusiveness of public consultation processes, openness of the policy- and lawmaking processes and accessibility of adopted legislation. [para. 185]

ANNEX 2: LIST OF INTERLOCUTORS MET DURING THE COUNTRY VISIT

During the country visit that took place on 27-30 May 2024, meetings have been conducted with the following interlocutors:[253]

1. President of the Parliament of Montenegro
2. Secretary General of the Parliament of Montenegro
3. Chairperson of the Legislative Committee and Committee Secretary
4. Representative of the Gender Equality Committee and Committee Secretary
5. Representatives of the Secretariats of the Committee for Economy, Finance and Budget, Committee for Political System, Justice and Administration and European Integration Committee
6. Deputy Chairperson of the Committee on International Relations and Emigrants and representatives of the Committee Secretariat
7. Head of the Parliamentary Institute
8. Head of the Parliamentary Budgetary Office
9. Representative of the Committee on Human Rights and Freedoms and representatives of the Committee Secretariat
10. Representative of the Secretariat of Legislation
11. Representative of the Directorate General for Criminal and Civil Legislation of the Ministry of Justice
12. Director General for Judiciary of the Ministry of Justice
13. Chief of the Division for Gender Equality Affairs, Ministry of Human and Minority Rights
14. Director for the OSCE and the Council of Europe of the Ministry of Foreign Affairs
15. Protector of Human Rights and Freedoms
16. State Secretary of the Ministry of European Affairs
17. Representatives of the Ministry of Public Administration
18. Representatives of the Official Gazette of Montenegro
19. Representatives from civil society organizations
20. Representatives of international community/International partners

253 Not all public institutions, CSOs and international organizations were available for the meetings due to other/overlapping commitments.

ANNEX 3: BASIS FOR ODIHR'S LAWMAKING REFORM ASSISTANCE ACTIVITIES

Scrutiny of individual laws often reveals deep-seated weaknesses in a country's lawmaking system. Laws adopted with the best intentions in response to pressing social needs may prove inefficient or ineffective because of underlying deficiencies in the system of preparing legislation itself. Frequently, political priority considerations prevail over any other considerations while enacting legislation on substantive issues. The most effective way of rectifying the situation is to address the underlying causes. Often, whilst considerable resources are devoted to the building or strengthening of institutions involved in lawmaking, not enough is done for developing or enhancing methods for rationalizing legislative procedures. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme,[254] a joint initiative of the European Union and the Organization for Economic Co-operation and Development (OECD).[255]

For long, the primary focus of the ODIHR's legislative assistance has traditionally been on providing legal advice on individual pieces of legislation, when the process of their drafting and consideration was ongoing. While doing so, ODIHR recurrently notes that some of the shortcomings identified in the texts find their cause in the manner in which the legislative process was managed or regulated. Therefore, specific recommendations related to procedural matters, including mechanisms for making the process more transparent and more inclusive or for monitoring the implementation of legislation, have been made to the legislators with varying degree of success.

Building on the above observation, key OSCE commitments on open, participatory and inclusive legislative processes[256] and taking into consideration recommendations or special interests manifested in discussions that took place in OSCE Human Dimension Implementation Meetings in 2002, 2003 and 2004 as well as at the 2004 Human Dimension Seminar on Democratic Governance,[257] ODIHR started working on assessing, upon request, lawmaking processes of OSCE participating States.[258]

254 SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe.

255 For more information on this programme, refer to: < About SIGMA - OECD>. Created in 1992 with a focus on EU candidate countries, this programme has provided support to decision-makers and public administrations in their efforts to modernize "public governance systems."

256 "*Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (…) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone*;" (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). "*Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991). Other OSCE human dimension commitments emphasize the importance of democratic, inclusive and participatory public decision-making procedures, especially with regard to the effective and full participation of women, people belonging to national minorities and Roma and Sinti; see e.g., Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (Action Plan), OSCE, 27 November 2003, para. 88; The Challenges of Change (Helsinki Document), OSCE, 10 July 1992; and OSCE, Moscow Document.

257 Among these recommendations, it is worth recalling the following extracted from the original documents: (i) access to laws and legislative documents, including primary and secondary legislation, court rulings, draft laws and legislative agendas, should be ensured; (ii) legislative proceedings should be open to the public; (iii) legislative transparency should be fostered at all levels of governance, including local self-governance; (iv) public consultation should be an indispensable element of legislative process; (v) both legislatures and the executive branch should encourage public consultation; (vi) parliamentary proceedings, including committees meetings, should be open to the public; (vii) minutes and records should be entirely available to the public. Reading rooms and internet could be used to this end; (viii) ODIHR's legislative assistance work should pay greater attention to the underlying attitudes and factors that affect the way laws are prepared and drafted and should place more emphasis on promoting citizen participation in the political process besides elections; (ix) OSCE's work with legislatures should be expanded - an inventory of standards related to structures, procedures and practices of democratic parliaments should be developed; (x) to promote strengthening of democratic practices within parliaments of the participating States, the OSCE should assist with the development of rules of procedure and legal frameworks; (xi) ODIHR should provide assistance to participating States with regard to law drafting in a decentralized state structure, with focus on specifics of enforceability issues at the local level.

258 The first OSCE ODIHR Legislative Paper – Law Drafting and Regulatory Management in Georgia was completed in June 2006. Since then, as of December 2024, ODIHR has carried out 16 lawmaking assessments (preliminary, comprehensive and follow-up) benefitting

Experience has shown that a successful lawmaking process includes the following components: a proper policy discussion and analysis; an impact assessment of the proposed legislation (including possible budgetary effects); a legislative agenda and timetables; the application of clear and standardized drafting techniques; wide circulation of the drafts to all those who may be affected by the proposed legislation; and mechanisms to monitor the efficiency and implementation of legislation in real life on a regular and permanent basis. Further, an effective and efficient lawmaking system requires a certain degree of inclusiveness and transparency throughout the lawmaking system. This includes providing meaningful opportunities for the public, including minority groups, to contribute to the process of preparing draft proposals and to the quality of the supporting analysis, including the regulatory impact assessment and gender impact assessment, which involves the adaptation of policies and practices to make sure that any discriminatory effects on men and women are eliminated. Proposed legislation should be comprehensible and clear so that parties can easily understand their rights and obligations. The efficiency of the legislation in real life should be monitored on a permanent basis.

Based on the lawmaking assessments carried out since 2005 and the findings and recommendations pertaining to the legislative process made in legal reviews analysing individual pieces of legislation, ODIHR initiated the development of comprehensive Guidelines on Democratic Lawmaking for Better Laws, which were published in January 2024, and offer a comprehensive framework and parameters for assessing legislative processes.

Following an official request from an OSCE participating State, ODIHR, in close co-ordination with the national authorities, conducts a full-fledged comprehensive assessment of the country's legislative system and assist the authorities in undertaking comprehensive legislative reforms. A comprehensive assessment is generally divided in the following stages:

(1) Preparation of a *Preliminary Opinion on the Legal Framework Governing the Legislative Process*, which consists of a desk review analysis of the current constitutional, legal, infra-legal and organisational framework of the legislative process in the country.

(2) Country visit to present and discuss the preliminary findings and recommendations of the Preliminary Opinion during a series of semi-structured interviews[259] with key stakeholders of the lawmaking process including but not limited to representatives from the parliament, chairpersons and members of parliamentary committees, parliamentary staff, government officials, representatives of the national human rights institution, national machinery for the advancement of women, representatives of gender equality and/or anti-discrimination bodies, the official gazette, representatives of the Constitutional Court, non-governmental organizations (NGOs), international partners and other stakeholders.

(3) Preparation of the ODIHR Comprehensive Assessment Report on the Lawmaking Process, focusing on the legal as well as practical aspects of the entirety of the lawmaking process from the initial stages of the policymaking, including impact assessment, to the drafting, consultations, adoption, publication, communication, monitoring of implementation and evaluation;

(4) Launch of the Comprehensive Assessment Report and discussion on way forward (e.g., support for developing an action plan for regulatory reform and/or supporting relevant stakeholders to develop tools and other guidance documents and/or training curricula for lawmakers and/or conducting capacity development initiatives, etc.).

nine countries: **Armenia** (2014, Regulatory Reform Roadmap for Armenia (May 2016), follow-up assessment ongoing), **Bosnia and Herzegovina** (2022), **Georgia** (2005, 2015), **Kyrgyz Republic** (2014, 2015), **Moldova** (2008, 2010, preliminary assessment ongoing), **Montenegro** (preliminary in 2023 and comprehensive in 2024), **North Macedonia** (2007, revised in 2008), **Serbia** (2008, 2011 – and Regulatory Reform Roadmap (February 2014)), and **Uzbekistan** (2019 and follow-up in 2024).

259 See: general list of questions related to lawmaking assessments.

In particular, the recommendations contained in the Comprehensive Assessment Report may serve as a working basis for conducting thematic workshops that provide a forum for discussing the recommendations and developing more specific recommendations. The topics of the workshops may be jointly identified by ODIHR and the national authorities. The workshops aim at creating a platform for inclusive discussions among key national stakeholders, including non-governmental organizations, on methods that may be employed to make the lawmaking process more effective, efficient, transparent, accessible, inclusive and accountable. The recommendations, stemming from the Comprehensive Assessment and the thematic workshops may then be put together in the form of a reform package and officially submitted to the State authorities for approval and adoption. On the request of the OSCE participating State, ODIHR may continue supporting the improvement of the legislative process through offering, among others, legal reviews on draft or adopted legislation developed as a follow-up to the comprehensive assessment.