Strasbourg, 9 October 2023 **CDL-AD(2023)036**

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

OPINION

ON THE DRAFT LAW ON THE GOVERNMENT

Adopted by the Venice Commission
at its 136th Plenary Session
(Venice, 6-7 October 2023)

on the basis of comments by

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

Opinion co-funded by the European Union

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I. Introduction

1. By letter of 27 July 2023 addressed to the Secretary General of Council of Europe, Mr Marash Dukaj, the Minister of Public Administration of Montenegro requested an opinion of the Venice Commission on the draft Law on the Government of Montenegro.

2. Mr Warren Newman, Mr Vladimir Vardanyan and Mr François Séners acted as rapporteurs for this opinion.

3. On 18 and 19 September 2023, the rapporteurs, together with Mr Pierre Garrone and Mr Roland Gjoni and Ms Martina Silvestri from the Secretariat, held online meetings with representatives of the Ministry of Public Administration, the Office of the Prime Minister, the Parliament, the European Union Delegation, and civil society organisations. The Commission is grateful to the authorities of Montenegro and the staff of Council of Europe office in Podgorica for the excellent organisation of the online meetings.

4. This opinion was prepared in reliance on the English translation of the draft Law on the Government. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs, the results of the online meetings of 18-19 September 2023 and written comments sent by the Montenegrin authorities. Following an exchange of views with Mr Marash Dukaj, Minister of Public Administration of Montenegro, it was adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023).

II. Domestic legal context

A. Observations on the law-making process

6. The draft Law was prepared by the outgoing government whose mandate ended with a no confidence vote in August 2022. General elections took place on 11 June 2023. The new Parliament held its constitutive session on 27 July 2023 but failed to elect a Speaker and Deputy Speaker. On 10 August 2023, the Prime Minister-designate received a mandate to form a government from the President of the Republic within 90 days. The Prime Minister-designate has to propose a government and its programme by 11 November 2023. At the time of the drafting of this opinion, no party or coalition commands a majority in the Parliament. In this context, the Commission makes the following observations regarding the law-making process.

7. In principle, the Venice Commission welcomes the initiative to draft a Law on the Government of Montenegro. Setting forth the manner of composition of the Government, its term of office, method of operation and decision-making, and its relations with other state bodies, may enhance the legal certainty and transparency of government activities.

8. That said, the Venice Commission notes that the law-making process for this draft law is complicated by the uncertain situation surrounding government formation. As will be elaborated below, one of the unwritten conventions of a caretaker government is that it should refrain from undertaking new policy initiatives and/or proposing new laws after it has lost the support of the Parliament. During discussions online, state authorities agreed that Montenegro's experience suggests that even when draft laws are presented in Parliament by an outgoing government, once a new government takes up office, the Parliament formally requests the new Prime Minister to take a position on the draft laws undergoing parliamentary review. The activation of the law-making process for the draft Law on the Government before a new government takes up its functions may limit the ability of the new government to determine its legislative priorities pursuant to its programme. In the current context, the draft Law is still in the preparatory stage and the new government may require some time to become familiar with the draft Law before deciding to

amend the text, abandon the initiative altogether or submit the draft in bill form to the Parliament for enactment. For these reasons, it would be more prudent for the outgoing government to defer the finalisation of this draft Law to the new government upon taking up its functions, and with the support of the new Parliament.

B. Constitutional basis of the draft Law

9. The draft Law is proposed in accordance with Article 16 of the Constitution of Montenegro, which provides that legislation is enacted by the Parliament in accordance with the Constitution and, *inter alia*, shall regulate *"the manner of establishment, organisation and competences of the authorities and the procedure before those authorities, if so required for their operation"*.[1] Article 82 (1) and (3) of the Constitution enumerates the main responsibilities of the Parliament including the power to adopt the Constitution, laws as well as regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations).

10. The composition and main powers of the Government of Montenegro are regulated in Part III of the Constitution of Montenegro (Articles 100-112). The principle of separation of powers enshrined in Article 11 (4) of the Constitution stipulates: "*The relationship between powers shall be based on balance and mutual control."*

11. In the view of the Commission, these provisions provide a constitutional basis for the Parliament to regulate by law the establishment, organisation, and competences of the Government of Montenegro. As such, the draft Law, if enacted, may be characterised as organic or quasi constitutional legislation in that it deals with principles and organs of government and is thus constitutional in nature (although not in status). The Constitution of Montenegro remains the supreme law; the draft Law is designed to implement some of the elements of the Constitution as they relate to the government and its relations with the Parliament and other state actors, but its provisions must be consistent with the Constitution itself.

C. Rationale and main elements of the draft Law

12. According to the information provided by the requesting authority, the reasons for the enactment of this law can be summarised as follows. First, the draft attempts to address a gap as there is currently no Law on Government in Montenegro. The enactment of a new law is contemplated in the Government's Medium-term Work Programme 2022-2024. Second, the law seeks to integrate various regulations and practices followed by the government, streamline government operations, and establish rules on the efficient cooperation with state bodies including the Parliament, the President and state administration. In addition, the law seeks to better define the powers of a government whose mandate has ended, during the time between the end of the term of the outgoing government until the new government takes up its functions. According to the Ministry of Public Administration (MPA,) the previous experiences of the work of governments in a "technical mandate" have shown that it is necessary to clearly regulate the legal space between the work of two governments, to avoid any vacuum of power in the transitional period between the end of the mandate of the outgoing government and the commencement of work of the new government.

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[1] Article 16 of the Constitution of Montenegro read as follows:

Article 16 - Legislation

The law, in accordance with the Constitution, shall regulate:

1) the manner of exercise of human rights and liberties, when this is necessary for their exercise;

2) the manner of exercise of the special minority rights;

3) the manner of establishment, organisation and competences of the authorities and the procedure before those authorities, if so required for their operation;

4) the system of local self-government.

5) other matters of interest for Montenegro.

13. The text proposed in the draft consists of 60 articles organised into 15 chapters.[2] It aims at regulating the organisation, mandate, composition, manner of working, decision-making rules, the types of acts of the government and grounds for the termination of its mandate, its permanent and *ad hoc* working bodies, and the responsibility of the general secretariat of the government. In addition to relations with the Parliament and President, the draft regulates the interaction with other state bodies such as the State Audit and Protector of Human Rights.

III. Relevant international standards

14. At the outset, the Commission notes that there are few international standards relevant to the matters regulated by the draft Law. The Commission has previously examined similar laws from the perspective of the Rule of Law Checklist.[3] Principles relevant to the issues raised by this draft Law include:

- ***The principle of transparency***[4] of the legislative process related to the standards which apply to democratic law-making,
- ***The principle of legality***[5]***,*** which, *inter alia,* requires laws to be in accordance with the Constitution; and
- ***The principle of the separation of powers***[6], which addresses the respective functions of the executive and the legislature and the relationship between them.

15. First, in the view of the Venice Commission, the process for making law must be *"transparent, accountable, inclusive and democratic"*. To satisfy this requirement, the public should have access to draft legislation, and should have a meaningful opportunity to provide input.[7] Drafters should assess the impact of new laws on human rights and budget before legislation is adopted.[8] Similar standards of law-making procedures, including the need for thorough impact assessment; the need for broad and inclusive public consultations; the need for transparency in the legislative process, and for consistency in the laws, have also been promoted by the OSCE.[9]

16. Second, the *principle of legality* requires that *supremacy of the law* is recognised. Amongst other things, this means that conformity of legislation with the Constitution must be ensured, and the action of the executive branch must conform with the Constitution and other laws.[10] The principle of legality includes the supremacy of the law. This implies that in the hierarchy of norms of the legal order (in all countries with a formal written Constitution), the Constitution has supremacy over other laws.[11] The principle of legality also requires that other normative acts (secondary or delegated legislation and bylaws) issued by state institutions should be authorised by and be consistent with the primary legislation.[12]

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[2] 1:Basic Provisions; 2: Composition of the Government; 3: Mandate of the Government; 4; Organisation; 5: Method of work and decision-making; 6: Publicity of the Government's Work; 7: Acts (regulations, decisions, declarations, resolutions etc.) of the Government; 8: Government Work Program; 9: General Secretariat; 10: Working Bodies of the Government; 11: Relationship to state administration bodies; 12: Relationship with the President of Montenegro; 13: Relations with the Parliament of Montenegro; 14: Relationship with other institutions; and 15: Transitional and Final Provisions.

[3] Venice Commission, (CDL-AD(2016)007).Rule of Law Checklist.

[4] Venice Commission, CDL-AD(2016)007), Rule of Law Checklist, Benchmarks A.5.iv. See also, Venice Commission, CDL-AD(2020)034, Opinion on the Draft Law on the Government of Kosovo, paras. 21-24.

[5] Venice Commission, CDL-AD(2016)007), Rule of Law Checklist, Benchmarks A.1.ii and iv.

[6] Venice Commission, Rule of Law Checklist CDL-AD(2016)007), Benchmarks A.5.iv.

[7] Venice Commission, CDL-AD(2016)007), Rule of Law Checklist, Benchmarks A.5.iv.

[8] Venice Commission, CDL-AD(2016)007), Rule of Law Checklist, Benchmarks A.5.v.

[9] Document of the Copenhagen meeting of the Conference on the Human Dimension, 29 June 1990 at https://www.osce.org/fr/odihr/elections/14304.

[10] Venice Commission, CDL-AD(2016)007).Rule of Law Checklist, Benchmarks A.1.ii and iv.

[11] Venice Commission, CDL-AD(2016)007).Rule of Law Checklist, para. 46.

[12] Venice Commission, CDL-AD(2016)007).Rule of Law Checklist, II.A.1.ii and iv. See also Venice Commission, CDL-AD(2019)025, Opinion on the Draft Law on Legal Acts of Kosovo, paras. 9-13.

17. Third, the *principle of separation of powers* which, *inter alia*, affirms the supremacy of the legislature over the executive in making laws is also relevant here. This means that when a regulatory area is required to be regulated by legislation (as in Article 16 of the Constitution of Montenegro), the general and abstract rules on the organisation and functioning of that particular area should be included in an act of Parliament, or a regulation based on that act. Even when the legislative power is reserved to the executive by the virtue of the Constitution (e.g., during states of emergency or wartime), the discretion of the executive cannot be unlimited and must be subject to parliamentary oversight and judicial review. In the same spirit, the legislature should exercise its power to regulate the organisation and functioning of the executive responsibly, avoiding the imposition of strict and overly detailed rules which unduly limit the executive branch from exercising its respective functions. At the same time, unfettered and unchecked power in the hands of any of the branches of the state is not consistent with the fundamental premises of the Rule of Law as a constitutional principle.[13]

IV. Analysis

A. The principle of transparency and the lack of an explanatory report

18. The Commission notes that the draft law was initially submitted without an explanatory report which should set out the rationale for the proposed law, the objectives it seeks to achieve, the alternatives considered, and choices made by the drafters. Following a request to the state authorities, in August 2023, the Commission received a brief memorandum on the draft Law containing the reasons for the preparation of the draft Law, its main objectives, and an outline of its chapters. However, the memorandum does not contain any regulatory impact assessment (hereinafter: RIA) or human rights assessment which would facilitate the task of scrutinising the draft Law and its relationship with other laws affected by the entry into force of a new Law on the Government (e.g., the Law on Public Administration, Law on Montenegrin citizenship, Law on Administrative Procedure).

19. The Commission notes that the Rules of Procedure of the Government of Montenegro establish a general obligation for all ministries preparing laws and other regulations to carry out an impact assessment of the proposed acts in accordance with the Ministry of Finance (Article 33).[14] Furthermore, the Venice Commission understands that an assessment of financial resources required for the implementation of this law will be carried out at a later stage. Although the Commission was not provided with the requisite assessments, it encourages the state authorities of Montenegro to conduct such assessments prior to the submission of the law to the Parliament to enable its members to make informed decisions on the enactment of the draft Law.

20. The Commission commends the efforts of the MPA to conduct public consultations and organise a public debate on the draft law in accordance with the Rules of Procedure of the Government (Article 35).[15] The MPA received comments from the public and interested civil society organisations and compiled a report of the public comments.[16] That said, during the online meetings, most interlocutors proposed a more inclusive and transparent process in respect of the further stages of the drafting process.

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[13] This can be derived from the principle of separation of powers, which limits unfettered power and the unchecked discretion of the executive. See Council of Ministers Documents CM(2008)170, The Council of Europe and the Rule of Law - An overview (27 November 2008), § 46.

[14] Rules of Procedure of the Government of Montenegro, available in the Montenegrin language at https://www.gov.me/biblioteka?page=1&sort=published_at&q=Poslovnik%20Vlade%20Crne%20Gore

[15] Ibid.

[16] The Explanatory Report submitted by the Ministry of Public Administration includes a link to the ministry's website where the public comments are available in the Montenegrin language at https://www.gov.me/dokumenta/4fbd1160-3059-4a6a-9692-93514c9c90fa

21. The Commission reiterates that the provision of sufficiently detailed explanatory documents to accompany draft legislation is in the interests of the government proposing the legislation.[17] This document should be used as an opportunity to explain clearly why the law is considered necessary and to demonstrate that the policy-making process has properly considered alternative ways of achieving the main policy objectives of the proposed law. In this context, the Commission encourages further discussion on any outstanding ambiguities and inconsistencies in the draft Law identified in this opinion.

B. The principle of legality and the option of constitutional entrenchment

22. In respect of the basic constitutional structure, the Constitution of Montenegro establishes Montenegro as a sovereign and independent state, with "a republican form of government" and a democracy "based on the rule of law" (Article 1) where every person is bound by the Constitution and the law (Article 10). The Constitution - being a written one - is the supreme law and the Constitutional Court is expressly mandated to protect constitutionality, law and legality of other regulations (Article 11 (5), Article 145 and 149). In the view of the Commission, these constitutional provisions encompass the principles of the hierarchy of norms, supremacy of the constitution and legality, as outlined above.

23. In terms of the hierarchy of norms, the Constitution of Montenegro remains supreme, whereas the law (in this case, the proposed Law on the Government of Montenegro) can be referred to as "organic legislation" or "systemic law", and thus constitutional or quasi-constitutional in character, if not in status. Legislation of a constitutional nature or character is legislation that implements a principle of government, deals with the composition and powers of the organs and institutions of government, or regulates the branches of government. Thus, this draft Law will be an act adopted through an ordinary law-making process by the Parliament of Montenegro with an absolute majority, but 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. Therefore, 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.

24. The draft being examined includes several provisions which appear to introduce new rules with varying degrees of specificity on which the Constitution is silent. For example, Article 9 of the draft Law on the composition of the government envisages the maximum number of Deputy Prime Ministers (4) and ministers without a portfolio. Article 26 determines the maximum number of ministries as 15 and specifies seven core ministries as mandatory, preventing their merger with other ministries. Article 102 of the Constitution on the composition of the Government is very brief on this matter, merely stating: "*The Government shall consist of the Prime Minister, one or more Deputy Prime Ministers and the ministers".* While there seems to be no direct contradiction between the provisions contained in the draft law and the constitutional provisions on the government, the draft Law creates new rules on the government's composition.

25. Article 19 of the draft Law, entitled "the Government's Mandate" states that the "*The Prime minister - designate must submit to the Parliament the program and proposal for the composition of the Government within 30 days of the day the President of Montenegro initially suggested the Prime minister - designate."*, whereas the Constitution has a different wording and time limit for the formation of the government, stating in Article 92 that *"The Parliament shall be dissolved if it fails to elect the Government within 90 days from the date when the President of Montenegro proposed for the first time the candidate for the position of the Prime Minister."* The draft Law

[17] Venice Commission, CDL-AD(2020)034, Opinion on the Draft Law on the Government of Kosovo, para. 31.

appears to create new rules which shorten the time given for the formation of government to the first candidate for the position of Prime Minister from 90 days to 30 days. As previously stated in the urgent opinion on the Law on amendments to the Law on the President of Montenegro, the time limit altering the rules on the government formation does not find any support in the Constitution.[18] Paragraph 2 Article 19 of the draft Law contains new language imposing an obligation on 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 makeup of the Government."* While commendable from the perspective of inclusiveness, this provision is not found in Article 102 of the Constitution on the composition of the Government, and in the view of the Commission, may be too ambiguous to be efficiently enforced in practice.

26. Article 22 of the draft Law on the powers of a government whose mandate has ended creates new rules imposing limitations such as not to incur any new financial obligations without the approval of Parliament and not to make nominations, or appointments except for appointing acting officials. These restrictions may be justified by the long periods of government serving in a "technical capacity" which Montenegro has recently experienced, but they appear to go beyond the Constitution which in Article 110 (3) specifically imposes only one restriction, stating that *"The Government whose mandate has ceased shall not dissolve the Parliament."* In some states with parliamentary systems, these types of additional restrictions on caretaker governments are matters left to good practice and unwritten constitutional conventions, but if they are to be stipulated as requirements of law, further consideration should be given to their consistency with the text and underlying principles of the Constitution.

27. Other provisions of the draft Law related to the interaction with the President of Montenegro (Chapter XI) and interaction with the Parliament of Montenegro (Chapter XII) are 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.

28. It is, of course, for the Constitutional Court of Montenegro to rule on these questions of constitutional law and to ensure the supremacy of the Constitution.

29. The Commission considers that the constitutional entrenchment of some of the provisions of the draft Law may prove to be necessary. In recent years, Montenegro has undergone a period of political volatility, government instability and institutional crises where constructive engagement between political forces for substantial constitutional changes has been difficult to achieve. As the Commission concluded in its previous opinion on amending the Law on the President of Montenegro, 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 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.[19]

30. In sum, further deliberation and elaboration of the said provisions (Articles 9, 19, 22, 26 as well as Chapters XI and XII) should be considered to ensure that the supremacy of the Constitution is upheld.

[18] Venice Commission, CDL-AD(2022)053, "Urgent Opinion on the on the Law on Amendments to the Law on the President of Montenegro", paras. 39 and 45.
[19] Venice Commission, CDL-AD(2022)053, "Urgent Opinion on the on the Law on Amendments to the Law on the President of Montenegro", paras. 52-53.

C. Prohibition of dual nationality for members of government

31. According to Article 9 (5) and Article 24 (6) of the draft Law, citizens of Montenegro who have the citizenship of another country cannot serve as a Prime Minister or member of government and their term of office shall be terminated if they acquire another citizenship while in office.

32. The Venice Commission notes there are no precise international standards on the prohibition/non-prohibition of dual citizenship for high-ranking state officials. States generally enjoy a wide margin of appreciation in regulating access to their citizenship and accepting dual nationality.

33. It further notes that the Commission has not been requested to conduct a thorough examination of the dual nationality regime established by the Constitution, laws and by-laws of Montenegro, as this would also require a separate analysis of the national context and its history as a part of former Yugoslavia and a former member of the Union State of Serbia and Montenegro. This would also imply an examination of whether the current constitutional order of Montenegro permits the law to include additional requirements for the members of the Government or whether the constitutional text is exhaustive, and whether similar additional requirements are stipulated in other laws regulating the activities of the Parliament or the Judiciary. The final interpretation of the Constitution belongs to the Constitutional Court, and assessing the content of other pieces of legislation would go beyond the scope of this opinion. Nevertheless, the Commission deems it useful to offer the drafters several observations from the perspective of internationally recognised Rule of Law standards in order to ensure better fulfilment of those standards in the subsequent drafts.

34. The relevant articles of the Montenegrin Constitution do not enumerate dual nationality as a cause for incompatibility to serve as a member of the Government (Article 104). The draft Law, through the disqualifying conditions of Article 9 and 24, seems to create new incompatibilities in relation to being a member of government which are not envisaged in the constitutional provisions on the Government. Other relevant provisions of the Constitution (Articles 100-112) on the composition and responsibilities of the Government are silent about any requirements for members of the Government: age, domicile, length of residence, citizenship *et cetera*. In respect to the members of Parliament, dual nationality is not enumerated as a disqualifying condition as Article 87 (4) of the Constitution refers explicitly to the cessation of Montenegrin citizenship as a ground for the termination of the mandate and not the possession of another citizenship. Without repeating the arguments about the supremacy of the Constitution, the Commission advises further analysis to ensure that the provisions on prohibition of dual nationality for members of government remain within the boundaries of the Constitution.

35. The Constitutional Law for the Implementation of the Constitution of Montenegro which was proclaimed and came into effect concurrently with the Constitution on 22 October 2007 appears to establish the general rule that citizens of Montenegro who acquire the citizenship of another country will lose the citizenship of Montenegro.[20] Article 12 (2) of the Constitutional Law differentiates between citizens of Montenegro who may have obtained citizenship of another state prior to the day of the referendum on independence of 3 June 2006 and those who acquired it later but not longer than one year as of the day when the Constitution of Montenegro was

[20] The Constitutional Law for the Implementation of the Constitution of the Republic of Montenegro - Appendix I to the Constitution of Montenegro - contains16 articles which are considered an integral part of the Constitution. Article 12 of this Constitutional Law for the Implementation of the Constitution of the Republic of Montenegro states:

> **Article 12**
>
> Every citizen of Montenegro who had a citizenship of some other State apart from the Montenegrin citizenship, on the day of 3 June 2006, shall have the right to keep the Montenegrin citizenship.
>
> Citizen of Montenegro who obtained some other citizenship after 3 June 2006, shall have the right to keep the Montenegrin citizenship until a bilateral agreement is made with the State whose citizenship he obtained, but not longer than one year as of the day when the Constitution of Montenegro was adopted.

adopted. The Constitution came into force on 22 October 2007. This means that after 21 October 2008, citizens of Montenegro who obtained the citizenship of another country after 3 June 2006 were not able to keep the citizenship of Montenegro and the citizenship of that other country legally unless Montenegro concluded bilateral agreements to this effect.

36. During the online meetings, the state authorities clarified that except for North Macedonia, Montenegro has not been able to conclude bilateral agreements with other states of the region (e.g., Serbia, Croatia, Bosnia and Herzegovina). As most interlocutors confirmed, in practice, at least some citizens of Montenegro do possess the citizenship of other regional countries in parallel with the citizenship of Montenegro even though Montenegro has not concluded bilateral agreements with such countries on regulating the question of dual citizenship. The *de facto* possession of two or more citizenships by citizens of Montenegro, presents issues of enforceability of the prohibition of dual nationality for members of Government stipulated in the draft Law. For example, it is unclear how the draft Law proposes to deal with the cases when a particular member of the Government does not make public the possession of another nationality, either because he/she intentionally wishes to benefit from the advantage of having two citizenships or because in spite of his/her wishes, he/she still holds another citizenship on the basis of the legislation of a state which makes renunciation of citizenship difficult or impossible and has not concluded an agreement with Montenegro.

37. Furthermore, in the view of the Commission, the draft Law does not clarify whether the prohibition of dual citizenship is to operate automatically as an absolute and final bar on membership in the Government, or whether dual citizenship previously acquired by birth (Montenegro being a successor State) should be distinguished from overt acts of naturalisation. In its present form, the draft Law does not clarify whether the renunciation of the nationality of another country enables a person to take up a government position in Montenegro or whether the acquisition of a second nationality is an irreversibly disqualifying event, regardless of steps taken to renounce it.

38. Most importantly, drafters should consider if the provisions of the Law on dual nationality respect the non-discrimination principle. In the past, the Venice Commission has recommended that restrictions of citizens' rights should not be based on multiple citizenship.[21] The principle of non-discrimination requires the prohibition of any unjustified unequal treatment under the law and/or by law, and that all persons are guaranteed equal and effective protection against discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[22] This principle is also enshrined in other norms of international law and conventions ratified by Montenegro, which in accordance with Article 9 of the Constitution of Montenegro, prevail over the internal legal order.[23] Montenegro is a Party to several relevant international conventions and has undertaken obligations to respect the non-discrimination principle.[24]

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[21] Venice Commission, CDL-AD(2008)022 Joint Opinion on the Election Code of Moldova as of 10 April 2008, paras. 30-32. See also Venice Commission, (CDL-AD(2002)023rev), Code of Good Practice in Electoral Matters, I. 1.1., b, par. 6.

[22] Venice Commission, Rule of Law Checklist (CDL-AD(2016)007), para. 69.

[23] Article 9 of the Constitution of Montenegro states as follows:

> **Article 9. Legal order**
> The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation.

[24] Relevant provisions include: Article 2 of the International Covenant on Civil and Political Rights, 16 December 1966 (accepted by Montenegro through succession procedure on 23 Oct 2006), at https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (ratified by Montenegro 6 June 2006) and its Protocol No. 12 (ratified by Montenegro on 3 March 2004), both at https://www.echr.coe.int/documents/d/echr/convention_ENG, Article 5 of the European

39. On the issue of conservation of a previously acquired nationality, Article 16 of the European Convention on Nationality (ECN) states that: *"A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required."*

40. The Commission is aware that upon signing this Convention, Montenegro lodged a reservation to Article 16 of the ECN not accepting the rules on conservation of prior nationality, on account of a potential conflict between Article 16 of the ECN and Article 12 of the Constitutional Law for the Implementation of the Constitution of Montenegro cited above. However, notwithstanding this reservation, Article 5 of the ECN stipulates that *"The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin*." Article 17 of the ECN regulating state rights and duties related to multiple nationality requires contracting parties not to discriminate on the ground of possessing another nationality stating that *"Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party."*

41. Dealing with a similar question in respect of Moldova, in 2010 the European Court of Human Rights (ECtHR) ruled that restrictions for dual citizens in accessing high government positions are permissible, but they should not be aimed at excluding some persons or groups of persons from participating in the political life of the country. After considering Moldova's special historical and political context, the ECtHR found the restrictions preventing elected MPs with multiple nationalities from taking seats in Parliament to be disproportionate.[25] It found a violation of Article 3 of Protocol No. 1 to the European Convention of Human Rights (ECHR) on the right to free elections.[26]

42. In the light of these observations, the Commission considers that the dual nationality provisions in the draft Law should be further elaborated to improve the clarity and predictability of legislation.

D. Prime minister's inability to temporarily exercise his/her duties

43. Article 10 of the draft Law on the responsibilities of the Prime Minister states that *"When the Prime Minister is prevented from carrying out his duties or is absent, he delegates those responsibilities to the Deputy Prime Minister, whom he selects."* While this provision appears to impose an obligation on the Prime Minister to delegate the responsibilities to a Deputy Prime Minister of his choice, it does not seem to address situations when the Prime Minister is unable to delegate (e.g., in the event of sudden illness or accident impairing his/her decision-making capacity). Although the absence or temporary inability of the Prime Minister to exercise his/her duties may rarely occur, it would be better to regulate this situation *ex jure* to avoid any confusion or misinterpretation arising from such situations.

44. One possible solution to partially eliminate this legal uncertainty is to introduce language designating one of the Deputy Prime Ministers as the First Deputy Prime Minister who automatically takes over the tasks of the Prime Minister. If 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) some "emergency exit" provisions may be helpful to address this situation. For example, a new provision may be added to specify that

Convention on Nationality of 6 November 1997 (ratified by Montenegro on 22 June 2010), at https://rm.coe.int/168007f2c8.

[25] ECtHR Grand Chamber, *Tanase v. Moldova*, Application No. 7/08, 27 April 2010, § 178-180.

[26] *Ibid*. In this case the ECtHR found that restrictions of this nature curtail the rights guaranteed by Article 3 of Protocol No. 1 to such an extent as to impair their very essence and deprive them of their effectiveness.

in the case the First Deputy Minister cannot replace the Prime Minister during the 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 his duties.

E. Limiting the number of ministries and naming seven mandatory ministries

45. Article 26 of the draft Law limits the number of ministries to fifteen and establishes seven core ministries which cannot be merged with other ministries (justice, defence, internal affairs, finance, foreign affairs, health, and public administration). The Constitution of Montenegro does not provide any numerical limits for the members of the Government (Article 102). From the perspective of the separation of powers, the draft Law appears to limit the flexibility generally afforded to the executive branch to organise government departments or ministries as it sees fit to cover its responsibilities and implement its programme.

46. The Commission reiterates that on the matter of government composition and structure, flexibility seems to be the rule and limitation the exception. As pointed out in a recent opinion, only a few countries, such as Belgium, impose a limit in their Constitution (Article 99: the Council of Ministers has a maximum of fifteen members) or Ireland, which sets a minimum and maximum limit in its Constitution (Article 28.1: the government has a minimum of seven and a maximum of fifteen members).[27] In other parliamentary democracies, such as Canada, most government departments, such as the Department of Justice, are established by statute/law.[28] In Lithuania, Article 29 of the Law on Government establishes 14 ministries, stipulates their names and enables the creation of additional ministries only through a law of parliament.[29]

47. In principle, the Commission finds the proposition to limit the number of ministries by the law as reasonable, since the number of ministries cannot be infinite or left at complete discretion of the ruling majorities. In a parliamentary system of governance, where the government is, as a rule, a coalition one, the unlimited number of ministries may lead to artificial enlargement of the Government, which may harm the activities of the executive and lead to mismanagement and cronyism.

48. The Commission finds no reason to disagree with the arguments of the state authorities of Montenegro who may have deemed it expedient to limit by law the number of ministries in a relatively small country and thus to curb the perennial temptation, in many democracies, to recognise and reward an inflated number of political actors and allies with ministerial positions including ministers without a portfolio. In this sense, preventing the artificial increase of government positions appears to be a legitimate policy objective.

49. There appear to be no constitutional obstacles to establishing a ceiling on the number of deputy prime ministers, ministers, and ministers without portfolio. Although the Constitution does not explicitly provide numerical limits for the number of ministries, 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 (Article 16 of the Constitution).

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[27] Venice Commission, CDL-AD(2020)034, Opinion on the Draft Law on the Government of Kosovo, para. 31.

[28] Section 63 of the Constitution Act of 1867 combined both approaches (flexible and prescriptive) in establishing the composition of the first Cabinets of the provinces of Ontario and Quebec. It provided that "The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown ands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor General." (emphasis added.)

[29] Law on the Government of Lithuania, No. I-464 of 19 May 1994 last amended by Law No. XII-934 of 19 December 2017.

50. However, from the perspective of the separation of powers, it is not entirely satisfactory that a law of Parliament (Articles 26 and 9) 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. Setting the limit of ministries, naming some of the ministries as mandatory and defining their scope of responsibilities as well as prohibiting their merger with other ministries appears to limit the Prime Minister's autonomy as out of 15 ministries, he/she can only decide on the scope of responsibilities for a maximum of eight ministries. Also, it is not entirely clear what are the guiding criteria on designating a ministry as mandatory and why a ministry covering Education is not considered to be one of the core functions of the state.

51. To strike a fairer balance between the supremacy of the Parliament and the separation of powers, it may be appropriate to amend Article 26 of the draft Law in such a way as to address the policy objectives of the drafters without excessively restricting the autonomy of the executive branch. The seemingly stringent rules of Article 26 may be tempered through new language establishing a greater upper limit (up to 18 ministries), while keeping the list of core ministerial areas of responsibility in the draft Law. This appears to be a more middle ground solution consistent with the recent experiences of government composition which has varied from 12 to 20 ministries.

F. Restricting the powers of an outgoing government

52. Article 22 of the draft Law specifies the powers of a government whose mandate has ended by stating that the Government is responsible for regular financial and other obligations if they do not incur new obligations which have not been approved by the Parliament. Under paragraph 2 of this article, the Government is prohibited from making new nominations or appointments or giving approval to appointments and can appoint officials only in an acting capacity. On the same matter, Article 110 (2) of the Constitution of Montenegro states, "*The Government whose mandate has ceased shall continue with its work until the election of the new composition of the Government"* and imposes only one restriction on the outgoing government, stating, *"The Government whose mandate has ceased shall not dissolve the Parliament".* The Constitution appears to stress the need for the continuity of government whereas the draft Law introduces complementary restrictions.

53. The Commission notes that the powers of outgoing governments or "caretaker governments" have been controversial in other countries (e.g., North Macedonia, Belgium, Kosovo, Ireland) and deserves some discussion. A general characteristic of "caretaker governments" is that they cannot claim to command the confidence of parliament since their mandate has expired (e.g., through a non-confidence vote or failure to be returned to office by the electorate). Due to the lack of full democratic legitimacy, a caretaker government is expected to exercise restraint and should not initiate new policy initiatives or take decisions on significant matters which do not require urgent decisions.

54. For this purpose, in many parliamentary democracies, including those of Australia and Canada, this type of prior restraint is imposed by what is generally called the "caretaker convention": an outgoing government is to act as a caretaker, or steward or fiduciary, taking only those decisions that are routine, or of a temporary nature, or are urgently required by the exigencies of the situation. These unwritten rules or "caretaker conventions" are grounded less in the principle of the separation of powers than they are in the principle of responsible government requiring the government to be politically accountable for their decisions to the democratically elected representatives in Parliament.

55. Turning to the case at hand, Article 22 of the draft Law seems consistent with the thrust of the Constitution in this regard, which places the emphasis on continuity of government without excluding limits designed to keep the exercise of powers by the outgoing government in check,

if possible, by limiting any decisions of a permanent character which would bind a future government with a new mandate. This is in line with the Commission's recent opinion on Kosovo in which it suggested that an outgoing government should refrain from making decisions on all matters that commit the future government on a lasting basis and which do not fall under routine, day-to-day business.[30]

56. Having established that, in principle, restrictions of powers of outgoing governments do not raise any issues of compatibility with Rule of Law principles or other international standards, the Commission finds it necessary to distinguish between the three main limitations stipulated in Article 22, namely 1) the prohibition of new financial obligations without the approval of Parliament, 2) to make no nominations, appointments or give approval for appointment (unless done so in line with the ordinary procedure and initiated procedures before its mandate expired) and 3) to appoint officials only in an acting capacity.

57. In the view of the Commission, in its current form, the provisions prohibiting the caretaker government from incurring any new financial obligations without approval of the Parliament may be too rigid and may hinder or seriously complicate the work of the Government. Should this restriction be construed too narrowly (e.g., suggesting that a "technical government" must seek parliamentary approval for every single additional Euro to be spent or to redirect funds in other projects after budgets are approved), it may prevent the government from promptly mobilising necessary resources to deal with unexpected situations (e.g., natural disasters and other emergencies).

58. The Commission considers that restricting the power of an outgoing government to make nominations, appointments or give approval for appointment is a reasonable solution which provides a necessary defence against politically motivated appointments prior to leaving office. This tendency to misuse the legal vacuum for last minute appointments was also shared by most interlocutors in the online meetings, who informed the rapporteurs that, in the past, outgoing governments had failed to show any restraint after losing the confidence of Parliament by continuing to nominate or appoint significant numbers of senior officials, including political advisors for ministers until their last days in office.

59. The limitation of powers of an outgoing government to appoint officials only in an acting capacity seems to be relevant too, since the Government whose mandate has expired is *de facto* an acting or "technical" Government which should not make new appointments unless they are temporary in nature.

60. In sum, should the provisions on restricting the powers of an outgoing government remain in the draft, the Commission finds the restriction on not incurring any new financial obligation as problematic from the perspective of the principle of continuity of government, as it makes government operations very difficult, particularly when dealing with unexpected challenges (e.g., *force majeure*). To address these situations, the Commission suggests that the drafters revisit this limitation to achieve the policy objective of imposing restrictions on unjustified spending while paying due regard to the principle of continuity of government. This could be done by specifying that a government whose mandate has ended should not undertake new financial obligations except those needed to guarantee the continuity of State services and institutions and the regular functioning of public services. Of course, these notions are often difficult to define in very clear terms since political realities cannot be regulated exhaustively by legal norms.

61. Furthermore, the Commission deems it necessary also to clarify the wording of Article 23 of the draft Law stipulating that the outgoing Government must**, "**as a rule**",** transfer power to the incoming one after the expiration of its term of office. Here, the phrase "as a rule" may lead to ambiguity implying that the outgoing government has the discretion to either transfer or not

[30] Venice Commission, CDL-AD(2020)034, Opinion on the Draft Law on the Government of Kosovo, paras. 47-50.

transfer the power to the new government. Based on comments from Montenegrin authorities, the rapporteurs learned that this provision refers to the ceremonial or technical handover of the tasks of the outgoing government to enable the incoming government to familiarise itself with ongoing projects and outstanding obligations. This may be an issue of translation but the English version of the Article 23 in the draft provided by the Ministry of Public Administration refers explicitly to the transfer of power and not the ceremonial or technical handover of duties to the incoming government. At any rate, this provision should be carefully couched in clear terms to ensure that the transition of power to a democratically elected government is an obligation and not merely an expectation.

G. Quorum for holding sessions and adopting decisions

62. As already said, Articles 9 and 26 of the draft Law provide that the maximum number of the members of Government may not exceed 22 (the Prime Minister, 4 Deputy Prime-Ministers, 15 Ministers, 2 Ministers without portfolio). Article 32 (1) sets the quorum to hold a session to be more than half of all members, or 12 if for practical purposes one takes the limit of 22 as a frame of reference. It further specifies that even when the quorum is reached, the decision-making majority is more than half of all members. This 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.

63. From a practical and operational perspective, more flexible regulations on the quorum and the rules on reaching decisions are preferable. Participation of half of the members of the Government for the quorum to be reached may be deemed necessary to avoid the adoption of the decision by "the minority", whilst the majority may be against it – or at least not in favour. However, 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. In terms of efficiency, in some systems, decisions are taken in principle at smaller and more focused Cabinet committees, with the full Cabinet meeting only to ratify (or not) the outcomes. This may not be necessary in a system such as Montenegro's, where the full Cabinet, including the Prime Minister, the Deputy Prime Minister(s) and up to fifteen Ministers is already relatively small.

64. The Commission observes that, in many countries, formal decisions of cabinets are governed by the confidentiality of what is said in the Cabinet room, and the convention of collective responsibility for Cabinet decisions means Ministers are bound by Cabinet solidarity and cannot dissent publicly from Cabinet decisions.[31]

[31] For a discussion of how to resolve conflicts between Cabinet confidentiality on the one hand and the right to pursue justice in the courts, maintain the rule of law, and the accountability of the executive, see the reasons of the Chief Justice of the Supreme Court of Canada in *Babcock et al. v. Canada (Attorney General)*, [2002] 3 S.C.R. 3, beginning at paragraph 15. "The British democratic tradition which informs the Canadian tradition has long affirmed the confidentiality of what is said in the Cabinet room, and documents and papers prepared for Cabinet discussions. The reasons are obvious. Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny […] If Cabinet members' statements were subject to disclosure, Cabinet members might censor their words, consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect. […] The process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly. […] Thus, ministers undertake by oath as Privy Councillors to maintain the secrecy of Cabinet deliberations and the House of Commons and the courts respect the confidentiality of Cabinet decision-making." (para. 18) https://decisions.scc-csc.ca/scc-csc/scc-csc/en/1998/1/document.do. The question of the confidentiality of Cabinet discussions became controversial in Ireland and, following a referendum, resulted in a constitutional amendment (Seventeenth Amendment of the Constitution Act 1997, Article 28.4.3) preserving the confidentiality of

65. 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.

66. Article 32 (3) of the draft Law provides different regulations for the making of decisions during times of declared war or emergency, stipulating that in such circumstances 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. 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.

H. Entry into force and delayed applicability

67. Article 60 of the draft Law provides for the coming into force of the Law upon "the eighth day following the day of its publication in the Official Gazette of Montenegro". However, paragraph 2 of the same article goes on to state that the Law *"shall be applied from the day of the announcement of the final results of the first subsequent parliamentary elections".* It is not unusual to sequence the implementation of different parts of a law. The complexity of changes triggered by a new piece of legislation, the need for the enactment of numerous by-laws or regulations in the implementation of primary legislation may indeed call for a staggered implementation of the law. Oftentimes, the delayed application of the law is justified by the need to harmonise various legal acts affected by a new law or to allow sufficient time for the citizens and interested parties to become familiar with new laws.

68. The Commission acknowledges the fact that this law is regulating a matter which was not previously regulated through primary legislation. It also understands that pursuant to Articles 58 and 59 of the draft Law, the harmonisation of the Law on Public Administration and adoption of the regulations for the implementation of this Law should take place within three months from the date of entry into force of this Law. Nevertheless, if the intention of the drafters was to apply the law only after the next general elections expected to take place in the summer of 2027, it is not clear why the entry into force of the act is not delayed until such date too. The postponed application may lead to ambiguities as the incoming government (e.g., if ongoing coalition building negotiations are successful within constitutional deadlines) will be faced with a situation where it must harmonise the laws and adopt by-laws or regulations required by Articles 58 and 59 but it is not supposed to apply the other parts of the law which explicitly regulate its organisation, structure and decision-making. The postponed application of the entire law will likely create confusion as an act in force is normally applicable from that moment onwards, precisely because it is in force.

69. To address this ambiguity, it might be preferable to bring only some of the provisions into force immediately (that is, eight days after publication in the Gazette) and make other parts subject to entry into force later.

Cabinet discussions, except where the High Court determines that disclosure should be made in the interests of the administration of justice or by virtue of an overriding public interest.

I. Other issues to be further clarified

70. The Commission has identified several provisions which can benefit from more precise formulations and recommends their further improvement in subsequent drafts.

- Article 3: *"The Government acts independently within its sphere of authority"*: it would be preferable to specify, to avoid any ambiguity, that the action of the Government is nevertheless subject to parliamentary control, as recalled later in the text in Articles 5 and 10 of the draft Law. This parliamentary control is provided for in Articles 11 and 82 of the Constitution of Montenegro and this draft Law must of course respect this fundamental constitutional rule.

- Article 12 of the draft Law mentions that as a rule, the Deputy Prime Minister is a minister. The use of the phrase “As a rule”, may create a misunderstanding on the possibilities of having Deputy Prime Ministers without the status of minister. The issue of the possibility of combining the position of a Minister (including without portfolio) with that of a Deputy Prime Minister should be clarified.

- Article 18 states: *"The Code of Ethics for Government members shall be adopted by the Government".* This provision is welcome, but it would be better if it also provided for the publication of this code and a right of scrutiny by Parliament to ensure legislative control over this sensitive subject. This minor change may also help citizens to better monitor the transparency of government practices.

- Article 20 of the draft Law stipulates that the President and the members of the Government, immediately after the election in the Parliament, take the oath. It seems to be a rather ceremonial obligation, but clarification is needed to state before whom and where the oath should be taken. For example, Article 97 of the Constitution clearly stipulates that the President shall take the oath before the members of the Parliament.

- Article 28 on the Organisation of the Government's Work: the text refers to a "Government's permanent working body": this structure is neither mentioned in the Constitution nor defined in the draft Law. As this body appears to be vested with several powers, it would be necessary at least to include some wording on the composition and better regulate its role.

- Articles 37, 38 and 39 of the draft Law describe the types of acts which may be made and adopted by the Government. These include: “Decrees with legal force”, “decrees”, “resolutions”, “strategies”, “programs”, “declarations”, “decisions”, “conclusions” and “other acts”. Article 100, paragraph 3 of the Constitution of Montenegro 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 in certain circumstances. It would be helpful to clarify the distinction between decrees (which in Canada or the United Kingdom would be called orders in Council, or in French, décrets) and decrees having legal force. The 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). For these reasons, the Commission recommends that the types of acts and their consequences

under Articles 37, 38 and 39 of the draft Law should be better described and clarified to reduce legal uncertainty and/or confusion.

- Article 48 of the draft Law empowering 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"*, *prima facie*, seems to improve good governance and prevent an administrative overreach and intrusiveness in protected areas of human or fundamental rights and freedoms. The reasons for including legal persons (e.g., artificial persons such as companies or corporations) amongst the protected categories in this Article may need further elucidation.

- Article 53 contains 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".* The scope of such request needs to be clarified: is the Government's power limited to asking Parliament to grant a delay, with no obligation on Parliament to accept, or must Parliament accept such a delay if the request is made by the Government?

V. Conclusion

71. On the request of the Minister of Public Administration of Montenegro dated 27 July 2023, the Venice Commission examined the draft Law on the Government of Montenegro.

72. The Venice Commission welcomes the opportunity to provide its opinion on the initial draft Law on the Government of Montenegro. In the view of Venice Commission, the provisions of the draft Law examined do not appear to be incompatible with international standards.

73. However, the Venice Commission identified several parts of the draft Law which should be revised to ensure that the supremacy of the Constitution is upheld and internationally recognised Rule of Law principles, that the principle of legality and principle of separation of powers are respected.

74. The Venice Commission makes the following key recommendations:

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

75. Other recommendations for further improvement are made in the analysis section.

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