

Slavica Penev
Sanja Filipović

IMPROVING THE PROCESS OF ECONOMIC REFORM LEGISLATION IN MONTENEGRO



INVESTMENT COMPACT
FOR SOUTH EAST EUROPE

EKONOMSKI INSTITUT
ECONOMICS INSTITUTE

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Second Edition



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FOREWARD

Legislative reform is one of the pre-conditions for the creation of a favorable investment environment in South East Europe (SEE). Countries in this region often have more burdensome regulations and a less favorable investment climate compared with Central European countries and transition countries that recently joined the EU. In the absence of legal reforms to promote a functioning market economy, investment and innovation will not develop; there is a significant risk of corruption in both public and private sectors, with an increase in the size of the informal economy, and reduced income and employment growth.

The network of government bodies with control functions in SEE economies is complex, and their responsibilities are often vaguely defined, overlapping and contradictory. In the next couple of years, there will be very intensive legislative activity in the SEE countries because of the necessity to comply with EU rules, as well as the need to complete the process of reform. This is why it is urgent to improve the quality of the legislative process by better management of the draft laws arising from multiple sources within the Government.

For this purpose it is necessary to identify and analyze existing legislative processes in the SEE countries and their main weaknesses, and to propose solutions for improvement.

The Project entitled How To Improve the Legislative Process in Serbia and Bosnia and Herzegovina - The path from Proposing a Law to Enacting it in Parliament, has been designed to outline the necessary steps to improve the design and implementation of legislation. It has been conceived as a pilot for the SEE region that could be integrated into the monitoring process under the OECD-led Investment Compact.

The idea for this project was conceived at the Regional Parliamentary Conference: “The Role of Parliaments in Economic Policy and Institutional and Legal Reforms in South East Europe” held in Dubrovnik (2004) and organized by the Friedrich-Ebert Foundation, in cooperation with the OECD and the Stability Pact/ Investment Compact for South East Europe.

The Project Improving the Process of Economic Reform Legislation in Montenegro represents the next step towards the realization of the Regional Project, which would entail all the SEE countries. This Project focused primarily on the reform of the economic legislation in Montenegro, bearing in mind the importance it has for a successful completion of the transition process and creating a favorable business and investment environment in the country.

The first draft of the project was presented at a conference held in Podgorica (1 December 2006), which was co-hosted by the Government of Montenegro and the OECD's Investment Compact. This conference brought together members of the Government and parliamentarians from Montenegro, experts as well as representatives from the private sector and their associations.

The conclusions and recommendations from this conference have been incorporated in the final version of this Project, and the importance to organize another regional conference focused on common elements for improving parliamentary procedures in the field of economic reform legislation has been mentioned. The main aim of this Project is to underscore the importance of the legislature and its process for successfully conducting a transition process in Montenegro, which is on its path to creating a market economy. Special emphasis has been placed on the reform of the economic legislation as one of the crucial prerequisites for creating a favorable business and investment environment. "Lessons learnt" from this Project can be constructively implemented in the entire SEE region.



Rainer Geiger

OECD Co-Chair
SEE Investment Compact



Thomas Meyer

Head of a project at the,
Office for legal reform in
Serbia and Montenegro
GTZ



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The work has been structured by Rainer Geiger (Deputy Director for Financial, Fiscal and Enterprise Affairs, OECD), Thomas Meyer (Head of a project Office for legal reform in Serbia and Montenegro, GTZ) and Slavica Penev (Senior Research Fellow, Economics Institute, Belgrade).

The research has been undertaken by Slavica Penev as a head of a Project and Sanja Filipović (Research Fellow, Economics Institute, Belgrade).

The research has benefited from the input and comments to the Project, received from all relevant stakeholders at the workshop held in Podgorica. Special thanks are due to Gordana Đurović (Deputy Prime Minister for European Integration of the Government of Montenegro), Nada Mihailović - Pavićević (Advisor to the Deputy Prime Minister of the Government of Montenegro) and Dobrosav Milovanović (Director of the Economics Institute, Belgrade) for their contribution to this Project.

The study has been reviewed by Šaleta Đurović (Deputy Director of the Agency for Industrial Restructuring and Foreign Investment of Montenegro) and Peter Sanfey (Lead Economist, EBRD).

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SUMMARY

The legal system of Montenegro, as well as that of other former republics of Yugoslavia, which are independent states now, is a continental legal system mostly based on German, Austro-Hungarian and French legal traditions. At the same time, this specific legal system originates from decades of law enactment and practice in Former Yugoslavia.

The process of dissolution of Former Yugoslavia in early 1990s resulted in the creation of five new, independent countries including the Federal Republic of Yugoslavia, as a joint state of Serbia and Montenegro, which in 2003 becomes the State Union of Serbia-Montenegro. In 2006, they became two independent, mutually recognized states, the Republic of Serbia and the Republic of Montenegro.

Legal systems of these two newly established states originated from the same legal tradition.

Since the formation of the Former Yugoslavia, both republics began to enact laws on the republic level beside the federal legislation. In 2003, at the time of State Union of Serbia-Montenegro, this process was intensified, and resulted in Montenegro de facto having an almost entirely independent legal system in 2006.

In the past ten years, Montenegro has undergone an intensive process of institutional, administrative and legislative changes and made significant advancement regarding the improvement in its legal environment. Many high-quality laws have been enacted, which was a prerequisite for a successful conduct of the transition process.

The preparation of Montenegro for the EU and the World Trade Organization (WTO) accession, as well as the arrangements that Montenegro concluded with the International Monetary Fund and the World Bank, and the creation of the CEFTA free trade agreement in the region in 2006, significantly influenced the intensive legislative activity and the improvement in quality of laws. As a result of the aforementioned process progression, further continuation of intensive activity on drafting

new and improving the existent laws in Montenegro is expected in the course of the next years.

The Government, every Member of Parliament and at least 6,000 voters have the right to propose laws, other regulations and general acts in Montenegro. When the law is proposed by the Government, the Prime minister, Deputy Prime Minister, Member of the Government, or Permanent body of the Government have a mandate to provide initiatives and proposals for changes to existing and adoption of new laws.

A law can be drafted by: The Government (through the relevant Ministry), other administrative body (secretariats, bureaus, administrations, directorates and agencies) or other authorized proposer of law (every Member of Parliament, or at least 6,000 voters).

Along with the draft law, other regulation or general act, the proposer is obliged to obtain: the opinion of the Secretariat of Legislation pertaining to the compliance of the draft law with the Constitution and the overall legal system of Montenegro; the opinion of the Secretariat for European Integration pertaining to the compliance of the draft law with appropriate regulations of the European Union; the opinion of the Ministry of Justice pertaining to laws which regulate judicial proceedings as well as the provisions of the laws which regulate sanctions, specific administrative proceedings and violation procedures; the opinion of the Ministry of Internal Affairs and Public Administration pertaining to laws which regulate judicial proceedings before government bodies, systems of government bodies and local self-government units; a fiscal impact assessment of the law enforcement on the budget. Along with the draft law, the proposer is obliged to submit European Union regulations and acknowledged international conventions with which this act complies with.

Along with draft law and other regulations, as well as Government's strategic documents, the competent ministry is obliged to submit a report on completed inter-departmental consultations, which would contain statements, suggestions and opinions brought up during consultations.

Concerning the laws that are not proposed by the Government, they are submitted to the Council of Ministers and subsequently presented to

Parliament, together with the Government's opinion on the draft legislation.

Along with the draft law, it is necessary to submit a justification statement which shall contain: compliance with the European legislation and acknowledged international conventions; explanation of the basic legal concepts; assessment of the financial resources for law enforcement; if the draft contains provisions for which retroactive effect is anticipated, a statement of public interest to justify retroactive application; and text of the provisions which are being amended if the law includes amendments to existing legislation.

The Government can submit to the Parliament a proposal that deals with particular issues as a preliminary step towards legislation. In this case, the procedure is the same as with the draft law procedure. The Parliament considers the proposal and submits its remarks, suggestions and recommendations to the Government, which prepares the draft law and submits it to the Parliament for final consideration.

Prior to its consideration and adoption at the Parliament's plenary session, a draft law is considered by the competent Parliamentary Committees. All drafts need to be considered by the Committee for Constitutional Issues and Legislation and the Committee which is competent for the subject of the legislation. If the draft law incorporates issues within the area of competency of other Committees, the latter may also give their opinion on these issues.

The competent Committee may suggest to the Parliament to adopt the draft law as a whole, to adopt the draft law in the text amended in comparison to the text submitted by the proposer, or not to adopt the draft law.

The Parliament first holds a debate on the draft law in principle. After conclusion of the first debate Parliament can reject it in principle and decide that it will not be subject to detailed examination.

If, after the first debate there are no disputable constitutional issues, the desirability of the legislation is confirmed there are no amendments or those proposed in Parliament are accepted by Government the draft is adopted in the first reading, subject to further deliberation on the detailed provisions.

The laws enacted by the Parliament are published in the National Gazette of the Republic of Montenegro, and the President of the Republic proclaims the law.

Even though there is no obligation for a complete harmonization with the EU regulations, the proposer is obliged to submit a Statement of Compliance of the draft law with the regulations of the European Union.

Within the Statement of Compliance, the drafter should identify the relevant EU legal act, the level of harmonization of the draft law with the relevant sources, and if the harmonization is not complete, the drafter should state the reasons for it, together with a framework and deadlines for achieving complete harmonization, in accordance with the provisions of the Stabilization and Accession Agreement between the European Union and the Republic of Montenegro. If there are no relevant EU provisions with which the law has to comply this needs to be explicitly stated.

Creating a favorable legal and regulatory environment for business activities is one of the preconditions for successfully conducting the transition process in Montenegro to a functioning market economy. A favorable legal and regulatory environment implies the existence of high quality, modern, market-oriented laws, but also of an adequate institutional infrastructure, necessary for implementation.

In line with the majority of countries in transition, Montenegro has achieved progress in creating implementation capacity for legislation although there are still significant gaps in some areas.

A number of problems still exist in Montenegro's regulatory environment, and negatively influence the investment climate in the country. Above all, the problems relate to gaps in necessary regulation, excessive regulation in other areas, and existence of a number of obsolete laws inherited from the SFRJ and the FRJ, which remain effective until they are replaced by innovative, modern laws. There have also been instances where legislation has been prepared in haste, without adequate expert advice. There is no central registry of existing norms to check the coherence of new legislation. Ministries or regulatory agencies do not always have the necessary capacity to prepare high quality drafts, there is no sys-

tematic use of regulatory impact analysis and the drafters may not fully appreciate the difficulties of implementation.

These problems can have a negative impact on legal certainty and perception of business risk in Montenegro and thus have a deterring effect on both domestic and foreign investment.

A comprehensive regulatory reform is required to address such problems and to identify the necessary measures to overcome them. The basic goal should be creation of a legal framework for economic and social development which brings a significant increase in legal certainty. Such a reform would imply the abolition of unnecessary or obsolete regulation, introduction of new rules in areas that have been under regulated, and simplification of existing legislation. It would also be desirable to consolidate economic legislation in codes which are easily accessible and presented in a user friendly manner.

A forward planning system of regulatory actions in Montenegro was introduced in 2001, as an integral part of the Government Annual Agenda. The ministries and other administrative bodies submit their proposals, initiatives and suggestions on the necessities of drafting new laws and amending the existent laws and by-laws. The institutions competent for drafting the mentioned acts, the ways of drafting acts and deadlines for their implementation, are clearly defined within this framework. The Government Agenda, which also includes the regulatory actions mentioned, shall be published on the Government web site.

There is no legal obligation for performing public consultation in the process of drafting laws and other legal acts in Montenegro. If the Government considers that that a public consultation is necessary for certain laws and other regulatory acts, it determines the program for consultation appoints the body to perform it and sets relevant deadlines.

The obligation to perform Regulatory Impact Analysis (RIA) is not officially introduced into the legislative system in Montenegro, but the need for introducing RIA into the legislative process in Montenegro is identified in the Administration Reform Strategy in Montenegro (2002-2009) and in the Development Strategy of Montenegro (2003-2007). These

strategic documents imply developing methodology for enforcing RIA, and its implementation into the new regulatory and institutional system in Montenegro.

Even though the work of lobby groups is not institutionalized in Montenegro, the practice of lobbying with the goal of influencing governing bodies and legislation has is a common phenomenon. Labor unions, political parties, associations of domestic and foreign business representatives and other informal lobby groups have taken an active part in the legislative process in order to defend their interests.

In Montenegro, as well as in a majority of countries in transition, implementation often lags behind the development of economic reform legislation. Lack of enforcement can undermine the credibility of the legal system and is perceived as an obstacle to investment and private sector development.

Parliament can monitor the enforcement of laws and secondary regulations through its committees and commissions. Regulatory agencies are obliged to submit a report on their activities to the competent parliamentary committee.

The Committee for international relations and European integrations and the Committee for monitoring publicity and transparency of the privatization process play a significant role in that process. The Committee for international relations and European integrations is also a means of parliamentary oversight of the Government activities, with the aim of monitoring the compliance of new laws with the *Acquis Communautaire*. Where necessary, this Committee and also initiate harmonization of the Montenegrin legal system with the European standards. The Committee for monitoring publicity and transparency of the privatization process oversees the work of the segment of the executive power that is conducts the privatization process.

The Parliament of the Republic of Montenegro does not have a research department that would provide members of the parliament and the parliament working bodies with necessary information on legislation and other issues, which are being decided upon in the Parliament. This task is, to

some extent, performed by a number of experts, permanently engaged in the Parliament, among whom there are: Secretaries of the committees, advisors engaged (employed) with the Cabinet of the President of the Parliament and other operating units of the Parliament.

New Rules of Operation of the Parliament allows for the establishment of the Department for Informative and Documentation issues that, apart from the parliamentary Library, also contains the Research and Documentation Centre. The Centre would present some kind of precursor to a research department; it could help collect data and perform analysis and prepare briefs at the request of members of the parliament, MPs groups, working bodies and the Parliament Service. Since the Centre has been programmed for only two employees, its capacity will not be sufficient for providing services on such a wide scope. Additionally, the new Rules of Operation of the Parliament provide for the possibility to engage researchers, professional analysts and consultants for specific thematic fields upon request of the competent parliamentary bodies.

The institutions involved in the control of coherence of laws are the Legislation Secretariat at the level of the Government, and the Committee for Constitutional Issues and Legislation, at the level of the Parliament. Institutions involved in quality control of laws and the compliance with Acquis Communautaire are the Secretariat for European Integrations, at the level of the Government and the Committee for International Relations and European Integrations, at the level of the Parliament.

On the basis of the above findings, the following conclusions and recommendations can be summarized as follows (the full text of the recommendations is provided in chapter V of the Report):

- a) In order to improve the system of public consultation and transparency, consultations with all interested parties and public hearings, where appropriate, should be mandatory for all major draft laws and regulations;
- b) The existent forward planning system of legislative activities should be improved;

- c) Explicit standards for quality and coherence of legislation should be introduced;
- d) Regulatory Impact Analysis (RIA) will provide decisions makers with information on the likely impacts of the proposed measure on markets and market competition. It will also help assess the cost effectiveness of the proposed regulation;
- e) A Council for Regulatory Reform should be established as the body competent to monitor the performance of RIA throughout the Government;
- f) Ex-post RIA system should be established and inter-ministerial cooperation enhanced in order to improve the enforcement of regulation;
- g) Parliamentary control over the executive power should be strengthened by requesting periodical activities reports by government departments and regulatory bodies in charge of implementation of legislation;
- h) It is essential to strengthen parliamentary capacities, with the aim of improving the quality and coherence of laws; for this purpose there has to be sufficient parliamentary staff capable of collecting data, performing policy research and analyzing legislative proposals, as necessary, and by establishing a special expert body at the level of the Parliament, to provide advice in matters relating to European integration.

INTRODUCTION

The idea for project of improving the legislative process in countries of South East Europe, was conceived at a Regional Parliamentary Conference “The Role of Parliaments in Economic Policy and Institutional and Legal Reforms in South East Europe” held in Dubrovnik (2004), organized by the Friedrich Ebert Foundation, in cooperation with the OECD and the Stability Pact/Investment Compact for South East Europe. The most important conclusions of the Conference were the following: (i) In order to verify the conformity of the proposed legislation with the constitution, existing legislation, the EU framework and international standards, there is a need for specific review capacity both at the parliament and at the government levels; (ii) Regional networking and exchange of information is required, i.e. exchanges of experience between Parliaments in the region would be highly beneficial, and (iii) Institutional reform and development of a well-functioning institutional infrastructure are necessary preconditions for a successful implementation of laws.

Based on the above-mentioned conclusions, a project entitled How to Improve the Legislative Process in Serbia and Bosnia and Herzegovina - The Path from Proposing a Law to Enacting it in Parliament was realized as a pilot for the SEE region.

The Project Improving the Process of Economic Reform Legislation in Montenegro represents the next step towards the realization of the Regional Project. This Project focused primarily on the reform of the economic legislation in Montenegro, bearing in mind the importance it has for a successful completion of the transition process and creating a favorable business and investment environment in the country.

Main components of this Report are:

1. Overview of the legislative process in Montenegro

This section of the Report provides an overview of the legislative process, from the drafting of the law through its enactment by the Government and, consequently, by the Parliament.

2. The obligation for conducting regulatory reform in Montenegro and implementing the Regulatory Impact Analysis (RIA)

This section of the Report underlines the need to conduct a comprehensive regulatory reform aiming at: (i) creating a legal framework necessary for the development of economy and society in general, and (ii) reducing the regulatory risk.

3. Problems in the process of implementing the laws and possibilities for overcoming them

If there are problems and uncertainties in the implementation of laws that govern economic legislation this may be a serious obstacle to investment. These shortcomings have to be identified in order to take remedial action.

4. Resources that the Parliament has at disposal for drafting and monitoring the implementation of laws

This section of the Project provides an overview of the resources that the Parliament has available for efficiently drafting and monitoring laws and other regulations.

5. Recommendations for improving the existing legislative process

This Project provides a series of recommendations for improving the legislative process in Montenegro.

Chapter I

ENACTMENT OF NEW LAWS AND REVISION OF THE EXISTING LAWS

1.1. Who proposes new laws and revision of the existing one?

In accordance with Article 85 of the Constitution of the Republic of Montenegro,

- The Government,
- Member of Parliament, or
- At least 6,000 voters

have the right to propose laws.

When the law is proposed by the Government, the

- Prime minister
- Deputy Prime Minister
- Other Members of the Government or permanent bodies of the Government can take the initiative.

The Parliament or a minimum number of voters have also the right to propose draft legislation, but this is rather exceptional in practice.

1.2. Who drafts laws?

The Proposal of law, which is to be submitted to the Parliament of the Republic of Montenegro, is drafted in accordance with the Rules of Procedure of the Republic of Montenegro.

A law can be drafted by:

- The Government
- Other authorized proposer of law (Member of Parliament, or at least 6.000 voters).

When the Government proposes the law, the drafting can be executed by:

- The relevant Ministry, or
- Other administrative bodies (secretariats, bureaus, administrations and directorates).

Along with the draft law, the proposer is obliged to obtain:

- The opinion of the Secretariat of Legislation pertaining to the compliance of the draft law with the Constitution and the overall legal system of Montenegro;

- The opinion of the Secretariat for European Integration pertaining to the compliance of the draft law with appropriate regulations of the European Union;
- The opinion of the Ministry of Justice pertaining to laws which regulate judicial proceedings as well as the provisions of the laws which regulate sanctions, specific administrative proceedings and violation procedures;
- The opinion of the Ministry of Internal Affairs and Public Administration pertaining to laws which regulate judicial proceedings before government bodies, systems of government bodies and local self-government units;
- A budgetary impact assessment of the law enforcement.

Along with the draft law, the proposer is obliged to submit European Union regulations and international conventions with which this act is supposed to comply.

Along with the draft law, the competent ministry is obliged to submit the report on any completed inter-ministerial consultations, which would contain statements, suggestions and opinions brought up during the consultations.

The enactment procedure commences with submitting a draft law. The draft law is submitted in the form in which it is to be adopted, and it must be accompanied by a justification statement.

The draft, accompanied by the explanation, shall contain the following:

- Constitutional basis for the proposed legislation;
- Reasons for enacting the law;
- Compliance with the European legislation and relevant international conventions¹;
- Explanation of the basic legal concepts;
- Assessment of financial means of law enforcement;

¹ It is necessary to fill out the Statement of Compliance of the draft law with complementary regulations of the European Union, in accordance with the instruction for filling out the Form of Compliance with European Union regulations, administered by the Ministry of International Economic Relations and European Integrations.

- If the draft contains provisions for which retroactive effect is anticipated, a statement of the public interest justifying retroactive application;
- Text of the provisions which are being amended if the laws amend existing legislation.

The Government can submit to the Parliament a statement of intent to legislate on particular issues. In this case, the procedure is the same as with the draft law procedure. The Parliament will consider the proposal and submit its remarks, suggestions and recommendations to the Government, which then submits a draft law to Parliament for consideration.

Concerning draft laws which do not emanate from the Government, the proposal is first examined by the Government which then submits in to Parliament together with its own opinion.

1.3. Procedure for adopting laws

1.3.1. Procedure for preparing draft legislation within the Government

The draft law is first adopted by the Government before its submission to Parliament and must be accompanied by a justification statement.

Proposer of the law is obliged to submit the following documents, attached to draft proposal:

- The opinions of the competent bodies (Secretariat of Legislation, Ministries and other relevant bodies who had already provided their opinion), and
- Drafters' views on those opinions.

If the Ministry, or another body that prepares the draft law does not accept the views of the Secretariat of Legislation, other ministries or bodies involved in the process and no agreement is reached at that level, the competent Deputy Prime Minister will take a decision.

Along with the draft law, the drafter also submits to the Government a proposal for appointing the representative who will take part in the activities of the Parliament of the Republic of Montenegro and its working bodies.

The General Secretariat within the Government checks whether the required documentation is complete. If it determines that the formal conditions for adoption are fulfilled, the draft law is submitted for consideration to the competent Government Committee.

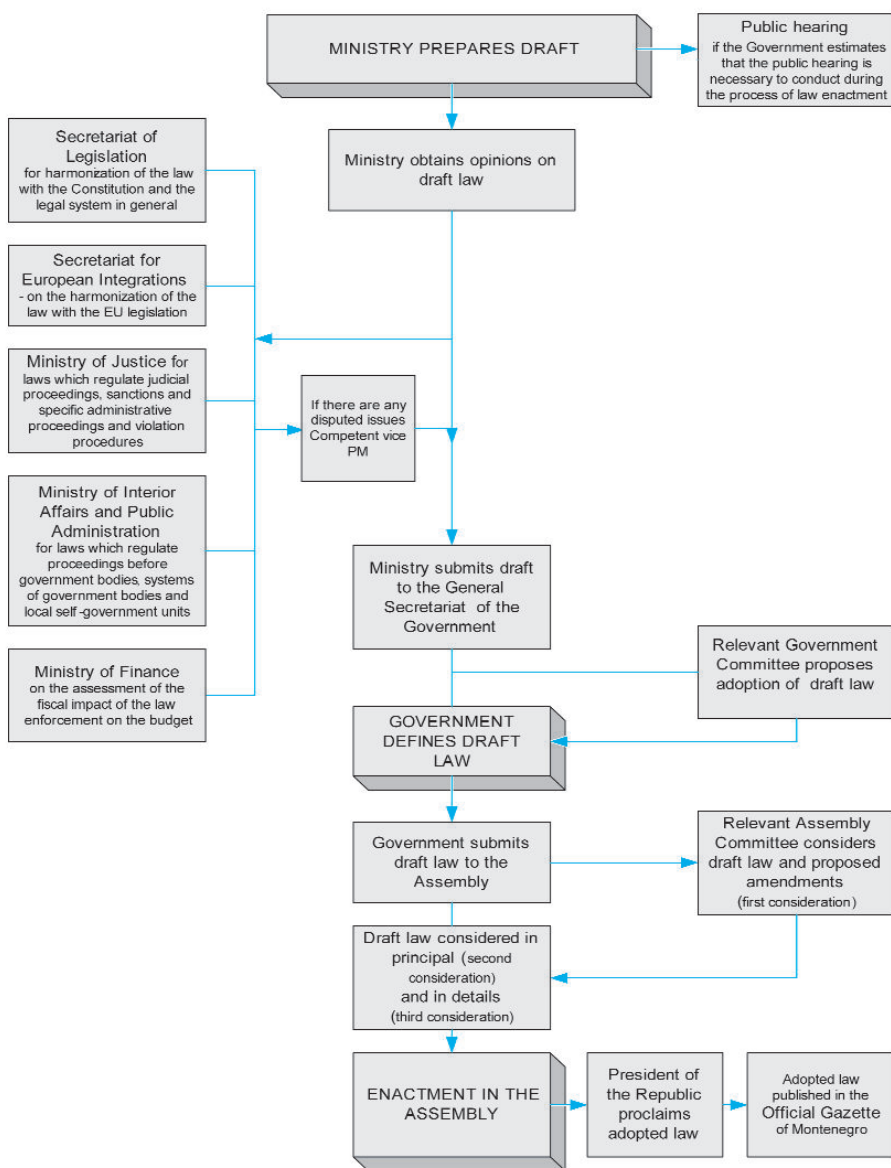
The Government consists of the following Committees as its permanent working bodies:

- Committee for Political System, Internal and Foreign Policy;
- Committee for Economic Policy;
- Committee for Financial System and Public Consumption;
- Committee for Personnel and Administrative Policy;
- Committee for Human Resources and Administration;
- Committee for distribution of a part of budgetary reserve resources.

The Committees consider draft laws in accordance with their competences. When it is satisfied with the text, it submits it to the Government of adoption and transmission to Parliament.

If the proposer of the law is not the Government, but some other authorized proposer, the draft law before being considered by Parliament is submitted to the Government for its opinion. The Government may advise the Parliament to reject the draft or enact it with or without amendments.

Figure 1: Procedure of enactment of laws proposed by the Government



1.3.2. Procedure of Enactment of Laws in the National Parliament

Once submitted to the National Parliament, the draft law is distributed by the President of the Parliament to the Members of Parliament (MPs) and the competent Committees. If the Government is not the proposer, the draft law is submitted to the Government for its opinion and published at the web site of the Parliament.

First consideration. Competent Committees consider the draft law prior to its consideration at the Parliament session. The first consideration is intended for the Members of Parliament to become generally conversant with the act submitted. A plenary session debate is being held only at the request of a certain number of MPs, resulting in a decision as to whether the procedure for enactment should be pursued.

Unfortunately, the previous experience with the Parliament activity indicates that the Committees did not perform their roles satisfactorily in the course of the parliamentary process. Often greater importance was attached to the plenary session performance than on the essential, professional debate that should take place at the level of the competent committees. Likewise, the committee procedures were often being evaded by applying rules of urgency.²

The New Rules of Operation of the Parliament, adopted on July 2006 and which came into force with the convocation of the new Parliament in October 2006, introduce novelties into the legislative procedure and attach more importance to the Parliament Committees. According to the Rules of Operation, the Parliament cannot hold a debate on the draft law if the Committee report has not been previously submitted, and the recourse to urgent procedure is limited.³

² NDI (2006), *New Challenges for the New Mandate*, pg. 11.

³ According to Article 151 of the Assembly Rules of Operation, “the law which is to regulate issues and relations that ensued from the circumstances that could not be anticipated, can be enacted by shortened procedure, and non-enactment could cause prejudicial consequences“.

According to new Rules of Operation, the standing working bodies of the Parliament are:

- Committee for Constitutional Issues and Legislation;
- Committee for Political System, Justice and Administration;
- Committee for Security and Defense;
- Committee for International Relations and European Integrations;
- Committee for Economy, Finances and Budget;
- Committee for Human Rights and Freedoms;
- Committee for Gender Equality;
- Committee for Tourism, Agriculture, Ecology and Spatial Planning;
- Committee for Education, Science, Culture and Sport;
- Committee for Health Care, Labor and Social Welfare;
- Administrative Committee.

Consideration of the draft law submitted to the Parliament is mandatory for the Committee for Constitutional Issues and Legislation and for the competent Committee. If the draft law incorporates particular issues within the area of competency of other Committees, the latter may also consider the draft law regarding particular issues. If the draft law imposes charges on the budget of the Republic, the draft also has to be considered by the Committee for Budget.

The Committees, which considered the draft law apart from the main competent Committee, submit their opinion on the draft to that Committee. The competent Committee shall consider opinions received from other Committees which examined the draft law, and shall report about the Committees' opinion in the Statement which it submits to the Parliament.

The Competent Committee may suggest to the Parliament the following: (i) to adopt the draft law as a whole; (ii) to adopt the draft law with amendments; (iii) not to adopt the draft law.

When the draft laws and amendments to them are considered at the Committee session, the proposers of the draft laws and amendments, or their authorized representatives, shall be invited to attend the session.

Second consideration. The Parliament in plenary session first examines the draft law in principle.

A debate in principle comprises the debates on:

- Constitutional basis;
- Reasons for enacting the law;
- Compliance of the law with the European legislation and relevant international agreements;
- Nature and effects of the proposed solutions and assessment of necessary budget resources for law enforcement.

After conclusion of the primary debate, the National Parliament may decide: (i) to adopt the draft law in principle, or (ii) to reject the draft law. If the draft law is rejected at this stage there will be no further debate.

Third consideration. If the Parliament adopts the draft law in principle, prior to debating the draft law's particulars, the President of the Parliament invites competent Committees to reconsider the draft law and the submitted amendments, and to submit the report no later than two days.

The laws enacted by the Parliament are published in the National Gazette of the Republic of Montenegro. The law is proclaimed by the President of the Republic.

1.4. Is harmonization with European Union legal system obligatory?

According to the Rules of Operation of the Republic of Montenegro Government and the Rules of Operation of the Republic of Montenegro Parliament, the proposer is obliged to submit a Statement of Compliance of the draft law with the regulations of the European Union.

Within the Statement of Compliance of the draft law with corresponding regulations of the European Union, the drafter should determine:

- The relevant EU legal act, i.e. harmonization of the draft law with *Acquis Communautaire* (with primary, secondary and other sources of the EU regulation),

- The level of harmonization of the draft law with relevant sources (harmonized, partly harmonized, not harmonized),
- If the harmonization is not complete, the drafter should state the reasons for it,⁴
- Framework and deadlines within which the harmonization is to be completed,
- Harmonization of the draft law with the provisions of the Stabilization and Accession Agreement between the European Communities and their Member States and the Republic of Montenegro.

If there are no specific EU regulations with which to comply this has to be explicitly stated.

Hitherto, the Ministry of International Economic Relations used to play an important role in harmonizing laws and other regulations with the legislation of the European Union, but in future, that role will be assumed by the Secretariat of European Integration⁵ through direct participation in the process of drafting and giving the opinion on whether a satisfactory level of harmonization with the EU legislation was accomplished, during the drafting process.

The Committee for International Relations and European Integration within the Parliament of the Republic of Montenegro debates on the law harmonization with the EU legislation.

⁴ When stating the reasons for not achieving a complete compliance, it is necessary to provide an analysis of factors, a study or another document.

⁵ Ministry for International Economic Relations and European Integration has been abolished in November 2006, and a Secretariat for European Integration has been established, which is directly administered by the Deputy Prime Minister for European Integration.

The Council for European Integrations, as an advisory body of the Government of the Republic of Montenegro, the Members of which are President of the Republic, Prime Minister, President of the Parliament⁶, apart from other duties also plays an active role in considering and proposing measures for legislative harmonization, necessary for successful and efficient process of the EU association.

⁶ The Council Members are: President of the Republic of Montenegro (Chairs the Council), Prime Minister of the Republic of Montenegro of the Republic of Montenegro, President of the Assembly of the Republic of Montenegro, Deputy Prime Minister for European Integrations, President of the Montenegrin Academy of Sciences and Arts, President of the Constitutional Court of the Republic of Montenegro, Rector of the University of Montenegro, President of the Supreme Court of the Republic of Montenegro. Beside the Council Members in terms of office, the Council may also invite renowned scientists and executives of the research institutions and organizations of civil society to attend the Council sessions.

Chapter II

REGULATORY REFORM AND IMPLEMENTATION OF REGULATORY IMPACT ANALYSIS (RIA)

2.1. Needs for deregulation and regulatory reform

Creating a favorable legal and regulatory environment, as a crucial segment of the business environment, is one of the preconditions for successfully conducting the transition to a functioning market economy.

A legal and regulatory environment which is conducive to investment implies the existence of:

- high-quality, modern, market oriented laws;
- an adequate institutional infrastructure, necessary for implementation.

As well as a majority of countries in transition, Montenegro has achieved appreciable improvement regarding the quality of laws, relative to their implementation.

Box 2.1. **What is regulation and regulatory reform?**

There is no generally accepted definition of regulation applicable to the very different regulatory systems in OECD countries. In the OECD work, regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to which governments have delegated regulatory powers.

Regulations fall into three categories:

Economic regulations intervene directly in market decisions such as pricing, competition, market entry, or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.

Social regulations protect public interests such as health, safety, the environment, and social cohesion. The economic effects of

social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other instruments, such as market incentives and goal-based approaches, that are more flexible, simpler, and more effective at lower cost.

Administrative regulations are paperwork and administrative formalities - so-called “red tape” - through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

Regulatory reform is used in the OECD work to refer to changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance.

Source: OECD (1997), Report on Regulatory Reform.

During the last couple of years, very intensive legislative activity in Montenegro, professionally and financially supported by the donor community⁷, resulted in drafting a significant number of high-quality laws.

⁷ The most important donors in Montenegro were: USAID, EAR, UNDP, WORLD BANK, including the bilateral support from some European Union members such as Holland, Norway and Germany through GTZ programmes.

The improvement is particularly evident in the area of economic legislation. These laws aim to liberalize the legal and regulatory framework to support the operation of a market economy.⁸

The preliminary preparation of Montenegro for the EU and the World Trade Organization (WTO) accession, as well as the arrangements that Montenegro concluded with the International Monetary Fund and the World Bank, and the creation of the CEFTA free trade agreement in the region in 2006, significantly influenced the intensive legislative activity. As a result of the economic integration, further continuation of intensive activity on drafting new and improving the existent laws in Montenegro is expected in the course of the upcoming several years.

Boks 2.2. **OECD Principles of “good regulation”**

According to the 1995 OECD Recommendation on Improving the Quality of Government Regulation, good regulation should:

- be needed to serve clearly identified policy goals and effective in achieving those goals;
- have a sound legal basis;
- produce benefits that justify costs, considering the distribution of effects across society;
- minimize costs and market distortions;
- promote innovation through market incentives and goal-based approaches;
- be clear, simple, and practical for users;
- be consistent with other regulations and policies; and
- be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.“

Source: OECD (1997), Report to Ministers on Regulatory Reform.

⁸ FIAS / World Bank (2004), Montenegro Investment Environment Diagnostic Study, str. 3.

However, in Montenegro, as well as in other countries of the region, implementation does not always follow the pace of new legislation and there are still gaps in institutional infrastructure necessary for the enforcement of legislation.⁹

Apart from apparent results of the legislative activity hitherto, a number of problems still exist in Montenegro's regulatory environment and negatively impact the quality of the legal and regulatory climate in the country. Above all, the problems relate to:

- lack of necessary regulation in some areas;
- excessive regulation in other areas;
- existence of a number of obsolete laws inherited from the SFRJ and the FRJ, which remain in force until replaced by innovative, modern laws;
- cases of fast drafting and enactment of laws without an adequate support from experts;
- absence of a unique central registry of existing norms;
- lack of capacity within the ministries and other administrative bodies for drafting complex legislation and introducing regulatory impact analysis, and
- insufficient development of the institutions which are necessary for implementation.

2.2. Regulatory reform in Montenegro

A comprehensive regulatory reform is required in order to obtain an overall picture of the abovementioned problems in the regulatory environment, and to identify the measures necessary for overcoming them. Its basic goals should be: (i) creating a legal framework necessary for developing economy and society in general; (ii) reducing the legal uncertainty.

⁹ Indicators presented by the OECD simply confirm the fact that development of institutions is the greatest problem in the process of transition. Even in Central European countries, which recently became Members of the EU, the process of building institutional infrastructure is still not completed.

The implementation of the reform would imply:

- deregulation in terms of abolishing unnecessary and obsolete regulation;
- regulation of the areas that have not been regulated up to now;
- simplification of existent legislation.

In order to create prerequisites of improving the legal system it is necessary to improve the institutional framework for markets and business activities.

Montenegro has no regulatory reform strategy that could identify current problems in regulatory environment and ways to overcome them. A number of problems are identified in the Administration Reform Strategy in Montenegro 2002-2009 and in the Development Strategy of Montenegro 2003-2007, and their overcoming is set as a reform priority.

One of the key goals of the Administration Reform Strategy in Montenegro is to improve the quality of legislation and perform deregulation in particular, over-regulated areas. The Strategy further indicates the necessity for proposed regulations to be proportionate, balanced and effective. The Strategy implies a comprehensive public consultation in which all subjects, affected by those regulations, shall participate.

In order to achieve greater discipline and monitoring in the regulatory area, this Strategy introduces the following measures: (i) regulatory “check list”, (ii) methodology of regulatory analysis, (iii) modeling explicit standards for legislation quality, including initiation of alternative approaches to regulating social relations (economic stimulation, contractual mechanisms, and auto-regulation).

This Strategy provides for introducing the system of regulatory analysis (Regulatory Impact Analysis) into the administrative system, until December 31, 2009.

The Administration Reform Strategy in Montenegro 2002-2009 classifies development of economic regulation as a reform priority, through improving efficiency and independence of the regulatory bodies’ activities, and constituting mechanisms for surveying the achieved results within the area of regulatory bodies’ competences. Above all, this implies improvement of

the regulatory system of infrastructural activities, which is conducted through independent regulatory agencies, institutions, commissions and bodies (Telecommunication Agency, Agency for Power Engineering, Broadcast Agency, Central Bank, Securities Commission, etc.).

Since there is a need to analyze the implementation of the current concept, the Strategy also provides for conducting the analysis of performance, organization and efficiency of the existent regulatory bodies. Based on the analysis of the current state of affairs and the concept of the economic development, a conceptual document of the regulatory system development in Montenegro is underway.

Examples of deregulation and regulation in Montenegro

Competition policy. Competition policy creates a stable and transparent economic environment for investors and ensures that the interaction between economic operators is efficient and welfare-maximizing. In transition economies, the presence of the state in the market is stronger, and new competitors are more likely to be impaired by regulatory, legal, institutional and cultural factors when accessing the market. Transition economies typically have a relatively high degree of market concentration, significant state ownership and weaker legal frameworks for competition, which combine to limit new investment and economic growth. According to the OECD assessment, the competition policy is the area in which transition reform processes in Montenegro achieved the slowest progress.¹⁰ The development of competition policy and law in Montenegro has been very slow even during the last few years, when transition progress in other areas has been intensified.

¹⁰ According to the EBRD Annual Report for 2005, Serbia and Montenegro got the lowest appraisal for improvement in the field of competition policy. Even though it is evident that none of the transition countries succeeded in reaching the EU standards, improvement in competition policy, as a prerequisite for a market economy, is a complex and long-term goal of all the countries in transition. As a country which originates from the same legal system as Serbia and Montenegro, Slovenia managed to achieve the greatest improvement in this field. According to the same source, among all the surrounding countries, Bulgaria has achieved the greatest progress in the preceding year, principally due to harmonization of the legislative framework with the EU standards.

The Federal Antimonopoly Law, dated from 1996, was the first attempt to codify the competition law in FR Yugoslavia. Numerous shortcomings/gaps have been found in this law:

- The law did not completely regulate competition, because many others laws in the legal system contain provisions regulating market competition;
- The law defined only two issues - ban on abuse of the monopolistic/dominant position and prohibition of monopolistic agreement without differentiating between horizontal and vertical agreements. A key shortcoming of the Law is that it does not define concentrations as one of the basic practices for distorting market competition;
- Even though the Antimonopoly Commission, as a competent body in charge of implementing legislation, was formed within the Federal Ministry of Economy and Internal Trade, it did not have sufficient power of authority.

A need for drafting modern Law on Protection of Competition, harmonized with the EU standards, was recognized back in 1999 when the adoption of amendments to the Privatization Law regulated the competitiveness as one of the priorities and key prerequisites for attracting foreign investments in Montenegro. Nevertheless, the existent Federal Law was in force in both republics until the enactment of new, republic laws in 2005. The new draft Law on Competition was prepared in Montenegro back in 2002 by the Ministry of Finance, the Ministry of Economy and the Secretariat of Legislation. Adoption of the new Law was one of the priority reformist goals in Montenegro.¹¹

The Law on Protection of Competition was adopted in November 2005, and it reached a considerable level of compliance with the EU standards. This comparatively high-quality Law, as opposed to the Federal Law from 1996, defines all three practices of potential market competition distortion:

- Prohibited agreements;
- Abuse of dominant position;

¹¹ Investment Compact SEE (2002), Monitoring Instruments, pg. 171.

- Concentration causing considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening of dominant position on market.¹²

Being considerably better than the Federal Law, the new Law makes a clear distinction between horizontal and vertical agreements and defines the provisions that could distort market competition. Abuse of dominant position is quantitatively defined as the use of already existent dominant position, in a way that implies unequal trading, generally defined by the Law.¹³ For the first time, the Law introduces the mechanisms for monitoring the concentration of market participants, requiring them to report any deed of concentration that could consequently lead to preventing distortion or restriction of competition. Contrary to the Federal Law, dated from 1996, which does not impose sanctions on the creation of monopoly situations, but only on the abuse of monopoly position without clear criteria of their symbolization, this Law prescribes rigorous fines for violating provisions of the Law, both for legal and natural persons.¹⁴

The prerequisite for the implementation of this modern Law implies the enactment of corresponding by-laws and constitution of a relevant competitive body. Generally, the Law has provided for appointment of the competitive body and determined the scope of its competencies¹⁵. According to the Action Plan for assessing to the EU¹⁶, organizational unit for the protection of competition, within the Ministry of Economics, shall be the body, entrusted with the mentioned competencies.

¹² Article 2 of the Law on Protection of Competition, Official Gazette of the Republic of Montenegro, No. 69/05.

¹³ Articles 18 and 19 of the Law on Protection of Competition, Official Gazette of the Republic of Montenegro, No. 69/05.

¹⁴ Article 44 of the Law on Protection of Competition, Official Gazette of the Republic of Montenegro, No. 69/05.

¹⁵ Article 33 of the Law on Protection of Competition, Official Gazette of the Republic of Montenegro, No. 69/05.

¹⁶ Action plan for implementing recommendations for a new European partnership, March 2006.

Box 2.3. Examples of regulating the competition in Serbia

As in Montenegro, the Law on Protection of Competition, dated from 1996, was also in force in Serbia until 2005, when both Member States of the then State Union adopted new laws, regulating this area of competency. The two Laws were quite sophisticated and drafted after the EU regulation on associations, as well as after the models of Slovenian, Croatian, Polish and French laws on protection of competition.

Unlike the Montenegrin Law, the newly adopted Serbian Law on Protection of Competition (September 2005) precisely defines founding of a competent institution, its internal organization of work, election of its members and the way in which the institution is being financed. In accordance with the mentioned Law, the Commission for the protection of competition is established as an independent and autonomous organization, responsible to the National Parliament of the Republic of Serbia for its work and obliged to submit to the National Parliament its annual report of the activities.

In April 2006, Serbian Parliament appointed five members for the Council of the Commission as a separate body, responsible for making all decisions and other acts within the competency of the Commission. Upon constituting the Commission, Antimonopoly Department within the Ministry of Trade, Tourism and Services ceased to exist as such, and its personnel were reengaged by newly established Technical Service of the Commission. Funds necessary for establishing and the first year of activities of the Commission have been provided from the budget of the Republic of Serbia. Further funding necessary for the activities of the Commission shall be provided out of income generated from tax charges for decisions and solutions issued.¹⁷

¹⁷ Report on the Activities of the Ministry of Trade, Tourism and Services for the period april-june 2006, pg. 7.

2.3. Is there a forward planning system of regulatory actions?

The forward planning system of regulatory actions in Montenegro was introduced in 2001, as an integral part of the Government Annual Agenda. The Agenda is passed pursuant to the following: (i) the Programmes of the candidates for Prime Minister, approved by the Parliament, and (ii) the Agenda of Economic Reforms, as a medium-term review of the Government Agenda, which defines the politics, goals, competent bodies and institutions responsible for their implementation.

The Government Agenda includes:

- Thematic, and
- Legislative segments.

which are systematized in the following areas: (i) Political system and internal policy, (ii) Economic policy and development, (iii) Financial system, social activities and social policy measures.

The ministries and other administrative bodies, which submit their proposals, initiatives and suggestions on the necessities of drafting new laws and amending the existent laws and by-laws, play an active role in planning the Government legislative activities. The institutions competent for drafting the mentioned acts, the ways of drafting acts and deadlines for their implementation, are clearly defined within the framework of planned regulatory actions.

The Government Agenda, which also includes the regulatory actions mentioned, shall be published at the Government web site and made available to the public.

If the ministries, other bodies or organizations are not in the possibility to execute their responsibilities regulated by the Government Agenda, they are obliged to submit a due notice to the Government about the reasons for not doing so and to propose new deadlines for implementation of responsibilities envisaged.

Box 2.4. **Forward planning in Hungary**

Hungary has developed a complex forward planning system of legislative and regulatory actions. Currently, two forward regulatory planning procedures are in place:

- Five year program;
- Shorter-term legal programs spanning from six months to three years.

The Act on Legislation requires that the government establish a five-year program listing all the laws and major government decrees to be prepared. Every year the government (i.e. the Ministry of Justice) reports to Parliament progress in the implementation of the program. Due to the discrepancy between a five-year program and a four-year parliamentary cycle, such long-term plans have mostly acted as the government's political commitments.

To remedy this inconsistency, the government has developed shorter-term legal programs spanning from six months to three years. These plans are important tools for internal and external consultation.

By law, the government consults the legal programs not only with the representatives of public administration, but with the Supreme Court, the Public Prosecutor, social and business representatives, and local governments. After approval, the government makes public the programs in the Official Gazette and in the mass media. Additionally, each six months the Ministry of Justice updates the legislative plan, reporting the progresses to the Parliament, improving through this mechanism the management of its the legal responsibilities.

Source: Penev, S. (2006), How to Improve the Legislation Process in Serbia and Bosnia and Herzegovina: the path from proposing a law to enacting it in the Parliament, Investment Compact for South East Europe and Economics Institute.

2.4. Public consultation and transparency

There is no legal obligation for performing public consultation in the process of drafting laws and other legal acts in Montenegro. By the Rules of Operation of the Government of Montenegro, when the Government finds that a public consultation is necessary for the process of enacting certain laws and other legal acts, it determines a provisional draft, the consultation programme, appoints the body to perform it, and sets the deadlines for performing the consultation, which cannot be shorter than 15 days.

The Rules of Operation of the Government of Montenegro prescribes that the materials, submitted for consideration and approval at the Government session, are internal by its nature until being adopted at the Government session, and that it could be made public only with the Prime Minister's permission. This Provision of the Government Rules of Operation is unduly restrictive, but it is not applied in practice.

Rules of Operation of the Government of Montenegro prescribes that in the procedure of drafting laws and other regulations, which govern complex and systematic issues, preliminary consultation can be held.

After submitting the draft law to the Parliament, the texts of the draft law are to be published on the Parliament Internet, which indicates that during the process of law adoption in the Parliament, the texts of the laws are available to the public.

The above represents a starting point, but is insufficient in terms of the level of transparency and involvement of stakeholders in the legislative process.

Box 2.5. **Public consultation in Slovenia**

Serbia should benefit from the Slovenian experience, in which, in practice, the process of public consultation and involvement of all interested parties in the legislative process exceeds the formal obligations set by legal instruments.

Even though there is no legal obligation for the government in Slovenia to seek the opinion of stakeholders e.g. Council of State, consultative bodies representing labor, business and non-governmental bodies (e.g. business associations, civil society organizations), Slovenian Government usually seeks opinions of social partners (business associations, trade unions in matters concerning their field of interests) and organizations of civil society.

Draft proposals are sent to different parties involved and interest groups in order to gather relevant information for making an assessment impact. Important in this regard, according to National Parliament, is the social partnership, as a means of indirect influencing of various associations of non-government organizations on the legislative process. Mainly through consultations and reconciliation of viewpoints organized in the government or ministries, some non-government organizations, i.e. trade unions, Chamber of Commerce and Industry of Slovenia, Chamber of Craft of Slovenia, Chamber of Agriculture and Forestry of Slovenia, have the indirect power, according to the relevant legislation, to participate in the legislative process.

Slovenian parliament is very often open to listen to the civil society, even though the government opinions are a decisive factor in most cases. Acts and other material enacted by the National Parliament are then published in full text, or as a summary, in the Gazette and may be published in the public media. All phases of the legislative procedure are published on the Internet. Representative of the public media have the right to be present at a session of the National Parliament and its working bodies.

In order to acquire information, a standing committee may conduct public hearings to which it may invite members of the government, representatives of various interests, professionals or other persons whom it considers capable of providing useful information. A standing committee is obliged to do this if at least one quarter of its members so request. The announcement is published in the public media.

2.5. Regulatory Impact Analysis - RIA

Regulatory Impact Analysis (RIA) is becoming widely used as a method of improving the quality of regulatory environment not only in the OECD countries, but in a number of other countries as well. It is a tool by which the policy makers are informed in advance about the impact of the proposed laws in terms of the potential costs, benefits and risks.

Regulatory Impact Analysis (RIA) helps: (i) properly define the problem which should be overcome by adopting the regulation; (ii) perceive the effect of the regulation proposed; (iii) identify alternative options for achieving the desired aim; (iv) assess potential regulatory and deregulatory options; (v) improve transparency by participating in the debate of all interested parties; (vi) determine whether the benefits justify the costs; (vii) determine whether particular sectors are disproportionately affected; and (viii) ensure that implementation issues are taken into consideration early in the process.

Box 2.6. **The OECD Reference Checklist for Regulatory Decision-Making**

1. Is the problem correctly defined? The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. Is government action justified? Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. Is regulation the best form of government action? Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. Is there a legal basis for regulation? Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorized by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. What is the appropriate level (or levels) of government for this action? Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. Do the benefits of regulation justify the costs? Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. Is the distribution of effects across society transparent? To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. Is the regulation clear, consistent, comprehensible and accessible to users? Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. Have all interested parties had the opportunity to present their views? Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. How will compliance be achieved? Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

Source: OECD (1995), Recommendation of the Council of the OECD on Improving the Quality of Government Regulation

The OECD Reference Checklist for Regulatory Decision-making contains the principles about regulatory decisions that can be applied at all levels of decision- and policy-making for improving effectiveness and efficiency of government regulation. It indicates that the creation and implementation of better regulation can be achieved by: (i) upgrading the legal and factual basis for regulations, (ii) clarifying options, assisting officials in reaching better decisions, (iii) establishing more orderly and predictable decision processes, (iv) identifying existing regulations that are outdated or unnecessary, and (v) making government actions more transparent. The Checklist, however, cannot stand alone, but must be applied within a broader regulatory system, including adequate analysis, consultation processes, and systematic evaluation of existing regulations.¹⁸

¹⁸ OECD (1995), Recommendation of the Council of the OECD on Improving the Quality of Government Regulation (Adopted on 9 March 1995).

Box 2.7. Good practices in the design and implementation of RIA systems Introducing effective RIA

The following key elements are based on good practices identified in OECD countries:

1. Maximize political commitment to RIA;
2. Allocate responsibilities for RIA programme elements carefully;
3. Train the regulators;
4. Use a consistent but flexible analytical method;
5. Develop and implement data collection strategies;
6. Target RIA efforts;
7. Integrate RIA with the policymaking process, beginning as early as possible;
8. Communicate the results;
9. Involve the public extensively;
10. Apply RIA to existing as well as new regulation.

Source: OECD (1997), Regulatory Impact Analysis: Best Practice in OECD Countries, Paris.

2.6. Obligation to perform RIA in Montenegro

The obligation to perform Regulatory Impact Analysis (RIA) is not officially introduced into the legislative system in Montenegro. However particular segments of the analysis are performed under the Rules of Operation of the Government of Montenegro.

Along with the draft law, other regulations or general act, the proposer is obliged to submit the assessment of fiscal impact which the enforcement of that regulation has on the budget of the Republic, on the budget of the Republic Fund for Pension and Disability Insurance, on the budget of the Republic Health Insurance Fund, on the budget of the Employment Bureau of Montenegro and on the budget of the local self-government, in compliance with the Instruction enacted by the Ministry of Finance.

These strategic documents suggest (i) developing methodology for enforcing RIA, and (ii) its implementation into the new regulatory and institutional system. In order to enforce RIA at the highest quality and most efficiently into the legislative system in Montenegro, these documents indicate the need for engaging a number of foreign experts, specialists for this area.

The Strategy of the Administrative Reform identifies the process of implementing RIA as a complex instrument with an aim to enable ex ante impact evaluation of new regulations (laws and by-laws), not only on the state budget, but more in-dept as well. This strategy indicates that the introduction of such mechanism would require comprehensive qualification of public officials in the ministries and other government bodies.

Box 2.8. Objectives for RIA Governments that use RIA have defined four main objectives that respond to these pressures:

1. Improve understanding of real-world impacts of government action, including both benefits and costs of actions;
2. Integrate multiple policy objectives;
3. Improve transparency and consultation;
4. Improve government accountability

Source: OECD (1997), Regulatory Impact Analysis: Best Practice in OECD Countries, Paris.

2.7. The role of lobby groups

Even though the work of lobby groups is not institutionalized in Montenegro, the practice of lobbying with the goal of influencing governing bodies and legislation is frequently applied. Labor unions, political parties, associations of domestic and foreign business representatives, as well as other types of lobby groups, have taken active part in influencing the change in existing laws and enactment of new laws in order to defend their interests.

Box 2.9. Examples of institutionalizing the work of lobby groups

Professional lobbying, as overt or publicly monitored activity, implies direct influence of an individual or an interest group on selected representative or civil servant, with the aim of influencing the outcome of legislative or regulatory process. Lobbying refers to the issues related to competency of the Parliament, the Government, respective departments and units of local self-government.

The international practice has developed two major approaches to lobbying:

- regulatory approach (American practice), by way of law, defines: the concept of lobbying, subjects, conditions and ways of registering lobbyists, duties of the parties involved, economic aspects of lobbyists' operational activities, sanctions for potential failure to meet the requirements,
- deregulatory approach (European practice), relies on self-regulation and on the notion that the society (morale) and general laws represent an adequate regulator, in as much as are sufficient information available about the ways lobbying is being conducted.

In many transition countries, professional lobbying activities are carried out within a clear framework and competences of officials and decision makers. Lobbying is being used as a synonym for corruption, bribery and other unfair political practices or influences. Professional lobbying in these countries is just in its initial stage of development, since a number of recent scandals initiated institutionalization of this activity. One of the attempts to make lobbying transparent is the enactment of the particular legislative regulation on lobbying in Poland and Hungary.

Poland adopted the Law on Lobbying Activity in the Lawmaking Process (the Lobbying Law) in July 2005. The Lobbying Law (i) defines professional lobbying; (ii) regulates who may engage in professional lobbying and how, and (iii) requires the government to

make public not only officer's contact with lobbyist, but also upcoming legislation. According to that Law, a lobbyist must be registered in the professional register, which is maintained by the Minister of Internal Affairs Administration. Registered lobbyists are entitled to engage in lobbying on the premises of the public authorities and the Parliament and contact government officials. The Law requires that the Council of Ministers prepare, at least every six months, a legislative schedule concerning the acts directed to the Parliament.

Hungary adopted a law regulating lobbying activities in February 2006. This law is based on the US Lobbying Disclosure Act of 1995. The act covers only acknowledged and authorized lobby groups. Trade unions and other similar groups are explicitly excluded from its scope, as are judges, the prime minister and members of Parliament. The Law explicitly lists the professional groups prohibited from lobbying work. Conversations between lobbyists and state officials must be recorded in the register and published on the Internet along with the client's name.

Source: www.freshfields.com, www.spinwatch.org

Examples of the activities of informal lobby groups in Montenegro

Enactment of the new Law on Accounting and Auditing. The Law on Accounting and Auditing, dated from 2002¹⁹, has shown a number of deficiencies in practice. The Ministry of Finance of the Republic of Montenegro intervened via by-laws twice (in March and November 2002). Those were instructions that profoundly elaborated the ways of performing audit activities in Montenegro. Since the instructions for the enforcement of the Law in force have not contributed to managing this issue more efficiently, the procedure for drafting the new Law commenced. Enactment of a new legislative solution was supposed to create institutional assumptions for reducing provisions of auditing services and, therewith, employers' expenditures as well.

¹⁹ Official Gazette of the Republic of Montenegro, No. 06/02.

During the process of drafting the new Law, the influence of two lobby groups was evident - Association of Accountants and Auditors of Montenegro and Montenegro Business Alliance. The lobby groups had dissimilar interests regarding introduction of responsibility for companies to perform audit of financial statements on their business activities. Association of Accountants and Auditors of Montenegro pledged that the new legislative solution should maintain the then limit of realized annual revenue of up to million euros, as criteria for introducing requirement that the legal entities are obliged to perform audit of financial statements.²⁰ On the other hand, Montenegro Business Alliance set the goal of liberalizing business activities and thus requested that the obligation of performing audit should be repealed for joint-stock companies with the aim of minimizing financial charges for small and medium enterprises (SMEs). The request was motivated by the need for strengthening SMEs' development activities.

As a result of the aforementioned lobbying activity, a compromise was reached in the final version of the Law on Accounting and Auditing. According to the Law, joint stock companies are obliged to perform audit only if, on the day of preparation of financial statements, meet at least two of the following three criteria: (i) amount of total assets exceeding 2 million euros, (ii) realized annual revenue exceeding 4 million euros, (iii) average number of employees during the business year exceeding 50 employees.²¹

Even though the proposed amendments of lobby groups can contain correct suggestions, as mentioned above, in practice they are very often only an instrument of imposing the interests of the lobby group, as opposed to general interests. A potential solution for the prevention of negative impacts of lobby groups is the education of MPs and an efficient communication with the professional staff of the Parliament, so that the MPs shall be aware of the potential inconsistencies of the proposed amendments with other legislation as well as with EU standards. This would ensure more options for selecting the proposed amendments by the Caucus in Parliament, and, consequently, improve the quality of draft laws.

²⁰ Article 13 of the Law on Accounting and Auditing, Official Gazette of the Republic of Montenegro, No. 06/02.

²¹ Article 12 of the Law on Accounting and Auditing, Official Gazette of the Republic of Montenegro, No 69/05.

Chapter III

IMPLEMENTATION OF LAWS

3.1. Problems in the process of implementation of laws

In Montenegro the enforcement of laws presents one of the most serious obstacles to the creation of a favorable regulatory environment, due to delays in institutional reform and the development of a well functioning institutional infrastructure.

Intensive legislative activity in Montenegro is not only the outcome of the country's transition towards a market economy, but also the result of its preparation for the EU and the WTO accession, and negotiations and arrangements with the IMF and the World Bank.

The introduction of numerous laws in Montenegro implies the existence of considerable professional capacities not only for drafting and enactment but also for implementation. Lack of skills for implementation and interpretation can lead to further amendment of recently adopted laws and thus create a vicious cycle.

3.2. Parliamentary involvement in the implementation of laws and secondary regulations

In a developed parliamentary system, apart from its active role in the procedure of enactment of laws, the Parliament plays also a significant role in monitoring the work of the executive power, i.e. the enforcement of laws.

Parliamentary committees and commissions, as standing working bodies, provide oversight of government activities.

Box 3.1. The role of parliamentary committees

Important role in enhancing legislative and control function of the parliament is entrusted to parliamentary committees as working bodies in charge of providing expertise on short or permanent basis during the legislative process, which thereby contribute to efficiency of parliamentary work. Committee's scope of work covers the

following activities: (i) detailed analysis/review of the proposed laws, (ii) oversight and evaluation of work of the executive power, (iii) conducting the inquiry and making reports on different initiatives and draft laws, as well as (iv) conducting special inquiry. Through their activities, the committees provide for a higher level of public involvement into the legislative process, but the level of transparency of their work varies from country to country.

Two basic organizational models are:

- Standing committees and
- Temporary committees.

Standing committees have a developed professionalism and, as such, often have their representatives from the executive administration bodies, including ministries and agencies. On the contrary, temporary committees have a restricted competence in the process of enactment (the Government retains a significant control over the Parliament) and they are discharged upon the consideration of a particular draft law.

In practice, the significance of the committees increases, and there is a tendency of widening the scope of their competencies regardless their number, organizational model or size.

The Committee for monitoring publicity and transparency of the privatization process is established as the special working body of the Parliament which oversees the work of one segment of the executive power which is involved in conducting privatization process. The Committee is obliged to submit to the Parliament regular annual reports on its activities.

The Committee for monitoring publicity and transparency of the privatization process was established in 2000, in accordance with the Law on privatization²², with the aim to give the to Parliament an active role in privatization process, which would enhance transparency of that process and narrow the scope for potential malpractice.

²² Article 18a of the Privatization Law, Official Gazette of the Republic of Montenegro, No. 23/96, 6/99 and 42/04.

The Committee is authorized to monitor the work of the Privatization Council, and to require the privatization repositories (the Government, the Council, funds and the Agency) to submit all data, information and documents necessary for monitoring publicity and transparency of the privatization process.

The Committee is entrusted with the power to initiate a debate at the Parliament on transparency issues of privatization processes, including privatization operations that have not yet been concluded.

The Committee can propose regulations and amendments to regulations which provide for greater transparency and effectiveness of the privatization process.

Regulatory agencies are obliged to submit a report on their activities to the competent parliamentary committee.

The Committee for international relations and European integrations, which is established by the new Rules of Operation of the Parliament, is also a means of parliamentary oversight of the Government activities.²³ This Committee is obliged not only to monitor the compliance of new laws with *Acquis Communautaire*, but also, when necessary, to initiate harmonization of the Montenegrin legal system with the European legislation.

Institution of Ombudsman - protector of human rights and freedoms, as independent and autonomous institution established in accordance with the Law²⁴, as one of the supreme government bodies. The mission of the Ombudsman includes oversight of legal certainty, expedience and efficiency of work of administrative authorities and public services, with the aim of protecting human rights and freedoms from violations committed by these authorities. The Parliament has the power to elect and dismiss the Ombudsman, and he is obliged to submit to the Parliament annual and special reports on his activities.

²³ New Rules of Operation of the Assembly of Montenegro was adopted in July 2006 and it came into effect in October 2006.

²⁴ The Law on Protector of Human Rights and Freedoms, enacted in 2003.

3.3. Examples when regulations are amended for solving problems with their implementation

The problems with implementing laws arise not only with obsolete laws, inherited from the time of socialism, but also with the series of new or amended laws which have been adopted since the beginning of the transition period in Montenegro, up to present.

If the problems in implementation arise with laws that regulate major areas of the economy, they can pose serious obstacles to the transition process and deter both domestic and foreign investment. Accordingly, identification of the shortcomings in implementation is a prerequisite for solving the problems, whether by means of drafting new laws and regulations, or through development of the institutional framework.

The regulations governing the privatization process present a good example of amending the existent and adopting new laws, and developing new institutions in order to create conditions for successful operations.

A set of laws that regulate the privatization process

The Federal Law on Socially Owned Capital of 1989, which favored the so-called “insider concept of privatization”, regulated the commencement of the privatization process in Montenegro. In order to overcome certain problems in implementation of this law, in December 1990, the Government of Montenegro enacted the Decree on the process of restructuring public property into other models of ownership in socially owned enterprises. In order to perform a more objective assessment of socially owned capital value, apart from the book value²⁵, the Decree introduced an obligation for performing market value assessment of socially owned capital.

In accordance with the Law on the Agency of Montenegro for Economic Restructuring and Foreign Investments²⁶, the Agency for Industrial

²⁵ At that time, due to high inflation rate, the book value of the company was far below its market value.

²⁶ Law on the Agency of Montenegro for Economic Restructuring and Foreign Investments, Official Gazette of the Republic of Montenegro, No 25/90.

Restructuring and Foreign Investment was established in the same year. Its mission was to organize and take part in the development of industrial restructuring programs in order to rehabilitate existing enterprises and to create conditions for the establishment of new ones.

In order to create a necessary regulatory framework for effective and successful privatization process, the set of laws and secondary regulations, which governed this important transition, was adopted at the republican level in Montenegro²⁷ during the 1990s.

Upon enactment of the Law on Ownership and Managerial Transformation²⁸, the first phase of privatization was regulated. According to the Law, the social ownership was abrogated, owners of capital were identified, and the capital was allocated to workers and to funds, i.e. the state.²⁹

With the aim to regulate the second phase of privatization, the Privatization Law was enacted in 1996. According to this law, enterprises were transformed into joint-stock companies and limited liability companies, pursuant to the Law on Ownership and Managerial Transformation.

During the implementation of this Law, a series of shortcomings was identified, reflected in: (i) insufficient transparency, (ii) unclear procedures, (iii) dilution of responsibilities in conducting the process of privatization, and (iv) inadequate protection of ownership rights. In order to overcome the shortcomings, the existing law had to be amended in order to accelerate privatization operations with the aim of creating more favorable conditions for economic development in Montenegro.

²⁷ At that time, Montenegro was one of the two republics in the FRY.

²⁸ Law on Ownership and Managerial Transformation, Official Gazette of the Republic of Montenegro, No 2/92.

²⁹ In accordance with this Law, capital was distributed to the workers € 40% (10% free and 30% under favorable conditions) and to the state funds € 60% (out of which 60% goes to the Development Fund, 30% to the Pension Funds and 10% to the Employment Bureau).

In order to streamline the privatization process, the Government of Montenegro established the Privatization Council in 1998a as the central body to represent the interests of the State in the privatization process.

In February 1999, the Parliament adopted substantial amendments to the Privatization Law and only very few provisions of the previous law remained in place. The amended law strengthens the executive power of the Privatization Council and clarifies the competences and duties of the other institutions which are involved in the privatization process.

This Law stopped the previously started process of “spontaneous privatization” and introduced a requirement for proceeding in accordance with pre-established plans. Privatization Plans are established annually by the Government at the proposal of the Council and published in the media.

Also, this Law introduced clear procedures, defined the models for privatizing enterprises, including a procedure for voucher privatization.

A series of secondary regulations was passed in order to create a regulatory framework for implementing this Law.³⁰

Box 3.2. The set of laws that regulate privatization process in Serbia

Commencement of the privatization process in Serbia, as well as in Montenegro, was regulated by the Federal Law on Socially Owned Capital of 1989, which favored the so-called “insider concept of privatization”. The Law on Ownership Transformation was enacted in 1997. It also favored the “insider concept of privatization” according to which the workers, employed with the companies which had started the privatization process, received free distribution of 60% of share capital the new Law on Privatization

³⁰ Decree on dematerialization of securities and vouchers, Decree on privatization vouchers, Decree on Privatization funds and special management companies, Decree on share selling by publicly announced tender, Decree on Central register of shares, Decree on buying shares with old foreign currency saving.

(adopted in June 2001), changed the method of privatization by replacing the “insider” concept with the “outsider” concept. It provided for wider field for strategic investments and participation of foreign investors in the privatization process. In order to strengthen the enforcement of this Law, two other laws were enacted: the Law on Privatization Agency and the Law on Share Fund. These laws govern establishment and regulated scope of activities of the institutions competent for implementing the privatization process. In accordance with the provisions of those laws, three institutions were established:

- The Privatization Agency, as legal entity which promotes, carries out and controls implementation of privatization process in compliance with the Law,
- The Share Fund, as legal entity where all the state shares are collected into one place, and through which they are sold, under the terms and in compliance with the Law,
- The Privatization Register which receives 15% of share value of the enterprises sold by tender, for the purpose of redistributing the shares years to all interested citizens who are not employed with the privatized enterprises.

The Law on Privatization enacts three methods of privatization:

- Tender, as a method of selling large enterprises, where the strategic investor is offered at least 70% of the package of shares,
- Auction sale for small and medium -sized enterprises, and
- Restructuring of the selected group of large loss-running enterprises for which, or at least for the parts of which, there exist good business prospects, followed by tender or auction sale.

Upon adoption of these laws and establishment of institutions competent for conducting privatization process through tender and auction sales, privatization process in Serbia has been intensified (with the World Bank support). Many successful privatizations were conducted during the period 2002-2004.

However, many of the most favored enterprises have already been sold, which implies that the forthcoming privatization processes will be more demanding and difficult to conduct. In order to accelerate the privatization of domestic loss-running enterprises with hardly any business result, through corporate and financial restructuring prior to privatization, it was necessary to solve the issue of debt to the state. In accordance with the recent amendments to Privatization Law (May 2005), the state creditors of the privatization subjects in the process of restructuring, are obliged to completely write off the claims towards these enterprises, and to settle their claims from the effective sales value of the enterprises. Nevertheless, there are still many public and state-owned enterprises which, due to negative business operations and extensive debt, can be privatized, neither through tender nor through auction sale, even after conducting the process of restructuring.

Undertaking bankruptcy proceedings over these enterprises presents an important means of carrying through the privatization process in Serbia. For that reason, the new Bankruptcy Law was adopted in June 2004. Contrary to previous legal solutions, this Law considerably upgrades the protection of creditors' rights.

In order to improve enforcement of this Law, the World Bank has recently recommended amendments to the Law according to which the Privatization Agency shall be authorized to undertake the bankruptcy proceedings over those enterprises which can not be privatized through the tender model, or through auction sale.

Source: Penev, S. (2006), How to Improve the Legislation Process in Serbia and Bosnia and Herzegovina: the path from proposing a law to enacting it in the Parliament, Investment Compact for South East Europe and Economics Institute.

Chapter IV

PARLAMENTARY RESOURCES FOR DRAFTING AND MONITORING LAWS

4.1. Available resources for drafting laws

In accordance with the Constitution of Montenegro, the Parliament is empowered to propose laws even though this is rarely the case in practice. As a rule, the enactment of laws is usually proposed by the Government and the drafting is financed from the Government Budget. In the past several years, a very intensive legislative activity was supported by donors, whose funds were used for financing a number of foreign and domestic experts who were engaged in drafting laws.

In the course of past several years, donors have played an important role in providing professional and financial resources for giving the support to the procedure of drafting new and revising the existent laws in Montenegro.

The CARDS programme provided expert assistance for a series of laws pertaining to the fiscal and monetary policy, customs, foreign trade relations, ecology, etc. Some of them are the Value Added Tax Law, Foreign Trade Law, Veterinary Law, Environmental Protection Law and others. CARDS and USAID provided significant expert assistance to the judiciary reforms.

4.2. Parliamentary research staff

In many national systems the Parliament's legislative role is supported by special research departments, with the aim to provide reliable data and analyses for decision-makers. The primary task of such research departments is to conduct research of specific thematic fields and to provide relevant and objective information that will ease and improve the work of members of the parliament and parliamentary commissions.

The Parliament of the Republic of Montenegro does not have a research department that would provide members of the parliament and the parliament working bodies with necessary information on laws and other issues, which are being decided upon in the Parliament. This task is, to some extent, performed by a number of experts, permanently engaged in the Parliament, for instance: Secretaries of the committees, advisors engaged (employed) with the Cabinet of the President of the Parliament and other operating units of the Parliament.

New Rules of Operation of the Parliament allow for the establishment of the Department for Informative and Documentation issues that, apart from the parliamentary Library, also contains the Research and Documentation Centre. The Centre would present some kind of precursor to research department, with the aim to prepare and work out informative and statistical analysis and materials at the request of members of the parliament, MPs groups, working bodies and the Parliament Service. Since the Centre's budget provides for only two employees, its capacity will not be sufficient for providing meaningful services.

Additionally, the new Rules of Operation of the Parliament provide for the possibility to engage research, professionals and consultants for specific thematic fields upon request by parliamentary bodies.

Box 4.1. The experience of research teams in Slovenia and Hungary

At the beginning of 1990s, establishment of research departments within the parliament has become regular practice in a number of countries in transition. As a rule, the research centers are organized as independent units and, but they are rarely the component part the parliamentary Library. Even though these departments regularly engage a limited number of personnel, the profundity of research is achieved by engaging experts from various fields.

Experiences of Slovenia and Hungary could good examples of the model for organizing the research body within the Parliament of Montenegro.

Back in 1998, Slovenia established the Research Department within the Secretariat of the Parliament. The prime mission of the Department was to conduct comparative analysis of other countries' regulations, with regard to parliamentary procedures which regulate the MPs' status. In Hungary, the research activity is organized within the Cabinet of the Parliament. One of the primary activities of this body is to provide the MPs' committees with legal and professional help in legislative process.

4.3. Control of quality and coherence of laws

The institutions involved in the control of coherence of legislation are:

- The Legislation Secretariat at the level of the Government, and
- The Committee for Constitutional Issues and Legislation at the level of the Parliament.

The Legislation Secretariat, in compliance with the Act on organization and the procedure of public administration, is competent to: (i) check the compliance of laws and secondary regulations with the Constitution and the legislation, in the preliminary proceeding, (ii) ensure professional-methodological cohesion in the preliminary proceeding, (iii) conduct the activities with regard to monitoring development and advancement of the Republic legal system, (iv) draft special regulations and general acts, as well as the regulations which the ministries and administrative bodies are not competent for, (v) give opinions on draft legislation, (vi) monitor the legality of acts and work of the publishing institution - the Official Gazette of the Republic of Montenegro, (vii) perform other activities within its competency.

The Committee for Constitutional Issues and Legislation, according to the new Rules of Operation of the Parliament, is the permanent working body of the Parliament, which was established by merging the then two committees³¹. The Committee plays an important role in the process of controlling the coherence of legislation, and it is competent to: (i) consider bills, other draft regulations and general acts enacted by the Parliament, with regard to their compliance with the Constitution and the legal system, (ii) provide standardized legislative methodology relevant to the uniform legal-technical drafting of the legislation adopted by the Parliament, (iii) prove authentic interpretations of laws, other regulations and general acts, (iv) consider proposals on initiating the procedure for assessing the constitutionality of legislation or of other regulations and general acts adopted by the National Parliament, etc.

³¹ According to the previous Rules of Operation of the Assembly, this function was assigned to the Committee for Constitutional Issues and to the Legislative Committee.

Institutions involved in quality control of legislation and the compliance with Acquis Communautaire are:

- Secretariat for European Integrations at the level of the Government,
- Committee for International Relations and European Integrations at the level of the Parliament.

Secretariat for European Integrations, exercises at the Government level a control of harmonization with EU legislation. The Ministry performs its role through direct involvement in preliminary procedure for drafting new laws, as well as through indirect instructions to other ministries or administrative bodies involved in the drafting process. This role is particularly important in cases when the administrative body, competent for the particular field of activity, does not have sufficient professional capacity for conducting the harmonization procedure of a kind.

Committee for International Relations and European Integrations, in accordance with the new Rules of Operation, is the permanent working body of the Parliament, competent to monitor harmonization with EU legislation, at the Parliament level. Additionally, the Committee is competent to initiate harmonization of the national legal system with Acquis Communautaire, when necessary.

Box 4.2. **The Role of the Institution of Ombudsman - protector of human rights and freedoms in the legislative process in Montenegro**

The Institution of the Protector of Human Rights and Freedoms (Ombudsman) was established in accordance with the Law on the Protector of Human Rights and Freedoms enacted in 2003. It is the body autonomous in the exercise of its duties and independent, of both the authorities and influences of other legal entities or individuals. The Parliament of the Republic of Montenegro is empowered to elect and dismiss the Protector and his Deputies.

The Ombudsman, as one of the supreme government bodies, is a composite part of the overall legal system. It is elected and dismissed by the Parliament of the Republic of Montenegro, and is obliged to submit to the Parliament annual and special reports on its activities. The Institution of Ombudsman is competent to control legal certainty, expedience and efficiency of work of administrative authorities and public services, with the aim to protect human rights and freedoms from violations committed by these authorities, by means of enactment, action or failure to act. The Institution is also empowered to propose legislative initiatives - initiatives for amending or enacting regulations within the scope of its competence, if it considers that the normative shortcomings have violated the government/administrative work, i.e. the law.

The Ombudsman passes the decisions that are not legally binding. It is not empowered to abrogate or to abolish enactments of the government or of other bodies and services, but can influence their work, indicating the mistakes, abuses, injustice, inexpedience or incomprehensibility of their decisions.

Chapter V

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

In the past ten years, Montenegro has undergone an intensive process of institutional, administrative and legislative reform. Many high-quality laws have been enacted, which was a prerequisite for a successful transition to a functioning market economy. Remarkable progress has been accomplished in the reform of economic legislation.

However a number of policy areas which are important for investment are still not adequately regulated and are suffering either from excessive or insufficient regulation. A number of laws inherited from either the SFRY or the FRY are still in force.

The legislative process is short of the quality control, implementation of regulatory impact analysis (RIA) is not mandatory, and existent mechanisms in Montenegrin legislation are not an adequate replacement for RIA.

On the basis of the findings of this Report the following conclusions and recommendations are put forward to improve the legal environment for economic activities and the process of reform legislation in Montenegro:

a) Public consultation and transparency

In order to improve the existent informal system of consultation, public consultations should become mandatory for all important regulations and constitute a formalized segment of legislative procedures. The process of consultation should be transparent and open to all interested parties. Consultations should commence at the initial stage of drafting legislation in order to mobilize expertise, to share relevant information and to provide all those likely to be affected by the legislation an opportunity to express their views.

b) Forward planning system of legislative activities for new laws and regulations

The Government of Montenegro should continue its work on improving the existent forward planning system of legislative

activities, introducing the obligation to update the plans periodically as well as to submit them to the Parliament with the aim to keep it informed.

c) Setting explicit quality standards for regulation

The Government should consider the elaboration of a manual containing standards and criteria for the preparation of high quality laws and regulations. The quality standards could include guidance for clear and concise drafting, criteria for legal coherence, assessment of compatibility with the constitution, EU law, relevant international conventions, impact analysis, improvement in forward planning systems, procedures for conducting consultations, and consideration of enforcement capacities.

d) Strengthening of the existing capacity of the Secretariat for Legislation in accordance with upcoming intensive legislative activities

It is important to avoid delays in the process of adopting laws, due to limited capacities of the Secretariat for Legislation. This can be achieved by (i) hiring new staff and (ii) by strengthening the capacity of the existing staff through training programmes.

e) Introducing the obligation for conducting Regulatory Impact Analysis (RIA)

It is highly recommended to introduce the obligation for conducting, at Government level, Regulatory Impact Analysis - RIA for all important draft laws and regulations. This would provide the decision makers with a possibility to get reliable information in advance about anticipated impact on the economy, the functioning of markets and competition, the cost effectiveness in terms of the pursued objectives and risks. For important legislation a reality check should be introduced reviewing periodically the experience with impact, efficiency and cost of implementation.

f) Establishing the Council for Regulatory Reform

The Council for Regulatory Reform would be the body competent to perform coordination and quality control of RIA. The Council should be established as the permanent working body of the Government, within the Prime Minister's Cabinet. The Council should have its own Secretariat and the resources to obtain outside professional support. It should provide the Parliament with an annual report on its activities.

g) Enhancing capacities of the ministries for implementing RIA

Expertise should be available in each Ministry and independent agency to integrate RIA into its regulatory activities. For this purpose adequate resources and training programs should be provided, where necessary with the help of outside advisers.

h) Improving enforcement of laws

Government and regulatory agencies should regularly assess the effectiveness of implementation procedures and take remedial action where problems are encountered.

i) Strengthening the parliamentary control over the executive power

All regulatory and other agencies at the republican level should submit annual reports on their activities to the Parliament. Introducing such an obligation would improve transparency of work of those institutions.

j) Strengthen parliamentary capacity for quality control and coherence of legislation

A special Research Department should be established within the Parliament, with adequate resources to collect data and to perform analysis to provide support for Members of Parliament and Parliamentary Committees.

In addition the following measures for capacity building are recommended: (i) strengthening the research capacity of the existing parliamentary staff and committees and (ii) access to outside expertise. The strengthening of the capacity of the Parliament staff would lead to a continuous enhancement of Parliament's productivity. For this purpose twinning programs with other Parliaments from EU member States or the European Parliament could be envisaged.

Members of Parliament should be encouraged to participate in discussions with national and international bodies on the progress of economic reform and join inter-parliamentary networks in the region that provide a possibility for exchange of experience on a thematic basis.

It would be useful to form a special expert body on the level of the Parliament, which would be in charge of European Integrations, and would deal with harmonizing national laws with the standards of the European Union. This body would be directly communicating with the Secretariat for European Integration, and would monitor its activities, participate in training and seminars on integration processes and future steps that Montenegro is undertaking towards becoming a part of the European Union.

k) Improving technical and IT equipment for MPs' work

It would be necessary to enhance the office space for MP's work, as well as its IT equipment, to provide every PM with his/her own office and access to internet.

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