

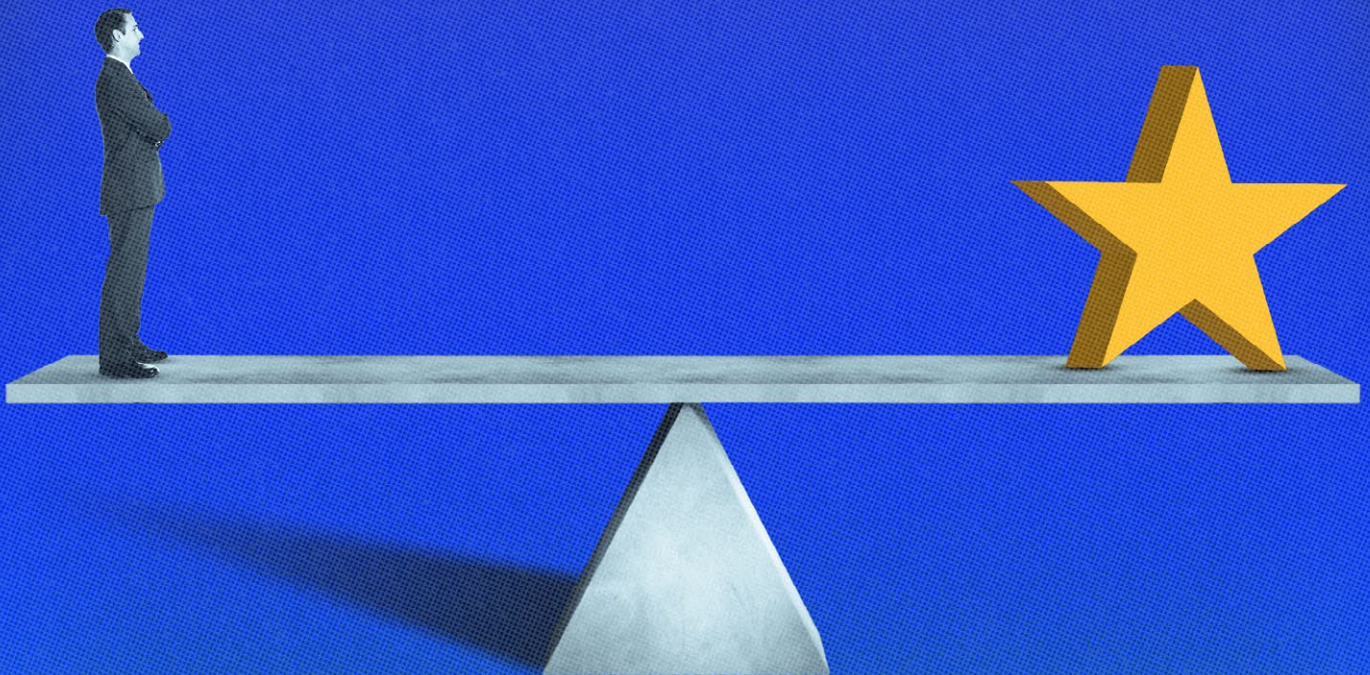


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IMPLICIT MARGINALIZATION

- Civil Society and Rule
of Law in Negotiations -



Podgorica, 2024



Centar za
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Promise of Change

Montenegro has a reputation as a country having an energetic civil society. The non-governmental sector has often been seen as playing an oppositional role, providing an alternative and critique to public policies during the decade-long rule of a dominant political party and its coalition partners. The political changes in 2020 had a multifaceted impact on civil society, which, among other things, was "affected" by the outflow of staff, but also by reduced alertness, critical approach and agility of a number of non-governmental organisations.

The European integration process is akin to a lasting state of emergency for any country, when, voluntarily and out of its own interest, the candidate country agrees to an external and intensive scanner, i.e. harmonizing its public policies with the European Union (EU). It was envisioned as an accelerated process of adoption of European standards through which reforms are, to a significant extent, shaped in a dynamic relationship between the candidate state and the EU, rather than solely based on internal ideas and needs. Furthermore, the process is intended to be inclusive, involving society as a whole to collectively achieve the best results and the fastest possible ultimate goal – full EU membership. However, the question remains: are the forces in Montenegro today united and working together on reforms?

Montenegro became an EU candidate in December 2010 and officially started negotiations with the EU on 29 June 2012, adopting a new approach where chapters 23 - Judiciary and Fundamental Rights and 24 - Justice, Freedom, and Security were among the first to be opened. These chapters will remain open until the end of the negotiation process. For the first time, so called interim benchmarks for these two chapters and the Report on their fulfilment, known as IBAR, which Montenegro received on 26 June 2024, were introduced.

EU accession is a complex process that unfolds simultaneously on several intertwined tracks. On one hand, there is the Stabilization and Association Process¹, which established political dialogue between the EU and Montenegro through the first contractual relationship. On the other hand, there are accession negotiations, which closely monitor the adoption and implementation of the *acquis communautaire* and the fulfilment of agreed reforms.

The progress of each country is influenced by two main groups of factors:

- assessment of the state in selected areas and the success of internal reforms, and
- geostrategic and political interests. These can have both positive and negative impacts,

¹ The Stabilization and Association Agreement (SAA) is an international treaty between the signatory state and the EU, establishing a legal framework for mutual cooperation and gradual approximation to European standards. The Agreement regulates the obligations of the candidate country for EU membership, primarily concerning the adoption and implementation of specific laws, as well as meeting certain standards in the quality of public administration and institutional capacity. The EU, for its part, significantly facilitates access to its market for companies from the signatory country, provides technical and financial support from the accession funds of the Union.

EU negotiations for signing the SAA with Montenegro began in November 2005. After Montenegro regained independence, a mandate for direct negotiations with Montenegro was adopted in July 2006, which commenced on 26 September 2006, and concluded on 1 December 2006. The Agreement was initialled on 15 March 2007, and signed on 15 October 2007.

meaning a country can be rewarded without deserving it or can be penalized even when it fulfils its agreed obligations. This group of factors includes global recession, enlargement fatigue among member states, etc.

The EU *acquis (Aquis communautaire)* is divided into 33 chapters², and membership negotiations are the process during which Montenegro will adapt to its legal, economic and social systems, reforming its own legislation and practices in all these areas, as well as the entire societal system.

However, after twelve years of negotiations, it is more than clear that the *conditionality policy* faces many more challenges in achieving success than initially thought, meaning that *Europeanization* and the promised *transformation* remain unfulfilled desires. In other words, formal and substantive results do not always go together. Practice has shown that the inconsistency in maintaining the levels of demands towards the aspiring states can negatively affect the quality of reforms and be an injection of *stabilocracy* that encourages undemocratic practices.

After the first years of accession negotiations and the initial enthusiasm, the energy of both the state administration and civil society has waned, showing in practice a lack of belief that close cooperation and joint work with the administration yield results. At the same time, over the past twelve years, the scope of the *rule of law* has continuously expanded, becoming a complex system of major reform areas that is difficult to monitor due to a lack of transparency and unclear criteria and assessments for their fulfilment.

The European integration process is akin to a lasting state of emergency for any country, when, voluntarily and out of its own interest, the candidate country agrees to an external and intensive scanner, i.e. harmonizing its public policies with the European Union

Entering the Final Round of Accession Negotiations

This report does not aim to list all significant civil society initiatives and noteworthy activities, as some would undoubtedly be unintentionally omitted. The intention is to highlight new perspectives and underutilized opportunities, especially considering entering the final phase, *the third third of negotiations*, by obtaining

² In the current course of negotiations, negotiations were opened in a total of 33 chapters, of which three chapters were temporarily closed: 25 - Science and research (18 December 2012), 26 - Education and culture (15 April 2013) and 30 - Foreign Relations (20 June 2017). Chapter 8 - Competition was opened last (30 June 2020).

the IBAR and the final benchmarks for chapters 23 and 24.

It is equally important to note that this is not a report on the state of chapters 23 and 24 but addresses the frameworks, criteria, and benchmarks of European integration in the domain of the rule of law, with the goal of mapping critical points where more active participation of Montenegro's civil society is desirable.

The report is based on publicly available sources and acts adopted by state authorities, as well as interviews with representatives of competent institutions and non-governmental organizations. To ensure greater openness of the interlocutors, the interviewees were promised anonymity, and therefore, their names will not be mentioned when conveying the expressed views.

The author expresses special gratitude to the Ministry of European Affairs for their constructive approach and for providing access to extensive documentation needed for work on this analysis.

The first few chapters provide an overview of the thematic field of the rule of law defined through several different frameworks of European integration, as this is the field in which cooperation between state bodies and non-governmental organizations should be achieved. In the following chapters, the report deals with practices of cooperation between the two sectors, while conclusions and recommendations are given at the end.

Far from the Set Ideal

The process of EU enlargement, previously that of the European Community, has become increasingly complex with each new wave of expansion, accompanied by the addition of new criteria that potential candidate countries must meet. Among the EU member states, Croatia went through the most demanding negotiation process, but it can already be stated that Montenegro's example of negotiations is longer and more demanding.

The Treaty on European Union (Lisbon Treaty) in Article 49 defines which country can become an EU member, outlining all the conditions it must meet, primarily the requirement to respect the values on which the Union is based, as defined in Article 2 of the Treaty.

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.

Article 49 states when countries can apply for membership.

Any European country that respects the values listed in Article 2 and is committed to promoting them can apply for membership in the Union.

Admission conditions and adjustments to the treaties on which the EU is founded, resulting from accession, are subject to an agreement between the member states and the state that has submitted an application for membership. This agreement is submitted for ratification to all contracting states, in accordance with their constitutional rules.

In June 1993, in Copenhagen, the European Council, in response to the aspirations of Eastern and Central European countries for EU membership, established political, legal, and economic criteria that must be met for a country to become a member.

The Lisbon Treaty criteria and the Copenhagen criteria are underutilized spaces for civil society action. All obligations of the aspiring EU member state are instruments that can aid internal reforms. The common goal must be that on the day of accession, Montenegro truly becomes a society for all its citizens as defined by Article 2 of the Lisbon Treaty, which is currently not the case. This is also confirmed by the latest Freedom House report, *Nations in Transition*³, published in April 2024, which still designates Montenegro as a *hybrid regime*, while the democracy rating is lower than the previous year (dropping from 3.79 to 3.75). The report accurately diagnoses that Montenegro is a country where the government juggles democratic and undemocratic practices, all three branches of government are dysfunctional, and insufficient efforts are made to depoliticize captured institutions.

New Methodology

In May 2020, Montenegro accepted the revised negotiation methodology.

The European Commission (EC) adopted the new methodology for conducting pre-accession negotiations on 5 February 2020, aiming to inject new energy into the process and provide greater

³ More on <https://freedomhouse.org/country/montenegro/nations-transit/2024>

credibility, more political leadership, increased dynamism, predictability, and both positive and negative conditionalities during the process.

The methodology defines that the goal of the process is full membership and the preparation of candidates for it. This is repeated multiple times to dispel the dilemma that has existed for a long time around this issue, especially since October 2019 and the failure of the EU to open negotiations with North Macedonia and Albania. At that time, alternative membership options, ranging from the *Norwegian model of the European Economic Area* to *privileged partnership* for the Western Balkans, began to increasingly emerge, be discussed, and promoted. The methodology clearly rejects such directions and focuses on the EU membership of Western Balkan countries.

A step in the right direction in the application of the new methodology is that Montenegro received IBAR, which formally unblocked the negotiations and made it possible to close the chapter. This gives incentive to the countries of the Western Balkans region.

In the coming period, the civil society of Montenegro should significantly leverage the opportunities provided by the *conditionality policy*, particularly the system of *stick and carrot*, and influence the authorities to implement reform and adopt European standards and best practices.

Cluster Number One – Broader Rule of Law Framework

Among other innovations brought by the new methodology, an important innovation is grouping of negotiation chapters into six clusters. Therefore, chapters remain the primary format for negotiations, because all documents (screening reports, negotiating positions, benchmarks) are adopted in chapter format.

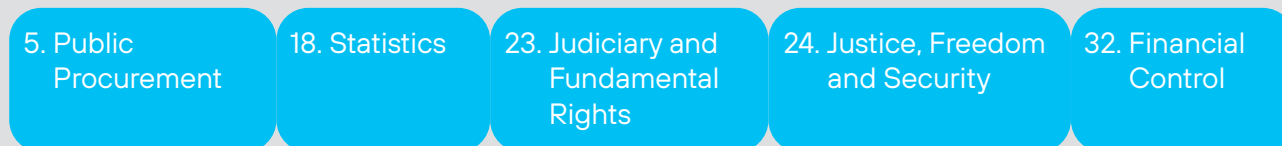
The first cluster - *Fundamentals*, represents the most important area as it includes chapters related to democratic institutions, rule of law, political and economic criteria, public administration reform, public procurement, financial control and statistics.

This means that the rule of law is formally integrated and expanded with additional areas that directly impact the situation in the area of the rule of law. Simultaneously, this represents an opportunity for civil society to use these additional areas to improve the quality of work of institutions. This comprehensive approach has the potential to give flywheel to more serious reforms.

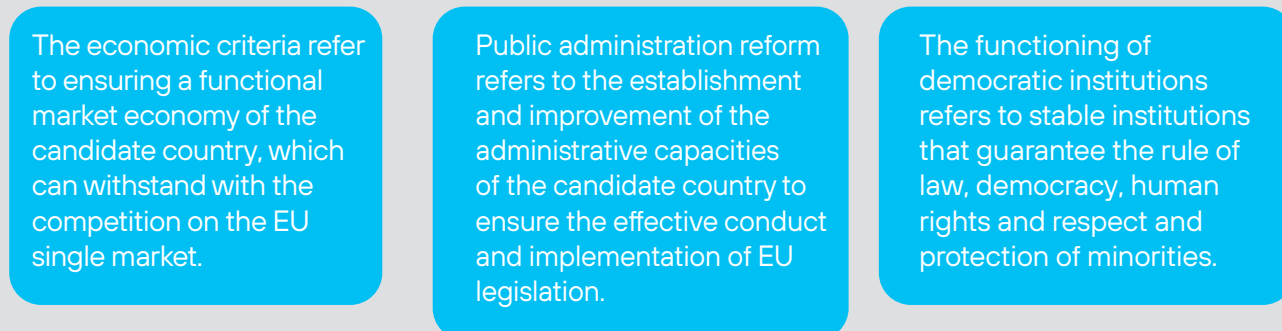
The rule of law area within this cluster will be a clear indicator of the negotiation process's progress. Given that Montenegro has already opened all chapters, theoretically, regression in this cluster could signal the blocking of negotiations (the so-called *balance clause*).

CLUSTER FUNDAMENTALS

Negotiation chapters that make up the Cluster Fundamentals:



And it also includes areas that were not included in the chapters:



The rule of Law in Chapters 23 and 24

Although reforms in the area of the rule of law began 26 years ago⁴, the period of dynamic legislative and institutional changes started with the preparations for the opening of negotiation chapters 23 and 24 in 2012. The adoption of action plans for these two chapters in the coming year, whose content was clearly and precisely directed by the recommendations given in the Analytical Review of Legislative Alignment for these two chapters (screening reports), comprehensively unified reforms across numerous areas. These documents determined the sub-areas that would be accepted as *evaluation fields for the rule of law*.

In other words, the area of rule of law is commonly understood to encompass the content of chapters 23 and 24. The list of areas is significantly longer than it was in Croatia's negotiations with the EU.

⁴ The first *Judicial Reform Programme* was adopted in 1998

Divided into 5 sub-areas:

- judicial reform,
- repressive and preventive fight against corruption,
- fundamental rights,
- rights of EU citizens,
- cooperation between the Government and non-governmental organizations.

Divided into 12 sub-areas:

- asylum,
- migrations,
- visas,
- external borders and Schengen acquis,
- fight against organized crime,
- suppression of drug abuse,
- combating human trafficking,
- fight against terrorism,
- judicial cooperation in civil and commercial matters,
- judicial cooperation in criminal matters,
- police cooperation and customs cooperation.

Interim Benchmarks: December 2013 – June 2024

Compared to the Central and Eastern European countries that joined the EU in the 2004 and 2007 *accession waves*, Croatia's EU membership negotiations were characterized by numerous innovations. Firstly, the number of chapters for negotiation increased (to 35), and for the first time, so-called benchmarks were introduced, which are conditions necessary to fulfilled for chapters to be opened and/or closed.

Montenegro was the first country to receive also interim benchmarks in chapters 23 and 24 (see Annex 1). The EU's Common Position for chapters 23 and 24 stipulated that Montenegro must meet 83 such benchmarks.

The reform activities that need to be implemented in negotiation chapter 23 were defined by the EU's Common Position through 45 interim benchmarks: 18 in the area of judiciary, 14 in anti-corruption,

11 in fundamental rights, one general benchmark concerning monitoring the implementation of the Action Plan for chapter 23, and one benchmark regarding the cooperation of state bodies with non-governmental organizations in the negotiation process.

In Chapter 24, the EU's Common Position defines a total of 38 interim benchmarks - four related to migration, four to asylum, two to visa policy, four to Schengen and external borders, five to judicial cooperation in civil and criminal matters, 13 to police cooperation and fight against organized crime, one to combating terrorism, four to cooperation in the area of drugs, and one general benchmark concerning the monitoring of the implementation of the Action Plan for chapter 24.

Rule of Law: 83 interim benchmarks													
Chapter 23					Chapter 24								
45					38								
18	14	11	1	1	4	4	2	4	5	13	1	4	1

Most of the interim benchmarks for chapters 23 and 24 refer to the alignment of the strategic, legislative and institutional framework in the above-mentioned areas with European and international standards, while a smaller part of the activities is dedicated to establishing the initial track record in areas of special importance.

Unfulfilled Benchmarks and Operational Conclusions

According to EU representative, two thirds of the interim benchmarks have been met by 2018. Work on the remaining third intensified with the election of the 44th Government of Montenegro on 31 October 2023, while the period in between was marked by stagnation and regression.

Just a few days after the new Government of Montenegro took office, the EC's annual report on Montenegro was published, mapping the context and results of the institutions from where the Government had to proceed. The average report score was 3.12, i.e. lower than 2022's score 3.15. The lowest score in the eight years since the report can be converted into numbers remains from 2021, when it was 3.03, indicating several poor years in negotiations. Qualitatively, in 2023, as before, very harsh assessments were given for negotiation chapters 23 and 24, and the lack of results in these two chapters effectively blocked all others.

Subsequently, the EC internally provided the Government with its assessment of which 31 interim benchmarks were considered unmet and what needed to be addressed for Montenegro to receive the IBAR, i.e., the Interim Benchmark Assessment Report, as well as the final benchmarks. It is not known

that any non-governmental organization participated or provided data on the fulfillment/non-fulfillment of interim benchmarks.

At the time of the formation of the 44th Government of Montenegro, according to the EC, some of the unfinished obligations were: fulfilling the remaining recommendations of the Venice Commission and the GRECO, completing the process of rationalization of the judicial network, focusing on more efficient prosecution of war crimes in domestic courts, adopting a national anti-corruption strategy, make efforts to strengthen the performance, independence and quality of work of the Agency for Prevention of Corruption (APC) strengthening the performance, independence, and quality of the work of the Agency for Prevention of Corruption (APC), amending/introducing a new Law on Prevention of Corruption, improving the track record and efficiency of the judicial response to corruption and organized crime, enacting a set of new media laws, investigating attacks on journalists, including those from previous period, increasing accommodation capacities for asylum seekers, fully establishing a system for the secure data exchange between authorities involved in the fight against organized crime, opening a shelter for victims of human trafficking, updating the legislative framework related to the fight against money laundering in accordance with FATF standards, and revising the Law on the Seizure Criminal Assets in accordance with the EC recommendations.

Having in mind that these are complex tasks whose implementation is not certain within a six-month period, the EC took an additional step. Namely, for each of the mentioned unmet benchmarks, it provided internal operational conclusions, the execution of which will be considered as fulfilling the benchmarks.

Operational conclusions pertained to the interim benchmarks:

- 36, 2, 3, 4, 6, 7, 8, 9, 13, 14, 19, 20, 21, 23, 26, 27, 28, 32, for chapter 23.
- 7, 12, 14, 15, 18, 22, 23, 25, 28, 29, 30, 32, 38 for chapter 24.

Examples of operational conclusions that dominate include: creating a timeline for the adoption of a law, making efforts to shorten the time required to translate draft laws, coordinating the work of institutions to fulfil operational conclusions, submitting tables with track record, adopting a strategy or action plan, organizing technical meeting, providing statistical data on appointments, making a plan for future reforms, and creating "next steps" or a "roadmap" in preparing a document, etc.

From the above, it is evident that the implementation is prolonged, and the six-month work period was used only to prepare for expected reforms.

Hence, for example, the interim benchmark *to resolve attacks on journalists* was transformed into *updating one-pager report on the progress of resolving these attacks*, and this approach was applied in other cases as well. This means that, although none of the earlier attacks have been resolved in the meantime, the interim benchmark is considered fulfilled.

The key tangible outcome of all this is the 12 IBAR laws in the field of rule of law, as they are popularly called, which were amended and supplemented in an expedited procedure and without quality public discussions. Additionally, the legislative role of the Parliament was reduced to voting without thoroughly considering the content of these texts.

Furthermore, the inclusiveness of civil society and consultation by the authorities was at its lowest level since the opening of negotiations.

Although obtaining IBAR is an obvious national interest and a step towards achieving the most important state foreign policy goal, it remains questionable whether the maximum was reached with such operationalization of obligations and whether Montenegro is truly approaching the desired social transformation that would improve the quality of life for its citizens in this manner.

IBAR – final benchmarks

Unfortunately, civil society no longer significantly shapes government policies nor has the formal opportunity to influence the EU's requirements. An example of this is the IBAR, in whose creation civil society did not formally participate, according to available data. Consequently, it did not take part in defining the state's future obligations in the area of rule of law. This is a missed opportunity because the final benchmarks will dictate the agenda of the Government and Parliament until the end of the accession negotiations.

What is certain is that the scope of requirements has been reduced to just a third of those from 2013. Namely, unlike then, when Montenegro received 83 interim benchmarks for chapters 23 and 24, Montenegro now has six final benchmarks, albeit broadly defined.

For chapter 23, three final benchmarks have been given, comprising 17 sub-benchmarks: five for judiciary reform and war crimes prosecution, six for corruption prevention and repression, and financing of political parties, and six for human rights.

For chapter 24, three final benchmarks have been given, with seven sub-benchmarks: three for migration, asylum, and visas, and four for organized crime.

Chapter 23:	Chapter 24:
<p>Three final benchmarks:</p> <ol style="list-style-type: none"> 1. judicial reform, 2. establishment of an efficient system for the fight against corruption, 3. application of the European Charter on Human Rights. 	<p>Three final benchmarks:</p> <ol style="list-style-type: none"> 1. results in the field of migration, asylum, visas, Schengen and external border control, 2. fight against organized crime, 3. prevention of money laundering and financing of terrorism.
<ul style="list-style-type: none"> ● five sub-benchmarks for judiciary reform and prosecution of war crimes, ● six for prevention and repression of corruption, financing of political parties, ● six sub-benchmarks for human rights. 	<ul style="list-style-type: none"> ● three sub-benchmarks for asylum, visas, migration, ● four sub-benchmarks for organized crime.

NGOs and Negotiations

Within the Treaty on European Union (Lisbon Treaty), among other fundamental values upon which the Union is based, representative and participatory democracy are particularly recognized. This has created the need to enhance the incentivizing legal and institutional framework for NGO participation in the creation and implementation of public policies, which becomes a mandatory condition for meeting the political criteria for full membership in the European Union for Western Balkans⁵ countries.

In the 2016 EU Enlargement Strategy⁶, the role of NGOs in reform processes was recognized as indispensable, and the annual reports of the European Commission on the state of candidate countries regularly analyze the progress made in the area of civil society.

Today, no one mentions that one of the interim benchmarks in Chapter 23, specifically interim benchmark number 45, was the commitment of the state of Montenegro *to ensure adequate involvement of civil society in the development, implementation, and oversight of policies*. None of the interviewed NGO representatives believes that there is adequate involvement of civil society in the creation, implementation, and oversight of public policies. However, with the acquisition of the IBAR, this is now considered fulfilled and is no longer contained in the final benchmarks.

Benchmark 45 was formulated precisely with the understanding that without intensive work on public policies, the desired social transformation will not occur, and it is a significant loss that it is no longer considered key to improving the negotiation process.

Additionally, in 2024, the relationship between the two sectors, public (state) and non-governmental, is no longer recognized as a topic of Chapter 23, which can be a serious drawback in efforts towards democratic consolidation.

The operationalization of benchmark number 45 was formally present in the negotiations only in the first years, when this area was part of the Action Plan for Chapter 23, with specific measures that were implemented and reported on, officially by institutions and unofficially through NGO sector reports. Unintentionally or intentionally, the marginalization of this part of Chapter 23 coincided with the regression in the substantive involvement of NGOs in negotiations in the area of the rule of law.

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⁵ Article 10, Treaty of Lisbon, OJ C 306 (2007), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>

⁶ More on https://neighbourhood-enlargement.ec.europa.eu/enlargement-strategy-2016_en

With the lack of inclusiveness, there has consequently been a reorientation of civil society towards activities in the rule of law that are outside institutional frameworks and towards *ad hoc* initiatives instead of systematic monitoring and attempts to achieve something by working with institutions.

Representatives of the interviewed institutions pointed out that they consider the contribution of NGOs valuable and significant but also note the reduced interest of NGOs in cooperation and that there is no longer intensive joint work as in the early years of the accession negotiations. NGOs are still those that uncover important cases, have a critical stance towards poor solutions, but are increasingly less directly involved in shaping public policies, designing solutions, their monitoring, and evaluation. This reflects in the quality of the overall state of the rule of law, i.e., the lack of results.

Disintegrated Efforts as a Barrier to Synergistic Effect

The interviewed representatives of institutions and NGOs agree that the proactivity and initiative of NGOs is not at the level it was in the first half of the negotiations.

For illustration, until June 2024, there is no known produced and it is not possible to find a publicly available new one(s):

- shadow report of civil society/NGO on the state of Cluster 1;
- shadow report on the state of chapters 23 and 24;
- shadow report on the stated of thematic areas from these chapters, following the criteria/benchmarks set in the negotiations;
- monitoring reports on the implementation of key strategies and action plans in the area of the rule of law;
- comprehensive analysis of the work and results of the police, prosecutor's office and courts in the area of high corruption and organized crime, nor comprehensive analysis of the work of the APC;
- no rounded form of the list of public demands and reform proposals that civil society seeks in the areas of the rule of law;
- etc.

Thus, although strong Montenegrin NGOs are evidently active in the area of the rule of law, their efforts are no longer tied to the processes, and there is a disintegration of efforts to use the institutional framework for systematic improvements. The negotiations are not being systematically or continuously monitored, leading to a lack of synergy and maximization of the use of institutional processes for reforms and in-depth administrative transformation.

The fact is that it is impossible for one organization to have expertise for the entire cluster or even

the entire chapter. However, it seems there has not been enough incentive and/or interest in building coalitions, so in 2024, as well as in previous years, there is no NGO coalition monitoring the negotiations in the chapters related to the rule of law.

There is a visible tendency in civil society to implement projects that do not depend much on institutions, investing effort in activities where results are more predictable and immediate, which is not the case when investing work in cooperation with institutions. This can also be attributed to negative experiences with institutions, especially in recent years, which have been marked by frequent changes in government and institutional structures, as well as intolerance towards critically oriented NGOs.

All this negatively impacts the quality of the negotiation process, which requires synergistic action. The value of cooperation is not in exclusively insisting on one's own solution but in creating good and sustainable solutions through the dynamic of different perspectives. The frequent legal changes in the area of the rule of law best demonstrate to what extent broader consultations on solutions is lacking.

Additionally, it can be observed that even twelve years after the opening of negotiations, expert capacities in civil society for many negotiation areas, especially in Chapter 24, have not been developed, except in the area of combating organized crime, which indicates that there have not been enough incentives, either internal or external. This has left a high degree of arbitrariness in assessing the fulfilment of standards to the state administration and the EU, which is a missed opportunity for Montenegrin society to make the most of the process for social change.

Good practices

The work of NGOs in the rule of law sector is invaluable, with numerous good practices that should not be underestimated.

This primarily includes:

- sporadic contributions of NGOs to European Commission reports,
- occasional participation of NGOs in working groups for drafting laws, strategies, and action plans,
- participation of NGOs in working groups for Chapters 23 and 24,
- sporadic meetings between institutions and NGOs, most often without an agenda, without concrete documents for review, without conclusions or recommendations for monitoring,
- participation of representatives of institutions in NGO-organized events,
- media presence and ad hoc initiatives and proposals
- monitoring of specific areas, strategies, and processes (e.g. Berlin Process),
- ...

Montenegrin NGOs have remained active in the fight against corruption and organized crime, as well as in the field of human rights, where they often replace institutions. Additionally, a strong revisionist wave has spurred societal radicalization, leading to increased NGO activities in defending freedom of expression, promoting transitional justice, and fostering a culture of remembrance, among other areas.

There are numerous ad hoc projects aimed at strengthening anti-corruption institutions, providing social services, protecting human rights, offering free legal aid, and similar initiatives, emphasizing capacity building and service provision, which are valuable contributions. However, many topics in Chapters 23 and 24 have remained outside the interest of both NGOs and donors, leading over time to weakened oversight, monitoring, and evaluation of reforms and public policies.

The efforts of NGOs in uncovering cases involving elements of corruption, misuse of public resources, and violations of the legal framework are irreplaceable as they highlight issues in all areas. However, in an environment with a very unhealthy public discourse, many of these cases get lost in the ether, rarely prosecuted to the end, and there is a missing link that would translate learned lessons into public policies to prevent similar abuses. Only and exclusively in this way will problematic practices and high levels of arbitrariness in the work of institutions be curbed.

Growth Plan and Reform Agenda

Another area where quality cooperation between state authorities and NGOs has not been achieved is the adoption of the Reform Agenda. After the European institutions adopted the Growth Plan to accelerate the enlargement process and stimulate economic convergence at the level of the Western Balkans region, the Government of Montenegro adopted several versions of the Reform Agenda, none of which were subject to public debate.

One of the four key areas covered by the Reform Agenda is the Rule of Law/Fundamental Rights⁷.

The key goals in the area of fundamental rights provided for in the Reform Agenda relate to ensuring the rule of law and achieving the remaining interim benchmarks from Chapters 23 and 24, especially in the areas of the judiciary, the fight against corruption and organized crime, as well as freedom of expression and the media. The focus is on improving access to justice, promoting the independence, autonomy, impartiality, and accountability of the judiciary and prosecution, as well as restoring confidence in the judiciary to ensure legal certainty as a prerequisite for economic activity. There are also priority measures in the sub-area of democracy aimed at improving the rule of law through the

⁷ More on: <https://www.gov.me/clanak/saopstenje-sa-37-sjednice-vlade-crne-gore-2>

adoption of a new, comprehensive, and harmonized legal framework for conducting elections, while in the part of the judiciary, the focus is on appointments to high positions, improving the results of investigations, confirmed indictments, and final judgments in cases of organized crime. Additionally, the plan includes strengthening capacities in the fight against organized crime, reducing domestic violence, implementing the recommendations of the European Committee for the Prevention of Torture, effective implementation of the Anti-Discrimination Law, and aligning visa policy with EU standards.

Although NGOs active in this area have not had the opportunity to submit their proposals, monitoring the planned measures can be significant for civil society since the approval of part of the funds from the Growth Plan will depend on the success of implementing the reforms provided for in the Government's plan.

Conditions for Cooperation and Environment

Representatives of institutions generally rated cooperation with NGOs positively. However, according to NGOs, this cooperation is more declarative than based on concrete reform projects whose implementation can be monitored and measured.

On the other hand, representatives of institutions point out that there are cases when NGOs do not show interest in getting involved and submitting their proposals promptly, and that there have been calls for cooperation that went unanswered. One such example is the general lack of interest in the development of Montenegro's EU Accession Programme, for which consultations are regularly organized. Additionally, there are examples of public discussions on laws, strategies, and action plans for which no comments were submitted by NGOs.

It is important to emphasize that quality engagement in reforms in the area of the rule of law requires meeting minimum conditions that would enable NGOs to submit comprehensive comments and proposals. This primarily refers to early announcements of interventions, publicly available plans and work programmes of institutions, early consultations and announced public discussions, free access to information, analyses as a basis for decision-making, reasoned responses to submitted proposals, and active work on building trust and mutual understanding. Only by creating an environment where constructive cooperation and planning are possible, as well as timely research and preparation for the topic to be reformed, will a larger number of NGOs be able to participate in policy-making on an equal footing.

Interviewed NGO representatives assess the environment for the operation of the non-governmental sector in Montenegro as generally unsatisfactory, pointing out in particular the unacceptable rhetoric of public officials directed towards critically-oriented organizations, which burdens mutual relations.

Participation in Working Groups

While membership in the working groups for negotiations was initially a matter of prestige, data indicates that interest today is minimal. For example, there were once as many as ten representatives from the most relevant organizations in the working group for Chapter 23, but now that number is significantly smaller, with only three in the latest compositions.

The capacities for Chapter 24 were never at the same level, but interest has also visibly decreased, so instead of four representatives, as was once the maximum, there have been only two NGO representatives in the working group in recent years.

Representatives of institutions pointed out as a good practice that during 2021 and 2022, several thematic sessions of working groups were held at the initiative of non-governmental organizations. However, based on the minutes, it can also be stated that working group meetings are not frequent and that most of the reform and negotiation processes take place outside the working groups.

Working groups have been particularly inactive since the reports on the implementation of action plans for Chapters 23 and 24 stopped being adopted, which was a dynamic part of the work due to the need for NGOs and state bodies to reconcile evaluations and data on the implementation of measures. Most of the other tasks of the working groups are carried out by employees of the Ministry of European Affairs in direct cooperation with the competent state body.

Overview of NGO representatives' membership in the working groups for Chapters 23 and 24⁸.

Chapter 23		
February 2024	3 from NGOs out of 46 members	42) Nevenka Kapičić, representative of the NGO Center for Democracy and Human Rights - CEDEM, 43) Jelena Čolaković, representative of NGO Juventas, 44) Maja Raičević, representative of the NGO Women's Rights Center.
February 2023	3 from NGOs out of 33 members	30) Marija Vesković, representative of the NGO Human Rights Action, 31) Mehdina Kašić-Šutković, representative of the NGO Youth Initiative for Human Rights – YIHR, 32) Mišela Manojlović, representative of Union of Municipalities of Montenegro.

⁸ The names and affiliations of the members from the NGO sector were integrally taken from the government's decision on the formation of working groups

April 2022	3 from NGOs out of 35 members	32) Marija Vesković, representative of the NGO Human Rights Action, 33) Mehdina Kašić Šutković, representative of the NGO Youth Initiative for Human Rights – YIHR, 34) Hasnija Simonović, representative of the Association of Judges of Montenegro.
August 2021	6 from NGOs out of 52 members	46) Dina Bajramspahić, representative of NGO Montenegrin Media Institute, 47) Maja Raičević, representative of the NGO Women's Rights Center. 48) Ana Đurnić, representative of the NGO Institute alternative, 49) Anđela Đuković, representative of the foundation Civic Alliance, 50) Milena Bešić, representative of the NGO Center for Democracy and Human Rights, 51) Tamara Milaš, representative of the NGO Centre for Civic Education
October 2018	8 from NGOs out of 47 members	38) Ana Novaković, executive director of the NGO Center for the Development of Non-Governmental Organizations, 39) Ana Nenezic, member of the NGO Centre for Civic Education, 40) Hasnija Simonović, representative of the Association of Judges of Montenegro, 41) Dina Bajramspahić, member of the NGO Institute alternative, 42) Nikoleta Tomović, executive director of the NGO Center for Monitoring and Research; 43) Maja Raičević, executive director of the NGO Women's Rights Center; 44) Jovana Marović, executive director of the NGO Politikon Network; 46) Vanja Čalović Marković, executive director of the NGO Network for Affirmation of the Non-Governmental Sector - MANS.
June 2017	10 from NGOs out of 70 members	60) Ana Novaković, executive director of the NGO Center for the Development of Non-Governmental Organizations, 61) Ana Nenezic, member of the NGO Centre for Civic Education, 62) Hasnija Simonović, representative of the Association of Judges of Montenegro, 63) Dina Bajramspahić, member of the NGO Institute alternative, 64) Tamara Durutović, member of the Board of Directors of the Bar Association of Montenegro, 65) Marina Vujačić, executive director of the Association of Youth with Disabilities of Montenegro, 66) Nikoleta Tomović, executive director of the NGO Center for Monitoring and Research; 67) Maja Raičević, executive director of the NGO Women's Rights Center; 68) Vuk Maraš, member of NGO MANS; 69) Jovana Marović, executive director of the NGO Politikon Network.
April 2012	5 from NGOs out of 49 members	44) Hasnija Simonović, president of the Association of Judges of Montenegro, 45) Ana Novaković, executive director of the NGO Center for the Development of Non-Governmental Organizations, 46) Boris Marić, member of the NGO Centre for Civic Education, 47) Velida Hodžić, director of NVU Ikre Rožaje, 48) Jovana Marović, member of the NGO Institute alternative.

Chapter 24		
February 2024	2 from NGOs out of 31 members	28) Milena Vujović, representative of NGO Civil Alliance, 29) Jovan Bojović, representative of NGO Juventas.
February 2023	2 from NGOs out of 29 members	26) Miloš Mitrić, representative of foundation Civil Alliance, 27) Dragana Jaćimović, representative of NGO Institute alternative.
June 2021	3 from NGOs out of 29 members	26) Ivana Vujović, predstavnica NVO Juventas, 27) Pavle Ćupić, representative of NGO Civil Alliance, 28) Dragana Jaćimović, representative of NGO Institute alternative.
October 2019	4 from NGOs out of 32 members	28) dr Milica Kovač-Orlandić, representative of NGO SoCEN - Sociological Center of Montenegro, 29) Ivana Vujović, representative of NGO Juventas, 30) Aleksandra Vukčević, representative of NGO Civil Alliance, 31) Stevo Muk, representative of NGO Institute alternative.
April 2012	2 from NGOs out of 39 members	37) Siniša Bjeković, representative of NGO Civil Alliance, 38) Vlado Dedović, member of NGO Center for monitoring.

Subcommittee on Justice, Freedom, Security

The key body for exchanging information about the status of chapters 23 and 24 between Montenegro and the European Commission is the *Subcommittee on Justice, Freedom, and Security*, which held its fourteenth meeting in March 2024.

Article 3, paragraph 1, item 6 of the *Decision on the formation of the Negotiating Working Group for preparing and conducting negotiations on Montenegro's accession to the European Union for the area of EU acquis and for chapters 23 and 24*⁹ states that the task of the negotiating group, including all members and representatives of non-governmental organizations, is to *prepare contributions and participate in the meetings of the Subcommittee on Justice, Freedom, and Security and the Stabilization and Association Committee*.

Nevertheless, it is not known that any NGO representative has ever participated in the work of the Subcommittee, despite having the right derived from the Government's Decision. This limitation restricts the discussion on the status of chapters 23 and 24 and hinders NGOs from participating equally in the negotiations, even though they are formal members of the negotiating working groups.

⁹ More on: <https://www.gov.me/dokumenta/d7362ef4-195d-4c67-aca0-970fd246cc5a>

Status of NGOs in Working Bodies

Active institutional participation of NGOs in various working groups for creating reforms in the field of rule of law has been negatively impacted, among other things, by the issue of NGO status in these bodies. The problem arose due to the misinterpretation of regulations and the ill-intentioned bureaucratization aimed at complicating and nullifying the cooperation between the two sectors. Namely, besides the fact that the enthusiasm for cooperation and the trust in achieving something has been lost over time, a formal obstacle for the significant participation of civil society representatives in working groups has also emerged.

Over the past few years, the APC has insisted on interpreting the Law on Prevention of Corruption in such a way that claims that NGO representatives, by being members of working groups preparing laws, strategies, and action plans with state officials from ministries, become "public officials."¹⁰ This stance and the established practice were confirmed by ASK in a statement on 8 March 2023¹¹, despite the inconsistent application.

Several NGO representatives have pointed out that this practice is unacceptable and is a principled reason for their disinterest in applying for government working bodies. This has resulted in a loss for public policies and the quality of acts adopted by the Government and Parliament in the EU integration process. So far, the Government has ignored requests to initiate legislative changes to prevent this unnatural practice of co-opting the non-governmental into the governmental sector.

10 Public Official (Article 3): "A public official, within the meaning of this law, is a person elected, appointed, or placed in a state body, administrative body, judicial body, local self-government body, local administration body, independent body, regulatory body, public institution, public enterprise, or other economic company, or legal entity that performs public authority or activities of public interest or is state-owned (hereinafter: authority body), as well as a person whose election, appointment, or placement is approved by the authority body, regardless of the permanence of the function and compensation." - Law on the Prevention of Corruption (The law was published in the "Official Gazette of Montenegro", no. 53/2014, 42/2017 - Decision of the Constitutional Court of Montenegro, and 73/2023 - Decision of the Constitutional Court of Montenegro.)

11 APC: "It is not a punishment to be a public official", 8.3.2023. <https://www.antikorupcija.me/me/sukob-interesa/novosti/2303080816-nije-kazna-bitu-javni-funkcioner/>

Time for New Horizons and Directions

The rule of law is one of the broadest yet most challenging field in Montenegro's EU negotiations because it directly affects the levers of power and the broad discretion traditionally maintained by the Montenegrin administration in several key areas.

From the perspective of civil society, the results achieved in the area of the rule of law are unsatisfactory. However, Montenegrin civil society is also aware of the risks of Montenegro not integrating into the EU. Therefore, it is necessary to encourage progress in the process and insist on consistent application of European standards and best practices.

Non-governmental organizations are very present in the public life of Montenegro. However, a strategic approach shift is needed, moving from the phase of constant "firefighting" and solving daily crises to building capacities for managing processes and reforms through comprehensive proposals and submitting complete demands to the authorities.

Monitoring the progress in aligning and implementing the legal framework will continue during the negotiations. It should also be noted that, according to the provisions of the negotiation framework, the European Commission can propose an updated version of the benchmarks wherever justified.

NGOs should:

- use the final phase of negotiations for fundamental social changes,
- create a joint platform for monitoring negotiations in the rule of law area, prepare and publish public demands for reforms, following the final benchmarks,
- continuously propose early integration measures to the Government and the EU and devise ways to strengthen ties between Montenegro and the EU in thematic areas and institutional frameworks,
- enhance monitoring and evaluation of technical processes and the fulfilment of technical conditions within the negotiations,
- intensify public information about the status of meeting the set reforms.

The Government of Montenegro should:

- immediately start working on action plans to meet the final benchmarks in chapters 23 and 24, with the broadest consultation with all stakeholders,
- compile and publish annual reports on the work of working groups for chapters 23 and 24, as well as the negotiation structure, with an emphasis on the Rule of Law Council,
- regularly publish track record for chapters 23 and 24,
- initiate changes to the normative framework to prevent the practice of treating NGO representatives in working bodies for drafting laws, strategies, and action plans as public officials,

- promptly publish ministry programmes and work plans, including a list of acts that will be publicly debated that year,
- increase the number of public debates on all documents and decisions it adopts,
- improve the Law on Free Access to Information,
- enable NGO representatives to participate in the Subcommittee on Justice, Freedom, Security,
- consider the possibility of an open call for NGOs for thematic discussions on issues in the field of the rule of law, for all NGOs that believe they have expertise in the given subfield, with the practice of adopting and implementing concrete conclusions,
- include civil society in the preparation of the Government's annual work plan.

The Parliament of Montenegro should:

- enable public consultations and debates on acts in parliamentary procedure,
- strengthen its control function.

The EU, the European Commission, and member states should:

- include non-governmental organizations in creating requirements and (sub)benchmarks in all negotiating chapters, especially chapters 23 and 24.
- institutionalize the exchange of information with NGOs in a format similar to the Subcommittee on Justice, Freedom, Security, with a detailed agenda and reporting on all relevant issues in the field of the rule of law,
- through support programmes for civil society, prioritize the strengthening of NGO capacities to monitor chapters 23 and 24.

Anex 1 – Interim Benchmarks for Chapters 23 i 24

Chapter 23

In light of the ongoing preparations in Montenegro, the EU notes that, assuming Montenegro continues to make progress in aligning and implementing EU legal standards in the area of Judiciary and Fundamental Rights, the following interim benchmarks must be met before taking the next steps in the negotiation process for this chapter:

1. Montenegro ensures close and continuous monitoring of the implementation of the Action Plan in the area of Judiciary and Fundamental Rights through a clear and multi-sectoral mechanism, with a particular focus on the adequacy of financial resources, institutional capacity, and respect for deadlines.

Judiciary:

2. Montenegro adopts and begins implementing a new national judicial reform strategy (2013-2018) and the accompanying Action Plan. Montenegro ensures that the impact of various measures is continuously monitored through a supervisory mechanism, and corrective measures are taken when necessary.

Montenegro strengthens the independence of judiciary, in particular:

3. Montenegro implements constitutional changes in accordance with the recommendations of the Venice Commission and European standards and best practices. Accordingly, Montenegro adopts secondary legislation. Based on that:
4. Montenegro establishes an initial track record of appointments of judges and prosecutors at higher levels based on a transparent, merit-based process with substantial qualified majority thresholds involving the Parliament.
5. Montenegro establishes an initial track record of appointments of judges and prosecutors through a unified, state-wide, transparent merit-based system and ensures that candidates for judges and prosecutors undergo mandatory initial training at the Judicial Training Center before appointment.
6. Montenegro establishes an initial track record of implementing a fair and transparent promotion system for judges and prosecutors based on periodic performance evaluations (including at higher levels).
7. Montenegro strengthens the administrative capacities of the Judicial and Prosecutorial Councils, enabling them to perform their key functions professionally, responsibly, transparently, and impartially.

Montenegro enhances impartiality and independence of the judiciary, in particular:

8. Montenegro strengthens the random case assignment system in all courts with three or more judges using the PRIS application and ensures that the planned analysis of the rationalization of the judicial system confirms the obligation to establish a minimum number of judges per court to enable effective random case assignment.
9. Montenegro ensures an initial track record of regular checks on the work of judges and prosecutors and ensures that disciplinary measures are effectively applied in cases of identified rule violations. Montenegro develops judicial practice for interpreting disciplinary rules and raises awareness among judges and prosecutors, along with an updated Code of Ethics.
10. Montenegro establishes a new disciplinary commission within the Judicial and Prosecutorial Councils responsible for conducting disciplinary proceedings against judicial office holders based on objective criteria. Montenegro

ensures that integrity managers in courts also develop measures to promote adherence to ethical standards among court employees.

11. Montenegro ensures an initial track record by properly verifying the assets declared by judicial office holders, enforcing sanctions in case of discrepancies, and taking appropriate measures, including criminal investigations where necessary, when declared assets do not match reality.
12. Montenegro aligns legal provisions with the Constitution to ensure full criminal accountability of judges and prosecutors and avoids the misuse of the concept of functional immunity of judges so that it does not hinder the initiation of criminal investigations if such a request arises.

Montenegro Enhances Professionalism, Competence, and Efficiency of the Judiciary. Specifically:

13. Montenegro develops robust statistical capacity (based on the European Commission for the Efficiency of Justice (CEPEJ) guidelines) allowing the PRIS to monitor the workload and performance of judges and courts, measuring, among other things, the average duration of court proceedings by case type, case inflow, number of unresolved cases, return rate, duration, and costs of enforcement proceedings. Montenegro analyzes these statistics to identify backlog cases, deadlines exceeded for decision preparation, process delays, and human and financial resources involved in resolving specific case types. Montenegro actively uses these data as a management tool and takes appropriate actions when necessary.
14. Montenegro continues the implementation of judicial network rationalization. Montenegro completes a new needs analysis that forms the basis for adopting the next steps in rationalization, which should lead to the closure of all unsustainable small courts.
15. Montenegro establishes an initial track record in further reducing the backlog of cases in courts, especially old civil and administrative cases. Montenegro increasingly uses alternative measures such as mediation, judicial settlement, and arbitration.
16. Montenegro establishes a system of continuous voluntary horizontal transfer of judges, based on initiatives enabling increased voluntary redistribution of judges to courts with the highest workload.
17. Montenegro ensures full compliance and proper enforcement of court orders and decisions. Montenegro establishes an initial track record in resolving and return rate in enforcement proceedings concerning civil and commercial cases. Montenegro completes a general assessment of the enforcement system and develops further measures as necessary.
18. Montenegro adopts the Law on Judicial Training and ensures the necessary financial and human resources to transform the Judicial Training Centre into a financially independent body according to set deadlines.

Montenegro improves management of domestic war crimes cases. Specifically:

19. Montenegro effectively demonstrates the capacity of law enforcement agencies and courts to independently resolve war crimes cases in accordance with international humanitarian law and the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia. Montenegro takes effective measures to address the issue of impunity, particularly by accelerating progress in investigations and prosecutions of these cases and ensuring access to justice and compensation for civilian victims.

Fight against Corruption:

20. Montenegro implements its national strategy for combating corruption and organized crime (2010-2014) and the Action Plan (2013-2013). It continuously monitors and evaluates the impact of various measures and proposes corrective actions when necessary.

Montenegro strengthens anti-corruption prevention measures. Specifically:

21. Montenegro establishes a new Anti-Corruption Agency with a clearly defined mandate and effective powers. This Agency should demonstrate a proactive approach, have necessary independence, sufficient resources, merit-based employment, trained staff, and strong connections with other relevant institutions (and their databases). Montenegro ensures that the appointment of the head of the Anti-Corruption Agency is transparent, merit-based, and based on objective criteria, including professional competencies.
22. Montenegro amends the Conflict-of-Interest Law and establishes an effective system for preventing conflicts of interest at all levels of state/public administration. Montenegro ensures an initial track record of increased identified and resolved conflict of interest cases, including deterrent sanctions and compensation to the public budget where relevant.
23. Montenegro ensures an initial track record of effective implementation of asset declarations and verification systems, including deterrent sanctions for non-compliance and valid successive measures (including criminal investigations where relevant) in cases where declared assets do not match reality.
24. Montenegro adopts and implements a code of ethics for members of the legislative and executive branches at all levels, regulating rules on conflict of interest, inconsistencies, and other unethical or corrupt behaviour, establishing appropriate accountability measures and deterrent sanctions for violations.
25. In public administration, Montenegro engages, promotes, and appoints public officials based on clear and transparent criteria, focusing on merit and demonstrated abilities. Montenegro strengthens the capacities of the Inspectorate, applies risk analysis methodologies, adopts integrity plans, and appoints trained integrity managers in public administration. Montenegro ensures an initial track record of applying effective sanctions in cases of violation of ethical values.
26. Montenegro amends the current legislation regulating the financing of political parties, ensuring full alignment with GRECO recommendations, and strengthens the administrative capacity and independence of oversight bodies. Montenegro ensures an initial track record of fair law implementation, including the application of deterrent sanctions where necessary.
27. Montenegro implements and evaluates the impact of measures taken to reduce corruption in sensitive areas and takes corrective measures where necessary, including disciplinary and criminal actions in cases of identified irregularities.

Montenegro strengthens repressive measures in the fight against corruption. Specifically:

28. Montenegro establishes an initial track record of efficient and effective investigation, prosecution, and convictions in corruption cases, including high-level corruption.
29. Montenegro revises the Criminal Procedure Code to enhance the effectiveness of pre-trial procedures. Montenegro establishes a new Special Prosecutor's Office to improve prioritization in serious criminal cases, better specialization of employees, and substantially improved inter-institutional cooperation and data exchange.
30. Montenegro significantly enhances the capacity of the Ministry of Internal Affairs to conduct financial crime investigations. Montenegro ensures that both the Ministry of Internal Affairs and the Special Prosecutor's Office are well-connected with other relevant agencies. Montenegro provides necessary training for financial investigations and systematically conducts financial investigations parallel to criminal investigations of organized crime and corruption cases.
31. Montenegro adopts legislation on asset management, establishes an Asset Management Office, engages management based on transparent and objective criteria focusing on merit and expertise, and establishes an initial track record through an increased number and sum of confiscated criminal proceeds, including high-level corruption cases.
32. Montenegro takes steps to improve the effectiveness of the whistleblower protection system.
33. Montenegro adopts a procedure for closing criminal cases in line with EU best practices. This includes the

obligation to provide a valid explanation of the decision to the alleged victim and creating a legal possibility for the revision of the prosecutor's decision to dismiss a criminal complaint.

Fundamental Rights. Montenegro strengthens the effective implementation of human rights. Specifically:

34. Montenegro further aligns its legal framework (particularly the Law on the Protector of Human Rights) with EU acquis and international standards. Montenegro strengthens the independence, professionalism, and institutional capacity of the Ombudsman (including establishing a National Preventive Mechanism for Torture). Montenegro ensures the effective implementation of human rights – including children's rights and the rights of persons with disabilities – through the judicial system and other authorities and provides adequate training in this regard.
35. Montenegro implements all recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) from the 2008 Report and the urgent recommendations from the 2013 Report, particularly improving material conditions in prisons, shelters, and closed institutions. Montenegro ensures sufficient measures for the recommendations from the 2013 Report. Montenegro prevents and ensures a prompt judicial response in cases of abuse. Montenegro establishes an effective probation system.
36. Montenegro ensures the improvement of freedom of expression and media in the country and applies zero tolerance towards threats and attacks on journalists, prioritizing criminal investigations when they occur. Montenegro establishes a Commission to monitor the activities of competent authorities in investigating old and recent cases of threats and violence against journalists, including murder cases. Montenegro ensures an initial track record of progress made in investigations, effective prosecutions, and deterrent sanctions for perpetrators of these acts.
37. Montenegro continues implementing the Domestic Violence Protection Strategy, including raising awareness about preventing domestic violence and providing necessary protection for victims.
38. Montenegro continues implementing the Strategy for Improving the Status of LGBTI persons, raises awareness about the rights of LGBTI persons, and takes appropriate measures against acts of discrimination based on sexual orientation.

Montenegro improves compliance with EU acquis and international standards regarding procedural protection measures. Specifically:

39. Montenegrin courts establish an initial track record of effective legal remedies in accordance with Article 13 of the European Convention on Human Rights.
40. Montenegro informs citizens about their legal rights and ensures that free legal aid is, in principle, available to all citizens in need, especially the most vulnerable categories.

Montenegro enhances the protection of minorities and cultural rights. Specifically:

41. Montenegro takes concrete steps, in line with the Action Plan, to prevent discrimination and systematically address cases of discrimination through administrative and judicial actions.
42. Montenegro implements the Strategy for Improving the Status of Roma and Egyptians in Montenegro, facilitating their access to personal documents and registration, as well as their access to education, employment, healthcare, and social housing, including the allocation of sufficient resources. Montenegro also promotes integration in the areas of culture, education, local government, media, and socio-economic rights and takes concrete steps to reduce the school dropout rate among Roma children.
43. Montenegro improves the quality of living conditions for displaced persons, including simplifying their registration and access to education, healthcare, employment, and social housing.

Montenegro takes steps to align its national legal framework with EU acquis and international standards against racism and xenophobia. Specifically:

- 44. Montenegro amends the Criminal Code to fully align it with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- 45. For the mentioned policy areas, Montenegro ensures the adequate inclusion of civil society in the development, implementation, and monitoring of policies.

Chapter 24

Given the current state of Montenegro's preparations and understanding that Montenegro must continue to make progress in aligning with and implementing the EU acquis covered by the chapter on Justice, Freedom, and Security, the EU notes that the following interim benchmarks should be met before further steps in the negotiation process for this chapter:

- 46. Montenegro ensures close and ongoing monitoring of the implementation of the Action Plan in the area of Justice, Freedom, and Security through a stringent and multidisciplinary mechanism, with particular attention to the adequacy of financial resources, institutional capacity, and adherence to set deadlines.

Montenegro improves its efforts to ensure compliance with EU requirements in the area of legal and illegal migration. In particular:

- 47. Montenegro conducts a comprehensive assessment of its legal, institutional, technical, and training needs in the area of legal migration. Based on this, Montenegro clearly identifies implementation steps and adopts a comprehensive training plan.
- 48. As indicated in the Action Plan, by the end of 2013, Montenegro opens a Reception Centre for irregular migrants, ensuring the rights of migrants and providing proper management with trained staff and adequate accommodation. Montenegro also monitors the adequacy of reception capacity and establishes appropriate measures to prevent and punish the infiltration of smugglers into the reception centre.
- 49. Montenegro conducts a feasibility study, resulting in clear recommendations on steps to strengthen capacity for the accommodation, protection, and rehabilitation of vulnerable minors and other vulnerable groups of migrants.
- 50. Montenegro negotiates and takes steps to conclude readmission agreements with third countries within the set deadlines and continues the smooth implementation of the readmission agreement signed with the EU, including adherence to deadlines for responding to individual requests.

Montenegro improves its efforts to ensure compliance with EU requirements in the area of asylum. In particular,

- 51. Montenegro conducts an impact analysis with EU expert assistance and, based on this, adopts a new Asylum Law in line with the EU acquis and prepares an analysis of all requirements to be met upon accession to the European Automated Fingerprint Recognition System (Eurodac) and the Dublin Regulation.
- 52. Montenegro ensures an initial track record of improved management of its asylum procedure, including reasonable processing times in line with EU practices, an improved percentage of cases where asylum is granted, improved accommodation, assistance, and integration of asylum seekers (including vulnerable categories) into society, and swift and proper handling of rejected applicants.
- 53. By the end of 2013, Montenegro opens an Asylum Centre ensuring the rights of asylum seekers and proper management and providing adequate accommodation. Montenegro monitors the adequacy of reception capacity and establishes appropriate measures to prevent and punish the infiltration of smugglers into the centre.
- 54. Montenegro provides training related to various key aspects of the EU acquis and procedures related to asylum.

Montenegro intensifies its efforts to ensure compliance with EU requirements in the area of visa policy, particularly:

- 55. Montenegro conducts a comprehensive needs assessment as a basis for the appropriate sections of the

necessary Schengen Action Plan.

56. Montenegro ceases issuing visas at the border, except in cases defined by the EU acquis.

Montenegro intensifies its efforts to ensure compliance with EU requirements in the Schengen area and external borders. Specifically,

57. Montenegro adopts a Schengen Action Plan to prepare necessary steps (including investments in infrastructure and equipment, personnel, training needs, institutional building, and legal steps) for implementing relevant parts of the Schengen acquis upon accession or joining the Schengen area.
58. Montenegro adopts and implements an updated Integrated Border Management Strategy in line with the EU's concept of integrated border management.
59. Montenegro achieves significant progress in modernizing infrastructure and equipment at border crossings and between them, as well as along the maritime border. Montenegro takes steps to close alternative routes with neighbouring countries.
60. Montenegro addresses the dual threats of corruption and organized crime at its borders by implementing a dedicated anti-corruption plan at the borders and ensures an initial record of results in effectively monitoring detected cases.

Montenegro intensifies its efforts to ensure compliance with EU requirements in judicial cooperation in civil and criminal matters. Specifically:

61. Montenegro conducts an analysis and clearly defines future legal steps necessary for aligning with the EU acquis in judicial cooperation in civil and commercial matters.
62. Montenegro establishes an information system to record international legal assistance and monitor the efficiency of handling international requests in civil judicial cooperation.
63. Montenegro conducts an analysis of administrative capacities, budgets, and training needs necessary for implementing the acquis in criminal judicial cooperation within the Ministry of Justice, courts, and prosecutors, and precisely defines future steps to fully align with the acquis in this area, including the European Arrest Warrant.
64. Montenegro adopts and begins implementing a training plan (including foreign language training) in criminal judicial cooperation through the Judicial Training Centre and the Police Academy.
65. Montenegro ensures an initial record of successful handling of international judicial cooperation requests and the implementation of bilateral agreements on judicial cooperation with other countries in the region.

Montenegro intensifies its efforts to ensure compliance with EU requirements in the field of police cooperation and the fight against organized crime. Specifically:

66. Montenegro concludes an operational agreement with Europol and implements it satisfactorily.
67. Montenegro establishes a secure electronic communication system that enables law enforcement agencies and prosecutors to exchange data effectively and securely.
68. Montenegro ensures that the special investigative team in the special prosecutor's office has direct access to relevant databases.
69. Montenegro conducts an analysis of existing equipment, human resources, and training needs in the field of police cooperation and ensures that future steps are clearly defined.
70. Montenegro continues implementing its anti-trafficking strategy, developing a comprehensive victim-oriented approach, closely monitoring its effects, and taking corrective measures when necessary.
71. Montenegro implements its national strategy for combating corruption and organized crime (2010-2014) and the Action Plan (2013-2014), continuously monitoring and evaluating the impact of various measures and proposing corrective actions when needed.

- 72.** Montenegro revises its Criminal Procedure Code to make pre-trial procedures more effective. Montenegro establishes a new special prosecutor's office, significantly strengthens the capacity of the police to investigate financial crimes, ensures both bodies are well-connected with other relevant agencies, and significantly improves intelligence sharing and inter-agency cooperation.
- 73.** Montenegro establishes an initial record of results in efficient and effective investigations, prosecutions, and convictions in cases of organized crime (including money laundering, human trafficking, cybercrime, cigarette smuggling, drug trafficking, and arms trade) and demonstrates strong political commitment to internal and regional activities in addressing serious and complex organized crime cases.
- 74.** Montenegro takes measures to rationalize (Higher Court) and encourage the specialization of key institutions (Special Prosecutor's Office and Ministry of Interior) in the fight against organized crime.
- 75.** Montenegro aligns its legislation with the recommendations of the Financial Action Task Force (FATF), provides necessary training on the concept of financial investigation, and systematically conducts financial investigations parallel to criminal investigations of corruption and other white-collar crimes.
- 76.** Montenegro develops an effective witness protection system through amendments to the Witness Protection Law and provides specialized training, better equipment, and increased staffing in the witness protection unit.
- 77.** Montenegro adopts new asset recovery legislation, establishes an Asset Recovery Office, appoints the office's management based on transparent and objective criteria focusing on merit and professional skills, and ensures an initial record of results with an increased number of cases and higher sums of confiscated criminal proceeds, including in cases of organized crime and money laundering.
- 78.** Montenegro ensures an initial record of results with an increasing number of suspicious transactions reported to the Financial Intelligence Unit and ensures their proactive use in criminal investigations.

Montenegro intensifies its efforts to ensure compliance with EU requirements in the field of combating terrorism:

- 79.** Montenegro implements its counter-terrorism strategy and takes steps to align with the relevant *acquis* in accordance with the timelines set out in its Action Plan.

Montenegro intensifies its efforts to ensure compliance with EU requirements in the field of drug cooperation:

- 80.** Montenegro successfully implements the National Strategy for Drug Abuse Prevention.
- 81.** Montenegro takes measures to increase the operational capacity and cooperation between agencies involved in combating drug trafficking.
- 82.** Montenegro ensures an initial record of increased drug seizures, including at the port in Bar and along the maritime border.
- 83.** Montenegro ensures that final judgments for drug trafficking systematically include decisions on the confiscation of illicitly acquired assets.

Anex 2 – Final Benchmarks for Chapters 23 i 24

Chapter 23¹²

In view of the state of Montenegro's preparations, the EU notes, on the understanding that Montenegro has to continue to make progress in the alignment with and implementation of the acquis covered by the chapter Judiciary and Fundamental rights, in particular on those issues set out above, and the priorities identified in the European Commission's annual reports and in the political dialogue between the EU and Montenegro, that this chapter may only be provisionally closed once it is agreed by the EU that the following closing benchmarks are met:

Montenegro implements a comprehensive justice reform in line with the EU acquis and European standards on impartiality, independence, accountability, efficiency, professionalism, access to justice and quality. In particular, Montenegro will meet this benchmark once it:

1. Ensures effective implementation of its Judicial Reform Strategy and its actions plans and, in particular, puts in place sufficient institutional capacity for the management of judicial reforms.
2. Ensures in law and practice the sustained independence, accountability, professionalism, access to justice and integrity of the justice system at all levels, including freedom from and resilience of the judicial system to attempts of undue internal and external influence, in line with European standards and Venice Commission recommendations.
3. Ensures the capacity, independence, accountability, and effectiveness of the self-governing bodies of the judiciary, including as regards the composition and decision-making process of the Judicial Council, in line with European standards.
4. Ensures the justice system, including the Courts and prosecution offices, is overall efficient, with judges and prosecutors delivering quality decisions and indictments within a reasonable time period, the existence of a well-functioning integrated case management system, including a reduction in the backlog of cases, financial and human resources including adequate support staff, an effective and qualitative judicial training system in place and effective enforcement of court decisions, with alternative dispute resolution being widely and appropriately used.
5. Establishes a credible and sustained track-record of effectively investigating, prosecuting, and trying cases of war crimes, including high level cases in line with international law and standards, in full cooperation with the International Residual Mechanism for Criminal Tribunals, and ensures access to justice and reparations to victims.

Montenegro puts in place robust and effective systems to prevent and counter corruption, including high-level corruption. In particular, Montenegro will meet this benchmark once it:

1. Establishes adequate operational capacities of the specialised anti-corruption bodies and regular judicial institutions to fight corruption, including high-level corruption, through cooperation with relevant EU bodies, including by ensuring the quality and capacity of the training system as well as the efficiency of case management systems.
2. Establishes a solid and sustained track record of investigations, prosecutions, and final convictions in corruption cases, in particular in high-level corruption cases, including a pro- active and effective approach to international cooperation.

¹² More on <https://data.consilium.europa.eu/doc/document/AD-13-2024-INIT/en/pdf>

3. Establishes a solid track record in seizure and final confiscation of assets, including a credible and consistent practice of launching parallel financial investigations when dealing with corruption cases, including high-level corruption, and with a fully operational asset recovery office responsible for identifying and tracing criminal assets with adequate human and financial resources.
4. Consolidates a robust corruption prevention framework, including a solid and sustained track record of administrative investigations and deterrent sanctions, with the Agency for the Prevention of Corruption operating in full political and operational independence and acting in an effective, impartial and pro-active manner on cases falling under its responsibility, as well as with adequate follow up by the prosecution service to cases where possible criminal behaviour is detected by the Agency, ensuring the merit-based appointment and recruitment of its management and staff.
5. Adequately implements and mainstreams a solid strategic framework to prevent and counter corruption, based on a new multiannual anticorruption strategy in line with European standards. This should translate into substantial improvements towards prevention and combatting of corruption across the most vulnerable sectors and beyond, as relevant.
6. Adopts and effectively implements legislation on financing of political parties and election campaigns in line with European standards.

Montenegro protects fundamental rights both in law and in practice and is fully prepared to implement the European Charter of Fundamental Rights and other relevant EU acquis upon accession. In particular, Montenegro will meet this benchmark once it:

1. Ensures the effective implementation and enforcement of the rights and freedoms set out in the European Convention on Human Rights, its protocols, and the jurisprudence of the European Court of Human Rights.
2. Implements the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) and ensures appropriate and swift judicial follow up in cases of ill-treatment should these occur.
3. Ensures effective protection of freedom of expression and media by implementing a reformed legislative and regulatory framework including as regards transparency of media ownership, in line with the EU acquis, European standards, best practices and recommendations, as well as tackling effectively foreign information manipulation and interference.
4. Establishes a credible track record implementing provisions on non-discrimination, gender equality and combating gender-based violence, protection of persons belonging to minorities and cultural rights, in line with the EU acquis and European standards and provides effective mechanisms for redress and assistance to victims.
5. Implements a de-institutionalisation strategy for persons with disabilities, as well as a strong child protection system grounded in community-based care, with the best interest of the child as the guiding principle, including as regards children deprived of parental care or with disabilities.
6. Ensures fair restitution proceedings for property rights within a reasonable time and full independence of the Regional Restitution Commissions.

Chapter 24¹³

In view of the state of Montenegro's preparations, the EU notes, on the understanding that Montenegro has to continue to make progress in the alignment with and implementation of the acquis covered by the chapter

¹³ More on: <https://data.consilium.europa.eu/doc/document/AD-14-2024-INIT/en/pdf>

Justice, Freedom and Security, in particular on those issues set out above, and the priorities identified in the Commission's annual reports and in the political dialogue between the EU and Montenegro, that this chapter may only be provisionally closed once it is agreed by the EU that the following closing benchmarks are met:

Montenegro delivers sustained, substantial results in the field of legal and irregular migration, on asylum, and on issues related to the Schengen acquis, visa policy and controlling its external borders. In particular, Montenegro will meet this benchmark once it:

- Establishes a solid track record of effectively managing mixed migration flows, including proven ability to properly control its borders, sufficient border and reception capacities, and concrete results combatting irregular immigration, prosecuting and dismantling networks of migrant smuggling, and effective international cooperation, including on return and readmission, including effective return mechanisms.
- Ensures there is a functioning asylum system in place in line with EU acquis, secures continuous adequate staffing of the Directorate of Asylum, and ensures appropriate reception capacity.
- Fully aligns its visa policy with that of the EU, in particular ending the practice of issuing seasonal visas and amending the lists of countries whose citizens are under visa obligation and those whose citizens are exempted of that obligation when entering; both lists must be made identical with those in force in the EU.

Montenegro has in place robust and effective systems to tackle and prevent organised crime, guided by the principles of prevention, protection, and responding. In particular, Montenegro will meet this benchmark once it:

- Aligns its legal framework with European and international standards on the fight against organised crime and cooperation in the field of drugs, and adequately implements and mainstreams a solid strategic framework to prevent and counter organised crime and drug abuse, based on strategic documents in line with European standards.
- Establishes a solid and sustained track record of investigations, prosecutions, and final convictions in all fields of serious and organised crime and money laundering (including stand-alone offences), including a pro-active and effective approach to international cooperation. This will require adequate resources and efforts to tackle lengthy procedures. Establishes a solid track record in seizure and final confiscation of assets, including a credible and consistent practice of launching parallel financial investigations when dealing with organised crime and money laundering, and with a fully operational asset recovery office responsible for identifying and tracing criminal assets with adequate human and financial resources.
- Ensures that final convictions for drugs trafficking are consistently accompanied by decisions on the confiscation of unlawfully gained assets.
- Adequately implements a comprehensive, gender-specific and victim-centred legal and policy framework in place to prevent and combat trafficking in human beings, fully in line with the EU acquis; with a solid track record of pro-actively detecting, identifying and providing accommodation, protection, assistance and support to (potential) victims, with substantial progress in dismantling networks of trafficking in human beings and in investigating, prosecuting and convicting the traffickers.

Montenegro ensures that anti-terrorism policy is in line with the EU acquis, guided by the principles of prevention, protection, and responding, and is effective in practice, as well as aligns its legal framework with European and international standards on anti-money laundering and counter-terrorism financing.

