



European PPP Expertise Centre • European PPP Expertise Centre

Montenegro

PPP Units and Related Institutional Framework



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Context for this Publication

This publication has been prepared as part of European PPP Expertise Centre's work on "PPP Units and Related Institutional Frameworks" and contributes to the Western Balkans Investment Framework's initiative on "PPP Institutional Strengthening in the Western Balkans". It responds to the need to understand the institutional structures that support PPPs in the countries of the Western Balkans.

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This publication has been prepared to contribute to and stimulate discussions on public-private partnerships (PPPs) as well as to foster the diffusion of best practice in this area.

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1. Introduction

The history of PPPs¹ in Montenegro goes back to the beginning of the 20th century when two large-scale transport concession contracts were signed with foreign private sector companies (the construction and operation of the railway between Bar-Virpazar and the maritime transport operation between Bar, Ulcinj and Skadar).

The development of modern PPPs started with the adoption of the Law on Participation of the Private Sector for the Delivery of Public Services in 2002. This law aimed at improving the cooperation between the public and the private sectors in the delivery of public services. It introduced BOT contracts and defined their terms.

Further developments took place in 2009 following the entry into force of a new Law on Concessions.² This law replaced the provisions of the Law on Participation of the Private Sector for the Delivery of Public Services regarding concessions and BOT arrangements and amended the procedures under which contracting authorities can resort to and award this type of PPPs.

Since the adoption of the above mentioned laws, over 180 contracts establishing cooperation of the public and the private sector in the delivery of public services were signed in Montenegro. The majority of these contracts are concessions for the exploitation of natural resources.

Montenegro is currently in the process of drafting of a new PPP legislation. The new law should cover both authority-pay and user-pay PPPs. The law is expected to define PPPs and set out a new institutional framework and procedures for the preparation and award of all types of PPPs. It should substitute the Law on Concessions, the Law on Participation of the Private Sector for the Delivery of Public Services and over 40 sectorial laws which, in some of their provisions, deal with the cooperation between the public and the private sectors in the delivery of public services. It is expected to be adopted in 2014.

Although no PPP unit has been established to date, two institutions, namely the Prime Minister's Office and the Commission for Concessions, have played a significant role in the promotion of PPPs.

The main objective of this report is to provide a general overview of the PPP institutional and legal framework in Montenegro. The report is structured as follows:

- Section 2 provides an overview of the Montenegrin PPP market;
- Section 3 sets out the role of the key public sector entities in PPPs;
- Section 4 describes the policy and legal framework for PPPs; and
- Section 5 outlines the PPP project cycle and describes the participants and their roles and responsibilities in the award of user-pay PPP contracts.

¹ In this report, the term Public Private Partnerships (PPPs) has a wide meaning and covers both authority-pay and user-pay contracts.

² <http://www.questionnaire.gov.me/Annexes/Annex024.pdf>

2. The PPP Market

Gathering reliable data on existing PPP projects in Montenegro is challenging as there is no systematic recording of PPPs at the central level. The Commission for Concessions runs a Registry of Concession Contracts³ (see Box 2) which contains data on several PPP projects but the distinction between PPPs and other types of concessions is not always clear.

PPPs in Montenegro can be authority-pay and user-pay contracts (concessions). The procedure for awarding authority-pay contracts is not clearly regulated as there is no legal framework for this type of PPPs. The procedure for awarding user-pay contracts is defined by the law on Concessions.

The Law on Concessions defines several types of concession contracts although only public works and public services concessions can be considered PPPs.

To date, the PPP market in Montenegro has been relatively narrow and fragmented. Apart from a bundle of several small DBOT projects under the management of the Ministry of the Economy (see below), there has never been any attempt to set up a PPP programme. A few central or local authorities have however implemented isolated PPP projects.

According to the information provided by the Prime Minister's Office and the Commission for Concessions, several PPP projects have been implemented at the national and sub-national levels and a number of others are in preparation.

2.1. Existing PPP Projects at the Central Level

- The Government of Montenegro procured the so-called "Wireless Montenegro Project" in the IT sector in 2011. This project includes the supply and operation of (i) a digital radio-communication system for the national emergency services (TETRA System) and (ii) a Wi-Fi broadband internet network for commercial use. It was developed as a institutionalised (joint-venture) PPP in which the Government has a 25 % stake and an Austrian private partner has the remaining 75%. The TETRA System has partially been implemented whilst the Wi-Fi broadband internet network still has to be deployed;
- The Ministry of the Economy procured 13 concessions for the construction and operation of small hydro-power plants under two bundled tender processes conducted in 2008 and 2010. Four of these were terminated early due to the non-fulfilment of contractual obligations by the private partners. A third tender process has been initiated in 2013 and is still underway;

³ <http://komisijazakoncesije.me/Registar%20ugovor%20o%20koncesijama%201-88.pdf>

- The Ministry of Education procured a student's dormitory project in Podgorica in 2012. In this project, the private partner is responsible for the design, financing, construction and operation of a student accommodation facility which will be transferred to the Ministry once the 30-year contract has expired; and
- The Ministry of Health procured two concessions. A 25-year contract for the financing, construction and operation of a PET/CT equipment⁴ was signed in 2010 and a 15-year contract for the financing, construction and operation of a medical waste facility was signed in 2011.

2.2. Existing PPP Projects at the Municipal Level

- The City of Podgorica implemented two projects of urban development (commercial centres and market halls) and a social housing project;
- The City of Cetinje implemented a small street lighting project under a 25-year contract for the commercial and touristic development of the "Lipska Cave" speleological site; and
- The Municipality of Herceg Novi implemented a road project under a 22-year concession.

2.3. Potential PPP Projects

According to data provided by the Commission for Concessions, several projects have been identified as potential PPPs at the national and municipal levels:

- A cable car project linking Kotor and Cetinje;
- A street lighting project in Podgorica;
- A regional airport project in Berane; and
- The MACCOC⁵ project which aims at regenerating an abandoned industrial infrastructure in the city of Cetinje as a cultural, touristic and business complex.

These projects are at various stages of preparation.

⁴ Positron Emission Tomography – Computed Tomography.

⁵ Marina Abramovic Community Centre Obod Cetinje.

Box 1 – The Bar-Boljare motorway project

The Bar-Boljare road project is significant in comparison with the size of the country. This 169 km motorway is due to connect the port of Bar and the Serbian border at Boljare. The 30-year DBFO contract involves a capital cost of over EUR 2 billion.

The project was tendered as a PPP in 2008. The contract between the Government and the preferred bidder was signed in 2009 and terminated due to the inability of the private partner to provide a suitable financing package for it. In 2010, the Government entered into negotiations with the second-ranked bidder but this international consortium equally failed to secure financing.

Negotiations for the completion of the project with a Chinese construction company started recently. According to information provided by the Ministry of Transport and Maritime Affairs, the Chinese partner would be responsible for the design and construction of the motorway whilst the public sector would provide financing for the project.

3. Key Entities in the PPP Framework

No dedicated PPP unit has been established to date in Montenegro. It is expected that, with the adoption of the new law on PPPs, a body responsible for the promotion of PPPs, capacity building in the public sector and project preparation/project support will be set up.

3.1. The Central Government

The Government has been a member of EPEC since 2011 and is one of the main promoters of PPPs in Montenegro. The Prime Minister's Office has a particularly active role in the promotion of international best practice in PPPs. The Office also oversees the implementation of key investment projects in Montenegro.

With regard to user-pay PPPs, the Government is responsible for (i) the adoption of the annual plan on concessions to be awarded by the State in the following year and (ii) authorising the award of concessions at the central level.

In accordance with the Law on Privatisation of the Economy, the Government established in 2009 the Council for Privatisation and Capital Projects. The role of the Council is to manage and control the privatisation process as well as coordinate activities of public bodies in the implementation of large infrastructure projects including PPPs. The president and members of the Council are appointed by the Government for a four-year term. The Prime Minister is the president of the Council.

Each line ministry can act as a contracting authority for PPPs which fall in the scope of their sectorial responsibilities.

The Ministry of the Economy

The Ministry of the Economy is responsible for the energy sector and for the geological exploration and exploitation of mineral resources.

The Ministry signed 13 concession contracts for the financing, construction and operation of a series of small hydro power plants and over 50 contracts for the exploitation of mineral resources. The experience gained with the hydro power projects is seen as a valuable asset which will help in the development of future PPP projects under the responsibility of the Ministry.

The Ministry of Transport and Maritime Affairs

The Ministry of Transport and Maritime Affairs is in charge of rail, road, sea, and air transportation.

The Ministry procured the concession contract (now terminated) for the Bar-Boljare motorway project mentioned in Box 1.

The Ministry of Finance

The Ministry of Finance is the body in charge of the supervision of expenditure under the State budget.

Contracting authorities must report on the use of public funds for infrastructure projects among their regular reporting obligations to the Ministry. Also, prior to entering into PPP contracts which might have financial implications for the State budget, contracting authorities are required to obtain an approval or an opinion from the Ministry.

3.2. The Commission for Concessions

The Commission for Concessions (“the Commission”) was established in 2009 under the Law on Concessions.

The Commission was set up as an autonomous and independent body responsible for conducting the following duties:

- The Commission acts as an independent referee on issues related to the evaluation of bids and the ranking of bidders in the appeals presented by bidders regarding the award of concessions;
- The Commission manages the Registry of Concession Contracts; and
- The Commission approves any extension of the concession period, expansion of the activity scope or use of other mineral resources.

Any appeal to the award process of concession contracts has to be investigated by the Commission which then acts as first instance appellate body. Decisions of the Commission are the last recourse within the procurement process. It is nevertheless always possible to bring a persisting dispute before the Administrative Court which will act as the second instance appellate body.

In addition to the tasks prescribed by the Law on Concessions, the Commission is also active in the promotion of PPPs (e.g. organisation of thematic conferences).

The Commission is comprised of a president and eight members appointed by the Government for a five-year term (renewable once) proposed by a number of public entities, in the following manner:

- The president and one member proposed by the Ministry of the Economy;
- Two members proposed by Parliament;
- One member proposed by the Ministry of Finance;
- One member proposed by the Ministry of Transport and Maritime Affairs;
- One member proposed by the ministry responsible for agriculture, forestry and water resources management;
- One member proposed by the union of employers; and

- One member proposed by the association of municipalities.

The Commission is a light organisation and has no permanent administrative structure. Its president and members are not employees of the Commission.

Once a year, the Commission is required to issue a report on its activities. This document is sent for agreement to the Government and for information to Parliament and municipalities.

The funding of the Commission's activities is provided under the State budget.

Box 2 – The Registry of Concession Contracts

All signed concession contracts need to be registered in the Registry of Concession Contracts. The Registry was established by the Commission and is available on its website. It contains, for each PPP project, data on:

- the concessionaire;
- the concession grantor;
- the subject matter of the concession;
- the date of signature of the concession contract; and
- the duration of the concession contract.

3.3. Municipalities

Municipalities in Montenegro are autonomous from central government in the areas of local public transport, waste, water, urban development, tourism and the development of health and educational services at the local level. Within these remits, municipalities can enter to any kind of public contracts (various types of PPPs as well as conventional works or service contracts).

The City of Podgorica and the City of Cetinje have been the municipalities most engaged in PPPs.

3.4. The State Commission for Control of Public Procurement Procedures

The State Commission for Control of Public Procurement Procedures is the first instance appellate body for disputes arising in any public procurement procedure in Montenegro. However, it does not have jurisdiction over concessions as the Commission for Concessions fulfils this role for this type of contracts.

3.5. The State Audit Institution

The State Audit Institution is an independent public body responsible for the control (auditing) of the legality, sound management, effectiveness and efficiency of the use of public funds and the management of State property.

The State Audit Institution submits to Parliament an annual report summarising the main results of its work. To date, the Institution has not worked on any PPP project.

4. Policy and Legal Framework

The existing laws on concessions and on the participation of the private sector in the delivery of public services, as well as several sectorial laws, currently make up the legal framework for the implementation of PPP projects. As none of these laws are specific to PPPs, the PPP legal framework is generally considered to have gaps.

To fill these gaps, Montenegro is in the process of preparing a law on PPPs. This new law should replace the Law on Concessions as far as concessions of public services or works are concerned and a number of sectorial laws. The new law is seen as an opportunity to enhance project preparation and contract award procedures in accordance with international best practice. Montenegro has been assisted by international advisers from the OECD/SIGMA in the preparation of this new legislation.

Until the new law is adopted, the main legal basis for the award of PPP contracts will remain the Law on Concessions. This law, adopted in 2009, regulates the award of concessions, their subject matter and other relevant matters. The law also establishes the Commission for Concessions and defines its role.

According to the Law on Concessions, a concession is defined as the right to:

- use the State-owned natural wealth, goods of general use and other goods of general interest (“extraction concessions”); or
- perform activities in the public interest (“public services concessions”); and
- construct, manage, maintain, operate and hand over the structure to the concession grantor at the end of the contracted period (“public works concessions”).

The concession grantor can be Parliament, the Government or a municipality.

The duration of a concession can go up to 30 years when the concession is awarded by the Government or a municipality or up to 60 years when the concession is granted by Parliament. The duration of the concession can be extended for a period which may not exceed half of the initially contracted period with the approval from the Commission for Concessions.

A concession is required to be awarded on the basis of a public competition procedure, although several exemptions from this procedure are allowed. The Law on Concession provides for:

- An open procedure;
- A two-stage procedure with the pre-qualification of tenderers; and
- An accelerated procedure (simplified procedure for the award of concessions with duration of up to three years).

In complex projects, contracting authorities are allowed to use competitive dialogue in order to determine the best technical, legal, financial or other solution for the implementation of the project.

The Law on Concessions also provides for a type of institutional PPP in which the concession grantor participates in the ownership of the concessionaire company.

5. The PPP Project Cycle

This section sets out the PPP project cycle under the current concession legal framework. An overview of the project cycle is provided in Figure 1 at the end of this section.

5.1. Needs Identification/Project Selection

Line ministries and municipalities (“Competent Authorities”) are responsible for the determination of their investment needs.

Identified investment needs have to be incorporated in an annual plan for the award of concessions adopted by the Government or the municipality concerned. The plans are adopted for specific sectors, following a public consultation. The plan is published on the website of the Government or the municipality concerned.

A concession project also can be identified and proposed by a private party. The proposal of the private party is submitted to the Competent Authority and must be supported by all the information needed to assess the business case of the proposal. In case the Competent Authority deems the proposal acceptable, it is required to initiate a procedure for awarding the concession. In the concession award process, the private party is not privileged over other bidders.

5.2. Project Preparation

Project preparation is managed by the Competent Authority. The Competent Authority is forming the project team responsible for the preparation of the “Concession Document” and tender documentation. External advisers may be engaged to support the project team in the drafting of these documents.

The Concession Document is the document on which the procedure for awarding the concession is formally based. The Concession Document must include at least:

- A description of the subject matter of the concession;
- The parameters for the evaluation of the cost-effectiveness of the investment;
- The minimum and the maximum duration of the concession;
- The list of the necessary technical and administrative documentation for the project, including the required permits, approvals and consents;
- The documents related to planning and ownership of the concession assets;
- The technical, financial and other requirements that the concessionaire will be obliged to meet;
- The basic elements of the tender documentation;
- A draft concession contract;

- The criteria for the selection of the most advantageous bid;
- The requirements and the methodology for performing the concession activities and the manner, quality and scope of the services to be provided to the users;
- The required measures for environmental protection and energy efficiency improvements;
- The initial amount of the concession fee;
- The methodology for setting tariffs for the delivery of the services;
- The list of all relevant legislation applicable to the award of the concession; and
- The required condition of the assets to be handed over upon expiry of the concession period.

The Concession Document must be supported by documents containing:

- An analysis evidencing that the concession is of public interest;
- Indications that the concession provides an appropriate value for money;
- An analysis of the risks and their allocation between the concession grantor and concessionaire;
- An assessment of the need for the concession grantor to participate in the ownership of the concessionaire company; and
- The report from the public consultation (prior to sending a Concession Document for adoption, the Competent Authority is required to organise and carry out a public consultation on the proposed concession project).

5.3. Project Approval

The Competent Authority is required to submit the Concession Document to the Government or to the Municipal Assembly concerned for adoption.

Once adopted, the Competent Authority can initiate the tender procedure.

5.4. Procurement

Tender Commission

The public competition process for the selection of the preferred bidder is conducted by a “Tender Commission”.

The Tender Commission is an ad hoc operational body established for each project. The Competent Authority appoints the chairperson and at least four members of the Tender Commission among professionals involved in the subject matter of the

concession. The costs of the Tender Commission are borne by the Competent Authority.

The Tender Commission is responsible for the following tasks:

- Opening the bids;
- Evaluation and verification of the eligibility of the tenderers;
- Evaluation of the bids; and
- Ranking the tenderers.

Tender procedure

Upon the adoption of the Concession Document, the Competent Authority publishes a public notice. The deadline for the submission of bids may not be shorter than 30 days.

The bidders are obliged to submit a cash deposit or a bank guarantee in the amount defined in the public notice.

The criteria for the evaluation of bids typically include:

- The duration of the concession;
- The proposed concession fee;
- The proposed price for the delivery of the services;
- References of the tenderer;
- The quality specifications for the services;
- Evidence of achievement of the public interest;
- The extent of natural wealth usage;
- The impact on employment, infrastructure and economic development;
- The environmental protection and energy efficiency achievements; and
- The amount of financial support expected from the concession grantor.

Based on the criteria set out in the public notice, the Tender Commission evaluates the bids and prepares a ranking of tenderers. The Tender Commission is required to deliver a ranking to the Competent Authority within 30 days from the day of opening of bids.

The Competent Authority submits a proposal to award the concession and the ranking of tenderers to the concession grantor which then decides of the award of the concession.

The decision to award the concession is published in the Official Gazette of Montenegro and on the website of the Competent Authority.

Signature

The concession contract is signed by a representative of the Competent Authority designated by the concession grantor. After signature of the contract, the Competent Authority is required to submit a copy of the concession contract to the Commission for Concessions for the contract to be lodged into the Registry of Concession Contracts. A copy of the signed contract is also sent to the administrative authority competent for the collection of public revenues and to the authority competent for property affairs.

5.5. Project Implementation

Contract management

The management of the concession contract rests with the Competent Authority.

Renegotiation and Dispute Resolution

Any extension of the concession period, expansion of the activity scope or use of other mineral resources is only permitted with the prior consent of the Commission for Concessions, based on a decision of the Government or the municipality concerned.

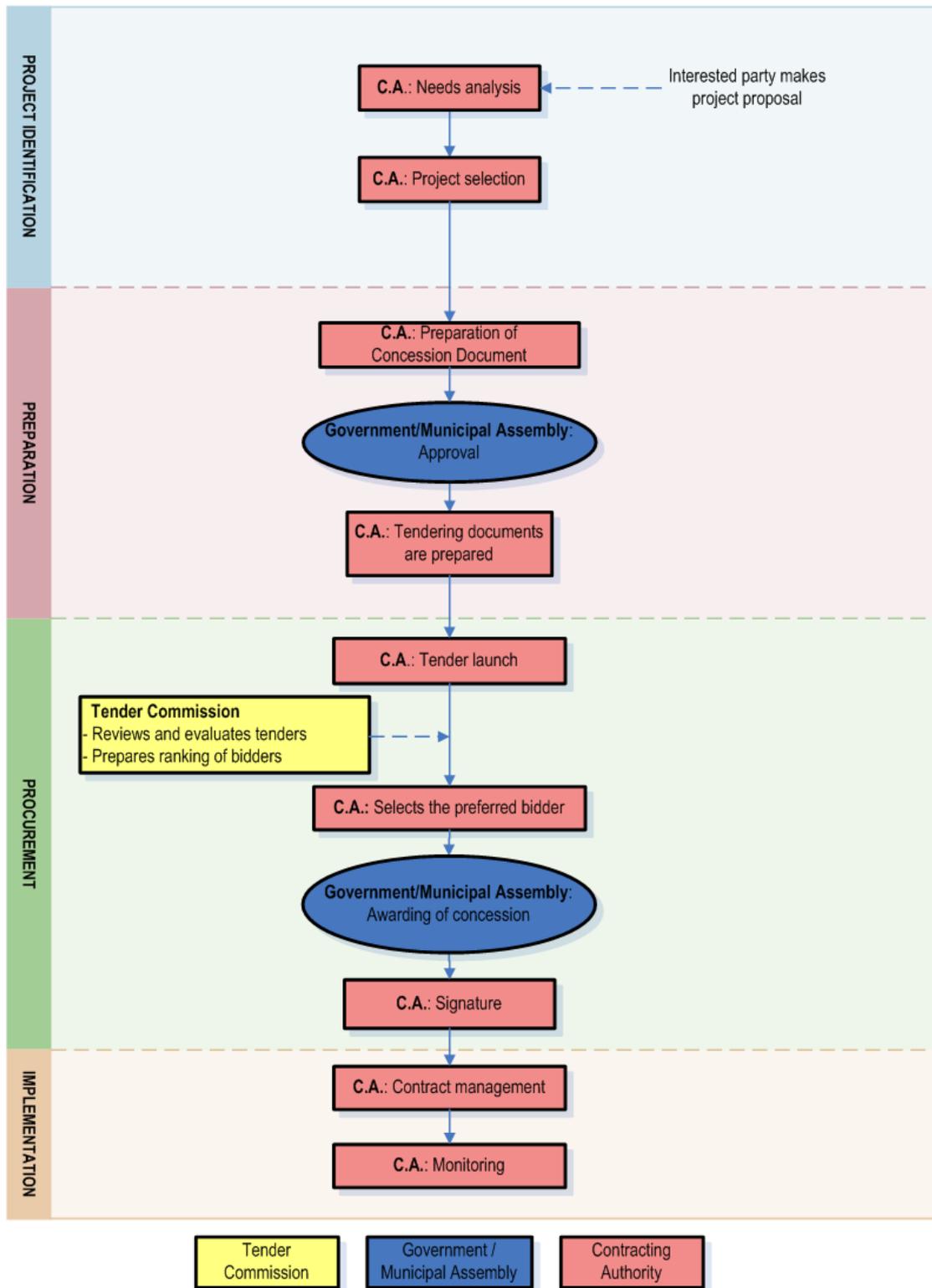
Disputes which may arise during the project execution phase are to be resolved according to the provisions of the concession contract.

Monitoring

The monitoring of the performance under the concession contract (e.g. fulfillment of the concessionaire's contractual obligations) rests with the Competent Authority.

The Competent Authority is entitled to engage individual experts or professional firms to monitor the execution of contractual obligations.

Figure 1: Outline PPP Project Cycle



ANNEX 1 – Macroeconomic Indicators

Montenegro is classified as an upper-middle income country by the World Bank. In 2013, its GDP was \$4.57 billion with GDP per capita reaching \$7,318 (see Chart 1). Montenegro has a population of 0.625 million and a population density of 45 inhabitants per km².

The World Economic Forum (WEF) ranks the economy of Montenegro 60th in terms of competitiveness. The 2014 World Bank “Doing Business” report ranks Montenegro 44th in terms of business regulation, and increase of 6 places compared to 2013.

GDP growth was at highest in 2007 (10.7%) and contracted severely in 2009 (-5.7%). Recovery was seen in the following years, although the percentage growth was much lower than in the years before the economic crises (Chart 2).

The government budget was balanced in years before the crises but the deficit widened up to 5.3% in 2009 (Chart 3).

Government debt in Montenegro is at a similar level as in the WB countries and at a slightly higher level than in the EU13 group (Chart 4). IMF forecast suggests debt increases in coming years.

Montenegrin sovereign debt was rated for the first time in 2006 (after the independence). Ratings have been downgraded during the crisis. Currently, sovereign debt is rated Ba3 (with stable outlook) by Moody's and BB- (with negative outlook) by S&P.

Montenegro	
Crna Gora	
	Capital: Podgorica Population: 0.625 mil - growth: 0.8% - density: 45/km ²
Macroeconomic and fiscal indicators	
GDP:	(Nominal, 04/2013, IMF estimate)
- total:	4.57 USD billion
- per capita:	7318 USD
Real GDP growth:	1.23%
Government Budget (% of GDP)	(2013, IMF estimate)
- revenue:	41.8
- expenditure:	44.2
- balance:	-2.6
Public Debt:	56.8%
Long-term Sovereign Debt Ratings (updated 17/12/2013)	
Fitch:	
Moody's:	Ba3 (Stable)
Standard & Poor's:	BB- (Negative)
Rankings	
WB Doing Business 2013 rank:	44
- change in rank since 2012:	6
WEF Global Competitiveness 2012 rank:	60
- Infrastructure subindex rank:	63

Chart 1 Montenegro - GDP per Capita **Chart 2** Montenegro - GDP Growth

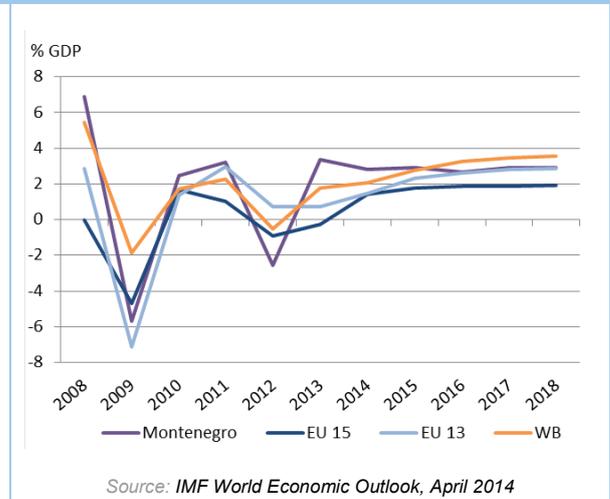
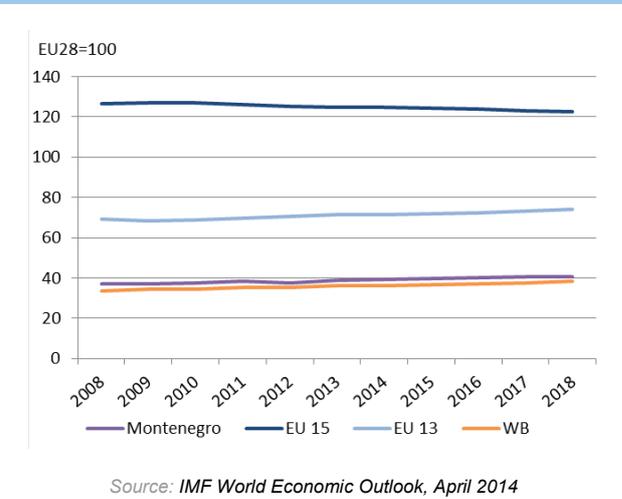


Chart 3 Montenegro - Government Budget Balance

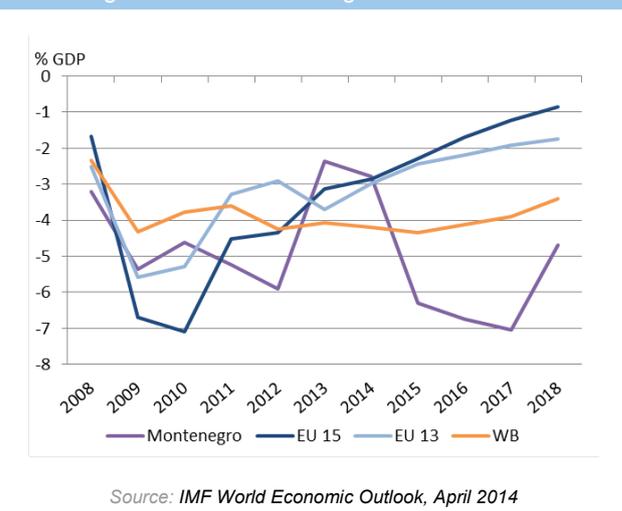
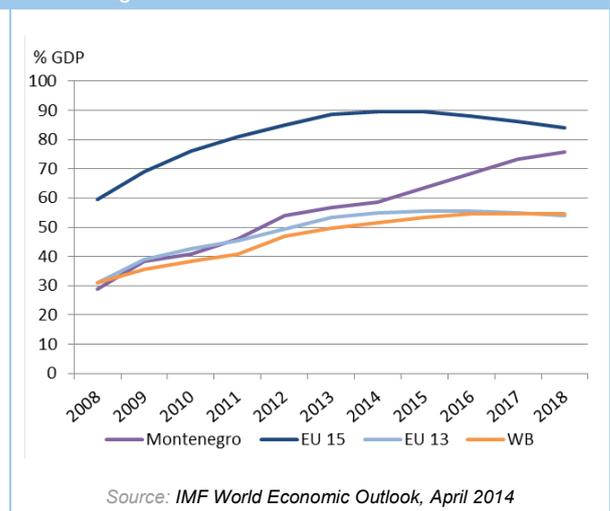


Chart 4 Montenegro - Government Debt



EUR15 (member countries until 2004): Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom
 EUR 13 (recent member countries): Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia
 WB: Albania, Bosnia & Herzegovina, Croatia, FYR Macedonia, Kosovo, Montenegro, Serbia



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