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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**MONTENEGRO**

**FOLLOW-UP OPINION**

**TO THE OPINION ON THE DRAFT LAW ON THE GOVERNMENT**

**Adopted by the Venice Commission  
at its 143rd Plenary Session  
(online, 13-14 June 2025)**

**on the basis of comments by**

**Mr Vladimir VARDANYAN (Member, Armenia)  
Mr François SENERS (Substitute member, France)  
Mr Warren NEWMAN (Expert, Canada)**

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## I. Introduction

1. At its 136th Plenary Session, the Venice Commission, at the request of Mr Marash Dukaj, the Minister of Public Administration of Montenegro (hereinafter "the Minister"), adopted its Opinion on the draft law on the Government of Montenegro ([CDL-AD\(2023\)036](#),<sup>1</sup> hereinafter "the 2023 Opinion").

2. Following the 2023 Opinion, the draft law was revised and submitted to the Venice Commission for a Follow-up Opinion by letter of 22 April 2025 of the Minister ([CDL-REF\(2025\)025](#), hereinafter the "revised draft law").

3. Mr Vladimir Vardanyan, Mr François Séners and Mr Warren Newman acted as rapporteurs for this Follow-up Opinion, having acted as rapporteurs also for the 2023 Opinion.

4. During the preparation of this Follow-up Opinion, country visit/on-line meetings were deemed unnecessary. The Follow-up Opinion was prepared in reliance on the English translation of the revised draft law. The translation may not accurately reflect the original version on all points.

5. This Follow-up Opinion was drafted on the basis of comments by the rapporteurs. It was adopted by the Venice Commission at its 143rd Plenary Session (online, 13-14 June 2025).

## II. Analysis

### A. Preliminary remarks

6. It is recalled that there is currently no Law on Government in Montenegro. The need to consolidate the existing regulations in this regard and to avoid any vacuum of power in the transitional period between the outgoing and the incoming governments was demonstrated, among other circumstances, by the recent institutional crisis in Montenegro.<sup>2</sup> The revised draft law regulates the composition, term of office, organisation, method of operation and decision-making of the Government as well as its interaction with other state authorities.

7. The Venice Commission welcomes the opportunity to provide its expertise on the revised draft law. This Follow-up Opinion examines the revised draft law in light of the 2023 key and other recommendations that the Commission considered necessary to be taken into account during the revision process. The absence of remarks on other aspects of the revised draft law should not be interpreted as tacit approval by the Commission.

### B. Follow-up to key recommendations

#### 1. The principle of transparency and the lack of an explanatory report

- *Future draft laws should be accompanied by an explanatory report/memorandum in line with the requirements of transparency in law-making, to facilitate meaningful public and civil society engagement in the legislative process. This explanatory report should include an assessment of the regulatory impact of the new draft Law on the existing legal framework and an evaluation of the budgetary impact for its implementation which is also required under the existing Rules of Procedure of the Government of Montenegro.*

8. The Follow-up Opinion request contains the explanatory report providing the constitutional basis, rationale and the regulatory impact assessment of the revised draft law, as well as the

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<sup>1</sup> Venice Commission, [CDL-AD\(2023\)036](#), Montenegro - Opinion on the draft Law on the Government.

<sup>2</sup> Venice Commission, [CDL-AD\(2022\)053](#), Urgent Opinion on the Law on amendments to the Law on the President of Montenegro, paras 25-27.

information on its alignment with international conventions ratified by Montenegro and budgetary implications. Detailed information has also been provided regarding the inclusive revision process specifying that the draft law was revised in light of the 2023 Opinion of the Venice Commission following public consultations, as well as input from relevant institutions and the expert community. NGO representatives were involved in the drafting process. The revised draft law also includes new provisions based on the GRECO recommendations concerning integrity checks for persons entrusted with top executive functions. The Government of Montenegro also sought the opinion of the European Commission.

9. The Venice Commission welcomes the detailed information submitted as well as the steps taken by the Montenegrin authorities in response to the recommendation, in particular, as regards transparency of the legislative process, inclusive consultations and the detailed explanatory report. In light of this information, the Commission considers that its recommendation has been fully followed and encourages the authorities to ensure comprehensive dialogue with the major stakeholders and civil society in future legislative processes.

## **2. The principle of legality and the option of constitutional entrenchment**

- *Articles 9, 19, 22, 26 as well as Chapter XI and XII should be revised to ensure full alignment of the draft Law with the Constitution, as well as the principles of legality and separation of powers.*

10. In the 2023 Opinion, the Commission referred the proposed Law on the Government as "organic legislation" or "systemic law", and thus constitutional or quasi-constitutional in character, if not in status, implementing a principle of government and dealing with the composition and powers of its organs and institutions. Although it will be adopted through an ordinary law-making process by the Parliament with an absolute majority, its impact is systemic, affecting not only the Government's composition and functioning but also its interaction with Parliament, the President and other state bodies. The Venice Commission stated that "[t]herefore, the Montenegrin authorities will have to ensure that the law is consistent with the Constitution, not contradicting or ignoring constitutional provisions. The legislation can, of course, go beyond certain minimum requirements of the Constitution, and enhance the implementation of some of the Constitution's underlying principles, as well as provide more statutory details as may be contemplated by the terms of the Constitution, but it must not be incompatible with those terms and provisions".<sup>3</sup> In this context, the Commission noted that several provisions of the draft law introduced detailed rules not specified in the Constitution. In particular:

- Articles 9 and 26 introduced specific new rules limiting the number of Deputy Prime Ministers to four, setting a maximum of 15 ministries, and designating seven core ministries. The Venice Commission considered that although not directly contradicting the Constitution, they created new rules on the Government's composition on which the Constitution is silent and merely states in its Article 102 that "The Government shall consist of the Prime Minister, one or more Deputy Prime Ministers and the ministers".
- Article 19 shortened the timeframe for the Prime Minister-designate to propose a government from 90 days (as set in Article 92 of the Constitution) to 30 days. It also introduced a new obligation for the Prime Minister-designate to consider gender equality and minority representation in the proposed Government, which is not found in Article 102 of the Constitution. The Venice Commission noted that while commendable from the perspective of inclusiveness, this provision might be too ambiguous to be efficiently enforced in practice.
- Article 22 introduced new limitations on the powers of a caretaker government, such as restricting financial obligations and appointments without parliamentary approval. Such

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<sup>3</sup> [CDL-AD\(2023\)036](#), *op. cit.*, para. 23.

limitations appeared to go beyond the Constitution which, in Article 110 (3), imposes only one restriction, stating that "[t]he Government whose mandate has ceased shall not dissolve the Parliament".

- The Commission noted that chapters of the draft law related to the interaction with the President and Parliament were "closely linked to the institutional life of the State, the fundamental principles of which are generally governed by constitutional law and should not generally be adopted or altered through ordinary laws, even those of an organic character".<sup>4</sup>

11. In the revised draft law, Articles 8 and 12 (former Articles 9 and 26, respectively) provide for a new (and thus more flexible) upper limit of 20 Ministers (18 Ministers and two without portfolio) while retaining the seven mandatory Ministries. This development is welcome (see also para. 23 below).

12. Paragraph 1 of Article 19 and Article 22 were deleted. Such developments can be considered positive in terms of eliminating a contradiction with the Constitution. However, the revised draft law no longer contains the obligation of the Prime Minister-designate to submit his/her programme and new composition of the Government to the Parliament (Article 103 of the Constitution) and the obligation of the government whose mandate has ceased to continue with its work until the election of the new composition of the Government (Article 110 of the Constitution). For the Venice Commission, the silence of the revised draft law in these regards does not equal to its "full alignment" with the Constitution as recommended in the 2023 Opinion. Reiterating that the draft law should not contradict or ignore constitutional provisions (see para. 11 above), the Venice Commission invites drafters to align the revised draft law with Articles 103 and 110 of the Constitution.

13. Article 19 of the revised draft law contains only one provision – former para. 2 concerning an obligation for the Prime Minister-designate to "consider gender equality as well as the representation of minorities and other minority national communities, when deciding on the proposed composition of the Government". In the 2023 Opinion, the Venice Commission welcomed the provision from the perspective of inclusiveness, noting, at the same time, that Article 102 of the Constitution on the composition of the Government does not include such provision and it "may be too ambiguous to be efficiently enforced in practice". The Commission notes that Article 18 of the Constitution (Gender equality) sets the general obligation for the State to guarantee the equality of women and men and develop the policy of equal opportunities, which is welcome. Article 79 para. 10 of the Constitution proclaims the right of national minorities to proportionate representation in public services, state authorities and local self-government bodies. In the Commission's opinion, Article 19 should be clarified with reference to the above constitutional provisions, making it clear that the composition of the government should actually reflect these constitutional aims. For example, "considering" could be replaced by "taking into account".

14. Finally, Chapters related to the interaction with the President (Chapters XII) and Parliament (Chapter XIII) are still in the revised draft law.

15. It has to be noted that this is not the first piece of legislation on which the Venice Commission has had to consider the need for the constitutional entrenchment of provisions in compliance with the principle of supremacy of the Constitution.<sup>5</sup> The Commission reiterates that "changing the provisions on the formation of the Government or introducing any complementary provisions which affect the system of checks and balances contemplated by the Constitution should not be

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<sup>4</sup> [CDL-AD\(2023\)036](#), *op. cit.*, paras 24-30.

<sup>5</sup> See, for example, Venice Commission, [CDL-AD\(2024\)013](#), Montenegro – Urgent Follow-up Opinion to the Opinions on the Law on the State Prosecution Service, para. 23; [CDL-AD\(2022\)053](#), Urgent Opinion on the Law on Amendments to the Law on the President of Montenegro, paras 33 and 46.

done by ordinary law adopted by the simple majority but by means of constitutional revision, following the procedure described in Article 156 of the Constitution of Montenegro, which requires a qualified majority of two thirds of all members of Parliament”.<sup>6</sup> Therefore, proceeding by way of a constitutional amendment would appear to be a more sustainable solution in this respect.<sup>7</sup> The Venice Commission also reiterates that it is for the Constitutional Court of Montenegro to rule on these questions of constitutional law and to ensure the supremacy of the Constitution.

16. In light of the above-mentioned observations, the Venice Commission considers that the recommendation has been partially followed.

### **3. Prohibition of dual nationality for members of Government**

- *Articles 9 (5) and 24 (6) should be revisited to provide more clarity and predictability on dual nationality as a disqualifying condition to serve as a member of Government.*

17. The 2023 recommendation reflected several concerns. In particular, the Venice Commission noted that Montenegro's Constitution does not explicitly prohibit dual nationality for government members, while the draft law introduced new incompatibilities not envisaged in the Constitution. Moreover, practical challenges would have arisen due to Montenegro's limited bilateral agreements on dual citizenship, creating enforceability issues. The draft law did not clarify whether renouncing the nationality of another country would enable a person to take up a government position in Montenegro or whether acquiring a second nationality was an irreversibly disqualifying event, regardless of the steps taken to renounce it. Most importantly, the Commission recommended considering whether the provisions on dual nationality respected the non-discrimination principle requiring that restrictions on citizens' rights should not be based on multiple citizenship.

18. The revised draft law focuses on the requirement of Montenegrin citizenship without prohibiting dual citizenship. Article 9(5) (now Article 8(5)) and Article 24(6) (now Article 21(6)) were re-drafted to eliminate the prohibition on dual nationality, thus addressing all the concerns the Venice Commission expressed in its 2023 Opinion. Consequently, the recommendations have been fully followed.

### **4. Prime Minister's inability to temporarily exercise his/her duties**

- *Article 10 should be revised to include wording on the possibility of designating one of the Deputy Prime Ministers as First Deputy Prime Minister who automatically replaces the Prime Minister in the absence or the temporary inability of the Prime Minister to exercise his/her duties, also addressing potential vacancies of the post of First Deputy Prime Minister.*

19. Article 10 of the draft law provided that the Prime Minister must delegate duties to a Deputy Prime Minister when absent or unable to perform them. However, it did not address situations where the Prime Minister is suddenly incapacitated and unable to delegate. To avoid legal uncertainty, the Venice Commission recommended designating a First Deputy Prime Minister who automatically assumes the Prime Minister's duties in the case of sudden incapacity. Furthermore, in case the First Deputy Prime Minister has not been appointed or the position is temporarily vacant for various reasons (e.g., premature end of mandate, dismissal, death), the Venice Commission recommended specifying, for example, that the Deputy Prime Minister who has served the longest in the Government or is the most senior in terms of age shall temporarily exercise the Prime Minister's duties.

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<sup>6</sup> [CDL-AD\(2023\)036](#), *op. cit.*, para. 29. See also [CDL-AD\(2022\)053](#), *op. cit.*, paras 52-53.

<sup>7</sup> [CDL-AD\(2024\)013](#), *op. cit.*, para. 23.



20. Article 9 (former Article 10) of the revised draft law provides that "At the beginning of his mandate, the Prime Minister designates a Deputy Prime Minister to act as his substitute during his absence or inability to perform duties, within the scope of powers delegated to him". The Commission welcomes this amendment which prevents legal uncertainty in case of incapacity of the Prime Minister to fulfill his/her duties. At the same time, to fully ensure the continuity of the Government's work, the recommendation regarding the replacement of the First Deputy Prime Minister, in case of his/her absence or temporary inability while replacing the Prime Minister, intended at ensuring the continuity of the Government's work, has not been taken into account in the revised draft law.

21. Consequently, the Commission's recommendation may be considered to be partially followed.

## **5. Limiting the number of ministries and naming seven mandatory ministries**

- *Should Article 26 remain in the draft, then to introduce more flexible language in the composition and structure of the Government by providing for a higher upper limit for the number of ministries, thus striking a fairer balance between the supremacy of the Parliament and the principle of separation of powers.*

22. The draft law limited the number of ministries to 15, including seven core ministries. The Commission noted that although there were no constitutional obstacles in this regard, "this power can be seen as an expression of the primacy of the Parliament in setting rules for the organisation and functioning of other state bodies. [...] From the perspective of the separation of powers, it is not entirely satisfactory that a law of Parliament [...] enables the legislative power to impose a strict format on the executive power to the extent it may reduce the flexibility of the executive branch to carry out its mandate or adjust the structure of the cabinet to adapt to new developments and the increased complexities of the government".<sup>8</sup> In order to strike a fairer balance between the supremacy of the Parliament and the separation of powers, the Commission recommended establishing a greater upper limit while keeping the list of core ministries.

23. Article 8 (former Article 9) of the revised draft law sets the upper limit of 20 ministers, of which two may be Ministers without portfolio, providing more flexibility to the executive branch to organise government departments or ministries as it sees fit to cover its responsibilities and implement its programme. Article 12 (former Article 26) of the revised draft law specifies that 18 ministers shall be responsible for administrative areas. The same number and types of core ministries (justice, defence, internal affairs, finance, foreign affairs, health, and public administration) have been maintained in the draft revised law.

24. The Venice Commission considers that the recommendation has been fully followed.

## **6. Restricting the powers of an outgoing government**

- *Should Article 22 (1) be kept in the draft, then to introduce more flexible language in respect of the limitation imposed on a caretaker government not to incur any new financial obligations. This could be done by specifying that a government whose mandate has ended should not undertake new financial obligations except those necessary to guarantee the continuity of State services and institutions and the regular functioning of public services.*

25. In its 2023 Opinion, the Commission found the restriction on not incurring any new financial obligation as problematic from the perspective of the principle of continuity of Government, as it

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<sup>8</sup> [CDL-AD\(2023\)036](#), *op. cit.*, paras 49-50.

made government operations very difficult, particularly when dealing with unexpected challenges (e.g., force majeure).

26. In the revised draft law, Article 22 (1) has been removed. Therefore, the Commission considers the recommendation as fully followed (see also para. 12 above).

## **7. Entry into force and delayed applicability**

- *Article 60 of the draft Law should be revised to specify which provisions enter into force on "the eighth day following the day of its publication in the Official Gazette of Montenegro" and which ones shall become effective at a later date.*

27. According to Article 60 of the draft law, following its entry into force eight days after publication, it would only be applied after the final results of the next parliamentary elections. At the same time, Articles 58 and 59 required the Government to harmonise other related laws within three months from the date of its application and by-laws for its implementation – within three months from the date of its entry into force. The Venice Commission expressed concerns about the confusion raised by a delayed application of the Law.

28. Article 58 (former Article 60) of the revised draft law provides that the Law shall enter into force on the eighth day of its publication in the Official Gazette of Montenegro. Therefore, all the provisions will enter into force on the same date, eliminating any ambiguity in this regard.

29. The Venice Commission considers that the recommendation has been fully followed.

## **C. Follow-up to other recommendations for further improvement**

### **1. Quorum for holding sessions and adopting decisions**

30. In its 2023 Opinion, the Venice Commission recommended to reconsider the rules concerning quorum and voting majorities set in Article 32 (1) of the draft law. The revised draft law provides for the same regulation in its Article 28 (former Article 32). As noted in para. 23 above, Article 8 of the revised draft law sets the new upper limit of 20 ministers. Thus, the maximum number of members of the Government is 25 (the Prime Minister, four deputy Prime Ministers, 18 Ministers and two Ministers without portfolio). The quorum to hold a session is more than half of all members (i.e., 13 members). The decision-making majority is the same.

31. The Venice Commission reiterates that "[t]his level of quorum and required majority of all members to adopt a decision can be rather high for cabinet deliberations and, if the minimum number of members for the quorum to be reached is present, it would imply that all members attending have to vote unanimously for any decision to be adopted. This might be re-considered. [...] the general requirement of having half of all the members of the Government for the making of any decision may be rigid and may hinder the operation of the Government. [...] Beyond the fact that these questions are generally better left to internal operations of the Government, if such matters are to be regulated by legislation, then the rule should be clear: a simple majority of those present should generally suffice and the quorum should not be so high as to impede effective decision-making. Certain exceptions may be provided for several types of acts of the Government, where the majority of all members of the Government may be deemed appropriate".<sup>9</sup>

32. Article 28 (3) (former Article 32 (3)) of the revised draft law stipulates that during times of declared war or emergency, a decision may be adopted when more than half of the members of the Government are present at a session and a majority vote is achieved. The Venice

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<sup>9</sup> [CDL-AD\(2024\)013](#), *op. cit.*, paras 62-66.



Commission reiterates its previous observation: "It can be assumed the draft Law is less demanding in the cases of declared war or emergency. Since emergency situations or martial law usually provide possibilities of derogation from international obligations and more specific limitations of human rights, the Commission deems it appropriate to caution that, when restrictions on human rights are at stake, requirements for the adoption of decisions in these situations should not be less demanding".

33. In light of the above, the Venice Commission considers that the recommendation has not been followed and thus remains relevant.

## **2. Accountability of the Government to the Parliament**

34. The Venice Commission recommended aligning the wording of Article 3 of the draft law ("The Government acts independently within its sphere of authority") by specifying that the action of the Government is subject to parliamentary accountability, as is understood in other provisions of the draft law (Articles 5 and 10) and the Constitution (Articles 11 and 82 (12)).<sup>10</sup> In the revised draft law, the previous wording of Article 3 has been altered to state "within the scope of its competencies" without specifying the accountability of the Government to the Parliament. Therefore, the ambiguity still needs to be addressed according to the recommendation.

35. That being said, the Venice Commission deems it important also to note that in contrast with Article 5 of the draft law referred to in the previous paragraph as one of the examples of parliamentary control,<sup>11</sup> the revised draft law no longer contains the principle of accountability of the Government to the Parliament. It provides for the accountability of the Prime Minister "for his work to the Parliament" (Article 9 - former Article 10 referred to in para. 33 above), the accountability of the Deputy Prime Minister "for his actions to the Prime Minister and the Parliament" (Article 11) and the accountability of the Minister "to the Deputy Prime Minister overseeing the respective area, the Prime Minister, and the Parliament for his actions" (Article 13). However, the general provision regarding the accountability of the entire Government to Parliament is omitted.

36. The Venice Commission recalls that although the Montenegrin Constitution does not contain specific provisions on the accountability of the Government to the Parliament, the power of the Parliament to elect and dismiss from duty the Prime Minister and members of the Government, i.e., Deputy Prime Ministers and ministers (with or without portfolio) implies that not only the Prime Minister but the whole Government is accountable to the Parliament. In contemporary parliamentary democracy, parliaments fulfil their obligation to protect and realise human rights and uphold the rule of law through their primary functions of representation, legislation and oversight.<sup>12</sup> The accountability of the Government to the Parliament is deemed as a rule "grounded less in the principle of the separation of powers than [...] in the principle of responsible Government requiring the Government to be politically accountable for their decisions to the democratically elected representatives in Parliament".<sup>13</sup>

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<sup>10</sup> Constitution of Montenegro, Article 11 (Division of powers): [...] "The relationship between powers shall be based on balance and mutual control"; Article 82 (Responsibility): "The Parliament shall [...] 12. Elect and dismiss from duty: the Prime Minister and members of the Government". See also Article 187 of the [Rules of Procedure of the Parliament of Montenegro](#) - the right of MPs to ask parliamentary questions to the Government – a basic element of the oversight function.

<sup>11</sup> Draft law on the Government of Montenegro, Article 5: "The Government is accountable to the Parliament of Montenegro for conducting the internal and external policy of Montenegro, for the implementation of laws and other regulations, the operation of public administration bodies, and the completion of other activities within its purview".

<sup>12</sup> Venice Commission, [CDL-AD\(2010\)025](#), Report on the role of the opposition in a democratic Parliament, paras 116-124. See also the Handbook for parliamentarians on "[National parliaments as guarantors of human rights in Europe](#)", Parliamentary Assembly of the Council of Europe, 2018, p.18.

<sup>13</sup> [CDL-AD\(2024\)013](#), *op. cit.*, para. 54.

37. In light of these observations, the recommendation has not been followed, and thus remains relevant.

### 3. Additional issues to be clarified

38. Article 12 of the draft law mentioned that "as a rule", the Deputy Prime Minister is a minister. The Venice Commission noted that the "[u]se of the phrase "as a rule", may create a misunderstanding on the possibilities of having Deputy Prime Ministers without the status of minister".<sup>14</sup> In the revised draft law, Article 12 no longer contains the ambiguous term "as a rule", and thus clarifies the status of the Deputy Prime Minister, who is a member of the Government (Article 8) but is not otherwise a Minister. Therefore, the recommendation has been fully followed.

39. Article 18 of the draft stated that "[t]he Code of Ethics for Government members shall be adopted by the Government". While welcoming this provision, the Venice Commission recommended providing for the publication of this Code and a right of scrutiny by Parliament to ensure legislative control over this sensitive subject. Article 18 of the revised draft law specifies the content and scope of the Code of Ethics and provides for the establishment, by the Government, of an Ethics Committee responsible for monitoring the implementation of the Code. The Venice Commission took note of the information provided by the authorities that as an act adopted by the Government, the Code of Ethics will be published in the Official Gazette and on the official website of the Government after its adoption. These developments are welcome. However, the recommendation regarding the scrutiny by Parliament has not been followed and thus remains relevant.

40. The Venice Commission recommended clarifying, in Article 20 of the draft law, before whom and where the Prime Minister and the members of the Government immediately after the election in the Parliament shall take the oath (Article 97 of the Constitution clearly stipulates that the President shall take the oath before the members of the Parliament). Such an ambiguity still remains in the revised draft law. Therefore, the Commission reiterates its recommendation.

41. Articles 37, 38, and 39 of the draft law outlined various governmental acts (e.g., decrees with legal force, decrees, resolutions, strategies, programs, declarations, decisions, conclusions, etc.). Article 100, paragraph 3 of the Constitution entitles the Government to adopt decrees, decisions and other acts for the enforcement of laws. In addition, Article 101 of the Constitution authorises the Government to adopt decrees with legal power during the state of war or the state of emergency. The Venice Commission also noted that "[t]he need for a clearer definition applies for other acts too. For example, there is a distinction generally accepted in law that many orders are simply administrative in character (such as orders appointing persons to positions), whereas others (such as orders authorising the issuance of a proclamation bringing an enacted law or statute into force) may be legislative in nature. As for regulations, they are usually in the nature of subordinate or delegated legislation, and by definition, usually have the force of law for an indeterminate number of persons (whereas orders are usually directed to individuals or a small class of defined persons)".<sup>15</sup> For these reasons, the Commission recommended to better describe and clarify the types of acts and their consequences to reduce legal uncertainty and/or confusion. In the revised draft law, government acts have been provided in Articles 33 and 34 (that replace Articles 37, 38 and 39). The distinction between decrees with legal force and other decrees has been removed, retaining only "decree", which is commendable. At the same time, as indicated in para. 12 above, the fact of removal does not equal to clarification of the distinction, in particular, when such distinction has been provided in the Constitution. The drafters are therefore invited to align the revised draft law with the Constitution. As regards definitions of acts

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<sup>14</sup> [CDL-AD\(2023\)036](#), *op. cit.*, para. 70.

<sup>15</sup> *Ibid.*

and their consequence, the revised draft law largely retains, in slightly improved form, the descriptive categories of regulations, resolutions, strategies, programs, declarations and conclusions. The Venice Commission considers that the recommendation to better describe and clarify the types of acts and their consequences to reduce legal uncertainty and/or confusion has been partially followed.

42. Former Article 48 (currently Article 46 of the revised draft law containing similar wording) of the draft law empowers the Government to “annul ministerial regulations that infringe the freedoms and rights of both natural and legal persons, as well as in other situations specified by law”. For the Venice Commission the reasons for including legal persons amongst the protected categories in this Article were not clear and it was recommended that the authorities provide further elucidation in this regard. This recommendation has not been followed and thus remains relevant. The authorities are invited to provide clarification in the explanatory report of the revised draft law.

43. The Venice Commission noted that Article 53 of the draft law contained “a somewhat imprecise provision: “A delay in consideration or passage of a law or other act may be requested by Government representatives in order to take the official position of the Government”.<sup>16</sup> The Commission recommended clarifying the scope of such a request. Article 51 (former Article 53) of the revised draft law remains unchanged. From the general analysis of the revised draft law and the Rules of the Parliament, it would appear that the provision is related to the legislative process of consideration of the draft laws in the parliamentary committees. The Commission reiterates its recommendation to clarify the provision. It also recalls that Article 51 of the revised draft law is part of Chapter XIII (Interaction with the Parliament) analysed in paras 10 and 14 above in the context of their constitutional entrenchment.

#### **D. New provisions on integrity checks for officials**

44. According to the authorities, a new Chapter X (Articles 43-45) has been introduced in the draft revised law in response to GRECO recommendations,<sup>17</sup> providing that “[b]efore proposing a candidate for Prime Minister, Government members, and executive branch officials, an integrity check procedure is conducted to identify and manage potential risks of conflicts of interest”. Other provisions of the Chapter set the modalities of conducting the integrity checks.

45. The Venice Commission welcomes the introduction of an integrity check for persons entrusted with top executive functions in line with GRECO recommendations, which aim at increasing transparency and accountability of state officials and public servants. Nevertheless, it is not clear from the provisions of Chapter X whether the failure to pass an integrity check by the candidate for Prime Minister or other candidate members of the Government would be an obstacle for the Parliament to elect them for the respective positions or it is of an advisory nature and aims to inform members of Parliament and the general public about the integrity of relevant candidates, allowing them to take final informed decisions on the candidates. In this regard, the Venice Commission notes that the provisions of the revised draft law do not entail any necessary consequences in case of a problematic result of the integrity check.

46. The following observations are called for in this particular regard: If the aim of the integrity check is to inform the competent political authorities concerning a candidate, the final decision remains with the Parliament. On the other hand, in a case where the President of Montenegro

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<sup>16</sup> *Ibid.*

<sup>17</sup> To conduct integrity checks prior to the appointment of ministers and state secretaries in order to identify and manage possible risks of conflicts of interest before their appointment; integrity checks take place in respect of the (Deputy) Chief of cabinet of the Prime Minister, as well as the politically appointed “special advisors” of the Prime Minister and Deputy Prime Ministers, as part of their recruitment, in order to avoid and manage possible risks of conflicts of interests; to adopt a code of ethics - see [GrecoRC5\(2024\)10](#), Compliance Report on Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, June 2024.

declines to propose the disqualified candidate and further consultations conducted with the representatives of the political parties represented in the Parliament (Article 95 of the Constitution) to propose another candidate are unsuccessful, a political crisis may occur.

47. Given the importance of integrity checks and the possible impact that their consequences may have on the process of the formation of the new government and the functioning of the institutions in the country, the Venice Commission considers that the existing description of the modalities of undergoing integrity checks should be supplemented with provisions as to the steps to be taken, in keeping with the Constitution, in case the candidate fails to pass the integrity check. Furthermore, the Venice Commission refers to its important observations made in the 2022 Urgent Opinion on the Law on amendments to the Law on the President of Montenegro: “The refusal of the President to propose a candidate Prime Minister to form a Government, or to designate the one proposed by the parliamentary majority, the lack of political consultations or the refusal to take part therein, the mutual allegations of unconstitutional behaviours, the threats of parliamentary boycott or of impeachment, the refusal to elect judges of the Constitutional Court, up till the hasty legislative initiative that materialised in the Law amending the Law on the President, are altogether symptoms of a lack of respect for institutions and citizens, as well as of poor political and constitutional cultures. The Venice Commission urges the Montenegrin authorities and political parties to be guided by the principle of loyal cooperation between State organs in the relations between the President of the Republic and the Parliament, but also between different political forces within the Parliament, calling on the responsibility of each individual MP to constructively participate in solving the current impasse and taking the required vital decisions”.<sup>18</sup>

### III. Conclusion

48. The Venice Commission praises the efforts made by the Ministry of Public Administration and all the relevant stakeholders in Montenegro in order to revise the draft law on the Government of Montenegro. The Commission welcomes the fact that the revised draft law addresses most of its 2023 key recommendations, in particular as regards the transparent and inclusive legislative process and the explanatory report, dual nationality for members of government, the upper limit of the number of ministries, the powers of an outgoing government and the entry into force of the Law.

49. The Commission also takes note of the partial implementation of its two key recommendations on the principle of legality and constitutional entrenchment and the First Deputy Prime Minister’s inability to temporarily exercise his/her duties.

50. The Commission, thus, draws the attention of the authorities to the following pending key recommendations:

- to ensure full alignment of Chapters XII and XIII of the revised draft law with the Constitution, as well as the principles of legality and separation of powers; to align the revised draft law with Articles 103 and 110 of the Constitution. It is highly recommendable to envisage the constitutional revision as a more sustainable solution in this regard;
- to specify that in the case the First Deputy Prime Minister cannot replace the Prime Minister during the latter’s absence or temporary inability, the Deputy Prime Minister who has served the longest in the government or is the most senior in terms of age shall temporarily exercise the Prime Minister’s duties.

51. The Commission also welcomes the fact that several other recommendations were fully or partially followed, in particular, as regards the clarification of the status of the Deputy Prime Minister and the distinction between decrees and decrees having legal force. At the same time,

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<sup>18</sup> [CDL-AD\(2022\)053](#), *op. cit.*, paras 30-31.

the Commission reiterates the following pending recommendations and notes that further recommendations are to be found in the text of this opinion:

- to clarify in Article 19 that the proposal of the Prime Minister as to the composition of the government should reflect the constitutional aims of gender balance and minority representation;
- to reconsider the rules concerning quorum and voting majorities set out in Article 28 of the revised draft law;
- to specify in Article 3 of the revised draft law that the action of the Government is subject to parliamentary accountability;
- to provide for a right of scrutiny by Parliament regarding the Code of Ethics to ensure legislative control over this sensitive subject;
- to elucidate further the reasons for including legal persons amongst the protected categories in Article 46 of the revised draft law.

52. Finally, given the importance of integrity checks and the possible impact that their consequences may have on the process of the formation of the new government and the functioning of the institutions in the country, the Venice Commission recommends specifying the steps to be taken, in keeping with the Constitution, in case of negative results of the integrity check.

53. The Venice Commission remains at the disposal of the authorities of Montenegro for further assistance in this matter.