



**COUNCIL OF
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COVER NOTE

from: General Secretariat
to: Working Party on Enlargement and Countries Negotiating Accession to the EU
Subject: ENLARGEMENT
- Accession Negotiations with Montenegro
= Draft General EU Position

Delegations will find attached a draft General EU Position for the negotiations with Montenegro, submitted by the Commission¹.

¹ This document has been transmitted to the Council in English only.

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- MONTENEGRO -**

MINISTERIAL MEETING OPENING

THE INTERGOVERNMENTAL CONFERENCE

ON THE ACCESSION OF MONTENEGRO

TO THE EUROPEAN UNION

GENERAL EU POSITION

NEGOTIATING FRAMEWORK

Principles governing the negotiations

- 1) The accession negotiations will be based on Article 49 of the Treaty on European Union (TEU) and, accordingly, take into account all relevant European Council conclusions, in particular the renewed consensus on enlargement agreed by the December 2006 European Council and the conclusions of the 1993 European Council in Copenhagen.
- 2) The negotiations will be based on Montenegro's own merits and the pace will depend on Montenegro's progress in meeting the requirements for membership. The Presidency or the Commission as appropriate will keep the Council fully informed so that the Council can keep the situation under regular review. The Union side, for its part, will decide in due course whether the conditions for the conclusion of negotiations have been met; this will be done on the basis of a report from the Commission confirming the fulfilment by Montenegro of the requirements listed in point 5. The shared objective of the negotiations is accession. By their very nature, the negotiations are an open-ended process whose outcome cannot be guaranteed beforehand.

In the field of CFSP, the High Representative is responsible, in close liaison with the Member States, and the Commission where appropriate, for screening, making proposals in the negotiations and reporting regularly to the Council.

- 3) Negotiations are opened on the basis that Montenegro respects and is committed to promoting the values on which the Union is founded, referred to in Article 2 TEU, namely the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Negotiations are also opened on the basis that Montenegro has achieved a high degree of compliance with the membership criteria, notably the political criteria set by the Copenhagen European Council in 1993 and the Stabilisation and Association Process conditionality established by the Council in 1997. The Union expects Montenegro to continue to work towards further improvements in respect of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; and to make further progress in relation to judiciary reform, the fight against corruption and organised crime, media freedom, anti-discrimination and public administration reform.

The Union and Montenegro will continue their intensive political dialogue. Progress across all membership criteria will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council.

- 4) In the case of a serious and persistent breach by Montenegro of the values on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard Montenegro, whether to suspend the negotiations and on the conditions for their resumption. The Member States will act in the Intergovernmental Conference in accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference. The European Parliament will be informed.
- 5) The advancement of the negotiations will be guided by Montenegro's progress in preparing for accession, within a framework of economic and social convergence. This progress will be measured in particular against the following requirements:

- the Copenhagen criteria, which set down the following requirements for membership:
 - the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
 - the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
 - the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and the administrative capacity to effectively apply and implement the *acquis*.

- the conditionality of the Stabilisation and Association Process, which remains the common framework for relations with all Western Balkan countries up to their accession, in particular Montenegro's commitment to good neighbourly relations and the strong contribution expected from Montenegro to the development of closer regional cooperation ;

- Montenegro's undertaking to resolve any border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter and the United Nations Convention on the Law of the Sea, including, if necessary, compulsory jurisdiction of the International Court of Justice.

- The fulfilment of Montenegro's obligations under the Stabilisation and Association Agreement as well as Montenegro's progress in addressing areas of weakness identified in the Commission's Opinion.

- 6) An overall balance in the progress of negotiations across chapters should be ensured. Given the link between the chapters "Judiciary and fundamental rights" and "Justice, freedom and security" and the values on which the Union is founded, as well as their importance for the implementation of the *acquis* across the board, should progress under these chapters significantly lag behind progress in the negotiations overall, the Commission will on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters until this disequilibrium is addressed. The Council will decide by qualified majority on such a proposal. The Member States will act in the Intergovernmental Conference in accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference.
- 7) In the period up to accession, Montenegro will be required to progressively align its policies towards third countries and its positions within international organisations with the policies and positions adopted by the Union and its Member States.
- 8) Montenegro must accept the results of any other accession negotiations as they stand at the moment of its accession.
- 9) Enlargement should strengthen the process of continuous integration in which the Union and its Member States are engaged. Every effort should be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the European Council in December 2006, stressing the importance that the EU can maintain and deepen its own development, the pace of enlargement must take into account the Union's capacity to absorb new members, which is an important consideration in the general interest of both the Union and Montenegro.
- 10) Parallel to the accession negotiations, the Union will continue its civil society dialogue with Montenegro, with the aim of bringing people together and ensuring the support of citizens for the accession process.

Substance of the negotiations

11) Accession implies the acceptance of the rights and obligations attached to the Union and its institutional framework, known as the “*acquis*” of the Union. Montenegro will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies the timely and effective implementation of the *acquis*. The *acquis* is constantly evolving and includes in particular:

- the content, principles, values and political objectives of the Treaties on which the Union is founded;
- the acts adopted by the institutions pursuant to the Treaties, as well as the case law of the Court of Justice of the European Union;
- any other acts, legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations, guidelines;
- international agreements concluded by the Union, by the Union jointly with its Member States, and those concluded by the Member States among themselves with regard to Union activities.

This applies *mutatis mutandis* to the Treaty establishing the European Atomic Energy Community (Euratom) and any acts adopted and agreements concluded pursuant or within the framework of that treaty, to which Montenegro shall also adhere.

Montenegro will need to produce translations of the *acquis* into its official language in good time before accession, and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession.

12) The resulting rights and obligations, all of which Montenegro will have to honour as a Member State, imply the termination of all existing bilateral agreements between Montenegro and the Union, and of all other international agreements concluded by Montenegro which are incompatible with the obligations of membership.

13) Montenegro's acceptance of the rights and obligations arising from the *acquis* may necessitate specific adaptations to the *acquis* and may, exceptionally, give rise to transitional measures which must be defined during the accession negotiations. Any provisions of the Stabilisation and Association Agreement which depart from the *acquis* cannot be considered as precedents in the accession negotiations.

Where necessary, specific adaptations to the *acquis* will be agreed on the basis of the principles, criteria and parameters inherent in that *acquis* as applied by the Member States when adopting that *acquis*, and taking into consideration the specificities of Montenegro.

The Union may agree to requests from Montenegro for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Montenegro. Transitional measures and specific arrangements, in particular safeguard clauses, may also be agreed in the interest of the Union, in line with the second bullet point of paragraph 23 of the European Council conclusions of 16/17 December 2004.

14) Detailed technical adaptations to the *acquis* will not need to be fixed during the accession negotiations. They will be prepared in cooperation with Montenegro and adopted by the Union institutions in good time with a view to their entry into force on the date of accession.

15) Montenegro will participate in economic and monetary union from accession as a Member State with a derogation and shall join the euro area following a Council decision to this effect on the basis of an evaluation of its fulfilment of the necessary conditions. The remaining *acquis* in this area fully applies from accession.

- 16) With regard to the area of justice, freedom and security, membership of the European Union implies that Montenegro accepts in full on accession the entire *acquis* in this area, including the Schengen *acquis*. However, part of this *acquis* will only apply in Montenegro following a Council decision to lift controls on persons at internal borders taken on the basis of the applicable "Schengen evaluation" of Montenegro's readiness.
- 17) In all areas of the *acquis*, Montenegro must ensure that its institutions, management capacity and administrative and judicial systems are sufficiently strengthened with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system. More specifically, this will require the necessary capacity and structures for the sound management and efficient control of EU funds, in accordance with the *acquis*.

Negotiating procedures

- 18) The substance of negotiations will be conducted in an Intergovernmental Conference with the participation of all Member States on the one hand and Montenegro on the other.
- 19) The Commission will undertake a formal process of screening the *acquis*, in order to explain it to the Montenegrin authorities, to assess the state of preparation of Montenegro for opening negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up in the negotiations. With respect to the chapters "Judiciary and fundamental rights" and "Justice, freedom and security", the screening has been initiated in accordance with the European Council conclusions of 9 December 2011.

- 20) For the purposes of screening and the subsequent negotiations, the *acquis* will be broken down into a number of chapters, each covering a specific policy area. A list of these chapters is provided in the Annex. Any view expressed by either Montenegro or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters. Policy areas in which particularly serious efforts are required by Montenegro to align legislation with the *acquis* and to ensure its implementation and enforcement will be addressed at an early stage in the accession negotiations. Also, agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters.
- 21) Building on the Commission's Opinion on Montenegro's application for membership, on subsequent Progress Reports and in particular on information obtained by the Commission during screening, the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter. For the chapters "Judiciary and fundamental rights" and "Justice, freedom and security", interim benchmarks will also be set (see point 22 below). The Union will communicate such benchmarks to Montenegro. Depending on the chapter, precise benchmarks will refer in particular to legislative alignment with the *acquis* and to a satisfactory track record in the implementation of key elements of the *acquis* demonstrating the existence of an adequate administrative and judicial capacity. Where relevant, benchmarks will also include the fulfilment of commitments under the Stabilisation and Association Agreement, in particular those that mirror requirements under the *acquis*.
- 22) The chapters "Judiciary and fundamental rights" and "Justice, freedom and security" will be opened on the basis of action plans adopted by the Montenegrin authorities. Screening reports to be prepared by the Commission for these chapters will provide substantial guidance, setting out the framework for negotiations and the tasks to be addressed in the action plans necessary for opening the chapters. The adoption of these action plans will constitute the opening benchmarks. Given the challenges faced and the longer term nature of the reforms, these chapters are expected to be among the first to be opened. The Union will lay down interim benchmarks in its opening positions. These interim benchmarks will be closely linked to actions and milestones in the implementation of the action plans. Subsequently, the Union will lay down in an interim position closing benchmarks requiring solid track records of reform implementation.

- 23) The Commission will report to the Council twice yearly on the state of advancement of negotiations under the chapters "Judiciary and fundamental rights" and "Justice, freedom and security ". Where problems arise in the course of negotiations under these chapters, the Commission may propose updated benchmarks throughout the process, including new and amended action plans, as necessary.
- 24) Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new *acquis*, the existing benchmarks may also be updated.
- 25) Montenegro will be requested to indicate its position in relation to the *acquis* and to report on its progress in meeting the benchmarks. Montenegro's correct transposition and, where appropriate, implementation of the *acquis*, including effective and efficient application through appropriate administrative and judicial structures, will determine the pace of negotiations.
- 26) To this end, the Commission will closely monitor Montenegro's progress in all areas, making use of all available instruments, including on-site expert reviews by or on behalf of the Commission. The Commission will regularly inform the Council of Montenegro's progress in any given area in the course of the negotiations, and in particular when presenting draft EU common positions. The Council will take this assessment into account when deciding on further steps relating to the negotiations on that chapter. In addition to the information the EU may require for the negotiations on each chapter and which is to be provided by Montenegro to the Conference, Montenegro will be required to continue to provide regularly detailed, written information on progress in the alignment with and implementation of the *acquis*, even after the provisional closure of a chapter. In the case of provisionally closed chapters, the Commission may recommend the re-opening of negotiations, in particular where Montenegro has failed to meet important benchmarks or to implement its commitments.

PROCEDURE FOR AND ORGANISATION OF THE NEGOTIATIONS

1. Chairmanship

In accordance with the practice in bilateral negotiations between two delegations, each led by a head, the question of electing a President of the Conference does not arise.

The practical work involved in chairing meetings will be performed by the head of the Union delegation in his capacity as head of the host delegation.

2. Frequency of meetings at ministerial level and deputy level – setting up of working parties

It is planned that there should be at least one meeting per six month period at ministerial and deputy level, on the understanding that the frequency could be adjusted if this were felt necessary.

The negotiations will remain centralised at ministerial and deputy level. The setting up of working parties should not be envisaged except to meet objective requirements of the negotiations. Any such working parties will operate under the authority of the deputies, on the basis of explicit terms of reference and in accordance with a specific timetable.

3. Venue for the meetings

Meetings will be held in Brussels, but during April, June and October any ministerial meetings will be held in Luxembourg.

4. Organisation

(a) Secretariat

Conference secretariat services will be provided, under the authority of the Secretary-General of the Council of the European Union or his representative, by a team consisting of officials of the General Secretariat of the Council and officials appointed by the delegation of Montenegro.

(b) Operating expenses of the Conference

Each party will bear its own travel and subsistence expenses and also the salaries of staff who are put at the disposal of the Secretariat.

The operating expenses of the Conference (rents, office furniture and supplies, telecommunications, interpreting, translation, auxiliary staff recruited for the Conference, etc.) will be met by advances made by the Council of the European Union.

These expenses will be entered in the Council's budget under a special budget heading.

The General Secretariat of the Council will submit, as appropriate, an annual financial management report to the Conference on the operating expenses. These expenses will be divided among the participants in accordance with procedures to be mutually agreed.

(c) Preparation of meeting documents

Without prejudice to other special documents which the Secretariat might be asked to draw up, the following arrangements have been adopted on the understanding that they could, if necessary, be modified in the light of experience.

(i) Ministerial meetings

Preparation, after each meeting, of a summary of conclusions, to be finalised by the deputies on the basis of a draft produced by the Secretariat and submitted to the next ministerial meeting for formal approval.

(ii) Meetings at deputy level

- Preparation of a summary of conclusions after each meeting.
- Preparation of reports for submission to ministerial meetings, if necessary, on the basis of drafts produced by the Conference Secretariat.

(iii) Working parties

- Preparation of reports for the deputies on the basis of drafts produced by the Conference Secretariat.

PRELIMINARY INDICATIVE LIST OF CHAPTER HEADINGS

(Note: This list in no way prejudices the decisions to be taken at an appropriate stage in the negotiations on the order in which the subjects will be dealt with.)

1. Free movement of goods
2. Freedom of movement for workers
3. Right of establishment and freedom to provide services
4. Free movement of capital
5. Public procurement
6. Company law
7. Intellectual property law
8. Competition policy
9. Financial services
10. Information society and media
11. Agriculture and rural development
12. Food safety, veterinary and phytosanitary policy
13. Fisheries
14. Transport policy
15. Energy
16. Taxation
17. Economic and monetary policy
18. Statistics
19. Social policy and employment
20. Enterprise and industrial policy
21. *Trans-European networks*²
22. Regional policy and coordination of structural instruments

² The content of this chapter will be integrated into, and negotiated under, chapters 14: transport policy and 15: energy respectively.

23. Judiciary and fundamental rights
 24. Justice, freedom and security
 25. Science and research
 26. Education and culture
 27. Environment and climate change
 28. Consumer and health protection
 29. Customs union
 30. External relations
 31. Foreign, security and defence policy
 32. Financial control
 33. Financial and budgetary provisions
 34. Institutions
 35. Other issues
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