

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 9.11.2010
COM(2010) 670 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**Commission Opinion on Montenegro's application for membership of the European
Union**

{SEC(2010) 1334 final}

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Commission Opinion on Montenegro's application for membership of the European Union

A. INTRODUCTION

a) Application for membership

Montenegro presented its application for membership of the European Union on 15 December 2008. Subsequently, on 23 April 2009 the Council of the European Union requested the Commission to submit its opinion on this application, in line with the procedure laid down in Article 49 of the Treaty on European Union, which states: *“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.”*

Article 2 states that *‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’*

This is the legal framework within which the Commission submits the present Opinion.

The Feira European Council in June 2000 had acknowledged that Western Balkan countries participating in the Stabilisation and Association Process were 'potential candidates' for EU membership. The European perspective of these countries was further confirmed by the Thessaloniki European Council in June 2003 which endorsed the "Thessaloniki Agenda for the Western Balkans". This agenda remains the cornerstone of the EU policy towards the region.

The European Council of December 2006 renewed the EU's commitment *"that the future of the Western Balkans lies in the European Union"* and reiterated that *"each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process. A country's satisfactory track-record in implementing its obligations under a Stabilisation and Association Agreement (SAA), including trade related provisions, is an essential element for the EU to consider any membership application"*. At the Sarajevo EU-Western Balkans ministerial meeting on 2 June 2010, the EU reiterated its unequivocal commitment to the European perspective of the Western Balkans and stressed that the future of these countries lies in the European Union.

In line with the Treaty requirements, the current assessment is made in terms of the conditions of eligibility laid down by the European Council. In Copenhagen in June 1993, the European Council concluded that:

"Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required."

Membership requires:

- that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union".

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.

In December 1995, the Madrid European Council referred to the need *"to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment"*.

The Stabilisation and Association Process (SAP) conditionality was defined by the Council on 31 May 1999. It includes co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and regional co-operation. These conditions are a fundamental element of the SAP and are integrated into the SAA with Montenegro, which entered into force in May 2010.

In December 2006, the European Council agreed that *"the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement"*.

In the present Opinion, the Commission analyses Montenegro's application on the basis of the country's capacity to meet the criteria, set by the Copenhagen European Council of 1993 as well as the conditionality of the Stabilisation and Association Process. Montenegro's track-record in implementing its obligations under the SAA, including trade related provisions, is also being examined. The Opinion has been prepared following a methodology similar to that used in previous Opinions with some adaptations reflecting the elements included in the 2006 'renewed consensus on enlargement'. The Commission organised a number of expert missions in Montenegro concentrated mainly in the fields covered by the political criteria. This approach allowed for an assessment of the administrative capacities of Montenegrin institutions and of the way legislation is implemented. It also helped to better identify remaining challenges and priorities for future action. The Commission has analysed both the present situation and medium-term prospects. For the purpose of this Opinion and without prejudging any future date of accession, the medium-term perspective has been defined as a period of five years.

The detailed analysis on which this Opinion is based is contained in a separate document (*Analytical Report accompanying the Opinion on Montenegro's application for membership of the European Union*)¹. In line with the renewed consensus on enlargement, the analytical report provides initial estimates of the impact of the future accession of Montenegro in some key policy areas. The Commission provides more detailed impact assessments for these policy areas at later stages of the pre-accession process. In addition, the EU accession treaty for Montenegro would involve a technical adaptation of the EU institutions in the light of the Treaty on the European Union.

b) Relations between the EU and Montenegro

Montenegro declared its independence on 3 June 2006, following a referendum held on 21 May 2006. In June 2006 the EU decided to establish relations with Montenegro as a sovereign state and all EU Member States recognised Montenegro's independence.

In October 2007 a **Stabilisation and Association Agreement** between the European Communities and their Member States and Montenegro² and an Interim Agreement on trade and trade-related matters were signed. The Interim Agreement entered into force in January 2008 and the Stabilisation and Association Agreement in May 2010 after its ratification by the parties. Montenegro has, overall, smoothly implemented obligations under the Stabilisation and Association Agreement, including its trade-related provisions. Whenever problems arose, Montenegro has been open and constructive to identify means to address them.

A **European Partnership** with Montenegro was adopted by the Council on 22 January 2007.³

Political dialogue meetings at ministerial level between the EU and Montenegro have been held since February 2007. Policy dialogue between the European Commission and Montenegro has been taking place since the country's independence. The Joint Committee established under the Interim Agreement met twice since the entry into force of the agreement. The first meeting of the Stabilisation and Association Council was held in June 2010. Annual inter-parliamentary meetings between representatives of the European Parliament and the Parliament of Montenegro have been held since 2006, and the first meeting of the Stabilisation and Association Parliamentary Committee was held in September 2010.

Visa liberalisation for Montenegrin citizens was granted by the Council after consultation of the European Parliament, as of 19 December 2009. It applies to holders of biometric passports travelling to the Schengen area. This decision was based on substantial progress in the areas of justice, freedom and security and fulfilment of the specific conditions set out in the roadmap for visa liberalisation. An agreement on readmission between the European Union and Montenegro is in force since January 2008.

Montenegro signed the Energy Community Treaty in October 2005 subsequently becoming a full member of the Energy Community of South East Europe. Montenegro signed the European Common Aviation Area (ECAA) agreement in June 2006.

¹ SEC(2010) 1334 of 09.11.2010.

² OJ L 108, 29.4.2010, p. 1.

³ OJ L20, 27.1.2007, p. 16.

Montenegro takes an active part in the EU economic and fiscal surveillance and reporting arrangements applying to potential candidate countries since 2006.

In June 2008 the Government of Montenegro adopted its National Programme for Integration in the European Union for the period of 2008-2012. This document represents a plan for the adoption of the *acquis*, providing for short-term and medium-term priorities.

The European Union is Montenegro's most important trading partner. In 2009, more than 40% of Montenegro's imports came from the EU and 48% of its exports went to the EU.

Montenegro has received **EU financial assistance** since 1998. Overall, between 1998 and 2010 the EU committed over € 408.5 million to Montenegro. From 1998 to 2006, Montenegro benefited from EU CARDS assistance worth € 277.2 million. Since 2007, CARDS has been replaced by the Instrument of Pre-Accession Assistance (IPA), under which Montenegro has received assistance worth € 131.3 million from 2007 to 2010. IPA aims to support the reform process in the country in the context of European integration with a focus on institution building, introduction of the EU *acquis* and improvement of socio-economic conditions as well as environmental protection and sustainable development. Financial support is also being provided to civil society.

The Stabilisation and Association Agreement provides for Montenegro's participation in EU Programmes. Montenegro actively participates in three EU programmes under the financial perspective 2007-2013: the 7th Framework Programme for research and technological development, in the Entrepreneurship and Innovation Programme (EIP) and the Culture Programme. IPA funds are used to meet part of the costs of participation in the three programmes.

B. CRITERIA FOR MEMBERSHIP

1. POLITICAL CRITERIA

The present assessment is made on the basis of the Copenhagen criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and of the conditionality of the Stabilisation and Association Process.

Montenegro is a parliamentary **democracy** based on a constitutional and legislative framework, which is largely in line with European principles and standards. Montenegro managed smoothly the referendum on its independence in 2006, in line with EU recommendations, on the basis of rules which were adopted by political consensus. Consensus among political parties on state-building is becoming stronger. There is also political consensus with regard to membership to the European Union. However, while the country's legal and institutional basis is broadly in place, there are deficiencies in the functioning of democratic institutions and shortcomings in implementation of the legislation persist. The parliament's overall capacity to ensure appropriate oversight of the government remains limited. The separation of powers is not fully respected in the case of the judiciary. The public administration remains weak and highly politicised.

Elections in Montenegro have generally been conducted in accordance with international standards for democratic elections. The last parliamentary elections held in March 2009 were assessed by OSCE-ODIHR as having met almost all international standards, but remaining

shortcomings need to be addressed. In particular, the election law has not been fully harmonised with the constitution.

Montenegro has in recent years strengthened the legal and institutional framework of **rule of law**. However, implementation is deficient. The main concerns are related to the politicisation of the judiciary and shortcomings in the functioning of law enforcement institutions, in particular in fighting organised crime and corruption.

Reforms in the judiciary are being pursued. Achieved results include the setting up of new institutions such as the judicial and prosecutorial councils and measures adopted to improve independence and efficiency. However, serious concerns remain over the role of the parliament in appointing the judicial and prosecutorial councils and state prosecutors. There are also concerns over the efficiency and accountability of the judiciary.

Montenegro has largely put in place the legal and institutional framework needed for combating corruption. However, corruption remains prevalent in many areas and constitutes a particularly serious problem. Anti-corruption legislation is not consistently implemented. Furthermore, the legal frameworks on prevention of conflict of interest and on financing of political parties and electoral campaigns have important deficiencies. Supervisory authorities lack the full legal powers and the capacity to ensure enforcement of the legislation on prevention of conflict of interest and on the control over the financing of political parties and election campaigns. There are also concerns regarding the supervision of public procurement, privatisation, spatial planning and construction permits. There is no consistent internal control to monitor corruption and ensure accountability and respect of rule of law within the state bodies. This applies in particular in areas such as tax administration and customs, the police and judiciary and local administration. Investigation capacities and law-enforcement co-ordination remain weak. Strong political will is needed to significantly improve performance in combating corruption. The track record of investigations, prosecutions and final convictions in corruption cases at all levels remains low.

In the area of the fight against organised crime, the legal framework developed by Montenegro is generally adequate and capacities have improved. However, organised crime remains a serious problem. Money laundering and drug-smuggling are key areas of concern. Law enforcement capacities and coordination are weak and implementation track records remain limited. Proactive investigative capacities remain inadequate. Threat assessment and the collection and processing of criminal intelligence are unsatisfactory. The prosecution's capacity to fully implement the new Criminal Procedure Code needs to be ensured. Further strengthening of cooperation at the international level is necessary, including with neighbouring countries.

Montenegro's legal and policy framework regulating **human rights and the respect for and protection of minorities** is largely in place and broadly corresponds to European and international standards. The institutional framework is largely adequate. However, there are gaps in implementation of the legislation and existing strategies and action plans. Increased awareness and sensitivity of the administration, police and the judiciary to standards in this field are needed.

Human rights are broadly respected in Montenegro. However there are concerns related to the effectiveness of anti-discrimination policies, freedom of expression and relations with the civil society. The anti-discrimination legal framework has been substantially improved. However, in practice, Roma, Ashkali and Egyptian, persons with disabilities and lesbian, gay,

bisexual and transgendered (LGBT) persons are still subject to discrimination, including on the part of state authorities. The implementation mechanisms for preventing, monitoring, sanctioning and prosecuting discrimination cases need to be strengthened. The July 2010 Anti-discrimination law needs to be fully implemented. Gender equality is not fully ensured in practice. As regards freedom of media, intimidation of journalists and disproportionate fines for defamation are a matter of concern. Legislation and practice on defamation needs to be fully aligned with the jurisprudence of the European Court of Human Rights. The independence of media regulator needs to be preserved. As regards relations with civil society, the existing dialogue is not fully satisfactory. In some cases, the most critical NGOs have been exposed to political and administrative pressures. Domestic violence, ill-treatment and sub-standard prison conditions are also issues of concern.

The respect for and protection of minorities are broadly guaranteed. However, cooperation between the government and minority councils as well as the representation of persons belonging to minorities in public services, state authorities and local self-government bodies needs to be improved. The access of Roma, Ashkali and Egyptians to economic and social rights, in particular education and employment, is unsatisfactory. As regards displaced persons from Croatia, Bosnia and Herzegovina and Kosovo⁴, estimated at around 17,000, the Law on foreigners of 2009 allows for their access to the status of resident. The reduction of administrative taxes in July 2010 has created better conditions for their access to this status. Montenegrin authorities have also adopted in July 2010 transitional measures allowing access of displaced persons to social and economic rights in the period prior to acquiring the status of a resident. However the action plan on displaced persons is poorly implemented on the ground. The number of persons who have been granted resident status remains low, notably due to the difficulties they face in providing all documents required. The laws guaranteeing access to economic and social rights need to be harmonised with the Law on foreigners. Living conditions in the Konik camp sheltering mainly displaced Roma, Ashkali and Egyptians from Kosovo are a matter of serious concern.

Montenegro broadly satisfies the **Stabilisation and Association Process** conditions. Cooperation with the International Criminal Tribunal for the former Yugoslavia is satisfactory. The country is strongly committed to regional cooperation and plays a constructive regional role. It participates actively in regional initiatives. Bilateral relations with all neighbours are generally good and developing further. Relations with Serbia, after the dissolution of the State Union, are generally good, however some pending issues remain. Delimitation of borders with neighbouring countries has not been finalised. Building on the political agreement achieved so far, Montenegro needs to finalise together with Croatia the joint submission to the International Court of Justice (ICJ) of the Prevlaka peninsula case. Montenegro is a party to the Rome Statute. However, the country ratified a bilateral immunity agreement with the United States regarding the International Criminal Court which is not in line with the EU common positions and guiding principles. The country needs to align with the EU position.

⁴ Under UNSCR 1244/1999.

2. ECONOMIC CRITERIA

The present assessment is made on the basis of the Copenhagen criteria related to the existence of a **functioning market economy**, as well as the capacity to cope with **competitive pressure** and market forces within the Union.

Montenegro achieved a broad domestic consensus on the fundamentals of economic policy as well as a track record in the implementation of economic reforms. Economic stability reached a degree considered sufficient to allow economic operators to make decisions in a climate of predictability. This has resulted in high growth rates which were on average above 5% in the years preceding the economic crisis. Budget deficit and public debt have been kept at moderate levels. Unemployment has been reduced to below 12% in 2009 and labour legislation modernised. The free interplay of market forces has been developing in the last decade through privatisations and the abolition of controls on prices, foreign exchange and trade regimes. Foreign investments were attracted by the improved business environment. The restructuring process of strategic enterprises and sectors is underway. State aid has been historically low, often related to privatisation clauses or supporting distressed companies. The Montenegrin economy remains very open and the level of trade and investment integration with the EU and the Western Balkan region is high.

However, after years of strong capital inflows supporting rapid economic growth, the global crisis unveiled significant internal and external imbalances exposing the country and threatening macroeconomic stability. The crisis also revealed vulnerabilities in the regulation and supervision of the banking sector, calling for critical recapitalisation of banks. In absence of fiscal space, the government could mainly react by providing guarantees to firms in difficulties, which threaten to materialise in the growing public debt. Persisting unemployment, and informal employment, point to weaknesses in the education and vocational training systems as well as to some labour market rigidities. The country has a still insufficient energy and transport infrastructure. Small businesses in particular are confronted with scarce and expensive financing. Persisting weaknesses in the rule of law negatively affect the business environment. The informal sector remains an important challenge.

3. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

The ability of Montenegro to assume the obligations of membership has been evaluated according to the following indicators:

- the obligations set out in the Stabilisation and Association Agreement;
- progress with adoption, implementation and enforcement of the EU *acquis*.

Montenegro has overall smoothly implemented the obligations under the Stabilisation and Association Agreement. However, there have been some gaps in certain areas (state aids, transit traffic).

Montenegro adopted in 2008 a National Programme for Integration, which is a comprehensive and ambitious plan providing for the approximation of national legislation to the EU *acquis*. Important progress in adopting legislation aligned with the EU *acquis*, particularly in some areas of the internal market, trade-related provisions, customs and taxation has been made. However the country faces major challenges in implementing and enforcing legislation. Administrative and judicial capacities remain overall limited and the country will need to

make sustained efforts to strengthen them in order to assume the obligations of membership in the medium-term.

If it continues its efforts Montenegro should, in the medium term, have the capacity to comply with the requirements of the *acquis* in the following fields:

- Taxation
- Enterprise and industrial policy
- Science and research
- Education and culture
- Customs union
- External relations
- Foreign, security and defence policy
- Financial and budgetary provisions

Montenegro will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term in the following fields:

- Freedom of movement for workers
- Right of establishment and freedom to provide services
- Free movement of capital
- Public procurement
- Company law
- Competition policy
- Financial services
- Information society and media
- Transport policy
- Energy
- Economic and monetary policy
- Trans-European networks
- Consumer and Health Protection

Further adjustments of the legal and institutional framework and in particular strengthening of administrative and implementation capacities are needed in the above areas.

Montenegro will have to make considerable and sustained efforts to align with the EU *acquis* and to implement it effectively in the medium term in the following fields:

- Free movement of goods
- Intellectual property law
- Agriculture and rural development
- Food safety, veterinary and phyto-sanitary policy
- Fisheries
- Statistics
- Social policy and employment
- Regional Policy and coordination of structural instruments
- Judiciary and fundamental rights
- Justice, freedom and security
- Financial control

Considerable adjustments of the legal and institutional framework and significant strengthening of administrative and implementation capacities are needed in these areas.

Regarding environment, further coordinated and significant efforts will be needed to align with the EU *acquis* and to implement it effectively. These should include substantial investments and strengthening administrative capacity for the enforcement of legislation in order to achieve compliance on the most important issues, including climate change, in the medium term. Full compliance with the *acquis* could be achieved only in the long term and would necessitate increased levels of investment.

C. CONCLUSION AND RECOMMENDATION

Montenegro has made progress towards fulfilling the criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993, as well as the conditions of the Stabilisation and Association Process. Nonetheless, further efforts are needed.

As regards the economic criteria, Montenegro has achieved a certain degree of macroeconomic stability. However, to become a functioning market economy, as set out by the 1993 Copenhagen European Council, Montenegro needs to address internal and external imbalances, as well as existing weaknesses, notably in the financial sector and the functioning of labour markets, and strengthen the rule of law. In order to enable it to cope in the medium term with competitive pressure and market forces within the Union, Montenegro needs to strengthen its physical infrastructure and human capital and to continue implementing structural reforms.

Montenegro's track record in implementing its obligations under the Stabilisation and Association Agreement is positive overall.

Montenegro would be in a position to take on the obligations of membership in the medium term, in most of the *acquis* fields, provided that the alignment process continues and that, considerable and sustained further efforts are made to ensure the implementation and enforcement of legislation. Particular attention needs to be paid to the areas of free movement of goods, intellectual property law, agriculture and rural development, food safety, veterinary and phyto-sanitary policy, fisheries, statistics, social policy and employment, regional policy and coordination of structural instruments, judiciary and fundamental rights, justice, freedom and security and financial control. Full compliance with the *acquis* in the field of the environment could be achieved only in the long term and would necessitate increased levels of investment; efforts in this area need to be accelerated.

Montenegro's accession would have a limited overall impact on European Union policies and would not affect the Union's capacity to maintain and deepen its own development.

The Commission considers that negotiations for accession to the European Union should be opened with Montenegro once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably the rule of law. In this regard Montenegro needs in particular to meet the following key priorities:

- Improve the legislative framework for elections in line with the recommendations of the OSCE-ODIHR and the Venice Commission; strengthen the Parliament's legislative and oversight role.
- Complete essential steps in public administration reform including amendments to the law on general administrative procedure and the law on civil servants and state employees and the strengthening of the Human Resources Management Authority and the State Audit Institution, with a view to enhancing professionalism and de-politicisation of public administration and to strengthening a transparent, merit-based approach to appointments and promotions.
- Strengthen rule of law, in particular through de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of state prosecutors as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors.
- Improve the anti-corruption legal framework and implement the government's anti-corruption strategy and action plan; establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels.
- Strengthen the fight against organised crime based on threat assessment and proactive investigations, increased cooperation with regional and EU partners, efficient processing of criminal intelligence and enhanced law enforcement capacities and coordination. Develop a solid track-record in this area.
- Enhance media freedom notably by aligning with the case-law of the European Court for Human Rights on defamation and strengthen cooperation with civil society.

- Implement the legal and policy framework on anti-discrimination in line with European and international standards; guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp.

Montenegro is encouraged to continue its constructive engagement in regional cooperation and in strengthening bilateral relations with neighbouring countries. Outstanding bilateral issues need to be addressed. The SAA needs to continue to be implemented smoothly; in this context, due attention to addressing identified gaps in areas such as state aids and transit traffic is required. In addition, the country is strongly encouraged to continue enhancing its administrative capacity across the board. Particular efforts are required as regards the effectiveness and impartiality of the state administration in sensitive areas such as environmental protection. Cases of violence and intimidation against journalists and NGO activists need to be properly prosecuted. The issues of domestic violence, ill-treatment and sub-standard prison conditions need to be addressed.

In the light of the progress made so far, the Commission recommends that the Council should grant Montenegro the status of candidate country.

The Commission will monitor progress of the necessary reforms within the institutional framework of the Stabilisation and Association Agreement and continue to support efforts through the IPA financial instrument. The Commission will present a report on Montenegro's progress in the 2011 enlargement package. This report will focus in particular on the implementation of the key priorities which need to be addressed with a view to the opening of accession negotiations.