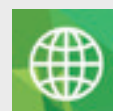


Special Report

Strengthening administrative capacity in Montenegro: progress but better results needed in many key areas



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Special Report**Strengthening
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(pursuant to Article 287(4), second subparagraph, TFEU)

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Chamber III — headed by ECA Member Karel Pinxten — which specialises in external actions spending areas. The audit was led by ECA Member Hans Gustaf Wessberg, supported by the Head of his private office, Peter Eklund; Emmanuel-Douglas Hellinakis, Attaché; Torielle Perreur-Lloyd, Head of Task; Stéphanie Girard, Ainhoa Pérez Infante, Aurelia Petliza, auditors.



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Abbreviations and acronyms

05

ACA: Anti-Corruption Agency

CPCoI: Commission for Prevention of Conflict of Interests

CSOs: Civil-Society Organisations

DACI: Directorate for Anti-Corruption Initiative

ECAA: European Common Aviation Area

EPA: Environmental Protection Agency

IGC: Inter-Governmental Conference

IPA: Instrument for Pre-accession Assistance

IRM: Integrity Risk Manager

PAR: Public Administration Reform

ReSPA: Regional School of Public Administration

SA: Stabilisation and Association

SAA: Stabilisation and Association Agreement

SAI: State Audit Institution

I Since declaring its independence in 2006, Montenegro has progressed along the road towards European integration. In 2010 it became a candidate country for membership of the EU and in June 2012 the Council adopted a negotiating framework, following which accession negotiations began. By the end of 2015, 22 out of 35 negotiating chapters had been opened, and two of these were provisionally closed.

II The Commission has helped Montenegro to build up institutions and to enhance administrative capacity with the objective of supporting its transition to a democratic and economically developed country. EU pre-accession assistance is both financial under the Instrument for Pre-accession Assistance (IPA) and non-financial through the mechanisms of political dialogue.

III During the 2007-2013 period the EU allocated 235.7 million euro in financial assistance to Montenegro to help the country prepare for accession. 76 % of this amount was contracted by the end of 2015. For the 2014-2020 period, IPA indicative financial allocations for the country amount to 270.5 million euro. The country also has access to programmes and projects financed under multi-beneficiary programmes covering the whole of the Western Balkans region and Turkey.

IV We audited 19 projects in three main sectors of IPA I assistance (2007-2013): public administration reform (13 projects), transport (three projects) and environment (three projects). Fifteen of these projects were funded through Montenegro's allocation and the other four from the regional allocation. In addition we looked at the mechanisms for political dialogue set up under the Stabilisation and Association Agreement and the accession negotiating process.

V The objective of the audit was to assess whether EU pre-accession financial and non-financial assistance during 2007-2013 contributed effectively to strengthening administrative capacity in Montenegro. We conclude that, despite the slow progress noted in several key areas, EU pre-accession assistance has helped to strengthen administrative capacity in Montenegro. However, for 12 out of the 19 IPA-funded projects which we audited the effectiveness of the support was reduced by the fact that some of the capacity-building outputs were not fully used or followed up by the Montenegrin authorities. The majority of the projects we audited did not set out a clear requirement for the national authorities to follow up and capitalise on IPA investments.

VI The audited projects generally delivered planned outputs which addressed important capacity needs, for example, by successfully supporting legislative changes and the establishment of institutions and by providing training. Projects were in most cases coordinated well and took into account the work carried out by other donors. However, we found examples of overlap or where the sharing of information between IPA projects run only in Montenegro and regional (multi-beneficiary) projects covering several pre-accession countries could be improved.

VII

We also found that although the Commission monitors the country's progress in strengthening administrative capacity, the assessment was qualitative and different parts of the public administration were examined. This made it difficult to compare improvement over time. The Commission initiated the publication of new data in 2015, but it was too early for us to assess this.

VIII

The mechanisms for political dialogue worked well but, in important areas of public administration reform, the environment and the fight against corruption, results are only being achieved slowly. We observed that limited progress in key areas was often due to weak commitment to reform by the national authorities despite EU pre-accession assistance. The Commission possesses tools to encourage reform including the 'overall balance' clause. It is not always clear whether or how this tool will be referred to or used if new laws and institutions supported by the EU do not deliver results in key areas such as the fight against corruption.

IX

The Commission decentralised the management of 12 % of IPA I funds to the Montenegrin authorities. We observed that the decentralised mode of management of EU funds provides a potentially useful tool for strengthening administrative capacity through transfer of knowledge which was not fully exploited under IPA I.

X

We make a number of recommendations in support of strengthening administrative capacity.

Montenegro's road towards EU integration

01

Montenegro is a small, mountainous country in the Western Balkans¹. It has a coast on the Adriatic Sea to the south-west and is bordered by Croatia to the west, Bosnia and Herzegovina to the north-west, Serbia to the north-east, Kosovo^{*2} to the east and Albania to the south-east. Its capital and largest city is Podgorica. The population of 625 266 inhabitants is comprised of the following ethnic groups: Montenegrin 44.98 %, Serbian 28.73 %, Bosniak 8.65 %, Albanian 4.91 % and other 12.72 %³.

02

Montenegro has made progress on its path towards EU accession since it declared its independence in 2006. In 2007 the country signed a Stabilisation and Association Agreement (SAA) with the EU⁴ and in 2010 the Council granted Montenegro the status of candidate country for EU membership. In June 2012 the Council adopted a negotiating framework and accession negotiations began. In the same year the first negotiating chapter was opened⁵. By the end of 2015, 22 out of 35 chapters⁶ had been opened, and two of these were provisionally closed. See **Annex I** for the timeline for Montenegro's EU integration.

03

Despite allegations of electoral fraud and a parliamentary boycott by some opposition parties, Montenegro has remained stable in the years following the start of the accession negotiations. Although it is confronted by a similar pressing need for reform as in the rest of the Western Balkan region, for example in public administration and to tackle corruption, Montenegro is currently considered to be the most advanced in its accession process.

1 At the time of the audit the following six countries made up the Western Balkans: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo*, Montenegro and Serbia.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

2 Ibid.

3 2011 census. See 'Montenegro in figures' by the Montenegro Statistical Office, 2013.

4 The SAA came into force in 2010.

5 This was Chapter 25, which covered science and research. It was also provisionally closed in the same year.

6 Each chapter relates to a policy area of EU legislation.

Introduction

EU pre-accession assistance

04

Since 2007 Montenegro has received EU financial assistance under the Instrument for Pre-accession Assistance⁷. The allocation of 235.7 million euro under IPA I covering the 2007-2013 period⁸ can be presented across the different sectors of support as follows:

7 IPA I was established by Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82) and Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-accession Assistance (IPA) (OJ L 170, 29.6.2007, p. 1).

8 The total IPA I allocation for the 2007-2013 period was 10 billion euro.

9 The Copenhagen criteria set by the European Council in June 1993 consist of:

(a) political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

(b) economic criteria: the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces in the EU;

(c) the ability to assume the obligations of membership, including adherence to the aims of political, economic and monetary union.

Table 1

IPA assistance to Montenegro 2007-2013 (million euro)

Sector	Total allocation per sector	Percentage
Public Administration Reform	45.6	19 %
Environment and Climate change	35.3	15 %
Cross-Border Cooperation	30.3	13 %
Transport	30.0	13 %
Justice and Home Affairs	25.5	11 %
<i>Ad hoc</i> measures	25.0	11 %
Agriculture and Rural Development	22.5	9 %
Social development	21.5	9 %
TOTAL 2007-2013	235.7	100 %

Source: European Commission.

05

The objective of EU funding under IPA I has been to support the transition of Montenegro into a democratic and economically stable country on the road towards European integration. The Commission has used funding under IPA I to help Montenegro build up institutions and enhance administrative capacity, as well as to promote economic and social development in its endeavours to meet the Copenhagen criteria⁹. By the end of 2015, 76 % of IPA I funds had been contracted and 87 % of this had been paid out.

06

IPA II follows on from IPA I and sets out a new framework for pre-accession assistance for the 2014-2020 period with an indicative allocation of 270.5 million euro. IPA II projects target structural reform in sectors covering the key areas set out in the EU's enlargement strategy, such as democracy and governance, rule of law, sustainable growth and competitiveness.

07

The EU also provides pre-accession assistance at a regional level in the form of multi-beneficiary (multi-country) projects and programmes covering the whole of the Western Balkans and Turkey. The regional allocation for IPA I was 1.357 billion euro and for IPA II, 2.959 billion euro.

08

EU pre-accession assistance builds on strategic documents, such as the SAA, the annual Enlargement Strategy and the annual progress reports adopted by the Commission for the country. These were reflected in Multiannual Indicative Planning Documents until 2013 and are now included in Indicative Strategy Papers. Annual or multiannual programmes are adopted by the Commission following consultation with the beneficiary countries and other stakeholders.

09

The Commission has mainly implemented EU projects in Montenegro directly under a centralised management mode. At the end of IPA I, it decentralised management of Human Resources Development and Regional Development programmes to the national authorities, but remains accountable for these funds and carries out checks of the transactions. Under IPA II, the Commission is continuing to use a mix of centralised and decentralised management modes, now called 'direct and indirect management', complemented by other implementation modalities, such as sector budget support¹⁰.

10

The Commission assesses Montenegro's progress for the preceding 12-month period through the Enlargement Package and the annual progress reports. Until 2014 the annual Strategy Paper, included in the Enlargement Package, set out recent achievements and the main challenges for the 12 months that would follow, including specific conclusions and recommendations. In 2015, the Strategy Paper included a longer-term overview of challenges, covering the rest of the mandate of the present Commission.

¹⁰ Budget support involves direct financial transfers to the national treasury of the partner country — conditional on eligible criteria (well-defined strategy, stable macroeconomic framework, good public financial management or a credible programme to improve it and transparency and oversight of the budget) and on policy dialogue, performance assessment and capacity building.

Audit scope and approach

11

The audit objective was to assess whether EU pre-accession assistance during 2007-2013 contributed effectively to strengthening administrative capacity in Montenegro. The scope extended to both financial assistance (projects funded by IPA) and non-financial assistance (mechanisms for political dialogue between the EU and Montenegro).

12

The audit addressed the following three main questions.

- (a) Did the audited projects address the need to strengthen administrative capacity appropriately?

To answer this question we looked at whether the audited projects were designed to address administrative capacity needs identified as important by the Commission and the national authorities and whether the projects were coordinated well with other IPA projects and with the interventions of other donors.

- (b) Did the audited projects achieve results in terms of strengthening administrative capacity?

To answer this question we looked at whether the audited projects delivered expected outputs related to capacity-building and whether these outputs were used and followed up by the national authorities. Where outputs were not used or followed up we examined the main reasons for this. We also looked at the Commission's assessment of the effectiveness of the EU support in improving administrative capacity.

- (c) Did the Commission use non-financial assistance effectively to improve administrative capacity?

To answer this question we looked at how the Commission had used the mechanisms for political dialogue set up under the SAA and accession negotiations. We also examined how the Commission used leverage available to it to obtain the active commitment of the national authorities to reform. Finally, we examined whether the Commission used the potential for transferring capacity by encouraging the spread of good practice developed under the decentralised mode of managing IPA funds.

13

We focused on three sectors important for Montenegro's integration with the EU: public administration reform (PAR), transport and the environment. These accounted for 47 % of the total country allocation for Montenegro under IPA I¹¹ as shown in **Table 1**. We also looked at projects addressing capacity building in the public administration funded out of IPA's regional (multi-beneficiary) allocation, also providing assistance to other countries eligible for assistance under IPA¹². Since all of these areas of support are also assisted under IPA II (2014-2020), the Commission can take into account the observations and recommendations of this report when implementing IPA II and when preparing the mid-term review of IPA II planned for 2017.

14

We looked at a sample of 19 projects. In the sector of PAR we selected 13 projects focusing on procurement, the fight against corruption, internal control, external audit, local self-government and the Regional School for Public Administration (ReSPA). In the transport sector we selected 3 projects, targeting civil aviation, the Railways Directorate and road construction. In the environment sector, we selected three projects focusing on management by central government, communal services and waste management. Fifteen projects in the sample were financed from Montenegro's country allocation and the remaining four from the regional allocation. See **Annex II** for details of the projects selected.

15

The audit included analysis of documents and interviews with representatives of the Commission and the national authorities. We also consulted other stakeholders, such as Civil-Society Organisations (CSOs) and donor organisations. We used evidence provided in project and programme documents, evaluations and assessments of IPA I and of the country, the Commission's annual progress reports and resolutions of the budgetary authority.

- 11 We looked at IPA I because projects were not yet being implemented under IPA II by the time of the audit.
- 12 Countries eligible under IPA include the Western Balkans and Turkey. These programmes and projects are also referred to as 'regional' or 'multi-country'. The total allocation under IPA I for multi-beneficiary programmes and projects was 1 137 million euro.

Part I — The audited projects addressed administrative capacity needs and in most cases were coordinated well with other IPA projects and donor interventions

16

To contribute effectively to strengthening the administrative capacity of the public administration of Montenegro, IPA projects should address the main capacity needs identified by the Commission and Montenegro. We expected to see good coordination between IPA projects and with the support provided by other donors, for example to avoid overlaps. New IPA projects should be built on the results achieved by earlier EU-funded actions.

Projects addressed capacity-building needs

17

We examined the Commission's Multiannual Indicative Financial Framework and the Multiannual Indicative Planning Document where the main EU support areas and objectives are defined, the Financing Agreements of the selected projects where their specific objectives are described and national strategy documents. All of these pointed to the need to strengthen administrative capacity. We assessed whether the audited projects aimed to address one or more of the capacity needs referred to in these documents. We observed that all 19 projects were designed to meet administrative capacity needs identified. **Table 2** provides an overview of the capacity-building objectives of the projects audited.

Table 2

How the audited projects were designed to address gaps in administrative capacity

Area	Projects	Capacity-building objectives
Procurement	1, 2, 3	<ul style="list-style-type: none"> ○ improving legislation and the capacity of contracting authorities through strengthening the capacities of the Public Procurement Authority ○ deliver training and organise a certification programme
Corruption	4, 5	<ul style="list-style-type: none"> ○ building up capacity in institutions concerned with preventing corruption ○ building local-level capacity to fight corruption, including CSOs
Internal control	6, 7	<ul style="list-style-type: none"> ○ introducing public internal financial control ○ preparing for planned future management of EU funds by the national authorities
External control	8, 9	<ul style="list-style-type: none"> ○ improving the capacity of the State Audit Institution (SAI) to plan its work and develop its audit methodology ○ developing audit quality control
Local self-government	10, 11	<ul style="list-style-type: none"> ○ developing training programmes and providing mentoring ○ drawing up strategic plans for municipalities
ReSPA	12, 13	<ul style="list-style-type: none"> ○ support for capacity building in the public administrations of the Western Balkans region
Transport	14, 15, 16	<ul style="list-style-type: none"> ○ developing capacity to improve legislation on roads, railways and civil aviation, to set up public private partnerships and concession funding for transport infrastructure ○ strengthening capacity to manage International Financing Instrument investments ○ developing technical and managerial skills at local level
Environment	17, 18, 19	<ul style="list-style-type: none"> ○ drawing up strategies for developing, harmonising and implementing legislation ○ developing capacity to implement projects at all levels

Source: Prepared by ECA using European Commission data.

Coordination between projects and with other interventions was mostly good

18

We examined whether projects were coordinated well with other actions funded by the EU and other donors in the country. We found that generally projects were coordinated well with other IPA projects, for example by building on the work of previous IPA projects in the same area. Although the number of other donors has diminished considerably in Montenegro since the start of IPA I in 2007¹³, we found that IPA projects took account of work done by these donors (see examples in **Box 1**).

13 Many donors reduced their support, or withdrew it, in the context of the availability of EU pre-accession assistance under IPA and the start of the EU accession negotiating process.

Box 1

Examples of good coordination

Projects 6 and 7 helped (1) to establish management and control systems specifically for the planned future decentralisation of management of EU funds by Montenegro and (2) to introduce public internal financial control more widely to the whole of the public administration.

To achieve the first objective, project 6 built on a project financed by the EU before IPA I began. During implementation of project 6, the Commission asked the contractor to modify the outputs to reflect work being carried out concurrently by the Commission's services to check the compliance of the structures set up by the national authorities to prepare for decentralised management. Project 7 then provided further support and training to prepare Montenegrin staff to operate the decentralised management structures.

To achieve the second objective, the two projects focused firstly on central public administration, then on the local level. In particular, project 6 aimed to introduce internal control in central government ministries, including establishing internal audit units with comprehensive audit plans and networking between them. Project 7 began a few months after project 6 ended and focused on weak management practices identified during the first project.

Projects 8 and 9 aimed to strengthen Montenegro's State Audit Institution (SAI). Building on a project funded previously by German donors, project 8 provided plans, guidelines and workshops for auditors. For example, it built capacity in the area of performance audit, which was a new type of audit work for the SAI. During implementation the IPA project was coordinated with work on strengthening performance audit capacities being carried out by German and Swedish donors. Project 9 was a twinning project led by the Lithuanian SAI. Despite a gap of 2 years between the two projects, it was well coordinated with the support provided under project 8 and developed quality control in the Montenegrin SAI through increasing technical capacity and preparing guidelines.

19

We found, however, that the coordination between IPA projects run only in Montenegro and multi-beneficiary projects covering several pre-accession countries was not always good (see examples in **Box 2**).

Box 2

Examples of weak coordination between IPA projects

Projects 1, 2 and 3 — We audited all IPA I projects¹⁴ supporting public procurement in Montenegro. The first project provided support only in Montenegro, whereas the other two were multi-beneficiary projects available to other pre-accession countries. While project 1 successfully established a public procurement system in the country, we found that the capacity-building outputs of the three projects were not coordinated well. The projects developed capacity to improve legislation on public procurement by helping to draft new laws. They also strengthened the performance of contracting authorities by delivering training and a certification programme for public procurement officials. The multi-beneficiary projects (2 and 3) were implemented after project 1 but they did not build effectively on the courses already provided by project 1 with additional, more specific training. Instead, in some cases, the content of the courses was very close or even exactly the same: all three projects provided training on basic public procurement procedures, both projects 1 and 2 addressed implementation of the Utilities Directive¹⁵ and both projects 2 and 3 addressed the Remedies system¹⁶. In addition, the participants at the courses were often the same individuals, for example the training-for-trainers courses run under projects 1 and 3.

Projects 12 and 13 — The Regional School of Public Administration (ReSPA) was created to help strengthen administrative capacity and boost regional cooperation in the public administrations of the Western Balkans. While the six participants, including Montenegro, contribute 150 000 euros each annually, most of the cost of ReSPA is funded by IPA multi-beneficiary projects. We found that ReSPA's training activities were not coordinated sufficiently well with other training delivered under IPA projects in Montenegro. For example, ReSPA training was mostly aimed at junior staff whose needs were largely met by other capacity-building initiatives. There was also insufficient information available to public officials about the training available. As a result Montenegro made little use of ReSPA's training offer.

¹⁴ This does not include Technical Assistance and Information Exchange contracts.

¹⁵ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

¹⁶ The EU Remedies Directives are Council Directive 89/665/EEC of 21 December 1989 (OJ L 395, 30.12.1989, p. 33), Council Directive 92/13/EEC of 25 February 1992 (OJ L 76, 23.3.1992, p. 14) and Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 (OJ L 335, 20.12.2007, p. 31). Remedies are legal actions available to economic operators participating in contract award procedures, which allow them to contest the award decision.

Observations

20

Since 2014, the Commission has recognised the need for better coordination between national and regional (multi-beneficiary) instruments and has revised its procedures. For example, the Commission has encouraged ReSPA to consult with national IPA coordinators and adjust its output accordingly. Furthermore, the Commission set up in 2015 the Centre of Thematic Expertise on PAR in the Directorate-General for Neighbourhood and Enlargement Negotiations to manage a number of multi-beneficiary (regional) programmes in the PAR area, including ReSPA contracts. One of the objectives of this centre is to ensure coordination between IPA regional and national assistance. It was however too early for us to verify whether these new developments yielded the required improvements in the coordination between national and regional IPA assistance.

Part II — Inappropriate use of outputs reduced the effectiveness of some of the audited projects

21

To contribute effectively to strengthening the administrative capacity of the public administration of Montenegro, IPA projects should deliver expected capacity-building outputs. Once delivered, these outputs should be used by the bodies targeted by the projects (the beneficiaries) and then followed up by the national authorities so that the results of the projects are sustainable and their full impact is achieved. In order to show what has been achieved with EU funds, we expect the Commission to report clearly on progress achieved, including the extent to which administrative capacity is improving in the country.

Projects generally delivered outputs but these were not always used by the beneficiaries or followed up by the Montenegrin authorities

22

For the projects audited, we examined interim and final reports, Commission monitoring and evaluation reports and the minutes of monitoring committee meetings, and we interviewed beneficiaries. We found that in general the projects delivered outputs as planned. Some of these were related to capacity-building objectives and some were designed to achieve other objectives, such as road construction. We focused on outputs related to capacity building. In 12 out of the 19 projects audited, we found that one or more of the capacity-building outputs were not used fully by beneficiaries or the national authorities did not carry out the necessary follow-up action to sustain the results achieved.

23

Where the beneficiary did not use outputs, the overall effectiveness of the projects concerned in strengthening administrative capacity was reduced because the potential improvements they offered did not always materialise. Often the reason for not using the outputs was related to budgetary or human-resource constraints.

See **Box 3** for examples of outputs not fully used by the beneficiaries.

Box 3

Examples of outputs not fully used by the beneficiaries

Project 4 was designed to focus on the prevention of corruption, targeting the two main bodies working in this area at the time: the Directorate for Anti-Corruption Initiative (DACI) and the Commission for Prevention of Conflict of Interests (CPCol). Two of the planned outputs were not fully used by the beneficiaries.

- The CPCol did not use the automated data-exchange system on asset declarations prepared by the project. Although it did not have adequate resources to keep it up to date, the CPCol preferred to continue using the manual register.
- The project prepared an Integrity Risk Manager (IRM) IT tool for DACI to supervise integrity plans prepared to help mitigate risks of corruption identified in the public administration. Although 72 institutions out of 102 in the country had developed integrity plans, only four of these had used the IRM tool by the time of the audit. This situation was partly because of insufficient staffing and partly because Montenegro did not procure the necessary funding to continue developing and introducing the tool. (Montenegro relied on a possible 400 000 euros from other donors according to the Action Plan for chapter 23. When this did not materialise it did not provide the necessary funds from its own resources).

While project 4 was being implemented, the national authorities decided to merge the CPCol and the DACI into a new Anti-Corruption Agency (ACA). By the date of our audit there was no evidence that any of the IT solutions developed by the IPA project for the DACI and the CPCol would be used in the ACA.

Project 14 drafted technical specifications for contracting out the preparation of a database for managing road infrastructure in Montenegro. The national authorities had not used the database by the time of the audit, 4 years after it was prepared. The same IPA project helped to build capacity in the Montenegrin public administration to implement infrastructure projects. However, in some cases the expected capacity-building benefits were lost due to high staff turnover. By the time of the audit, six out of the eight people trained in the Railways Infrastructure Company had already left their jobs, in most cases because they were on temporary contracts.

Project 19 helped to strengthen capacity in waste management at local level. The outputs initially planned were modified during the implementation of the project. However, we observed during our audit that even these revised outputs were not all being used, partly because of lack of staff and financial resources. For example, the recycling yard financed by the project and completed in 2013 was still not being operated, partly due to lack of staff to run it. In addition, equipment purchased as part of the project had not been maintained because of budgetary constraints in the municipality. Other items purchased by the project were not being used at all, for example recycling bins.

24

Where the national authorities did not follow up the outputs of projects, this often reduced the intended impacts. In some cases the national authorities did not adopt the necessary legislation, which meant the outputs were not fully effective. In other cases the institutions created were not granted independence, or bodies which should have enforced legislation adopted were not empowered to do so. Sometimes the national authorities did not provide the necessary additional human or financial resources to follow up outputs of IPA projects. See **Box 4** for examples of outputs not followed up by the national authorities.

Box 4

Examples of outputs not followed up by the national authorities

Project 5 aimed to strengthen the role of local administrations and CSOs addressing corruption at local level and to improve citizens' awareness of the importance of effective anti-corruption measures. The project achieved its planned capacity-building outputs (studies, panel discussions, policy recommendations). However, the Ministry of the Interior, mainly responsible for reporting on the implementation of local anti-corruption plans, decided not to participate in the consultation process initiated by the project to set up a multisectoral advisory anticorruption council. This weakened the council, which then did not meet after the end of the project.

Project 14 contributed successfully towards harmonising the law on air transport to prepare for the first phase of the European Common Aviation Area (ECAA) agreement. However, the national authorities had not adopted many of the by-laws drafted as part of the project to help bring the country into line with the requirements of the ECAA agreement by the date of the audit, 3.5 years after they had been prepared¹⁷.

Project 15 delivered a business plan in 2013 to improve the efficiency of the Railways Directorate. However, the national authorities had not implemented the business plan by the time of the audit because of financial constraints which led to delays in the recruitment of necessary additional staff (seven vacancies out of 17 posts in the directorate). In addition, the national authorities had not granted the directorate financial independence from the Ministry of Transport, which was necessary for the directorate to operate as intended.

Project 17 devoted 180 000 euro to strengthening capacity in the Environmental Protection Agency (EPA) to collect, validate and disseminate environmental data. To do this, the project spent a year developing an Environmental data collection, validation and dissemination system and related training courses. Although this work was completed in 2012, by the time of the audit the system developed was not yet in place and there was no significant improvement in capacity in the agency, or in the quality of its reports. The national authorities had not followed up the project output by allocating sufficient staff and financial resources.

Project 18 assisted the national authorities to prepare 29 pieces of secondary legislation in the area of Communal Services and Waste Management. Although drafts for the legislation had been prepared by the end of the project in August 2013, by the time of the audit only half of them had been adopted and published by the national authorities, reducing the impact of the IPA project.

¹⁷ Project ended in November 2011 and the audit was carried out in May 2015.

There was insufficient information to show progress over time in strengthening administrative capacity

25

We examined the information available to measure improvement in administrative capacity in Montenegro over the period audited. We looked at the 'Enlargement Package' of documents adopted every year by the Commission. This includes the Enlargement Strategy Paper, which sets out the way forward for future years and takes stock of progress made by each candidate and potential candidate country. It also includes annual progress reports, in which progress made each year by individual countries is described in more detail. In addition, we looked at progress reported in monitoring committees and in sectoral committees set up under the SAA and the first PAR baseline measurement exercise carried out in 2015.

26

We found that although the Commission's annual progress reports present overall progress in meeting the Copenhagen criteria and assess the state of play for individual negotiating chapters, they do not include assessments of progress in strengthening capacity over a longer time frame. They were also not designed to draw on the results of individual projects. Based on our reading of the reports, we tried to construct a picture of progress in strengthening administrative capacity for key areas of reform over the years 2011-2014 (see **Table 3**).

27

Our aggregation of the Commission's annual progress reports indicates slow progress in strengthening capacity. However, we found that the different reports did not always assess the same parts of the public administration, and that the qualitative nature of the assessment meant that the criteria for assessing the administrative capacity as 'weak' or 'increased' were not clearly defined. This made it difficult to compare improvement over time.

Table 3

Overview of administrative capacity assessments in Commission annual progress reports (2011-2014) for the areas audited

	Chapter ¹	Policy areas	2011	2012	2013	2014
5	Public Procurement	Public Procurement Directorate, Public Procurement Administration				
		Commission for the Control of Public Procurement Procedures				
		Inspection services				
		Concessions				
14	Transport policy	Accident investigation body				
22	Regional policy and coordination of structural instruments	Institutional Framework				
		Financial management, control and audit				
23	Judiciary and Fundamental rights	Anti-corruption policy				
		Commission for Prevention of Conflict of Interest				
		Anti-corruption coordination				
27	Environment and Climate change	Horizontal issues				
		Air quality				
		Waste management				

	Administrative capacity is still weak or limited and needs substantial or urgent improvement.
	Administrative capacity has increased but still needs further improvement.
	Administrative capacity has increased: no need for further improvement.

1 The reports follow the negotiating chapters even when they have not yet been opened.

Source: ECA using European Commission progress reports.

28

Recognising the importance of good data for continuous measurement of progress on reform, the Commission used a new reporting methodology for the annual assessment in the 2015 progress reports¹⁸ in nine areas on a pilot basis¹⁹. For these areas, the report provided more detailed information than previously on the state of play in addition to the progress achieved in the previous 12 months. Assessment scales were better harmonised and reports made more comparable, both between countries and over time. This will help in future to put the progress being made into context and also provide an indication of what should be the focus for the coming year²⁰. By the time of the audit, the Commission had not yet expanded these exercises to other areas such as the transport and environment sectors. The Commission also initiated baseline measurement reviews of the public administration in 2015, which will allow for quantitative and comparative reporting of progress²¹.

Part III — The Commission used its non-financial means to support the reform process well, but major issues remain unresolved

29

To contribute effectively to strengthening administrative capacity in Montenegro, the Commission should make effective use of its non-financial means to support the reform process. Mechanisms for political and policy dialogue should be set up and operate well and we expect the Commission to make explicit and consistent use of leverage available to it as part of this dialogue to obtain the active commitment of the national authorities to reform. Where there is potential for transferring knowledge, for example by learning from the management and implementation of IPA projects, the Commission should take advantage of this.

30

We examined the main structures for political dialogue between the Commission and Montenegro created under the Stabilisation and Association Agreement (SAA) and the accession negotiating process, including the new approach to negotiations applied in Montenegro. We looked at tools for encouraging reform, including the 'overall balance' clause. We examined whether the Commission had used these tools effectively to stimulate improvements in administrative capacity. We also looked at the extent to which the Commission uses the potential for encouraging good practice using the decentralised management of IPA funds.

18 Progress reports are called 'country reports' from 2015 onwards.

19 The new presentation is applied for all candidate countries and potential candidates and covers the areas of functioning of the judiciary, corruption, organised crime, freedom of expression, economic criteria, PAR, public procurement, statistics and financial control.

20 See Annex 2 to the EU Enlargement Strategy (COM(2015) 611 final of 10 November 2015).

21 The first review was performed in 2015 examined capacity, structural, legal, procedural and other issues. It used the Principles of Public Administration agreed in all enlargement countries and resulted in a detailed country report analysing how Montenegro is performing in the PAR area, and it suggesting detailed and sequenced recommendations for reform (<http://www.sigmaweb.org/publications/public-governance-baseline-measurement-reports.htm>).

SAA mechanisms for political dialogue operate well

31

Following Montenegro's independence in 2006, political dialogue was established at ministerial level between the Government of Montenegro and the EU institutions. The SAA signed in 2007 then laid the basis for political dialogue at different levels: the Stabilisation and Association (SA) Council, the SA Committee, seven SA subcommittees and, from 2014, the Special Group on PAR. The Commission and the Montenegrin authorities have met regularly since 2007 through these mechanisms to discuss, inter alia, the need for progress on reform and insufficiencies in administrative capacity in the country. Alignment with the *acquis* and the means to achieve this are the main focus of the sectoral subcommittees. The output of the subcommittees is discussed annually in the SA Council and in the SA Committee meetings.

32

The Commission has used the mechanisms of political dialogue with the Montenegrin authorities well, for example to encourage legislative changes in many areas and to support the creation of institutions necessary to take forward the reform process. This dialogue has highlighted important areas in which results have not been achieved, or are only being achieved slowly. For example, in its 2015 Progress Report, the Commission pointed out that: 'better internal auditing within contracting authorities remains crucial for improving monitoring and verifying contract implementation' and 'Internal audit capacity continues to be an issue of concern'²². The same report concluded that 'Montenegro is at an early stage of preparation on, inter alia, environment and climate change. Aligning with the *acquis* and strengthening the administrative capacity remain a substantial challenge for Montenegro'²³. The Commission's analysis is confirmed by the observations arising from our audit, reported in paragraphs 16 to 24.

22 Chapter 5 (Public Procurement) and Chapter 32 (Financial Control) (2015 Montenegro Progress Report).

23 Ibid p. 6.

33

There has been strong forward momentum towards EU integration in Montenegro since independence, illustrated by steady progress in the accession process and a current high level of support for EU membership in the population²⁴. This has provided the Commission with considerable potential leverage for strengthening administrative capacity. However we observed that the national authorities were sometimes not actively committed to the reform process and did not always use or follow up actions supported under IPA I to ensure the delivery of results (see paragraphs 23 and 24). We found that the majority of the audited projects did not set out a clear requirement for the national authorities to capitalise on the IPA investment. The importance of sustainability and the impact of results is reflected in the IPA II Framework Agreement with Montenegro²⁵.

There was lack of clarity regarding the use of tools to encourage reform provided by the accession negotiation process

34

The accession process, and more specifically the accession negotiations which opened between the EU and Montenegro in 2012, provided the EU with new tools for supporting legal, administrative and economic reform. An example of this is the opportunity provided in the dialogue surrounding the 35 negotiating chapters which cover all parts of the *acquis*. The setting of opening, closing and, where appropriate, interim benchmarks (the latter only for the rule of law chapters) provides tools to encourage the country in its alignment process.

35

As part of the negotiating framework agreed in 2012 the EU introduced a 'new approach' in which the two chapters concerned with the rule of law²⁶ were identified as being at the core of the enlargement process. These two chapters were opened early on in the accession process to give Montenegro enough time to establish the necessary legislation, institutions and track records of implementation before the closure of negotiations. Under the new approach, progress in negotiating on 'technical' chapters such as transport and environment would only be possible if the country continued to make progress in the area of the rule of law. The tool created to help encourage progress in this way is called the 'overall balance clause'²⁷. Montenegro is the first negotiating country for which the 'new approach' has been introduced.

24 In March 2016 74 % of Montenegrins said they would vote to join the EU in a referendum (<http://www.cdm.me/english/more-than-73-of-citizens-would-vote-for-joining-the-eu-in-a-referendum>).

25 Framework agreement between Montenegro and the European Commission on the arrangements for implementation of EU financial assistance to Montenegro under IPA II. The reporting requirements of the national authorities (Article 58) and the role of the IPA monitoring committees (Articles 52-54) include the obligation 'to enhance the overall efficiency, effectiveness, impact and sustainability'. Furthermore, article 55 sets out specific evaluation obligations for IPA II assistance, including in view of achieving its long-term objectives and impact.

26 Chapters 23 (Judiciary and fundamental rights) and 24 (Justice and home affairs).

27 Ministerial meeting opening the Intergovernmental Conference on the Accession of Montenegro to the European Union (Brussels, 29 June 2012). AD 23/12: 'should progress under these chapters significantly lag behind progress in the negotiations overall, and after having exhausted all other available measures, the Commission will on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed', p. 11.

36

The first time the Commission referred to the overall balance clause was in the 2014 Progress Report²⁸ and in the 2014-2015 Enlargement Strategy Paper²⁹, where it pointed out: 'The Commission recalls the existence of the "overall balance" clause of the negotiating framework. Progress in meeting the interim benchmarks on the rule of law chapters and the relevant identified shortcomings above, demonstrated by tangible results, will impact upon the pace of accession negotiations overall, including the agendas of future IGCs³⁰'. The Montenegrin authorities reacted to the reference to the clause and addressed some of the shortcomings identified by the Commission by adopting new legislation. The Commission and the EU Member States considered the action taken sufficient to continue opening new negotiating chapters.

37

The experience of recalling the overall balance clause in 2014 has shown that this tool can be used to good effect. However, in 2015, despite investment by the Commission in the area and undertakings made by the national authorities, there were few tangible results in terms of implementing anti-corruption legislation. Referring to generally slow progress in the fight against corruption, the Commission pointed out in its 2015 Progress Report that 'institutions should demonstrate a more proactive attitude in fulfilling their mandate. Montenegro's track record on effective investigation, prosecution and final convictions in corruption cases, in particular regarding high-level corruption, remains limited'³¹. Although progress towards reform remained limited in this key area, no reference was made to the overall balance clause. The Council and the Commission have not set out clearly the circumstances in which the clause is likely to be recalled or applied. For example, it is not clear whether the clause would be recalled in 2016 if the new anti-corruption legislation and institutions such as the ACA (see example in **Box 3**) do not function as planned and deliver tangible results.

28 2014 Progress Report, p. 1.

29 2014-2015 Enlargement Strategy Paper, p. 19 and p. 21.

30 Intergovernmental conferences.

31 2015 Progress Report. The same report pointed out that: 'Results on investigation, prosecution and convictions in corruption cases are limited to low and medium-level corruption. A high rate of investigations into reported corruption-related offences never results in indictments. So far there have been no final convictions for high-level corruption.' and 'Financial investigations are not yet systematically used in cases of corruption. In no corruption case has the confiscation of assets been ordered', and 'on law enforcement, the institutional and operational capacity of prosecutors, judges and police to fight corruption is insufficient', p. 14.

The potential for using decentralised management to strengthen administrative capacity has not yet been fully exploited

38

In Montenegro, the Commission contracted and implemented most of IPA I centrally. The Financial and IPA regulations provide for management of pre-accession funds to be conferred to enlargement candidate countries to prepare them for their future management of the EU's structural and agricultural funds. In accordance with the regulations, during 2012-2013, Montenegro asked the Commission to decentralise management of IPA I funds and created the required operating structures to this end. After checking that requirements for decentralised management had been met, the Commission granted the country responsibility for managing 12 % of the total IPA I allocations in the country. This was made up of 22.7 million euro covering transport and environment projects and 5.6 million euro covering employment and social inclusion projects. Montenegro's request for decentralised management of IPA II allocations relates to a greater proportion of funds.

39

Apart from increasing ownership of EU-funded projects, this management mode can deliver valuable capacity building in the operating structures. This is because, in the early years of decentralised management, the Commission carries out detailed and thorough checks of the work of the operating structures at all stages of contracting and implementing each project. Spreading good practice on project management accumulated in the IPA structures to the rest of the Montenegrin public administration operating in the same area can provide a potentially effective means of strengthening administrative capacity.

40

However, strengthening administrative capacity was not included as an objective when the regulations governing decentralised management were adopted. This meant that the Commission has not encouraged the national authorities to consider how good practice could be actively developed in the structures set up for decentralised management and then used to build capacity in the rest of the public administration. We also considered that there is a risk, as we observed in another pre-accession country³², that IPA operating structures become organisations parallel to the rest of the public administration.

32 See paragraphs 54 and 55 of European Court of Auditors Special Report 11/2016, 'Strengthening administrative capacity in the former Yugoslav Republic of Macedonia: limited progress in a difficult context' (<http://eca.europa.eu>).

Conclusions and recommendations

41

The objective of the audit was to assess whether EU pre-accession financial and non-financial assistance during 2007 to 2013 contributed effectively to strengthening administrative capacity in Montenegro. We conclude that despite the slow progress noted in several key areas, EU pre-accession assistance has helped to strengthen administrative capacity in Montenegro. However, for 12 out of the 19 IPA-funded projects which we audited the effectiveness of the support was reduced by the fact that some of the capacity-building outputs delivered were not fully used or followed up by the Montenegrin authorities. We make five recommendations in paragraphs 42 to 47 of which the Commission can take account when implementing IPA II. The Commission could also consider these recommendations in the context of the 2017 mid-term review of IPA II.

42

We found that the audited projects addressed important capacity-building needs, for example by successfully supporting legislative changes and the establishment of institutions and by providing training. The audited projects were in most cases coordinated well and took into account work carried out by other donors. However, we found examples of overlap or where the sharing of information between IPA projects run only in Montenegro and regional (multi-beneficiary) projects covering several pre-accession countries could be improved (see paragraphs 17 to 20).

Recommendation 1 — Better coordinate actions strengthening capacity

The Commission should ensure that capacity-building actions funded at both national and regional levels address priority needs, take full account of other completed, ongoing and planned support and are appropriately communicated to potential participants. Under IPA II, the Commission should closely monitor the relevance of capacity-building actions and improve coordination between national and regional actions.

Conclusions and recommendations

43

The audited projects generally delivered the expected capacity-building outputs. However, in some cases these outputs were not fully used by the beneficiaries or followed up by the national authorities to ensure the sustainability of results. The overall effectiveness of the audited projects in strengthening administrative capacity was thus reduced because the potential improvements they offered did not always materialise. Reasons for not using or following up the IPA projects appropriately included the national authorities not ensuring adequate staff availability, not adopting the necessary legislation to allow the output to be used or not granting the necessary independence to institutions created (see paragraphs 21 to 24).

44

Overall, we observed that limited progress towards strengthening administrative capacity in key areas was often due to weak commitment to reform by the national authorities. The majority of the projects we audited did not set out a clear requirement for the national authorities to follow up and capitalise on IPA investments (see paragraphs 31 to 33).

Recommendation 2 — Improve commitment to use outputs and follow-up results

When programming EU pre-accession assistance under IPA II, the Commission should require the national authorities to actively commit to using the outputs of IPA projects and following up results so that they are sustainable. During implementation of projects funded by IPA II the Commission should monitor closely the action being taken by the national authorities to meet commitments made in this respect to allow time to apply corrective measures before projects are closed. The Commission should take account of whether commitments have been met when deciding in which areas to invest future pre-accession assistance.

Conclusions and recommendations

45

We found that, although the Commission monitors progress in strengthening administrative capacity, there was insufficient comparable information on the progress achieved by the country over time (see paragraphs 25 to 28).

Recommendation 3 — Develop better tools for measuring progress towards improved administrative capacity

The Commission should:

- (i) build on the pilot presentation of data in the 2015 Progress Report for the 2016 report, and on the baseline measurement review of PAR carried out in 2015;
- (ii) examine whether these initiatives could be extended to other relevant areas such as transport and environment.

46

The mechanisms for political dialogue worked well although, in important areas of public administration reform, the fight against corruption and the environment, results are only being achieved slowly. The Commission possesses tools for reform, but it is sometimes not clear, for example in the case of the 'overall balance' clause, how they will be applied if new laws and institutions do not deliver results in key areas such as the fight against corruption (see paragraphs 34 to 37).

Recommendation 4 — Make full use of tools to support progress on reform

The Commission should encourage results on reform by:

- (i) making full use of all of the tools at its disposal as part of the accession negotiating process to support progress on reform;
- (ii) being transparent about how the 'overall balance clause' is referred to or used.

47

The Commission decentralised management of 12 % of IPA I funds to Montenegro. We observed that the decentralised mode of management of EU funds provides a potentially useful tool for strengthening administrative capacity through transfer of knowledge, which was not exploited under IPA I (see paragraphs 38 to 40).

Recommendation 5 — Use decentralised management to spread good administrative practice

Once examples of good practice have been established in the operating structures set up for decentralised management, the Commission should encourage the national authorities to emulate these practices in other parts of the administration, for example to encourage the delegation of decision-making to the appropriate level and to strengthen internal control systems.

This Report was adopted by Chamber III, headed by Mr Karel PINXTEN, Member of the Court of Auditors, in Luxembourg at its meeting of 12 July 2016.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

Key dates in EU–Montenegro relations

1999	• 26 May — Stabilisation and Association Process for countries of south-east Europe.
2000	• 24 January — Council adopts negotiating directives for Stabilisation and Association Agreement.
2003	• 21 June — EU–Western Balkans Summit celebrated in Thessaloniki, where the EU reiterates its support to the European perspective of the Western Balkan countries.
2006	• 3 June — Montenegrin Parliament declares independence following the 21 May referendum.
2007	• 22 January — Council adopts European Partnership for Montenegro.
	• 15 October — Stabilisation and Association Agreement (SAA) signed in Luxembourg.
	• 28 December — Interim Agreement on trade and trade-related issues signed.
2008	• 1 January — Interim Agreement and Visa facilitation and Readmission agreement enter into force.
	• 15 December — Montenegro applies for EU membership.
2009	• 19 December — Visa-free travel to the Schengen area granted.
2010	• 1 May — The SAA enters into force.
	• 9 November — The Commission recommends granting candidate status to Montenegro.
	• 17 December — The Council agrees to give Montenegro the status of candidate country.
2011	• 12 October — The Commission recommends the opening of accession negotiations.
	• 9 December — The Council launches accession process with Montenegro.
2012	• 26 June — The European Council endorses the Commission's assessment and opens accession negotiations.
	• 29 June — Accession negotiations start and the Accession Conference adopts the Negotiating Framework.
	• 18 December — Opening and provisional closure of first negotiating Chapter 25 — Science and Research
2013	• 15 April — Opening and provisional closure of Chapter 26 — Education and culture.
	• 27 June — Screening meetings are completed.
	• 18 December — Opening of negotiations on Chapter 5 — Public procurement, Chapter 6 — Company law, Chapter 20 — Enterprise and industrial policy, Chapter 23 — Judiciary and fundamental rights and Chapter 24 — Justice, freedom and security.
2014	• 31 March — Opening of Chapter 7 — Intellectual property law and Chapter 10 — Information society and media.
	• 7 May — Screening process is completed (last screening report presented to the Council).
	• 24 June — Opening of negotiations on Chapter 4 — Free movement of capitals, Chapter 31 — Foreign, security and defence policy and Chapter 32 — Financial control.
	• 16 December — Opening of negotiations on Chapter 18 — Statistics, Chapter 28 — Consumer and health protection, Chapter 29 — Customs union and Chapter 33 — Financial and budgetary provisions.
2015	• 30 March — Opening of negotiations on Chapter 16 — Taxation and Chapter 30 — External relations.
	• 22 June — Opening of negotiations on Chapter 9 — Financial services and Chapter 21 — Trans-European networks.
	• 21 December — Opening of negotiations on Chapter 14 — Transport policy and Chapter 15 — Energy.

Source: European Commission.

Projects audited

No	Project title	Contract No	Contracted (euro)
Procurement			
1.	Further development and strengthening of the Public Procurement System in Montenegro	205-748	1 080 017
2.	Support for Improvement in Governance and Management (SIGMA)	253-091 296-874 319-423	10 000 000 2 458 035 9 834 337
3.	Training in Public Procurement in the Western Balkans and Turkey	248-580	3 962 000
Corruption			
4.	Support to the implementation of the anti-corruption strategy and action plan	297-271	643 419
5.	Corruption in local government — zero tolerance!	306-428	211 454
Internal control			
6.	Strengthening the Management and Control Systems for EU Financial Assistance in Montenegro	252-719	2 000 000
7.	Strengthening the Management of EU funds and General Administrative Procedures	327-819	1 261 500
External audit			
8.	Strengthening State Audit Institution (SAI) of Montenegro	234-548	837 384
9.	Audit Quality control in the SAI of Montenegro	338-180	236 138
Capacity-building initiative			
10.	Technical assistance to Local Self-Government reform	229-836	638 950
11.	Capacity building and support to local self-government for implementation of municipal development grants	282-481	1 065 900
ReSPA			
12.	Running of ReSPA and organisation of ReSPA activities	256-128	2 400 000
13.	Running of ReSPA and organisation of ReSPA activities	331-241	3 500 000
Transport			
14.	Technical assistance to the Transport Sector	233-959	1 160 668
15.	Technical assistance for Institutional Development of the Railways Directorate in Montenegro	289-223	139 684
16.	Reconstruction of part of road Crkvicko Polje-Nikovici	256-594	789 807
Environment			
17.	Support to Environmental Management	258-795	912 465
18.	Drafting legal documents in the Field of Communal Services and Waste Management	290-255	155 055
19.	Improvement of waste management in Danilovgrad	256-597	983 193

Source: European Commission.

Executive summary

VIII

The Commission points out that the political dialogue can only encourage reform, but the ownership of the reform process lies with the national authorities.

The Commission further stresses the importance in the reform process of prioritising quality over speed.

The Commission's position is that the use of the balance clause is sufficiently defined in the negotiating framework.

The use of tools for managing the accession process, including the overall balance clause, is based on a broad assessment of the existing shortcomings and the extent to which the country is making progress as can be expected.

Observations

Box 2 — Examples of weak coordination between IPA projects

Projects 1, 2 and 3

The Commission points out that taking into account the small size of the Montenegrin administration and the early stage of setting up the public procurement system in Montenegro, some complementary overlap between the various training courses was inevitable.

Projects 12 and 13

The Commission points out that during the latter part of the period audited, the Regional School of Public Administration (ReSPA) managed to reorient from a training organisation into a regional hub contributing to policy dialogue through comparative studies and regional research, peer reviews, summer schools, in-country seminars, mobility schemes and study visits, thematic networks, etc. In this context, Montenegro has benefited from the interaction among government representatives in the different events organised by ReSPA, as well as from the comparative studies undertaken.

Since 2013, the organisation took a more strategic, high-level approach targeting only senior officials and decision-makers.

Box 3 — Examples of outputs not fully used by the beneficiaries

Project 4

The Commission notes that the Anti-Corruption Agency (ACA) was established on 1 January 2016. The agency is currently using the Integrity Risk Manager platform as a model for the development of a new-version IT system, as all the modules of ACA's IT system, including the module for integrity plans, have to be developed under unified standards.

Project 19

The Commission points out that a number of bins are held in stock for potential replacement of bins in use, as a rolling stock of unused bins is necessary.

Box 4 — Examples of outputs not followed up by the national authorities

Project 14 contributed successfully

The Commission stresses that it is important to note also that delays with the implementation of the European Common Aviation Area (ECAA) agreement are also due to the delayed ratification by some EU Member States (signed in 2006 and it has still not entered into force). Overall, Montenegro's level of preparedness in this area has been assessed very positively by the Commission. The latest ECAA assessment visit in October 2015 concluded that Montenegro is fulfilling the requirements of phase I of the ECAA agreement.

28

The Commission points out that transport and environment will be covered by the new reporting methodology as of 2016.

37

The Commission's position is that the use of the balance clause is sufficiently defined in the negotiating framework.

The use of the overall balance clause is based on a broad assessment of the existing shortcomings and to what extent the country is making progress as can be expected. In the case of the overall balance clause, the specific problems raised in 2014 had been addressed, following the Commission reminding the Montenegrin authorities of the existence of the clause.

Conclusions and recommendations

Recommendation 1 — Better coordinate actions strengthening capacity

The Commission accepts recommendation 1.

Recommendation 2 — Improve commitment to use outputs and follow-up results

The Commission accepts recommendation 2.

45

Progress on a year-by-year basis has always been reflected in the reports. Bringing together several subsequent reports allowed for comparisons over longer periods of time. With the introduction of the new reporting methodology in 2015 and the strengthened focus on readiness in addition to progress over the previous year, will make comparisons over longer periods of time even easier in the areas covered.

Reply of the Commission

Recommendation 3 — Develop better tools for measuring progress towards improved administrative capacity

The Commission accepts recommendation 3.

The Commission will continue to expand its new reporting methodology to additional areas in 2016. This will allow for better comparability between countries and also over time in the areas covered. Transport and environment will be covered by the new methodology as of 2016.

The assessment given under the new methodology, while taking into account quantitative elements, primarily remains qualitative. This is necessary to provide a realistic picture of all the elements that are relevant to assess the situation in a specific area.

46

The Commission points out that the political dialogue can only encourage reform, but the ownership of the reform process lies with the national authorities.

The Commission further stresses the importance in the reform process of prioritising quality over speed.

The Commission's position is that the use of the balance clause is sufficiently defined in the negotiating framework.

The use of tools for managing the accession process, including the overall balance clause, is based on a broad assessment of the existing shortcomings and the extent to which the country is making progress as can be expected.

Recommendation 4 — Make full use of tools to support progress on reform

The Commission partially accepts recommendation 4.

- (i) The Commission agrees with the Court that the use of all political tools at its disposal is essential to the accession process. The Commission considers that this is the case already, but the Commission is equally committed to the credibility of the process and favours quality of reform over speed. It is important to underline in this context that the speed of reforms in particular is under the control of the Montenegrin authorities.
- (ii) The Commission considers that it is transparent in its referral to or use of the balance clause.

The negotiating framework, which governs what is an intergovernmental process, sets out very clearly the conditions (see below) under which the overall balance clause may be applied. It is important to underline that the Member States decide on the use of the balance clause, based on a proposal from the Commission. The negotiating framework also speaks about the balance clause being used after having exhausted all other available measures. Hence, the Commission cannot accept this part of the recommendation.

The relevant text of the negotiating framework states: 'An overall balance in the progress of negotiations across chapters should be ensured. Given the link between the chapters "Judiciary and fundamental rights" and "Justice, freedom and security" and the values on which the Union is founded, as well as their importance for the implementation of the *acquis* across the board, should progress under these chapters significantly lag behind progress in the negotiations overall, and after having exhausted all other available measures, the Commission will on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed. The Council will decide by qualified majority on such a proposal and on the conditions for lifting the measures taken. The Member States will act in the Intergovernmental Conference in accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference.'

Recommendation 5 — Use decentralised management to spread good administrative practice

The Commission accepts recommendation 5.

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Event	Date
Adoption of the Audit Planning Memorandum/Start of audit	27.1.2015
Official sending of draft report to Commission (or other auditee)	23.5.2016
Adoption of the final report after the adversarial procedure	12.7.2016
Commission's (or other auditee's) official replies received in all languages	28.7.2016

In this report the Court examines whether the Commission's support to Montenegro has contributed effectively towards building up the administrative capacity of the country to prepare it for membership of the EU. The Court concludes that, despite the slow progress noted in several key areas, EU pre-accession assistance helped to strengthen administrative capacity during the period audited (2007-2013). While EU financial and non-financial support addressed important capacity-building needs, the Court notes cases where weak commitment to reform by the national authorities meant outputs were not used and planned impacts were not achieved. The Court recommends ways in which the Commission could focus on improving results.



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