

AD 12/25

LIMITE

CONF-ME 3

ACCESSION DOCUMENT

Subject: EUROPEAN UNION COMMON POSITION
– Chapter 5: Public Procurement

EUROPEAN UNION COMMON POSITION

Negotiating Chapter 5: Public Procurement

This position of the European Union is based on its general position for the Accession Conference with Montenegro (AD 23/12 CONF-ME 2) and is subject to the negotiating principles endorsed therein, in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;
- the requirements set out in points 24, 28, 41 and 44 of the Negotiating Framework.

The EU encourages Montenegro to continue the process of alignment with the EU *acquis*, noting that additional *acquis* may enter into force before accession, to ensure its effective implementation and enforcement, and develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Montenegro, in its negotiating position AD 12/13 ADD 1 COR 1 CONF-ME 10, accepts the *acquis* under chapter 5 as in force on 27 February 2025, and that it declares that it will be ready to implement it by the date of its accession to the European Union.

General principles

The EU notes that Montenegro accepts and takes into account in its legislative framework the general principles deriving from the Treaty on the Functioning of the European Union and from the jurisprudence of the European Court of Justice such as transparency, equal treatment, free competition, non-discrimination and proportionality, and other relevant provisions of the *acquis*.

Award of public contracts and concessions

The EU takes note of the significant progress made by Montenegro in the last years in aligning its legislation with the EU *acquis* in public procurement, and establishing the necessary conditions for the economy, efficiency, transparency, and accountability of public procurement operations.

The EU notes that Montenegro's **Law on public procurement** defines the key applicable procurement procedures, the entities covered, exclusions, and further contains provisions on requirements, technical details, selection and award criteria, and their application, and is aligned with the EU Procurement Directives (Directive 2014/24/EU, Directive 2014/25/EU). The EU further notes that Law on public procurement includes a specific chapter regulating defence and security procurement and is also aligned with the EU *acquis*.

On concessions and public-private partnerships, the EU notes that Montenegro's **Law on public-private partnership** does not cover concessions for the use of natural resources, which are covered by a separate **Law on concessions**. The Law on public-private partnership and the Law on concessions are aligned with the EU Concessions Directive (Directive 2014/23/EU).

The EU welcomes Montenegro's success in implementing an **electronic procurement system**, incorporating essential functions for a modern, transparent and fair procurement system, including for public-private partnerships. The EU welcomes and will continue to monitor Montenegro's commitment to further improve the e-procurement system, by introducing new functionalities to detect irregularities, enabling contracting authorities and economic operators to automatically identify and report irregularities such as fraud, collusion, coercion, obstruction, conflict of interest and other corrupt actions in public procurement procedures and improve the monitoring on the implementation of public procurement contracts, as well as enhancing interoperability with relevant electronic systems in Montenegro. The EU calls on Montenegro to put necessary emphasis on streamlining and enforcing its regulations regarding control mechanisms, monitoring and transparently executing contract implementation in its public procurement system, while ensuring the allocation of sufficient resources and staff for this matter.

The EU notes the importance Montenegro dedicates to the promotion of **social, green, innovation** related procurement, as well as the participation of **small and medium-sized enterprises** in public procurement. The EU notes the relevant legislative amendments and strategic framework (Strategy for Enhancing the Public Procurement Policy and Public-Private Partnership in Montenegro for the period 2021-2025) addressing this matter, in the past years. The EU encourages Montenegro to continue the incorporation of such aspects into all stages of the procurement cycle, establishing and maintaining relevant requirements and tools for facilitation. The EU calls on Montenegro to put necessary efforts and resources in place to ensure proper enforcement and implementation of its strategic framework.

The EU welcomes the significant progress made by Montenegro in the last years in fully aligning with the *acquis*. Furthermore, the EU notes Montenegro's commitment to enhance the clarity of its legislative texts, in order to effectively apply public procurement procedures, and efficiently execute them by 2026.

The EU underlines Montenegro's commitment to accept and implement the EU's international commitments in the field of public procurement. In this regard, the EU notes Montenegro's accession to the WTO's Agreement on Government Procurement (GPA) in 2015, the Stabilisation and Association Agreement (SAA) between Montenegro and the EU since 2010, and accession to the Central European Free Trade Agreement (CEFTA) in 2007.

The EU emphasises that any **international agreements** concluded by Montenegro should be in line with the EU *acquis* and with the SAA between Montenegro and the EU. It remains essential not to circumvent the application of national legislation and the EU *acquis* on public procurement and to uphold the principles of non-discrimination, fair competition, equal treatment of companies and transparency of public procurement procedures.

The EU notes that the Agreement on Cooperation in Tourism and Real Estate Development, concluded on 28 March 2025 between the Government of Montenegro and the Government of the United Arab Emirates (UAE), and ratified by the Montenegrin parliament on 3 June 2025, states that any contracts, programmes and further agreements with investors from UAE are exempted from legislation of both countries on public procurement, public tender and public competing procedure. It is imperative that Montenegro ensures that the implementation of this Agreement does not contravene the EU public procurement *acquis* and is in line with the principles set out in the SAA, including transparency, equal treatment and non-discrimination. The EU will closely monitor the implementation of the Agreement and stands ready to assist Montenegro in this regard.

The EU recalls the ongoing work by the European Commission to evaluate the performance and impact of public procurement directives (EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) across the EU, the EU invites Montenegro to keep itself regularly informed of the developments on chapter 5 of the *acquis*.

Remedies

The EU notes that Montenegro's regulatory and legislative framework regarding legal protection in public procurement procedures is aligned to a great extent with the *acquis*, covering contracts falling under the Law on public procurement and the Law on public-private partnerships.

In this respect, the EU calls on Montenegro to further strengthen the capacity of the independent review body, the Commission for the Protection of Rights in Public Procurement Procedures, and to identify measures to improve its performance, with the objective to enhance efficiency and effectiveness in implementing its decisions.

The EU encourages Montenegro to advance its review body's case management system to ensure consistency of its decisions and improve its online database for easier identification and analysis of common tendencies. The EU invites Montenegro to enhance its database to allow for ~~on~~-transparent sharing of information on decisions regarding concessions and public-private partnership contracts, as well as defence and security procurement contracts.

Strengthening of administrative capacity

The EU notes that Montenegro has put in place an adequate **regulatory and institutional framework** for the public procurement system, including the Directorate for Managing Public Investments and Public Procurement Policy in the Ministry of Finance, the central authority in charge of policymaking and monitoring of the public procurement system and the review bodies, including the Commission for the Protection of Rights in Public Procurement Procedures. The EU further observes that Montenegro possesses adequate administrative capacity in the area of public procurement.

The EU takes note of Montenegro's continuous commitment to improving its institutional and administrative capacities in the area of public procurement at all levels, in accordance with the Strategy for Enhancing the Public Procurement System and Public-Private Partnership for 2026-2030. The EU underlines the importance for Montenegro to continuously support and build trust in the country's public procurement system, ensuring smooth and efficient interinstitutional cooperation, fair competition and transparency in public procurement procedures.

The EU expects Montenegro to complete its legislation in defining the mandate and responsibilities of monitoring entities in the public procurement system and implement them by the time of accession. The EU also invites Montenegro to fill in vacancies in the public procurement system, ensuring the necessary capacity to properly enforce and implement its legislation.

The EU encourages Montenegro to ensure the recognition of a procurement expert as a profession in its recruitment processes, in order to attract and maintain qualified and experienced practitioners in the system. The EU emphasises the link with the ongoing public administration reform and underlines the importance of the latter issue, including its thorough implementation.

The EU notes that Montenegro has made further progress in revising its framework on **fighting corruption, conflict of interest, and fraud in public procurement**. The EU notes that the current definition of corruption and fraud is not sufficiently precise for specific public procurement purposes. The EU notes the commitment of Montenegro to urgently address these issues in the upcoming months, and will monitor steps taken in this respect. The EU notes that following the amendments introduced to the Law on prevention of corruption in 2024 and in line with the National Anti-Corruption Strategy, Montenegro pledges, in its updated negotiating position for chapter 5, to amend its Law on public procurement and the Law on prevention of corruption by first quarter of 2026, strengthening corrective mechanisms, direct misdemeanour liability, budgetary inspection controls, as well as reinforcing definitions of corrupt actions and fraud in public procurement, linking the relevant provisions of the two underlying laws. The EU further notes that Montenegro commits to introduce a red flag system in its electronic procurement system for detecting irregularities (fraud, collusion, coercion, obstruction, conflict of interest and other corrupt actions) in public procurement procedures, by second quarter of 2026. The EU calls on Montenegro to ensure timely adoption of its planned activities in this regard and secure their proper enforcement and thorough implementation. The EU will closely follow on the implementation of these commitments.

The EU also notes Montenegro's commitment under the Reform and Growth Facility for the Western Balkans, to update, by June 2025, its anti-corruption, integrity, and conflict of interest policies in public procurement to align with recent amendments to the Law on the prevention of corruption. It includes reviewing and strengthening transparency, accountability, and ethical conduct, while implementing stricter guidelines to manage conflicts of interest and ensure compliance through training, supervision, and enforcement, with the goal of reducing corruption and enhancing trust in public procurement.

The EU calls on Montenegro to continue its efforts to fully implement and enforce the public procurement legislation in a way that ensures its effective and efficient application, providing and accountable, fair and transparent public procurement system with strong safeguards against corruption at all levels. The EU welcomes the efforts put into professionalisation, and it encourages Montenegro to continue its activities for proper implementation of the legislative framework. The EU will closely follow on the implementation of Montenegro's commitments, including adjustments to its legal system and administrative capacities.

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In view of the above considerations, the EU notes that, at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the EU *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Montenegro's administrative capacity, its capacity to enforce the *acquis* in this chapter and the completion of the legislative alignment concerning the fight against corruption, fraud, conflict of interest and other prohibited activities in public procurement. The EU will also specifically monitor that the implementation of international agreements does not contravene the EU *acquis*. Particular consideration needs to be given to the link between the present chapter and other negotiation chapters. A final assessment of the conformity of Montenegro's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter, and which is to be provided to the Conference, the EU invites Montenegro to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the EU will, if necessary, return to this chapter at an appropriate moment.

The EU notes that Montenegro, in its negotiating position AD 12/13 ADD 1 COR 1 CONF-ME 10 accepts the *acquis* under chapter 5 as in force on 27 February 2025. The EU furthermore notes that Montenegro declares that it will continue the alignment process with the *acquis* and that it will be ready to implement it by the date of its accession to the European Union.

Furthermore, the EU recalls that there may be new *acquis* between 27 February 2025 and the conclusion of the negotiations.