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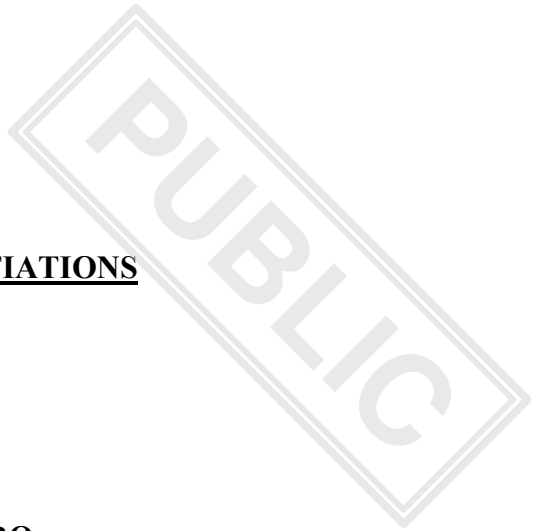
NOTE

From: General Secretariat of the Council
To: Working Party on Enlargement and Countries Negotiating Accession the
the EU
Subject: Accession negotiations with Montenegro

- Chapter 5: Public Procurement
-

Delegations will find attached a draft Common Position on the above-mentioned chapter, submitted by the Commission¹.

¹ This document has been transmitted to the Council in English only.



ACCESSION NEGOTIATIONS

MONTENEGRO

DRAFT COMMON POSITION

(Revision in response to additional information provided by Montenegro)

Negotiating chapter 5

Public Procurement

I. INTRODUCTION

Position of Montenegro

In its negotiating position CONF-ME 10/13 and its addendum AD XX/XX ADD 1 (CONF-ME XX) Montenegro accepted the *acquis* under chapter 5 public procurement as in force on 27 February 2025 and declared that it will be ready to implement them by the time of the accession to the European Union.

On 1 April 2025, Montenegro submitted its “Report on the Fulfilment of Obligations under Chapter 5 – Public Procurement.” The report presents the measures and activities aimed at implementing Montenegro’s obligations under chapter 5 and on the fulfilment of the closing benchmarks as set in the EU common position CONF-ME 17/13. The report covers the period from adoption of Montenegro’s Negotiating Position until March 2025.

Montenegro has not requested any transitional periods for the implementation of the *acquis* under this chapter.

Overall evaluation

Montenegro has achieved considerable progress in all areas under chapter 5, by adopting legislation aligned with the *acquis* and reinforcing its administrative structures and enforcement capacity. In particular, the country has made significant improvements since 2021, reinforcing its institutional framework, implementing the e-procurement system and achieving adequate progress on fair and transparent public procurement system, which provides value for money, competition, and strong safeguards against corruption. While the anti-corruption framework specific for the area of public procurement requires further reinforcement, a clear plan to address the remaining vulnerabilities is in place and should be implemented by the beginning of 2026.

In the field of **classic procurement and procurement of goods, services or works (utilities)**, Montenegro's legislation is aligned with the EU *acquis*. Between 2022 and 2024, Montenegro had updated and revised its legislation regulating these sectors, addressing implementation, monitoring, award criteria, e-procurement, simple procurement as well as respective institutional and administrative set up, in line with the EU recommendations.

As regards **concessions and public-private partnerships**, Montenegro's legislation is aligned with the EU *acquis*. In Montenegro, the Law on public-private partnership does not cover concessions for the use of natural resources, which are covered by the Law on concessions. Montenegro amended its concessions legislation in 2023 and 2024 to align further with the *acquis*, while the public-private partnership legislation is in force since 2020.

In the area of **defence and security** procurement, Montenegro's legislation is aligned with the EU *acquis*. The Law on public procurement includes a specific chapter regulating the definitions and compliance in this sector, while the substance, contracting methods and reporting of defence and security procurement are addressed in a separate implementing legislation, which was amended in 2024.

Regarding **remedies**, Montenegro's legislation is aligned with the EU *acquis*. The Law on public procurement also regulates the mechanisms and procedures to challenge public procurement decisions, including on concessions and public-private partnerships.

Montenegro has made further progress in revising its framework on **fighting corruption, conflict of interest, and fraud in public procurement**. Further actions from the side of Montenegro are needed to address this issue. In this respect, given that the current definition of corruption and fraud is not sufficiently precise for specific public procurement purposes, Montenegro plans to address these issues in the upcoming months. Following amendments to the Law on prevention of corruption in 2024 and adoption of National Anti-Corruption Strategy, reinforcing general anti-corruption mechanisms, policies, action plans, Montenegro also officially pledged in its addendum to the negotiating position to amend its Law on public procurement and 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 in public procurement, linking the relevant provisions of the two underlying laws.

In addition, Montenegro committed 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 Commission will closely monitor on the implementation of these commitments.

Montenegro has put in place an adequate **regulatory and institutional framework** for the public procurement 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. The monitoring of public procurement is managed by the Public Procurement Inspectorate. The body overseeing concessions is the Commission for Concessions of Montenegro. The review system is the responsibility of the Commission for the Protection of Rights in Public Procurement Procedures and the Administrative Court of Montenegro.

Montenegro possesses adequate administrative capacity in the area of public procurement.

On the basis of these considerations, the Commission concludes that the closing benchmarks set in the EU common position CONF-ME 17/13 have been fulfilled (see benchmark assessment report in **the annex**) and that the present chapter does not require further negotiations at this stage.

II. DRAFT COMMON POSITION

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 CONF-ME 10/13, 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 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 encourages 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 encourages 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. Utmost care should be taken to not 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), 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 would be essential for Montenegro to ensure that the implementation of this Agreement does not contravene the EU public procurement *acquis*. The manner in which the Agreement will be interpreted, applied and implemented will need to be managed carefully. The EU 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 encourages Montenegro to further strengthen the capacity of the independent review body, the Commission for the Protection of Rights in Public Procurement Procedures, to identify measures to improve its performance and with the objective to enhance efficiency and effectiveness in implementing its decisions for complaints submitted for all public procurement procedures falling under its responsibilities.

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 on transparently sharing 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 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. 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 invites 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 encourages 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.

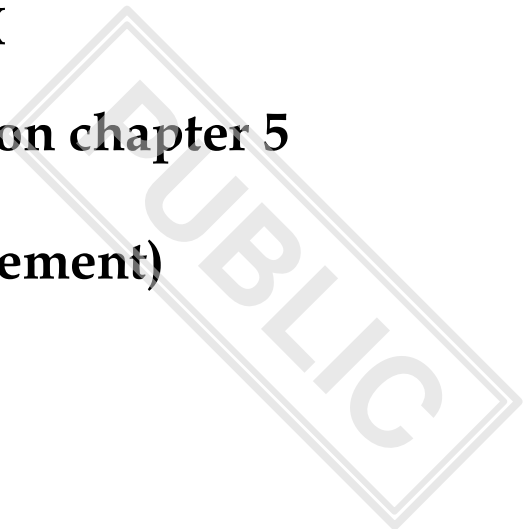
Monitoring of progress in the alignment with and implementation of the EU *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Montenegro's administrative capacity, its 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. Particular consideration needs to be given to the link between the present chapter and other negotiation chapters of the fundamentals cluster. 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 [CONF-ME 10/13] and its addendum AD XX/XX ADD 1 (CONF-ME XX) 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.

ANNEX
to the revised DCP on chapter 5
(Public Procurement)



I. CLOSING BENCHMARKS – CHAPTER 5 (PUBLIC PROCUREMENT)

The EU common position (CONF-ME 17/13) stated that the provisional closure of negotiations on chapter 5 on public procurement could be envisaged, once the following three closing benchmarks are met:

- Montenegro aligns its national legislative framework covering all areas of public procurement, including in particular concessions, public-private partnerships, and defence procurement, in accordance with EU procurement legislation and in conformity with the Treaty on the Functioning of the EU and other relevant provisions of the *acquis*.
- Montenegro puts in place adequate administrative and institutional capacity at all levels and takes appropriate measures to ensure the proper enforcement and implementation of national legislation in this area in good time before accession. This includes, in particular:
 - a) the implementation of Montenegro's Strategy for the Development of the Public Procurement System 2011-2015 and the Action Plan for its implementation to improve its administrative capacity, including proper training at all levels for all stakeholders;
 - b) the preparation of practical implementing and monitoring tools (including administrative rules, instructions, manuals, and standard contract documents);
 - c) the strengthening of control mechanisms which are necessary to ensure full knowledge and reliability of the system, including close monitoring and enhanced transparency of the execution phase of public contracts based on systematic risk assessments with prioritisation of controls in vulnerable sectors and procedures;
 - d) effective functioning of the remedies system, including in the area of concessions, public private partnerships and defence procurement;

- e) measures/actions related to the prevention of and fight against corruption and conflict of interest in the area of public procurement at both, central and local level.
- Montenegro demonstrates a track record of a fair and transparent public procurement system, which provides value for money, competition, and strong safeguards against corruption.

II. ASSESSMENT OF THE FULFILMENT OF THE CLOSING BENCHMARKS

In response to the closing benchmarks established by the Council under this chapter, on 1 April 2025, Montenegro sent to the Commission the following document:

- Final Report on chapter 5 – Public Procurement.

In the report, Montenegro presents the measures and activities it has undertaken between the opening of negotiations of this chapter on 18 December 2013 to date.

It is the Commission's assessment that, on the basis of the information provided in this report and of the progress demonstrated by Montenegro, Montenegro fulfils the closing benchmarks for this chapter.

II.A ASSESSMENT OF FULLFILMENT OF THE FIRST BENCHMARK

The first closing benchmark concerns the legislative framework of Montenegro on public procurement, including concessions, public-private partnerships, and defence procurement. In the recent years, Montenegro made good progress in terms of legislative alignment with the EU *acquis*.

This concerns:

1. the Law on public procurement (Official Gazette of Montenegro, No. 74/19, 3/23, 11/23)
2. the Law on public-private partnership (Official Gazette of Montenegro, No. 73/19)
3. the Law on concessions (Official Gazette of Montenegro, No. 8/09, 73/19, 125/23, and 82/24)

In details, as follows:

4. the Law on public procurement (Official Gazette of Montenegro, No. 74/19, 3/23, 11/23)

In line with the updated EU Directives of 2014 (Directives 2014/24/EU on public procurement, and 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors), Montenegro reformed its legislation on tender procedures, deadlines on submissions, framework agreements, methodology of bid submission, definition of contractor arrangements. The new legislation revised and introduced elements ensuring full alignment with the *acquis*, which includes: social and green procurement, exclusions, thresholds, introduction of new procurement procedures, revision of eligibility criteria for participating in procurement procedures, introduction of the most economically advantageous tender criterion, centralised procurement, regulating contracting methodology and obligatory monitoring of implementation of procurement contracts, and introducing the electronic procurement system.

Subsequently, in 2020, Montenegro adopted regulations on **defence and security** procurement (Official Gazette of Montenegro, No. 76/20) – aligning with the EU Directive (Directive 2009/81/EC on defence and security procurement) – and **small-value procurement** (Official Gazette of Montenegro, No. 61/20, 65/20, 71/20, 74/20, 102/20, 50/21) under the umbrella of the Law on public procurement.

Montenegro further harmonised its public procurement system with the EU *acquis*, by revising the right of contracting authorities to amend procurement contracts, requirement for contracting authorities to appoint individuals for accountability and oversight of implementation of contracts, and introducing further evaluation criteria.

Montenegro worked to continuously improve and revise its **implementing legislation** through numerous secondary legislation acts which regulate procedures, methodologies, guidelines, criteria, forms, corrections, oversight, analysis in procurement procedures covered by the Law on public procurement.

5. the Law on public-private partnership (Official Gazette of Montenegro, No. 73/19)

The Law on public-private partnership introduces a systemic approach to implementing **public-private partnership (PPP)** projects which are developed by public authorities – central and local government bodies – or businesses funded by public resources. The law makes the assessment of economic importance of projects obligatory, including that of public interest. For efficiency purposes, the law also regulates the simplification of **small-value PPP contracts** which aim to improve the infrastructure in the main areas, such as transport, healthcare, education. The selection of private partner is linked to the Law on public procurement, whereby the entity is known to the private sector. The law standardises supervision and monitoring, as well as prescribes the oversight obligation to be done by the Ministry of Finance, the Investment Agency of Montenegro – the main body in charge of PPPs –, as well as the Protector of Property and Legal Interests if the subject of the project is additionally based on the application of regulations on state property. The procedure of awarding PPP contracts must be carried out through the electronic procurement system.

The Law on public-private partnership also includes **service concessions** and **works concessions** as particular forms of public-private partnership. Under this law, concessions represent one form of contractual arrangement in which one or more public entities entrust private partners with the execution of works or the provision of services in return for compensation. This compensation consists either of the right to use the works or services that are the subject of the contract, or a combination of this right and monetary payment. Concessions for the use of natural resources are covered by the Law on concessions (see below).

The Law on public-private partnership with its complementary implementing legislation is aligned with the requirements of the EU Directive (Directive 2014/23/EU on award of concession contracts).

1. the Law on concessions (Official Gazette of Montenegro, No. 8/09, 73/19, 125/23, and 82/24)

The Law on concessions serves as an additional legislation covering **concessions for the use of natural resources**, goods of general use, and other goods of public interest, other aspects of concessions are covered by the Law on public-private partnership. The law establishes a comprehensive regulation of conditions, methods, procedures for awarding concessions, as well as the subject of concessions covered in the provisions. The law ensures the equal, transparent and non-discriminatory conditions of such concessions as well as prescribes the responsibilities of the independent administrative entity, the Commission for Concessions of Montenegro, to approve and oversee the awarding of concessions under the law. The law also prescribes the entity to review submitted appeals by bidders, as well as to maintain a register of concessions contracts.

In view of the completion of legislative alignment process, the Commission assesses the first closing benchmark set in document CONF-ME 17/13 as fulfilled.

II.B. ASSESSMENT OF FULLFILMENT OF THE SECOND BENCHMARK

As per the second closing benchmark Montenegro has to establish and maintain an adequate administrative and institutional capacity at all levels, which takes appropriate measures ensuring the proper enforcement and thorough implementation of its public procurement legislation in ahead of accession to the EU.

Concerning **administrative capacities**, the central authority in charge of policymaking in public procurement, and public-private partnerships and concessions, drafting legislation, and monitoring the public procurement system is the **Directorate for Managing Public Investments and Public Procurement Policy** of the Ministry of Finance. With the evolution of the strategic, institutional and legislative framework, in 2023, the directorate established five targeted departments:

- Public Investment Management Department
- Department for Normative and Legal Affairs
- Department for Professional Training, Development, and Certification in Public Procurement

- Department for Monitoring the Public Procurement System and Managing e-Procurement
- Department for Public-Private Partnerships

The Directorate has 32 positions with 9 being vacant and planned to be filled in 2025. It steers the regulation and standardisation of the electronic procurement system, while coordinating with the Commission for the Protection of Rights in Public Procurement Procedures, the State Audit Institution, and anti-corruption bodies.

The independent **review body**, the **Commission for the Protection of Rights in Public Procurement Procedures** is the entity responsible for safeguarding the rights of bidders and other participants in public procurement and public-private partnership contract award procedures. The body is involved in developing new legislative framework and contribute to professionalisation with the Directorate for Managing Public Investments and Public Procurement Policy.

Monitoring of public procurement is partly carried out by the Directorate, and partly by the **Public Procurement Inspection** unit of the Ministry of Finance. The responsibilities of the unit include the observation of the procedural prescriptions in the Law on public procurement and the implementing legislation on small-value procurement. Currently five out of ten posts are filled.

The **Cadastre and State Property Administration** is the state entity in charge of procurement procedures conducted through **centralised procurement**, subject to government decree.

The entity in charge of preparation of **public-private partnership and concession (service and works concessions)** contracts is the **Investment Agency of Montenegro**, under the policy guidance of the Ministry of Finance, established by the Law on public-private partnership.

The **Commission for Concessions of Montenegro** oversees the **concession** contracts and processes **covering the use of natural resources**. It is in charge awarding concessions contracts for associated mineral resources in approved exploitation fields, resolves and rules on appeals submitted by bidders, and keeps a register of such contracts.

The Commission finds Montenegro's administration in the field of public procurement effectively functioning with sufficient capacities to implement and enforce the public procurement legislation in a way that ensures its effective and efficient application.

- a) the implementation of Montenegro's Strategy for the Development of the Public Procurement System 2011-2015 and the Action Plan for its implementation to improve its administrative capacity, including proper training at all levels for all stakeholders;

In terms of **strategic framework**, Montenegro's first multi-year strategy (2011-2015) on public procurement focused on developing a legislative framework and operational measures for implementing it, developing the institutional framework and enhancing the administrative capacity, and addressing the issue of preventing corruption in public procurement. The results of the strategy were further addressed and evolved in the second multi-year strategy (2016-2020) which put more emphasis on harmonising its legislation with the EU *acquis*, and adopted a new legislative framework on the public procurement system, as well as establishing the electronic procurement system (CEJN). The current strategic framework (2021-2025) focuses on establishing a sustainable, effective and efficient public procurement and public-private partnership system. The objectives also address professionalisation and strengthening of capacities of the administration. All of Montenegro's multi-year strategies include an action plan for each year on which basis it evaluates and establishes the priorities for the next period. Within the latest strategic framework (2021-2025), as per reported by Montenegro, the set objectives are currently implemented satisfactorily to a 50% rate.

Concerning **professionalisation**, the Directorate for Managing Public Investments and Public Procurement Policy is in charge of continuously conducting professional development trainings for public procurement officials, contracting authorities, as well as bidders and other participants in the public procurement system. The trainings aim at keeping up with the practical and theoretical novelties of the procurement system, provided by the legislative reforms and the advancement of enforcement and implementation. This also includes trainings on the electronic procurement system. Public procurement officers are required to go through a certification scheme including examination process.

The Commission finds Montenegro's strategic framework and its complementary action plans to be sufficiently comprehensive to achieve the objectives of improving the public procurement system. Montenegro's professionalisation of its public procurement system is well developed and continuously evolving, in parallel with the advancement of its regulatory framework.

- b) the preparation of practical implementing and monitoring tools (including administrative rules, instructions, manuals, and standard contract documents);

As a standard practice, Montenegro establishes complementary implementing legislation including rulebooks which elaborate on procedures, methodologies, guidelines, criteria, forms, corrections, oversight, methods of analysis in procurement procedures. Rulebooks serve also as legally binding documents for participants of the public procurement system. Montenegro also publishes technical documents – manuals, handbooks, analyses, guidelines – which are serving as **practical tools and guidelines** for targeted subjects in public procurement and public-private partnerships.

The Commission assesses that Montenegro has sufficient practical implementation and monitoring tools in place.

- c) the strengthening of control mechanisms which are necessary to ensure full knowledge and reliability of the system, including close monitoring and enhanced transparency of the execution phase of public contracts based on systematic risk assessments with prioritisation of controls in vulnerable sectors and procedures;

Montenegro has put substantial efforts into strengthening its **control mechanism** through the establishment of a transparent and functioning **electronic procurement system** (CEJN) in 2021. The introduction of electronic procurement enhanced the transparency, competitiveness, effectiveness, and efficiency of public procurement processes, with accessible and reliable data available. The system is connected with the systems of the Revenue and Customs Administration, which allows to verify tax record of bidders and flag any irregularities. Montenegro plans to advance the monitoring and control mechanism in 2025 by linking e-procurement system with the records of the Agency for Prevention of Corruption and with the criminal records of the Ministry of Justice to better identify corruption and conflict of interest in procurement procedures.

The mechanism for monitoring simplified procurements, introduced in 2024, provides an option for bidders to request monitoring of the procurement processes, in order to make sure violations and irregularities are tackled throughout the procedures. Since its introduction, out of the 145 requests, in 98 cases irregularities were identified and further 16 cases were forwarded to the Public Procurement Inspection unit. The monitoring is conducted by the Ministry of Finance, while electronic monitoring of implementation of contracts is planned to be introduced by 2027.

The Public Procurement Inspection unit oversees inspections regarding the application of the regulatory framework, monitors the risks associated with corrupt activities, aiming at early detection and prevention. The decision of the inspector for public procurement can be contested in an administrative dispute before the Administrative Court.

The Commission finds that Montenegro's control mechanisms and monitoring tools of the public procurement system are in place and are functioning effectively.

- d) effective functioning of the remedies system, including in the area of concessions, public-private partnerships and defence procurement;

In the recent years, Montenegro continuously strengthened the standards of its mechanisms and procedures to challenge public procurement decisions through its **review system**. The introduction of the electronic procurement system in 2021 increased the transparency, efficiency, and reduced the number of appeals to the review bodies. Legal changes in the last years also significantly reduced the number of obstructive appeals (appeals aimed at delaying the implementation of procurement procedures).

The Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP) established in 2019, is the independent review body whose president and six commission members are appointed by the Parliament of Montenegro for five years. The CPRPPP is supported by the secretariat including legal, administrative and technical experts. The entity covers appeals on procurement procedures covered by the Law on public procurement and the Law on public-private partnership. The review body resolving appeals on concessions on use of natural resources, goods of general use, and other goods of public interest is the Commission for Concessions of Montenegro. The two review bodies also assess major procedural violations if they significantly impact participation, bid preparation, or contract performance. In such cases, the review body is obliged to review the entirety of the procurement procedure, identifying violations of the legislative framework on public procurement. When such violations are found, the review body initiates partial or full annulment of the procedure.

Decisions are published in the electronic procurement system and on the website of the review body. To make them more accessible, an online database with search function is also available. Legal analyses and practical documents, such as the descriptions of most frequent irregularities, are also available online. Decisions of the first review bodies can be appealed at the Administrative Court of Montenegro.

The CPRPPP received 303 appeals in 2023 and 330 in 2024, issuing decisions within an average of 24 days, and resolving 95% of the cases referred in 2024. The review body transfers cases from previous years, also due to returned cases of the Administrative Court.

The Commission assesses that Montenegro's mechanisms and procedures to challenge public procurement decisions ensure effective, efficient, transparent and competent handling of complaints.

- a) measures/actions related to the prevention of and fight against corruption and conflict of interest in the area of public procurement at both, central and local level.

Montenegro has set up a comprehensive framework to **fight corruption in public procurement**. In this field, the policy is coordinated by the Ministry of Finance and the Directorate for Managing Public Investments and Public Procurement Policy. The Directorate coordinates with the monitoring and inspection oversight entity within the Ministry, the Public Procurement Inspection unit, the Agency for Preventing Corruption, the State Prosecutor's Office, and the Police Administration and the respective courts. The cooperation and coordination on anti-corruption action is ensured by interinstitutional agreements. Montenegro's fight against corruption in public procurement also relies on a network of whistleblowers coordinating with the Agency for the Prevention of Corruption, as well as with the Ministry of Finance, State Prosecutor's Office and the police.

The legislative framework includes the Law on public procurement, the Law on preventing corruption (Official Gazette of Montenegro, No. 54/24), the Criminal Code of Montenegro (Official Gazette of Montenegro, No. 145/21), the Rulebook on risk analysis and control in public procurement procedures (Official Gazette of Montenegro, No. 55/20). As complementary guideline, the Directorate for Managing Public Investments and Public Procurement Policy prepared the Code of Ethics in the field of public procurement, published in February 2025.

Currently, the legislation addresses corruption and other prohibited activities in public procurement and prescribes necessary sanctioning and coercive measures when those are being identified. The Law on the prevention of corruption in its Article 2 defines corruption as *“any abuse of an official, business, or social position or influence with the aim of obtaining personal benefit or benefit for another”*, while Article 4 of the Law lists public procurement as part of the definition of public interest and irregularities. The Law on public procurement prescribes measures on corruption, referring to it as *“directly or indirectly giving, offering, promising or otherwise giving the appearance of a gift or other benefit to a public procurement officer, a member of the commission for the implementation of the public procurement procedure, a person who participated in the preparation of tender documents, a person who participates in planning or procurement or to another person, with the aim of obtaining confidential information or influencing the actions of the contracting authority.”* Additionally, the Rules on preparation and implementation of integrity plan is a document that outlines legal and practical measures to prevent and address corrupt and unethical behaviour within state administration, focusing on self-assessment of corruption risks, conflicts of interest, and ethically or professionally unacceptable actions across various organizational units and job positions.

In the recently adopted National Anti-Corruption Strategy 2024-2028 Montenegro addresses public procurement and includes measures in this context, which aim at offering technical support for sharing best practices in public procurement monitoring, improving the electronic system to identify corruption risks, and producing annual reports on public procurement processes and contracts at the local level. Training activities are streamlined in the Strategy for Improving Public Procurement Policy and Public-Private Partnerships in Montenegro, which encourages the engagement of NGOs.

Montenegro foresees further progressing its legislative framework by revising both its main legislation and its implementing legislation, with the intention to better define corrupt practices in public procurement to enable proactive prevention and early detection of corruption and related misconduct. This also entails amending the Law on public procurement and the Law on prevention of corruption with the aim to align the two laws, implement anti-corruption measures in public procurement, and set consequences for violations. Further amendments plan to establish amending stronger corrective mechanisms and the strengthening of direct misdemeanour liability by the Ministry of Finance before the Court for Misdemeanours, improve supervision by enhancing the Ministry's monitoring role and allowing it to initiate misdemeanour proceedings when violations of the law are detected.

The Commission recognises that Montenegro put sufficient effort into developing effective measures to fight corruption, conflict of interest and fraud in public procurement. Further actions are needed in order for Montenegro to reinforce its anti-corruption measures. Montenegro has provided a clear timeline on the measures to be introduced and implemented.

In conclusion, taking into account progress achieved by Montenegro on administrative and institutional capacity, measures taken to ensure the proper enforcement and implementation of national legislation in the area of public procurement, including in the area of fighting corruption, fraud and conflict of interest, and mindful of Montenegro's commitment in this context, the Commission assesses the second closing benchmark set in document CONF-ME 17/13 as fulfilled.

II.C ASSESSMENT OF FULLFILMENT OF THE THIRD BENCHMARK

Closing benchmark 3 concerns the track record of a fair and transparent public procurement system, which provides value for money, competition, and strong safeguards against corruption, is interlinked with closing benchmark 2. The measures and actions to prevent fraud, conflict of interest, corruption and other prohibited activities need to be properly enforced and effectively implemented in order to establish a positive track record.

By strengthening the regulatory framework, increasing the number of guidelines published, and enhancing professionalisation in public procurement in recent years, Montenegro has demonstrated a positive development in its reported statistics over the years.

Overview on public procurement in Montenegro for 2021-2024, as reported by Montenegro				
	2021	2022	2023	2024
Number of bids per procedure/Competition index	3.27	3.50	3.18	3.30
Share of public procurement in the total GDP per year	4.47%	8.74%	9.87%	11.38%
Value of public procurement (EUR)	219,680,113.13	506,954,976.20	675,196,902.04	847,582,273.86
Value of small-value procurement (EUR)	64,735,589.54	101,242,752.57	105,508,184.65	104,225,463.92
Simple procurements under threshold (5000 EUR in 2021, and 8000 EUR since 2022)	36,959,173.60	63,117,015.61	64,609,541.01	68,757,010.84
Number of procurement procedures	3918	5512	5693	7001
Number of public procurement contracts	4523	6819	7068	8373
Number of appeals in relation to number of public procurement procedures	5.02%	3.15%	5.46%	5.85%

In the period 2021-2024, the value of public procurement contracts according to the type of subject have developed in the following way:

Public procurement contracts according to type of subject for Montenegro for 2021-2024, with value (EUR)				
	2021	2022	2023	2024
Supplies	105,748,013.39	261,036,103.82	306,713,101.32	404,954,111.54
Services	31,609,982.77	97,645,941.66	84,943,114.22	92,760,446.98
Works	45,362,943.57	148,272,930.72	218,931,145.50	281,110,704.49

The share of the type of tender procedures used compared to the total number of tenders covered, in Montenegro in the period 2021-2024, is as follows:

Share of public procurement procedures per type of tender procedure used in Montenegro for 2021-2024				
	2021	2022	2023	2024
Open procedure	27.3%	34.9%	40.7%	39%
Restricted procedure	0.2%	0.3%	0.3%	0.3%
Negotiated procedure without prior publication of contract notice	2.8%	1.9%	1.3%	1.03%
Small-value procurement through e-procurement system	68.2%	59%	51.9%	53.7%
Invitation based on framework agreement	1.5%	3.8%	5.7%	5.9%

The share of the contracted value of tender procedures used compared to the total financial volume of tenders covered, in Montenegro in the period 2021-2024, is as follows:

Share of public procurement contracted value per type of tender procedure used in Montenegro for 2021-2024				
	2021	2022	2023	2024
Open procedure	67.6%	76.2%	85.6%	82.2%
Restricted procedure	0.4%	0.4%	0.5%	0.3%
Negotiated procedure without prior publication of contract notice	10.3%	12.6%	4.2%	8.3%
Small-value procurement through e-procurement system	14.0%	8.6%	6.7%	6.1%
Invitation based on framework agreement	7.6%	2.3%	2.9%	3.03%

In 2024, Montenegro made significant changes to its regulatory framework on small-value procurements, addressing the substantial gaps Montenegro's public procurement market had in the last years, positively affecting its track record in competitiveness and efficiency.

The establishment of the electronic procurement system (CEJN) in 2021 has added increased fairness and transparency to Montenegro's public procurement system. The system by now covers all procurement procedures (including public-private partnerships), as well as publications, the submission of appeals, and monitoring procedures. In the last years, in line with the legislative requirements, the system's usage has shown positive data:

	2021	2022	2023	2024
Published procurement procedures	5613	13 035	20 518	30 035
Completed procedures	3099	7554	12 195	17 915
Published contracts	3733	10 531	17 712	25 823
Active users	4922	6724	7988	9445
Active contracting authorities	2620	3560	4161	4783
Active bidders	2625	3636	4451	5350

Additionally, in 2024, Montenegro introduced the functionality of publishing intergovernmental agreements and contracts with third countries containing detailed information on the electronic procurement system, by fulfilling its obligation under the Government Procurement Agreement (GPA) of the World Trade Organisation (WTO). In this context, Montenegro also fulfils its commitment to establish a fair, transparent, competitive and non-discriminatory procurement market, by being a member of the GPA since July 2015.

Montenegro provided the following data on the activities of the review system in the period 2021-2024:

	2021	2022	2023	2024
Number of appeals received by CPRPPP	194	174	303	362
Number of decisions made by CPRPP	180	169	301	376
Appeals submitted to the Administrative Court	31	37	32	70

In terms of functioning of the oversight and monitoring of the public procurement system, as well as irregularities, Montenegro provided the following data from the Public Procurement Inspection unit of the Ministry of Finance:

	2021	2022	2023	2024
Number of established irregularities	185	234	151	132
Number of misdemeanour orders	47	30	55	23

The strengthening of coordination to fight corruption in public procurement and the coordination of the institutions with the network of whistleblowers has shown progress in identifying corrupt practices in public procurement, as reported by Montenegro for the period 2019-2022:

	2019	2020	2021	2022
The number of reports indicating corruption in public procurement procedures	6	10	11	28

During 2019-2022 corruption practices were reported 7 times for companies founded by municipality or state, 28 times for state authorities, 11 times for local governments, 5 times in the education sector, and once in the health sector and the judiciary.

To further strengthen its track record, by adding another safeguard, Montenegro plans to introduce its newly adopted Code of Ethics on its electronic procurement system by mid-2025, enabling users to report violations of the Code, which otherwise elaborates on conflict of interest, competition rules, corruption and other prohibited activities in public procurement.

Taking into account Montenegro's track record of a fair and transparent public procurement system to date, which provides value for money, competition, and strong safeguards against corruption, and in view of the country's commitments and future actions on the anti-corruption policies, the Commission assesses the third closing benchmark set in document CONF-ME 17/13 as fulfilled.

III. CONCLUSIONS

In view of the above assessment, the closing benchmarks under chapter 5 (public procurement) can be considered as being met.
