CENTAR ZA MONITORING I ISTRAŽIVANJE

ANALYSIS OF THE EFFECTS OF ANTICORRUPTION POLICIES IN MONTENEGRO 2012-2013 - AND RECOMMENDATIONS FOR IMPROVEMENT

September, 2013

ANNUAL REPORT ON IMPLEMENTATION OF ANTICORRUPTION POLICIES IN MONTENEGRO

ANALYSIS OF THE EFFECTS OF ANTICORRUPTION POLICIES IN MONTENEGRO 2012/2013 AND RECOMMENDATIONS FOR IMPROVEMENT

Publisher:
Center for Monitoring and Research CeMI
Ul Beogradska 32
81 000 Podgorica
e-mail: cemi@t-com.me
www.cemi.org.me

Publisher:
Zlatko Vujović

Author:
M.Sc. Ana Selić
M.Sc.Nikoleta Tomović
M.Sc. Dragan Bojović
LL.M. Vlado Dedović
M.Sc. Zlatko Vujović

Design:
Dragana Koprivica

Print:
Studio Mouse - Podgorica

Circulation:
100 copies

Creation of the study was supported by Open Society Foundation – Think Tank Fund from Budapest

Contents

Used abbreviations

AFCOS - The system for combating frauds
CDT- Center for Democratic transition
CHU- Central Harmonization Unit of the Ministry of Finance
DEU - Delegation of the European Union in Montenegro
DRI - Department of Revenue Investigation
EC - European Commission
EU- European Union
FMC -Financial Management and Control
GIZ- German Agency for International Cooperation
GOPAC -Global Organization of Parliamentarians against Corruption
GRECO - Group of States against Corruption
IPA - Instrument for Pre-accession Assistance
IA - Internal Audit
OLAF - European Anti - Fraud Office
OECD- Organization for Economic Co-operation and Development OSCE – Organization for Security and Cooperation in Europe
PA - Property Administration
PPA - Public Procurement Administration
PTM - Public Broadcasting Center
SEC- State Electoral Commission
SAI - State Audit Institution
SIGMA - Support for Improvement of Governance and Management

ABSTRACT

This study is divided in three parts: political corruption, economic corruption and corruption prevention and integrity. Under the term political corruption, for purposes of this study, we imply abuse of political function for personal gain. In this area we concentrated on policies regulating areas of financing of political parties, conflict of interests and control mechanisms used by the Parliament of Montenegro for prevention of corruption. Second part is dedicated to economic corruption, i.e. corruption in the process of creation and execution of state budget. In this part we processed areas of public finances, state property, public procurement and securities market. In the third part we evaluated preventive mechanisms and mechanisms of integrity building, such as free access to the information, protection of the whistleblowers, codes of ethic and integrity plans.

In each of these parts we analyzed characteristics of institutional and legal framework, i.e. institutional and legal changes that took place in the last year, results of these changes and deficiencies spotted in their implementation. In such manner we qualitatively evaluated degree of fulfillment of recommendations of the Action Plan for the Fight against Corruption and Organized Crime and identified key obstacles for successful prevention and reduction of corruption. Within each area we gave a set of recommendations, which encompass concrete interventions on legal or institutional framework or more consistent implementation of existing mechanisms.

INTRODUCTION

By opening of accession negotiations to the EU, Montenegro has continued with accelerated reforms of legal and institutional framework, especially in the area of fight against corruption and organized crime, Period 2011 – 2012 was characterized with especially active legislative activity, while in the last year we can monitor implementation of these laws and their effects.

Center for Monitoring and Research CeMI, for the second year in the row, monitors effects of anti-corruption policies on national level and suggests recommendation for their improvement. The first policy study was published in July of 2012, and it was welcomed with positive reaction by both decision makers and general public. Second policy study "Analysis of the effects of anti-corruption policies and recommendations for improvement" is supported by the Open Society Foundation, Think Tank Fund from Budapest. This policy study draws on last year's results, measuring progress in the areas of the Action Plan for the fight against corruption and organized crime, grouped in three areas: political corruption, economic corruption and corruption prevention and integrity.

Methodology for creation of the policy study was created with expert help of the Research Board of CeMI, composed of: Drago Kos, Commissioner of the International Commission for Fight against Corruption in Afghanistan and Chairman of the OECD Working Group on Bribery; Marijana Trivunović - international expert for fight against corruption and OSI consultant; Drino Galičić- associate at the Graz University and methodology consultant for numerous international organizations. Aim of this study is analysis of effectiveness of anti-corruption policies in Montenegro and formulation of proposals for their improvement through analysis of relevant international standards, and comparative experiences. For measuring of achieved results in listed areas a set of qualitative and quantitative indicators was used, with the aim to reply on following questions:

- How and in which degree are improved institutional and legal frameworks in the last year?
- Which mechanisms for implementation of anti-corruption policies are at disposal to relevant institutions? To which degree were these mechanisms utilized?
- What are the limitations of existing mechanisms?
- To which extent are Montenegrin laws aligned with international standards in given areas?
- What is necessary to amend in order to increase effectiveness of existing mechanisms, and which new mechanisms are needed?

In our research, we faced with few methodological limitations:

Action Plan for the Fight against Corruption and Organized Crime encompasses large number of heterogeneous areas, which are impossible to analyze in detail in one

document. CeMI has chosen those areas for which is considered that they represent priority in this moment.

Unified international standards and uniform comparative practice for certain areas is impossible to find, and for these areas we based our recommendations on specific features of Montenegro and available examples of good practice.

Data collection techniques included in-depth interviews of relevant stakeholders, analysis of legal texts, free access to the information demands and analysis of media articles.

Long-term control of corruption is rare and precious achievement, which is not out of reach of decisive and intelligent political reformers. Convinced in this statement, we hope that this study will represent useful support to all reformist forces in the state and that it will provide contribution to forthcoming efforts for decreasing of corruption in Montenegro.

1 POLITICAL CORRUPTION

1. Control role of the Parliament in process of fight against corruption in Montenegro

1.1 Characteristics of institutional and legal framework

The Parliament of Montenegro, after last changes of their Rules on Procedure has strengthened its control role. Rules of Procedure are defining control mechanisms1 and modalities of their use. The most effective instrument of control which is at disposal to MPs is parliamentary investigation. This control mechanism is established in the Constitution of Montenegro, Article 109, which sets that "The Parliament can, on proposal of at least 27 MPs, form the Inquiry Committee for gathering information and facts on events related to work of state bodies". Rules of Procedure of the Montenegrin Parliament2 are further regulating procedure of implementation of this mechanism. 3 This solution can be classified into the group of tough criteria and it is not aligned with good examples of international practice, where the number of MPs, required for initiation of parliamentary investigation, is significantly lower – starting from one MP, up to 1/5 of total number of MPs.4

After numerous problems with procedure of parliamentary investigation were spotted, after initiation of the investigation on "Case Telekom", in July 2012 the Law on

1 Control mechanisms, used by the Parliament in their activities of control over the work of the Government can be sorted in two groups: (1) group of mechanisms for collecting of information on the work of the Government and (2) group of mechanisms of effective control of the work of the Government. In the first group are listed: (a) question time and Prime Minister's hour, (b) parliamentary investigation, (c) consultative and control hearing. In second group there are: (a) confidence vote and (b) procedure of consideration of interpellation

2 Article 78-82, Rules of Procedure of the Parliament of Montenegro, "Official Gazette of Montenegro", No. 51/06 from 4/8/2006, 66/06 from 3/11/2006, "Official Gazette of Montenegro", No. 88/09 from 31/12/2009, 80/10 from 31/12/2010, 39/11 from 4/8/2011.

3 In order to conduct parliamentary investigation Inquiry Committee is formed, headed by the representative of the opposition. Inquiry Committee has the right to request data and information from state bodies, individuals and certain organizations, and upon conducted parliamentary investigation it submits report to the Parliament. When proposal is set on the agenda of the parliamentary session, in order to open parliamentary investigation, support of the majority of total number of MPs is requested.

4 Read more about it in the study Hirorary, Y., *Tools for parliamentary oversight - A comparative study of 88 national parliament*, Inter-parliamentary Union 2007, page 41.

Parliamentary Investigation is adopted[5]. One of the most important deficiencies of this Law is limitation of Inquiry Committees in regard to persons who could be invited to testify. Law determines circle of persons who are obliged to obey to the invitation by the Inquiry Committee. Those persons are: "managers, civil servants and employees in state bodies, bodies of local self-administrations, institutions, legal entities, previous bearers of public functions in executive and legal branch of power (Prime Minister, President of the Parliament, Minister, MP), ex and current functionaries of local self-administrations". They're obliged to "give statements and reply to questions of members of Inquiry Committee on facts regarding the subject of parliamentary investigation". By defining of such a narrow circle of persons obliged to testify, work of the Inquiry Committee is significantly limited, and by that possibilities for successful ending of parliamentary investigation are decreased. Law on Parliamentary Investigation does not foresee sanctions for those persons in case that they refuse to testify, or testify falsely. This kind of obligation and sanctioning could be set only by the Law on Parliamentary Investigation, which is not done in 2012.

Tendency of the Parliament to additionally strengthen its control function is noticeable, which is good, but sometimes it goes too far – even beyond of its jurisdiction, to the extent where recommendations of EC are disobeyed, as in the case of elimination of part of powers of the Council of the Agency for Electronic Media.[6] Within the framework of control function, Parliament reviews reports of numerous institutions that are dealing with fight against corruption, such as: Commission for Prevention of Conflict of Interests, Commission for Control of the Public Procurement Procedures, State Audit Institution and Judicial and Prosecutors' Council**.**

During 2012, the Parliament conducted one parliamentary investigation and 2013 was initiated another one, both ended with technical report. Both investigations were related to potential cases of corruption („Telekom" 2012 and „Recordings" 2013). Both parliamentary investigations were under high attention of media and work of inquiry committees was highly politicized. Practicing of the instrument of parliamentary investigation has shown that it's not useful for cases of corruption which involve parliamentarians, due to politicized atmosphere in which MPs take care only about their party's interests.

In accordance with amendments of the Rules of Procedure, in the first half of 2013, four special sessions were held, out of which two were dedicated to the Prime Minister's hour and the other two encompassed both Prime Minister's hour and Question Time. In total 25 questions were posed to the Prime Minister and 111 question was posed by MPs, during Question Time, as well as 11 additional questions. On sessions of working bodies 3 control and 8 consultative hearings were held.

Establishing of the Anti-Corruption Committee in 2012, was also recognized as

5 Law foresees that Inquiry Committee is made out of equal number of MPs of parliamentary majority and opposition, while President of the Board is from the opposition and his deputy from parliamentary majority. Decision is made by majority of votes. Law has authorized Inquiry Committee to "ask of all state bodies, bodies of self-administration, institutions and legal entities to provide insight into all necessary documentation" needed for implementation of the parliamentary (""Official Gazette of Montenegro", No. 38/2012").

6 In the span of expansion of its jurisdictions the Parliament has altered legal framework and committed regulatory agencies to submit their program and financial report on approval to the Parliament. Problem obtained special dimension in case of the Agency for Electronic Media, media regulator, who lost its independence with these legal changes. In spite of warnings, the Parliament didn't show readiness to align its behavior with recommendations of the European Commission.

initiative to enhance control role of the Parliament in the fight against corruption. This idea was intensively advocated by two civil society organizations: MANS and CeMI, as well as the part of oppositional parties. Anti-Corruption Committee is composed out of 13 members: 8 from parliamentary majority and 5 from the opposition. Such composition could be problematic in decision making. Also, problem arises with revising anti-corruption laws- namely, Anti-Corruption Committee is not considered as the main committee in revising any laws or reports, but only as "interested committee" which decreases its importance and area of action. Although obliged to send their Report on conducted activities in fight against corruption and organized crime, it seems that this obligation is fulfilled selectively. Jurisdiction[7] of this board, related to reconsidering of issues and questions arising in implementation of the laws related to the fight against corruption and organized crime, and their amendments, is very widely set. Relation among National Commission and the Parliament is regulated inadequately, due to the fact that the Parliament is represented in this body with President of the Parliamentary Committee on Finance and Budget. Decision of the National Commission to invite Parliament of Montenegro to appoint the president of the Anti-Corruption Committee for a member of the National Commission is encouraging, although the president of the Anti-Corruption Committee has refused this appointment. However, it seems that the biggest obstacle for effective work of the Anti-Corruption Committee represents its fourth jurisdiction defined with Rules of Procedure, which is not precise enough, as the procedure of further reviewing and processing of submitted proposals of the Anti-Corruption Committee is not clearly defined. In this sense it is necessary to amend Rules of Procedure of the Parliament of Montenegro, in a manner which would provide possibility for Anti-Corruption Committee to conduct its jurisdiction in adequate manner.

Action Plan for the Chapter 23 (Judiciary and Fundamental Rights) gives certain directives for improvement of control and monitoring mechanisms of the Parliament in the process of fight against corruption and organized crime. In order to further strengthen preventive role of the Parliament in the fight against corruption it is necessary to use existing new mechanisms of control of executive branch of power more intensively. Very important instrument for achievement of this goal is possibility of citizens to submit applications to newly founded Anti-Corruption Committee. As a special recommendation, pointed out in the Action Plan is inclusion of NGOs in the anti-corruption agenda, i.e. inclusion of representatives of civil society in the composition of the Anti-Corruption Committee in accordance with rules and regulations.

1.2 Conclusions and recommendations

In order to strengthen role of the Parliament in fight against corruption and improve its control mechanisms it is necessary to::

1. Reconsider decrease of the number of MPs, necessary for proposal of parliamentary investigation, which will provide to open parliamentary investigation on demand

7 The Committee has following mandate: (1) to monitor and analyze work of the state bodies, institutions and organizations in the area of fight against corruption and organized crime; (2) to revise issues and problems regarding implementation of the laws related to the fight against corruption and organized crime and to propose their amendments; (3) to propose additional measures for improvement of action plans, strategies and other documents related to the fight against corruption and organized crime; (4) revise applications and submits them to relevant state bodies.

of 1/3 present MPs during regular session of the Parliament;

2. Improve content of the Law on Parliamentary Investigation with provisions which foresee sanctions for concealing of information, refusal to testify and false testimony;
3. Expand subjects to the Law on Parliamentary Investigation, introducing obligation for all entities to provide information to the Inquiry Committee, give statements, reply to questions of the Committee on facts which are related to the subject of parliamentary investigation and obligation to provide to the Committee all documentation that they posess regarding the case;
4. Institutionalize cooperation of civil society and the Parliament, i.e. to include representatives of civil society in the Anti-Corruption Committee, as foreseen with the Action Plan for the Chapter 23;
5. Intensify use of control mechanisms of the Parliament in part of control of implementation of current legal framework for the fight against corruption and organized crime, and use of this mechanisms should result with concrete conclusions, measures and activities.

2. Financing of political parties

The State's lack of the clear vision in the area of fight against corruption is perhaps the most visible in the field of financing of political parties. Frequent changes of legislative and institutional framework are reflection of unsustainable policy in this area. This statement is supported with the fact that in the last 15 years six laws was adopted in this area, each of them with different institutional monitoring mechanisms, which in consequence had numerous improvisations in implementation and lack of effective control over political party financing.

2.1 Characteristics of institutional and legal framework

The last in the row **Law on Financing of Political Parties**, was adopted in December 2011 and came into force in January 2012.[8] The Law was adopted with the aim of achievement of transparency and legality of financial management of political parties, and it defines more precisely methods of acquiring and providing funding for regular work and electoral campaign of political parties, as well as the methods of control of financing and financial management of political parties. New Law on Financing of political parties has introduced some positive changes in line with GRECO recommendations: (1) provisions regulating in kind donations were introduced; (2) rules prohibiting abuse of state resources during electoral campaign were more precisely defined; (3) upper limit for acquiring funds for non-parliamentary parties was revised and it rose from previous 5% to 10% of total funds which parliamentary parties receive for their regular work; (4) audit of financial reports of political parties was enhanced through inclusion of State Audit Institution. However, the new Law hasn't eliminated all weaknesses, which were pointed out in reports of GRECO, European Commission and civil society.

By setting a model of control and audit of political parties, unknown in comparative

8 "Official Gazzete of Montenegro", No. 49/08, 49/10, 40/11, 42/11, 60/11 i 01/12

practice, based on limited powers of State Audit Institution and State Electoral Commission, this Law made a step backwards in regards to the previous Law.[9]

Bearing in mind abovementioned, as well as numerous weaknesses and deficiencies shown in the brief period of implementation of the Law on Financing of Political Parties, the Government of Montenegro has established Working Group for Creation of the New Law on Financing of Political Parties and Electoral Campaigns, whose members are representatives of state institutions and civil society organizations.

Bylaws, which are clarifying and further developing provisions of the Law on Financing of Political Parties, were adopted during first months of 2012.[10]

Regulation of the activities of political parties is done by the set of laws, which include also **Law on Political Parties and Law on Financing of Electoral Campaigns for President of Montenegro, Mayor, and Presidents of Municipalities**.[11]

Law on Financing of Electoral Campaigns for President of Montenegro, Mayor, and Presidents of Municipalities [12] sets methods of acquiring and securing of funds for electoral campaign and methods for control of financing of candidates for election of President of Montenegro, Mayor and President of Municipality. This Law contains an important contradiction in relation to the Law on Financing of Political Parties – namely control and audit in accordance of this Law is entrusted to internal auditor of Ministry of Finance in the Government of Montenegro. Obvious "systemic inconsistency" of these two laws reflects in different bodies which are in charge of audit of political subjects in electoral campaigns. While audit of political parties and electoral campaigns of political parties is done by the State Audit Institution, audit of electoral campaigns of candidates on presidential elections is done by executive power – Ministry of Finance, i.e. their authorized auditor. **Bylaws,** which are developing provisions of the Law on Financing of Electoral Campaigns for President of Montenegro, Mayor, and Presidents of Municipalities, are adopted by the Ministry of Finance in February of 2013, four years after adoption of this law.[13]

State Electoral Commission still has no developed capacities for control of financing of political parties. This institutions still has limited human and technical capacities. In current practice of implementation of the Law on Financing of Political Parties, SEC has regularly published all reports of political parties, but unfortunately its function is reduced to simple informing of the public through publishing of reports

9 In Report on screening of legislation for Montenegro fotr Chapter 23 of negotiations of Montenegro and EU – Judiciary and Human Rights, it is stated that legal framework doesn't provide adequate control over the political party financing, with identification of numerous problems in implementation of the Law and inadequate sanctions.

10 State Electoral Commission and Ministry of Finance have adopted: Rules on Accounting and Reporting on In-kind Donations of Poliotical Parties; Guidelines on Contents of Report on the Contributions of Legal Entities and Individuals to Political Parties during the Election Campaign; Guidelines on the form of reports on the origin, structure and the amount of collected funds used for the election campaign; Rules on the form of the annual report on income, assets and expenditure of political parties.

11 Besides mentioned laws there aew also elctoral laws, Law on the Election of Councilors and the MPs (from 1998 with amendments), Law on Election of the President from 2007. The and the Law on Election of Mayor from 2003 are governing various technical aspects of the implementation of various electoral processes.

12 "Official Gazette of Montenegro", No. 8/2009"

13 Adopted bylaws are: Guidelines on the form of reports on the origin, structure and the amount of collected funds used for the election campaign; Guidelines on reporting forms on funds spent for the election campaign; Guidelines on reporting forms of the income and assets of candidates for the election of the President of Montenegro.

without any kind of control mechanisms for content of these reports.

On the other hand, **State Audit Institution** is authorized to conduct audit of final accounts of political parties and reports on expenditures from electoral campaign. In accordance with the Law on The State Audit Institution[14], this body is established as institutional, external, independent, professional and objective control of spending of budgetary funds and management with public property in Montenegro. SAI controls legality, efficiency and effectiveness of spending of budgetary funds.

2.2. Effectiveness of legal and institutional framework

Both presidential and parliamentary elections were held in the last year, providing the opportunity to test entire regulatory framework for financing of political parties. During performance of audit of financial reports of political parties SAI has observed significant amount of irregularities:

Cash Payment: Through audit of financial reports by SAI it is concluded that all registered electoral lists, thirteen of them, have submitted reports on origin, amount and structure of acquired and spent funds for electoral campaign for national and local elections. Findings from the report are showing that political parties and coalitions have paid significant amounts of expenditures in cash and that justification of these expenses weren't done on the basis of appropriate documentation at certain parties and coalitions. Also, SAI concluded that parties and coalitions were paying remunerations to their authorized representatives and activists in field in cash, and these funds were not properly taxed.

SAI has, in their report, pointed out that submitted reports don't contain amount of funds collected on the basis of election result, as well as the data on expenditure of these funds, due to the fact that Ministry of Finance allocates these funds only upon receiving confirmation from SAI that the party or coalition has submitted their reports.

Membership fee: Only five parties has foreseen obligation of membership fee for their members. These are: Democratic Party of Socialists, Social Democratic Party, Bosniak Party, Croatian Civic Initiative and Positive Montenegro. One of problematic circumstances in decisions on membership fees is the question- in which manner a political party can foresee a percentage which will be deducted from the personal allowance of elected officials as a membership fee. In this way can be executed "concealed financing of political parties" from the state budget, where public official becomes just a link between state/local budget and account of the political party.

Lack of regulation for use of bank credits by political parties: Law on Financing of Political Parties is not developing in detail issues related to credit debts of political parties, such as issue of entitlement of political parties to obtain bank credits, question to which extent these funds can be used, out of which resources and in which deadline these funds will be returned, as well as methods of their securing, registering, etc. State Audit Institution has recommended regulating of issues of bank credits through amendments to the Law on Financing of Political Parties, especially to set upper limit for bank credits and deadlines and sources from which bank credits will be repaid.

Loans: Law on Financing of Political Parties doesn't define term "loan" which

14 "Official Gazette of Montenegro", No. 28/04

political parties use as one form of crediting. In the report of the State Audit Institution it's stated that one part of political parties has conducted crediting of individuals through loans, as well as that parties were credited through personal loans from members of the political party. It is also concluded that certain parties pay expenses of their electoral campaigns from funds intended to finance regular work of political parties. Findings of the audit are showing that parties and coalitions were repaying loans from budget of Montenegro and budgets local self-administrations, i.e. from funds allocated on the basis of obtained mandates. Bearing in mind frequent use of this crediting instrument by parties, State Audit Commission recommended mandatory regulation of issue of loans through new Law on Financing of Political Parties.

Inadequate sanctioning policy: In the period of implementation of the current Law on Financing of Political Parties State Electoral Commission has submitted 27 demands for initiating of misdemeanor procedures against political parties, i.e. responsible individuals in parties, due to failure to provide decisions on the amount of the membership fee, i.e infringement of the Article 8 of the Law on Financing of Political Parties. In addition, SEC has submitted 31 demand for initiation of misdemeanor procedures against political parties and responsible individuals due to failure to provide report on annual assets, property and expenditures. State Audit Institution didn't submit any demands for misdemeanor or criminal procedures on the basis of irregularities in financial management of political parties.

If we have in mind that 2012 was year of parliamentary elections in Montenegro, and that SAI entered in this process with own capacities, without new auditors for auditing of the process of financing of electoral campaigns, we can conclude that SAI has shown high degree of independence and professionalism in implementation of their duties in accordance with the Law on Financing of Political Parties, by conducting audit and publishing reports. However, even though SAI has shown high degree of professionalism and independence, most of their findings remained without concrete effects, due to the fact that breach of existing regulations, pointed out in their report, weren't sanctioned, nor were the other institutions following upon their findings in order to contribute to more effective implementation.

One on obstacles to more effective control of political party financing is **lack of regulations** on the basis of which is financial management of political parties done. Namely, even though political parties are budget beneficiaries, their management is currently effectuated on the basis of the Law on Accounting and Audit, and not on the basis of the Law on the State Audit Institution, as it is stipulated for other budget beneficiaries. Ministry of finance was in charge for adoption of rules on Financial Management of Political Parties, but it still remains undone.

In accordance with the Law on Financing of Electoral Campaigns for President of Montenegro, Mayor, and Presidents of Municipalities, Ministry of Finance was in charge for control of the financing of electoral campaign during **presidential elections**. According to allegations of representative of Ministry of Finance, there were no irregularities in the process of financing of electoral campaign of presidential candidates.

Here we can observe significant difference in results of the audit from presidential and parliamentary elections, as well as difference in quality of reports on audit. Report of SAI systematically points out weaknesses and gives recommendations for improvement of the financial management, while Ministry of Finance publishes only general opinion without publishing of detailed findings.

2.3. International standards

In the general conclusions of the **Report on the Screening for the Chapter 23** it is stated that current legislation in this area (Law on Financing of Political Parties, Law on Financing of Electoral Campaigns for President of Montenegro, Mayor, and Presidents of Municipalities) aren't adequate framework for control of the system of financing of political parties. Also, it is stated that it's necessary to further strengthen accounting obligations and obligations of submitting annual reports of political parties. Analysis has also shown that political parties' donors are not adequately identified. Regarding institutional framework it is stated that State Electoral Commission merely publishes reports, without further control of their content. It is stated that professional capacities of SEC should be enhanced in order to provide total, effective and independent scrutiny of the implementation of the Law. It's also pointed out that State Audit Institution, in charge of audit of the final annual account of political parties and audit of report on expenditures of electoral campaign, lacks access to the information and capacities to identify fraudulent behavior. Finally, Report on Screening for the Chapter 23 concludes that insignificant number of misdemeanor sanctions was imposed on the basis of infringement of the rules of financing. Report recommends improvement of the political party financing system through reliable reports, efficient control, and possibility of sanctioning by an independent body. It is also recommended to strengthen capacities of control bodies (SEC and SAI) and insurance of clear division of tasks and framework of cooperation. Also, it is recommended to increase accounting obligations of political parties and to strengthen reporting of in-kind donations.

I**n GRECO Report of the III Evaluation Round** it's concluded that following recommendations were still not fulfilled: 1. Introduction of clear rules and guidelines for usage of public resources for party activities and electoral campaigns; 2. Giving of independent authorities and capacities to the institution which monitors financing of political parties; 3. Strengthening of the political parties audit especially through (I) assessment of the need to adapt the current rules in order to set consistent and clear obligations of audit for political parties, including an evaluation of the existing threshold for audit of accounts for the campaign (i.e. that total amount of acquired and spent funds from private sources during one electoral campaign exceeds 50 000€); (II) introduction of provisions which would ensure independence of auditors who conduct audit of political parties. 4. To better adapt existing sanctions for violation of rules on political financing in order to provide that sanctions are proportionate and dissuasive, including the expansion of the scale and range of possible sanctions and to cover all possible violations of the law.

2.4 Conclusions and recommendations

1. It is necessary to adopt new Law on Financing of Political Subjects and Electoral Campaigns which will establish sustainable system of control and audit of political party financing and financing of electoral campaigns, with setting of clear procedures for imposing sanctions to political subjects and responsible individuals for violation of the provisions of the Law. New Law should contain amendments in following areas:

- ✓ Control of financing of political subjects and electoral campaigns must be conducted by an independent institution. Taking in consideration that currently is impossible to provide independent and professional establishment of the

State Electoral Commission, due to the lack of political will, CeMI has advocated in previous period creation of the independent **Agency for the Fight against Corruption** which would be entrusted with jurisdiction of control of financing of political parties and electoral campaigns in Montenegro. Establishment of the Agency was proposed in the Action Plan for the Chapter 23, as one of the measures for improvement of institutional framework in field of fight against corruption. Agency should conduct investigative actions in the procedure of control of total financial management and not only accounting control of the usage of budgetary funds. It means that possibility of administrative investigation should be part of Agency's powers. This investigation would encompass control of financial management of other subjects related to political parties, hearing of individuals, etc. Only such investigative mechanism would provide effective control of financial management of parties.

- ✓ New Law on Financing of Political Subjects and Election Campaigns should encompass solutions which will adapt existing sanctions in order to be effective, proportional and dissuasive, including expansion of scale and spectrum of possible sentences in accordance with GRECO recommendations in this area. In this part it is necessary to reconsider introduction of new forms of sanctions such as loss of public funds, disqualification from elections, monetary penalties and prison sentences for serious breaches of the law.

- ✓ In accordance with SAI recommendation, it is necessary to precisely regulate issue of loans, used by certain parties as type of crediting;

- ✓ In accordance with SAI recommendation, it is necessary to precisely regulate issue of financing of electoral campaigns through bank credits, set the limit up to which parties can use this instrument and determine deadlines and sources from which the debt will be repaid;

- ✓ In accordance with SAI recommendation, it is necessary to precisely determine all types of financing of political parties and to regulate in the unified manner issue of space rent for activities of political parties, on national and local level;

2. It is necessary to reconsider adoption of the specific law which will address all segments of abuse of state resources, primarily regarding clear definitions of all abuses of state resources during electoral processes, establishment of clear institutional mechanisms of control of this occurrence and adequate penal policy. Also, control and processing of abuse of state resources during electoral processes should be entrusted with Agency for the Fight against Corruption, which would implement this mandate in cooperation with police and prosecution.

3. It is necessary to improve degree of respect and implementation of recommendations suggested by the State Audit Institution, exposed in report on audit of annual financial reporting of parliamentary political parties. Following recommendations should be particularly followed:

- ✓ It is necessary that subjects of audit ensure legal, economical and successful management of financial resources and other property and increase responsibility of individuals included in management of these resources, through efficient system of internal controls.

- ✓ In accordance with earlier recommendations of SAI and CeMI, the Parliament of Montenegro should conduct transfer of funds on bank account of parties in a way in which transferred funds will not exceed determined limit of 0,5% of current budget. Thus, financing of employees in MP clubs should be done from funds allocated for regular work of political parties, or the Parliament of Montenegro should directly pay remunerations to these persons on their bank accounts.

- ✓ In order to improve fiscal discipline and efficient management of financial resources, all revenues of political subjects should be paid on their main account.

4. It is necessary to increase efficiency of implementation of control mechanisms of institutions authorized for monitoring of the Law on Financing of Political Parties.

5. It is necessary to provide higher level of respect of provisions of the Law on Financing of Political Parties by local self-administrations.

6. Amend or supplement bylaws adopted by SEC. In this sense, it is necessary to amend the Form for reporting on donations of individuals, and to supplement it with data that facilitate the identification of donors.

7. It is necessary to examine legality of decisions on membership fees of certain political parties, which foresee percentage that would be deducted of the salary of elected officials in the name of the party on local and national level, on the basis of membership fee. In such manner is done concealed financing of political parties from public funds. Also, this type of financing is recognized as a form of abuse of state resources.

8. Decrease amount of the membership fee to 50€ on annual level, which represents only real limitation which would prevent possibility of abuses. It is also necessary to clearly define in law that the membership fee is part of individual donations, i.e. that the sum of the membership fee and donation of an individual can't exceed 2000€.

9. Align institutional and legal framework in the area of financing of political parties on the basis of recommendations from Screening Report and recommendations of GRECO.

10. It is very important that Ministry of Finance in shortest possible deadline adopt rules of financial management of political parties, which would enable unified practice and more effective control of this process.

3. Prevention of conflict of interests

Prevention of the conflict of interests is one of the most sensitive areas of fight against corruption and regulation of this area has advanced very slowly through nine years of evolution. First Law on prevention of conflict of interests was adopted in 2004, and it was changed twice since, gradually expanding subjects of the Law, as well as jurisdiction and powers of the implementing institution.

3.1 Characteristics of institutional and legal framework

Law on Prevention of Conflict of Interests[15], has been amended and supplemented

15 Official Gazzette of Montenegro No. 41/11 and 47/11

most recently in August 2011, and it started with implementation on March 1st, 2012 (except for the provision regarding membership of MPs in governing boards, which started with implementation in November 2011). New **Law on Prevention of Conflict of Interests** represents significant step forward in comparison with the previous legal text. Key novelty of the Law, which has attracted greatest attention of public, is expansion of definition of the public official to encompass MPs. In accordance with this provision, MPs of the Montenegrin Parliament can't simultaneously cover positions of presidents of local self-administrations, or positions of directors of public enterprises and institutions. According to this provision, MP's were obliged to leave their parallel functions until November 1st 2011, while directors and presidents of local self-administrations could exercise function of MP's until March 1st, 2012.

Some of important novelties in the Law on Prevention of Conflict of Interests, are:

- Definition of public official is expanded, although not entirely aligned[16];
- Obligation of reporting of incomes from permanent or temporary working bodies and mixed commissions, created by the authority, was introduced;
- Sum of all gifts, given by one person or entity, can't exceed 50 euro during one year, and value of all gifts from various persons and entities can't exceed 100 euros;
- Evaluation of presents value is determined by an independent expert, not by the Commission, as it was done before;
- Deadlines for reporting on assets and on discharge from the other public function were expanded and amount of financial sanctions was defined more precisely. More strict sanctions were prescribed, which are ranging from 300 to 1.500 euro for physical entities, and from 1.000 to 10.000 for legal entities. Also, the Law prescribes that, for certain offenses, family members of public official could be penalized with fine ranging from 30 to 300 euro .
- Law prescribes financial sanctions for public authorities (ranging from 1.000 to 10.000 euro) and responsible persons in institutions (ranging from 300 to 1500 eura) in cases of violation of legal obligation to report registries of gifts, and in cases of failing to report dismissal, suspension or discipline measure for public functionary to the Commission.
- By amendments and supplements of the Law on Prevention of Conflict of Interest, jurisdiction of the Commission for Prevention of Conflict of Interest was expanded and its control mechanisms enhanced (especially in the part of verification of data contained in reports of public functionaries). Now, Commission has the duty to verify data from reports on income and property, in coordination with other relevant institutions (Tax administration, Central Registry of Economic Entities, Real Estate Administration, Directorate for Public Procurement, Securities and Exchange Commission, etc.).

16 (a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party- *UNCAC*

Upon adoption of the Law on Prevention of Conflict of Interests, in 2011, Commission has adopted following bylaws: Regulation on procedure before Commission for Prevention of Conflict of Interests; Rules of Procedure of the Commission; Form of the Report on Assets and Property of Public Functionaries; Form of Registry of Gifts and Form for Public catalogue of gifts. Regulation on procedure before Commission foresees three types of control: administrative and technical control; control upon report and in-depth control.

Control over implementation of the Law is exercised by the **Commission for Prevention of Conflict of Interest**. Commission has the President and six members, appointed by the Parliament to five year term. Commission performs preventive activities against conflict of interest through implementation of following jurisdictions: carries out the procedure and decides on infringements of the Law; gives opinion on existence of conflict of interest; determines value of gifts on the basis of expert opinion; conducts verification of data from the report on income and property; gives opinion on draft laws, other regulation and general acts if deems it is necessary for prevention of conflict of interest; gives initiative for amendment and supplement of the laws, other regulation and general acts, in order to align them with European and other standards in area of anti-corruption initiative and transparency of business transactions; submits demands for initiating of misdemeanor procedure and cooperates with international organizations and institutions from other countries that deal with prevention of conflict of interest.

Commission has its **Professional Service**, dedicated to professional and administrative works, whose activities are coordinated by the Secretary of the Commission.

Commission has expressed attitude that funds allocated for its work were not enough for implementation of planned activities of the Commission, which were increased in accordance with the new Law.

3.2 Effectiveness of institutional and legal framework

a) Expanded definition of the public official

After amendments to the Law on Prevention of Conflict of Interest in part of the definition of the public official, number of public officials in 2012 has increased to 3495, which is 11% more than in 2011. Trend of increase of the number of public officials has continued in 2013, with numerous opinions of Commission that have classified new categories of public officials as subjects to this law, and in first quarter of this year number of public officials rose to 3541.

However, this shows that there is still no mechanism of automatic recognition and registration of public officials who, if they're not yet subjects to the law, can avoid their duties in accordance with this Law, until the Commission officially doesn't give an opinion on their status. Also, the status of entire categories of public officials is problematic – such as the status of deans of private faculties. Namely, the Commission still hasn't issued official opinion whether the Law on Prevention of Conflict of Interests recognizes this group as public officials or not. In accordance with this, deans of private faculties are not submitting their reports on income and property, even though they're heading institutions which are using public funds.

With expansion of the definition of public official to encompass MPs of the Parliament of Montenegro, additional problem has occurred. Commission for Prevention of Conflict of

Interest is in charge of control of implementation of the Law by MPs, who are appointing the President and members of the same Commission- and this brings Commission itself in zone of conflict of interests.[17]

b) Submitting reports on property

Newest data of the Commission for Prevention of Conflict of Interests are showing that 14,5% i.e. 519 public officials didn't report their property for last year in legal deadline (31/03/2013).[18] For all public officials which didn't obey this legal norm, Commission brought decision stating that they violated Law on Prevention of Conflict of Interests and submitted demands for initiation of misdemeanor procedure to relevant authority.

Commission for Prevention of Conflict of Interests points out that certain problems in procedure of reporting on property often occur, such as manual entering of data in reports on income and property by many officials, due to the fact that there is high percentage of officials lacking computer literacy. Data are sometimes filled very bad handwriting, which sometimes lead to mistakes in processing of data. Also, numerous public officials are still waiting for the last moments of the deadline to submit their reports, which significantly increases amount of the work of Commission and additionally burdens the procedure. [19]

Procedure of submitting demands for initiation of misdemeanor procedure provides an opportunity for officials to "remove irregularities" and additionally burdens the system. In this manner, certain officials are avoiding to submit reports on income and property until they face infringement charges, and officials who submit reports on income and property during court procedure, most commonly are sanctioned by admonition. Direct sanctioning by the Commission, by the Commissions misdemeanor order, would be significant incentive for all officials to submit their reports within the legal deadline. Also, there is a problem of "new" officials, who didn't submit their reports on income and property yet, as Commission doesn't possess their data necessary for initiating misdemeanor procedure (personal identification number).

c) Changes of property status and receiving of gifts

During 2012, in accordance with the Law, 58 of public officials reported changes in property status higher than 5000 €. Through analysis of the reports on income and property until April 1st 2013, it is determined that 19 public officials didn't report changes in their property status higher than 5000 € (buying of apartment, land, car, etc.). Upon determination of these facts Commission has brought decision stating that those officials violated Law on Prevention of Conflict of Interests and submitted demands for initiation of misdemeanor procedure. During 2012, 13 public officials, out of which 11 at the national and two at the local level, reported they received gifts. These officials reported total of 105 gifts.

Avoiding to report changes in property status, higher than 5000€, can indicate that this property was acquired illegally. Commission still has no jurisdiction or power to verify origin of property, which significantly decreases effects of reporting on property. Montenegrin legal system still doesn't recognize term "illicit enrichment", nor

17 This possibility is pointed out in SIGMA Report of Integrity in Public Sector in Montenegro from 2009

18 Web page of Commission for Prevention of Conflict of Interests www.konfliktinteresa.me

19 Annual Report of Commission for Prevention of Conflict of Interests for 2012 and I Q 2013, August 2013

procedures related to this criminal act, which opens space for diverse abuses of function and acquiring of personal gain by damaging the state.

Also, Law doesn't prescribe obligation of reporting changes in property status higher than 5000€ for members of the family of public officials, although their property is also reported in accordance with the Law on Prevention of Conflict of Interests. Lack of control over this segment of property of public officials provides opportunity for public officials to conceal their property through property of their family members.

d) Conducting multiple functions

In regards to conducting multiple public functions, available data of the Commission for Prevention of Conflict of Interests are showing that 1074 officials are conducting two public functions, which represents 31% of total number of public officials, while 3% of public officials conducts three public functions. The Commission has filed demands for initiation of misdemeanor procedure against 12 public officials who conducted two incompatible functions, and 11 of these corrected their conduct in accordance with the law. During 2012, 11 public officials were in several management boards of „private" companies, which is prohibited by the law. Commission has brought decisions in these cases that the law is violated, after which majority of these officials have left their positions in management boards of private companies. One official declined to leave the position and Magistrates' Court initiated misdemeanor procedure against him.

Problem with the Law, related to incompatibility of functions is that the Law bans membership in management and control bodies of companies for public officials, while it doesn't prohibit engagement on other positions in public institutions, companies, and other legal entities. In such manner, some officials cover several incompatible functions, without directly breaking the Law on Prevention of Conflict of Interests.

e) Control of accuracy of data from reports on income and property and coordination with other institutions

During 2012, Commission has conducted control of 731 reports on property and assets of public officials, out of which 458 of officials on national and 273 officials on local level. Commission has discovered that 44 officials on national level and 32 officials on local level haven't declared accurate data in their reports on property and assets. For 76 of public officials who reported false data in their reports on income and property, decisions on infringement of the Law were brought by the Commission and demands for initiation of misdemeanor procedure were filed.

The Commission pointed out important problem in technical processing of the data from reports - lack of unique electronic system of state institutions, which would provide simple access and exchange of data, where Commission could easily verify declarations from reports on income and property of public officials.[20]1

Lack of electronic linkage influences timeliness of obtained information. For example, Securities and Exchange Commission has sent to Commission for Prevention of Conflict of Interests 5954 different information on change of property status of 3069 public

20 Annual Report of the Commission for Prevention of Conflict of Interests

officials[21], but this type of reporting is done on the annual basis and in retrospective (in 2013 for 2012 etc.). Backdated reporting on securities transactions caused that some transactions of public officials, much higher than limit of 5000€, remain unreported in records of public officials. Taking in consideration Commission observes these transactions as a simple change of type of already existing property (money instead of securities), question arises whether those criteria are applied also for selling of land and real estate.

Commission still has no possibility of requiring information from banks, insurance companies and private pension funds, which significantly decreases its effectiveness in control of data from reports on income and property of public officials.

f) Sanctions imposed

During 2012, the Commission has brought 882 decisions on infringement of the Law on Prevention of Conflict of Interests by public officials. In 230 cases public officials have remedied their actions, upon decision of the Commission. In 442 cases, Commission has filed demands for initiation of misdemeanor procedure, and 295 of these procedures were finalized by December of 2012. Magistrates' Court has sanctioned 167 officials with admonition and 95 officials by financial sanctions. Total amount of imposed financial sanctions is net worth 16.530€. In 2012, the Commission has filed 22 demands for discharge, suspension or discipline measure, due to infringements of the Law by public officials. However, for certain categories of public officials (as MPs or Councillors, elected directly by citizens) sanction of discharge from the public function can't be imposed.

Similar to the previous law, problem in part of implementation of measures occurs when institution in charge of dismissal and suspension of public officials, doesn't report back to Commission on sanctions imposed. The Law sets deadline for reporting to the Commission upon bringing the decision on sanction (30 days) but it doesn't set the deadline for brining the same decision.

Additional favorable circumstance for officials who are not reporting on property despite imposed sanctions, is Opinion of the Agency for Protection of Personal Data and Free Access to the Information, which prohibits publishing of names of sanctioned officials. Without public pressure, and with relatively low sanctions, this kind of identity protection can contribute to occurrence or continuation of corruptive behavior.

g) Capacities of the Commission for Prevention of Conflict of Interests

Increased jurisdiction and powers of the Commission are demanding increase in human and financial resources for functioning. Even though new Rules on Organization and Systematization of Professional Service foresees 17 working positions in total, including 4 new positions, in Commission is currently filled only 10 vacancies, while remaining vacancies are not filled, notwithstanding numerous demands sent to Ministry of Finance. Also, it should be mentioned that so far internal and external calls were published for Higher Counselor and Professional Service Secretary, without success. Currently, activities of counselor and secretary are conducted by other employees of the Professional Service. The Commission also points out that monthly incentives of employees, regardless of their request, is still being allocated in accordance with old

21 Securities and Exchange Commission of Montenegro, No. 05/1-1396/3-2013 Response to demand on Free Access to the Information 5/7/ 2013

coefficients, which represents negative factor for their stimulation and employment.[22]

For 2013, demanded funds from Ministry of Finances were 422. 259 €, while approved and allocated funds are 271.986 €.

3.3. International standards

Analyses and reports of GRECO, SIGMA and European Commission contained very often harsh critics of regulation in this area. However, upon adoption of the new Law, published reports have marked improvements in this sector. Even though the new Law had brought important progress in comparison with previous legal solutions, in sense of alignment with international standards, some posed benchmarks still remain unachieved:

1. Independent and proactive body in charge of control of conflict of interests.[23]
2. Differentiation in sanctions for appointed public officials and elected public officials.[24]
3. Criminalization of illicit enrichment and expansion of control of data from income and property reports to control of origin of property as well[25]
4. Possibility of extended verification of data from reports on income and property through obtaining information from banks, insurance companies and pension funds.[26]
5. Wide spectrum of deterrent sanctions foreseen for infringement of the Law.[27]
6. Improved system of reporting on property, especially through enhancement of control mechanisms and professional capacities of the Commission for Prevention of Conflict of Interests in order to ensure efficient and thorough control of property of public officials and introduction of measures prohibiting conducting of two functions at the same time[28]

3.4. Conclusions and recommendations

Action Plan for Chapter 23 of the Negotiations with the EU was adopted in March 2013, which foresees establishment of the independent Agency for the Fight against Corruption, which would cover the area of conflict of interests, among its other jurisdictions. This will be the first change of institutional framework for control of conflict of interests since 2004. So far, majority of legislative changes was made, but it is necessary to create strong institutional framework for good results, consistent implementation and maximum utilization of given powers.

1. Amendments of the Law on Conflict of Interests, which will guarantee:
    - ✓ Displacement of appointment of members and President of the Agency/ Commission from the Parliament in order to avoid political compromises

22 Annual Report of Commission for Prevention of Conflict of Interests 2012

23 Sigma Assessment Montenegro 2011

24 Ibid.

25 Progress Report Montenegro 2012, EC

26 Ibid

27 GRECO, II Round of evaluation, Montenegro 2007

28 Screening report 2012

- ✓ Full financial independency of the Agency/Commission and partial self financing through collection of revenues through imposed fines
- ✓ Possibility of administrative investigation, including authorization for obtaining information from banks, insurance companies, pension and investment funds, as well as control of property origin
- ✓ Possibility of first degree sanctioning through direct fines
- ✓ Introduction of deadlines for implementation of Agency/Commission's decision and sanctioning relevant authorities which fail to implement these decisions
- ✓ Clear definition of public official and obligation of registration with Agency/ Commission upon assuming of the duty

2. Income from monetary sanctions shouldn't be directed to the state Budget, but to the Budget of the Commission for Prevention of Conflict of Interests, which would provide additional funds for work of this body and improve its effectiveness.
3. Criminalization of illicit enrichment – with reverse onus
4. Electronic linkage of registries of public officials with registries of Tax Administration, registries of Real Estate Administration, registries of public procurement and securities, for timely and simplified verification of data from reports on income and property.
5. Enhancement of capacities of the Commission for Prevention of Conflict of Interests for control of reports on income and property and control of conflict of interests.

2 ECONOMIC CORRUPTION

1. Public finances

Montenegro has committed by numerous international documents to provide transparency of the area of public finances and to improve responsible and effective use of public funds. This is characterized by very dynamic reform of legislative framework in last few years, with the aim of alignment with international standards. Regarding anti-corruption policies in this area, we consider that it is important to point out and analyze following areas susceptible to the risk of corruption:

a) Adoption of state budget
b) Financial management and control, internal audit
c) EU funds financial management
d) Taxation

1.1 Characteristics of institutional and legal framework

a) Adoption of the Budget

Organic Law on budget sets methods if budget planning, revising, adoption, as well as methods of control of its spending.

b) State Audit

Area of state audit is under jurisdiction of the State Audit Institution. **State Audit Institution** performs the auditing of legality and effectiveness of management of state assets and liabilities, budgets and all financial affairs of entities whose sources of financing are public or acquired using state property. Legal basis for functioning of DRI is the **Law on State Audit Institution**, adopted in 2004. This Law was only slightly amended in the part of appointment and number of members (2006), setting of coefficient for salaries (2007), as well as in the part of penal provisions, in order to align it with the Law on Misdemeanors (2011). Law on SAI also regulates area of audit of budget users, i.e. all bodies and organizations that manage the budget and state property and the property of local governments, foundations, the Central Bank of Montenegro and other legal entities partially owned by the state.

Audit of the real sector is based on the **Law on Accounting and Auditing**, which was most recently amended in July 2011. Central Registry of Commercial Court was allocated to jurisdiction of the Tax Administration, and renamed to Central Registry of Economic Entities. In accordance with this, reports on financial management, which

were so far submitted to Commercial Court by June 30th, now shall be submitted to Tax Administration by March 31st each year. Deadlines are prolonged and conditions for acquiring of auditor's permission are more precisely defined, as well as the conditions for functioning of auditing companies.[29] The new Law also sets new inspection jurisdiction of the Tax Administration, such as: verification of classification of legal entities to small, medium and large; verification of organization of financial management in accordance with this Law; control of bookkeeping and the accounting records in accordance with this law; as we as control pf timeliness and accuracy of submitted financial report to relevant authorities.[30]

Parliamentary Committee for Economy, Finance and Budget, on their session held in 2011, has created draft **Law on Amendments and Supplements of the Law on State Audit Institution.** Among other provisions, amendments were aimed at providing:

- **Financial independence of SAI** in relation to the executive power, so that the budget of the SAI is determined by the competent working body of the Parliament, based on the proposal of the SAI Senate. Such proceedings are not to be subject of the discussion on a governmental level, under which the determined SAI budget is automatically integral part of the Annual State Budget. Also, it is foreseen that the salaries and other employee benefits in this institution are to be regulated by the special law;
- **Political independence of SAI**. The political independence of the SAI, through the proposition to adopt a provision based on which members of the SAI Senate cannot be members of a political party [31];
- **The effectiveness in the implementation of recommendations of the SAI,** by stipulating that the audited entity is required to submit a report to the SAI on the realization of the DRI recommendations contained in its Report on the audit, within a deadline established by this institution [32];

However, after opinion of the Legal and Constitutional Affairs Committee, this draft was returned to procedure and in 2013 the new draft law was created. This new draft was also withdrawn from the procedure and the new working group will be formed in this year, which will work on drafting of the new proposal, until the end of 2013.[33]

c) External audit of the EU funds

Law on Audit of the EU Funds, adopted in February 2012, defines objects of the audit, subjects to the audit and regulates work of Audit Authority for the Audit of the EU Funds (appointment of auditors and deputies, methods of their removal from office, qualifications, salaries, etc.). The Law also contains sanctions which can be imposed by the Audit Authority in cases when auditors are denied access to the premises of the subject to the audit, or when full documentation necessary for the audit is not submitted. It is important to stress that this Law introduces obligation of filing of criminal charges in case that in the audit process is found that there are grounds for suspicion that a

29 Articles 14 and 15 of the Law on Accounting and Audit „Official Gazette of Montenegro No. 69/05, 80/08 I 32/11"

30 Ibid, Article 18

31 Current Law regulates that members of Senate can't be members of managerial bodies of political parties

32 This standard has been proposed because DRI does sufficient capacities to perform routine control of the execution of its recommendations in all controlled subjects.

33 Intervju sa predstavnicima Senata DRI, septembar 2013

criminal offense has been committed.

Audit Authority for the Audit of the EU Funds existed as a unit within SAI, during 2010. As an independent body Audit Authority started functioning in October 2012. Law on Audit of the EU Funds sets conditions for appointment of the Chief Auditor, deputy and authorized auditors, and they're appointed by the Government.

d) Financial management and control, internal audit

Financial management and control encompasses activities which are especially related to planning and execution of the budget; conducting public procurement procedures; payment of the obligations on grounds of concluded contracts and other commitments; protection from the loss of property, improper use and the fraud; as well as the other non-financial activities in operations of entities.[34]

The Law on Public Internal financial Control System (hereinafter Law on PIFC), was adopted in November of 2008; it was amended in 2011 and in 2012, with provisions that have significantly improved existing text. During 2012 were adopted bylaws, which for the most part, completed the legal framework in this area.

Central unit for the harmonization of financial management and control and internal audit (CHU) is situated within the Ministry of Finance. Key task of the CHU is coordination in establishment and development of the PIFC on central and local level. In other words, CHU exists in order to provide unified development of PIFC structures and procedures, i.e. to coordinate establishment of financial management and control and internal audit with budget beneficiaries. CHU has two departments: department for development of the FMC (financial management control) and department for development of IA (Internal Audit).

e) Taxation

The Law on Tax Administration Parliament of Montenegro, in June 2011, approved the Law on Amendments to the Law on Tax Administration. The adopted amendments provided new authorities to the Tax Administration, in the sense that this body, beside the registration of taxpayers and maintenance of the Tax Registry, now performs registration of businesses and maintains a separate registry for them. Also, the Tax Administration is entrusted with a control over the delivery and publication of financial reports of companies, as well as the inspection of the accuracy of financial reporting, while the scope of penalties has been expanded and aligned with the new Law on Misdemeanors.

1.2 Effectiveness of the legal and institutional framework

a) Adoption of the Budget

In order to increase **transparency of the budget and use of public funds**, the Government of Montenegro has prepared draft amendments to the organic Law on Budget and Fiscal Responsibility, which defines new deadlines for budget planning, introduction of new fiscal rules and mid-term budgeting. Draft was returned to revision.

34 Zakon o PIFC „("Sl. list Crne Gore", br. 73/08 od 02.12.2008, 20/11 od 15.04.2011)

Draft Law on Budgetary and Fiscal Responsibility was placed on public discussion until January 31st of 2013, but due to numerous amendments, it was returned to Ministry of Finance for revision. Main problems of current legislative framework, as well as the new draft of amended Law are lack of transparency in process of budget planning and execution, especially in the area of creation of the capital budget, lack of sanctions and effective mechanisms for its implementation. New draft Law contained following deficiencies:

- There were no significant changes to budgetary schedule – prolonged deadline of one month is still not enough for revision of budget;
- Procedure of creation of capital budget remains the same. Neither Parliament, nor public have the right of participation in creation of this budget;
- Execution of the budget is not transparent enough– The Government submits report on execution of the budget only a month before submission of the new draft budget;
- New Law foresees establishment of the unit within MF, which would monitor execution of the budget, which is in direct opposition with the Law on PIFC;
- Managing of public debt remains in hands of the Government and Ministry of Finances, while the Parliament and SAI don't have the right of participation in this process
- Institution in charge of initiation of misdemeanor procedures is not defined;
- Given deadlines are so extended, that misdemeanors won't be processed due to statute of limitations;
- Penalties are too low, and they are not dissuasive;
- Sanctions are foreseen for only 8 misdemeanors, while many illegal actions remain without sanction;
- It is not clear who will monitor implementation of the law.

b) State Audit

In period October 2011 –October 2012 SAI has conducted audit of the Final Account of the Budget of Montenegro, as well as 10 general audits, one control audit, 4 controls of implementation of recommendations from previous audits and audit of 12 political subjects.[35]

Numerous irregularities were pointed out in the Annual Report of SAI, in different budgets beneficiaries, ranging from violation of the Law on Public Procurement (exceeding the limit of allowed amount of funds for direct procurement), to showing of more than 100 000€ of unused funds as expenditure, without justification or evidence on how these funds were spent. SAI has given one negative opinion as well (Montenegrin Academy of Science - CANU). However, there is no evidence that some of these findings resulted in investigation or filing of charges for violation of laws.

Control audit has shown that very few recommendations given by SAI were implemented by the budget beneficiaries. Lack of sanctions for non-compliance with recommendations of SAI, compromises authority of this institution and contributes to excessive spending of budgetary funds. The Government has formed Coordination Body for monitoring of

35 Annual report on work of SAI

implementation of SAI recommendations, but so far there were no reports on work of this body.

In the SAI's annual report it is pointed out that cooperation of SAI with Prosecution and Administration for Prevention of Money Laundering and Financing of Terrorism, but there are no statistical data on results of this cooperation, nor there are individual success examples of cooperation of these institutions.

The State Audit Institution maintains that all of their final reports are public and available to the competent authorities; therefore those authorities and interested public can file charges, while SAI can supply all necessary documents, which are required from this institution. In such way, responsibility for filing charges for violations of the law shifts among institutions and perpetrators remain unpunished.

c) External audit of the EU funds

Law on Audit of the EU funds has brought significant improvements in regards to the Law on Accounting and Audit: provision on protection of liability for expressed opinions in conducting the duty, and obligation of filing of criminal charges. However, this law lacks deadlines for conducting of the audit, submitting of reports and methods for choosing of the subject of the audit. Since it is registered, Audit Authority was working only on internal regulations (formulation of the Act on internal systematization and organization, Operational Rules, etc.). There were no concrete audits, due to the fact that transfer of authorities related to the audit of the EU funds, from European Union to Montenegro, is still not executed, i.e. the EU still conducts centralized management of these funds. It is foreseen that transfer of authorities from the EU to Montenegro for the first 4 components of IPA (help in transition and strengthening of institutions; cross border cooperation; regional development; development of human potential), will be done in this year, which is not the case with the fifth and the most comprehensive component (rural development). The Audit Authority currently employs 3 civil servants. Although it was foreseen to employ 8 people, currently there are only 3 and Audit Authority obtained consent to employ two more people. By the end of 2015, it is foreseen that the number of employees of this institution should be 20.[36]

d) Financial management and control, internal audit

Although the legal framework for this area is in substantial degree aligned with international standards, implementation is still not on the satisfactory level. Until August of 2013, on central and local level, 34 subjects have established internal audit unit, internal auditors are deployed in 27 of beneficiaries and in the internal audit units is employed 47 persons. 39 audits were conducted, with final audit reports, containing 153 recommendations in total, out of which 70 were implemented by now.[37]

Not one of internal auditors has international certificate for auditing, but Ministry of Finance is continuously working on their education and training. So far 8 internal auditors acquired conditions for obtaining of international certificate. So far, 3 trainings were held, with total of 40 participants.

Lack of capacities is also reflected in percentage of occupancy of foreseen vacancies in

36 Interview with Chief Auditor of the Audit Authority for audit of the EU funds, Mr. Predrag Raičević, June 2013

37 VI Report of National Commission on implementation of the Action Plan for the Fight against Corruption and Organized Crime, September 2013

internal audit, which amounts only to 56%. The SAI has also given critics on the work of internal audit: „Improper spending of funds determined by the state auditors in several consumer units indicates a lack of efficiency of the system of internal control, which is particularly applicable on the authorizing officer, whose signature on the most important instrument of control of expenditures - payment request, should provide payment in accordance with the approved budget, or control of the use of designated funds."[38]

Auditors of internal audit are not enough protected in their work. Namely, Law on PIFC defines that manager of the internal audit unit can't be assigned to another job, nor discharged due to opinions expressed in conducting of the duty. However, there are no sanctions, which would provide adequate guarantee for this provision.

e) Taxation

The evidence of progress in this area is 32 million euro greater collection of the tax debt compared with 2012, and 52 million euro greater collection in comparison with 2011. However, total unpaid tax debt in Montenegro amounts closely to 354 million of euro, out of which 119 are the debt for taxes and contributions on personal income. This is earlier debt, which dates more than 10 years in the past, i.e. since introduction of the IT system in Tax Administration. As for the debt of liquidated firms, it amounts to 24 million, but this debt cannot be collected, since these are companies which exist only on paper. Governing bodies of these companies should be held under material and criminal responsibility, due to negligent management of the company, and criminal charges should be filed against them.[39] In order to decrease this debt, the Government of Montenegro has adopted **The Regulation on procedure of collection of tax claims by property of taxpayers** in April of 2013, i.e. solution which provides possibility to pay tax debts by real estate property of taxpayers (apartments and business premises with paid utilities), which mean that any tax debt over 100 000€ can be paid with real estate. Commission of the Ministry of Finance for consideration of the tax debt discusses such requests, and the Government gives consent on settlement of the tax debt by real estate. In the end, ministry of Finance adopts final decision on collection of tax through this method. By August 2013, 10 companies has applied to pay taxes through real estate, out of which 1 application was approved.

Black list of tax debtors was created and first published in July 2013, in accordance with the Decree of the Government. This list contains names of 100 biggest tax debtors and 50 of those who failed to pay taxes and contributions on personal income. It is planned to supplement this list with another 200 of tax debtors and subjects who failed to pay excise tax debts.

Central Register of Economic Entities is not updated adequately – namely, companies which no longer exist are still registered as active, which prevents adequate control of taxation and represents an obstacle in numerous anti-corruption activities, such as control of the property of public officials, control of the process of public procurement, etc.

1.3 Conclusions and recommendations

1. Adopt the Law on Budgetary and Fiscal Responsibility which would guarantee:

38 Annual Report on work of SAI

39 Information obtained in the interview with Director of the Tax Administration Mr. Milan Lakićević, 12/06/2013

- ✓ Reasonable deadlines for revision of the budget – at least two months from submission of the draft budget;
- ✓ Inclusion of the Committee on Economy, Finances and Budget in process of creation of capital budget
- ✓ Shortening of deadlines for submission of reports on execution of the budget;
- ✓ Defining of active role of the Parliament and SAI in management of the public debt;
- ✓ Setting of strict sanctions for violation of this Law and for illegal and improper use of budgetary funds, as well as determining of relevant authority, which would be in charge for filing of misdemeanor charges;
- ✓ determining of relevant authority which will monitor implementation of this law.

2. **Adopt amendments of the Law on State Audit Institution** that foresee: full political and financial independence of SAI, sanctions for subjects of the audit which fail to report on implemented recommendations of SAI in the deadline set by SAI.
3. **Establish the structure for implementation of the PIFC:** establish units for internal audit in all budget beneficiaries foreseen in the law on PIFC, conduct filling of all vacant posts in internal audit units, in accordance with the Law.
4. **Organize structured training of all auditors** for internal audit and financial control and their international certification.
5. **Improve IT support of Tax Administration** – update and stabilize Central Registry of Economic Entities and link it to registries of: real estate, public procurement, public officials, in order to improve control of data from reports on income and property of public officials and enhance tax collection.
6. Amend the Law on Commercial Companies and set sanctions for irresponsible management, i.e. bringing the company in insolvent status, causing bankruptcy, etc.

2. State property and property expropriation

2.1 Characteristics of institutional and legal framework

Prevention of abuse during the use, and management of state property is regulated by the Law on State Property[40], by Articles 19 and 20 of the Law on Financing of Political Parties[41], as well as by the Article 71 of the Law on Civil Servants and Employees.[42] Area of the management and disposing with expropriated property is regulated by the Law on Temporary and Permanently Expropriated Assets[43], while the procedure of temporary or permanently expropriation of property obtained by illegal actions is regulated by Articles 91 - 97 of the Criminal Procedure Law of Montenegro[44]. Moreover, there are many bylaws that regulate the area of use and management of the state property, and

40 Official Gazette of Montenegro, No. 21/09 and 40/11.

41 Official Gazette of Montenegro, No. 42/11, 60/11, 1/12.

42 Official Gazette of Montenegro, No. 39/11, 50/11 and 66/12.

43 Official Gazette of Montenegro, no 49/08, 31/12.

44 Official Gazette of Montenegro, no 71/03, 7/04, 47/06 and Official Gazette of Montenegro, no 57/09,49/10

during 2013, numerous amendments of these bylaws are made[45].

The mentioned Law on the state property has established two bodies in charge for management and supervision of the state property: the Property Administration and the Protector of Property and Legal Interests of Montenegro. According the Article 20 of this Law, jurisdictions of the Property Administration are the following: to manage a unique record and register of the state property; to take care of the property which by Law belongs to the state; to take care of affairs of cadastral registration, land dividing, delineation, exchange, drafting of contracts and monitoring of their implementation, collection of rent and other matters related to the state property, to ensure conditions for protection of property and to perform other duties upon requests of the Government and the Ministry of Finance. Jurisdiction of Property Administration was expended with ordinance on organization and methods of work of state administration.[46] Those new jurisdictions are: maintenance of the building of state institutions, facilities of state representation bodies and diplomatic-consular delegations of Montenegro abroad, aligning of data from their registries with data from registry of real estate, registration of property of ex socio-politic organizations and their entry in real estate register, taking care of enrollment of property of Montenegro in real estate register, registry keeping on concluded contracts on acquisition and disposal with stationary and the movable assets and other goods of greater value in the state property, reporting to relevant authorities within deadlines foreseen by the law and conducting of additional work necessary for the functioning of state bodies.

On the other hand, primary obligation of the Protector of Property and Legal Interests of Montenegro[47] is to advocate and protect property and legal interest of the state, i.e. units of local self administration and public services founded by the state, which don't have a legal personality, in different procedures before courts and managerial bodies. Also, obligation of the Protector of Property and Legal Interests of Montenegro is to advocate and give legal opinion in relation to concluding contracts on acquisition and disposal with state property and in relation with other legal and property issues, on demand of state bodies. All state institutions are obliged to submit requested information and documentation to Protector. This institution is independent and it undertakes legal actions which arise and are related to civil law area, administrative law area and criminal law area. The Protector of Legal and Property Interests of Montenegro is appointed by the Government, on the proposal of Minister of Finances, to 5 years mandate. It has one or more deputies, also appointed and dismissed by the Government, on the proposal of the Protector.

---

45 Thus are adopted:
Regulation on Amending the Regulation on conditions and manner of use of vehicles owned by Montenegro (Official Gazette of Montenegro 17/13); Regulation on Amending the Regulation on conditions and manner of use of buildings for representative purposes owned by Montenegro (Official Gazette of Montenegro 19/13); Regulation on Amending the Regulation on conditions and manner of use of vehicles owned by Montenegro (Official Gazette of Montenegro 19/13); Regulation on Amending the Regulation on conditions and manner of use of official buildings and business premises owned by Montenegro (Official Gazette of Montenegro 19/13); Regulation on Amending the Regulation on conditions and manner of use of flats for official purposes owned by Montenegro (Official Gazette of Montenegro 19/13); Regulation on Amending the Regulation on conditions and manner of use of art and cultural assets owned by Montenegro (Official Gazette of Montenegro 19/13); Regulation on the payment of indemnification to former owners of confiscated property rights in financial means for the 2013 (Official Gazette of Montenegro 31/13).

46 Official Gazette of Montenegro, no. 38/03, no. 22/08 and 42/11.

47 Institution of Protector of Legal and Property Interests of Montenegro was established on April 30, 2010, when it overtook jurisdiction of advocating for the state, its bodies and public services in property litigations from supreme prosecutor.

2.2 Effectiveness of institutional and legal framework

What was represented as a problem in the previous reporting period, and remained unchanged by now, is the fact that Property Administration still has not established registry of stationary and movable property of the state, even though this system of registration should have been established in March 2010, in accordance with the Law[48]. Main reason for failure to establish this system is lack of the adequate electronic data processing software that was supposed to be created by Ministry of Finances in cooperation with authority relevant for information of society. Significant problem is also lack of human resources of the department for records and informing. Namely, in this department there are not enough trained employees who would in adequate manner conduct work under jurisdiction of this department. Additional problem in registering of state property is also the fact that certain number of institutions is not submitting to the Property Administration report on registering of movable and stationary property, or they are submitting these reports after the legal deadline[49]. Namely, state bodies are obliged to submit cumulative data to Property Administration on value of their property according to the structure of basic funds. In relation to the previous reporting period, a progress was made – Property Administration has appointed a person responsible for data entry and computer protection of those data was established. According to statement of deputy Director of Property Administration, control of veracity of the data entered into registries is not conducted, due to the fact that all institutions are keeping electronic registries which can be controlled at any moment[50].

In the previous year and the first half of this year there were no cases of confiscation of property acquired as a result of criminal activity. Up until now in Montenegro have been recorded only three cases in which the Prosecution has filed demands for temporary confiscation of property: Saric, Kalic and Khvan. Confiscated financial funds are placed on the special account in central bank in Montenegro where they are being kept until the completion of the final court proceeding, taking into consideration that Property Administration does not undertake management of such property. Also, Property Administration does not have exact information on credit obligation to banks on the basis of loan or mortgages which were approved to Kalics and Sarics. During management with temporarily confiscated property, Property Administration faces many problems, due to the facts that all confiscated property and financial funds are given to banks. Responsible persons are not appointed for management of temporarily confiscated securities and shares in companies, due to the facts that accounts of these companies are blocked on different grounds, and in such situations is impossible to organize their functioning (e.g. Mat company LLC Pljevlja). Confiscated houses are given for use to families of incriminated persons, without remuneration (cases Loncar, Kalic), since those are the old family houses which are not acquired illegally. On the other hand, Property Administration still hasn't signed protocol on cooperation with Directorate of Police, but there was a progress in education of civil servants who are managing temporarily confiscated property – during 2012 six trainings were held, and some of them were implemented in cooperation with OSCE and Republic of Serbia.

In the end, what was also recognized as a problem which Property Administration faces during the implementation of the Action Plan for the Fight against Corruption is

48 Provisions in Articles 70, 66 and 67 of the Law on state property.

49 Note form the meeting held 13/06/2013 with Osman Nurkovic, Deputy Director of Property Administration.

50 Ibid.

lack of independency of this body, since it is situated within Ministry of Finance which limits its powers.

Protector of Property of Legal Interest of Montenegro is independent institution which undertakes legal actions which arise and are related to civil law area, administrative law area and criminal law area. Despite its independence, in the system of state organization the institution of Protector is not defined as an authority of the judiciary in wider sense. Earlier representatives of the state had such status e.g. Public Defender as well as State Prosecution. Such position in the system of power is given also to legal representatives of surrounding states. Main characteristic of the work of Protector in the reporting period is overtaking of cases from administrations which lost their legal subjectivity, i.e. which no longer have status of legal entity (Customs Administration, Directorate of Police etc.) and which will be represented by the Protector in all property litigations, which significantly increases its scope of work. On the other hand, in the reporting period, professional service wasn't enhanced and the capacities of this institution weren't strengthened.

It's necessary to mention that the Protector has established adequate registries classified on the basis of type of procedure[51]. Aim of these registries is to provide efficient procedures, remove possibility of deadlock in any given case, or in any phase of procedure, as well as to familiarize all parties with all cases and determine responsibility of any employee for mistake or untimely action.

However, the Protector still does not possess his own web presentation[52], which brings into the question availability of data and transparency of work of this institution. Also, there is a necessity[53] to make certain amendments and supplements to the Law on Litigation Procedure[54]. Namely, the Law on Litigation Procedure does not contain provision which would regulate the right of the State as a party, to obtain reimbursement of costs regarding participation in civil proceedings. That's why the Protector had initiated on December 14, 2011, amendments and supplements of provisions in the Chapter XII of the Law on Litigation Procedure in a way to add an Article which would state as follows:

» For representation of the State, the Protector has the right on reimbursement of expenses under the Rules on Compensation of Lawyer's Services.

» Funds from the Paragraph 1 are assets to the budget of Montenegro[55].

As a consequence of the current provisions of the Las on Litigation Procedure we have the situation in which the State as a party in the procedure has the obligation the pay court

51 Following registries have been established: registry of litigation cases „PZ", register of not litigation and other civil cases „RZ", registry of administration cases „UZP", registry of executive cases „IZ" and registry of legal opinions „M". Also register of protective management „ZU" which contains, besides solving issues relevant for work processes also guidelines for procedure in individual characteristic subjects. These registers must be closed in December 31 (Report of the Protector of Property and Legal Interest for the period from April 30th 2010 to December 31st 2011).

52 Note from the meeting held 14/06/2013 with Mirjana Milic, the Protector of Property and Legal Interest.

53 Ibid

54 Law on Litigation Procedure (Official Gazette of Montenegro no 22/04, 28/05 and 76/06) in Chapter XII sets procedure costs, determining content, extent and other relevant issues for realization of the right of party to reimbursement of expenses which they had during litigation procedure. Obligation of reimbursement of expenses has the party which loses complete litigation procedure and in remaining cases the court decides on reimbursements depending of result of litigation. Therefore, the right, or obligation to reimburse expenses of the procedure is conditioned with result of litigation.

55 Initiative of the Protector for supplement and amendment of the Law on Litigation Procedure from 14/12/2011.

expenses, but it doesn't has the right to get reimbursement of these expenses under the Law. Also, all states in the region, without exception, have the right to reimbursement of expenses of civil procedure.

On the basis of exposed facts, it's not hard to conclude that the legal framework regulating the area of state property is still not applied adequately. We will list few most important deficiencies:

1. A credible record of entire state property, including property of local self-administration units is not established;
2. Registration of the state property is done in incomplete and inadequate manner, i.e. without enrollment of all legally foreseen data;
3. Numerous beneficiaries of state property don't submit to the Property Administration registries of movable and stationary property that they use, violating legally foreseen obligations and deadlines;
4. Ministry of Finances is not initiating misdemeanor procedures on the grounds of those violations;
5. Montenegro does not have Bureau for Restitution of Property. Thus, Montenegrin legislation is not aligned with Decision 2007/845/PUP on cooperation among bureaus of restitution of property in member states in the area of discovering and identification of benefits acquired through criminal activities or other property connected with criminal.[56]

2.3 International standards

GRECO in evaluation report for Montenegro recommends measures which would directly or indirectly contribute to control of possible abuse of state property. We will list some of those recommendations:

1. Guidelines containing efficient methodology for implementation of financial investigations, especially in relation to confiscation of objects of property in cases of criminal activities with characteristic of corruption, should be published.
2. It is necessary to create a common program of education for representatives of Police and Prosecution in order to enable, promote and improve use of practice and legal possibilities for identification, monitoring and confiscation of income from criminal activities including corruption.
3. It is essential to introduce legal provision which provide implementation of measures of temporary confiscation of property from corruptive criminal actions in the earlier phase of investigation, even when these are not criminal acts of organized crime.
4. Continuous scrutiny of organizations obliged to report suspicious transactions and improve level of education in order to achieve higher responsibilities of reporting of suspicious transactions, especially for those organizations which haven't reported any suspicious transactions, is highly needed.

56 Report on Screening, Chapter 24 – Justice, Freedom and Security, available at: http://www.mip.gov.me/en/images/stories/EI_download/Izvjestaji/Izvjestaj_o_skriningu_za_poglavlje_24.pdf.

Action Plan for Chapter 23 (justice and fundamental rights)[57] underlines necessity for improvement of mechanisms which control procedure of confiscation and management with property acquired by criminal actions. Some of defined measures from this area are:

1. Closer regulate procedure of confiscation and management of property acquired by criminal actions and enhance professional capacities of Property Administration.
2. It is necessary to address existing situation in procedures of confiscation of property and its management and propose model for its improvement within the framework of Analysis of the Organizational Structure, Capacity and Authorizations of State and Administrative Bodies in Fight against Organized Crime and Corruption.
3. Draft analysis with presentation of current situation in subjects with confiscation of the property containing evaluation of its management by Property Administration, detected obstacles and deficiencies in implementation of this instrument and recommendation for its improvement.
4. Adopt lex specialis which will regulate procedure of financial investigation and confiscation of property (material and procedure provisions on property confiscation, its management and restitution).
5. Strengthen administrative capacities of Property Administration through increase of number of civil servants on responsible for management of the temporarily and permanently confiscated property.
6. Develop internal working procedures of the Property Administration, set criteria for management of different kinds of property.
7. Establish electronic registry of confiscated property which will contain:

» Number of decision;

» Identification of state body relevant for conducting misdemeanor procedure;

» Type and estimated value of confiscated property and

» Data on person from whom the property was confiscated

8. Regularly report on management of confiscated property. Create and publish on the site of Property Administration half - annual report (which should mandatory contain number of cases and value of permanently confiscated property).
9. Adopt plan of education and conduct education for employees of Property Administration in area of management of confiscated property.
10. Conduct education of employees of Police Administration, state prosecutors and judges on financial investigations, discovering and freezing of property acquired by criminal actions in accordance with annual program of education.
11. Establish an independent body which will manage confiscated property.

2.4 Conclusions and recommendations

All identified deficiencies in implementation of current legal acts decrease

57 Action Plan for Chapter 23 availbale at: http://www.bos.rs/ceiblog/uploaded/Akcioni_plan_za_poglavlje_23.pdf.

effectiveness of anti-corruption policies in area of management and disposal of state property, as well as management of temporarily and permanently confiscated property. In order to reduce these deficiencies, besides measures and recommendations defined in GRECO report and Action Plan for Chapter 23, we consider that following measures should be undertaken:

1. It is necessary to establish, publish and daily update unique registry of all movable and stationary items and other goods owned by the state and units of local self-administration. In that sense, relevant ministries should implement project of Property Administration – electronic software for data processing which would be used for registry keeping and unique records of state property.
2. It is necessary to fill capacities of department for registering of state property in order to more efficiently implement activities from this jurisdiction of Property Administration.
3. It is necessary to ensure that all beneficiaries of state property, regularly and in legally foreseen deadline, submit accurate registries of property to Property Administration. Ministry of Finances should initiate misdemeanor procedures against subjects which are not submitting registries of property. Also, it is necessary to conduct inspection control of beneficiaries of state property in order to determine in what way registering and value estimation are done.
4. It is necessary that Property Administration signs protocol on cooperation with Police Administration in order to more efficiently organize activity of management of temporarily confiscated property.
5. It is necessary to create web presentation of the Protector of Property and Legal Interests of Montenegro, which would be regularly updated and make all data proactively available. That would increase transparency of the work of this institution.
6. Reconsider possibility of adoption of the Law on Protector of Property and Legal Interests of Montenegro in order to more precisely define jurisdiction and strengthen independency of this institution.
7. It is necessary to significantly improve capacities of state bodies which are dealing with discovering, confiscating and management of property acquired by criminal activities.
8. It is necessary to regulate procedures of overtaking of property through development of bylaws and to develop and implement efficient models of management of confiscated property.

3. Public procurement

3.1. Characteristics of institutional and legal framework

Current **Law on Public Procurement** was adopted in July 2011, and it came into force in 2012[58]. This Law which represents one of systemic anti-corruption laws regulates the conditions, manners and procedure for the procurement of goods and

58 "Official Gazette of Montenegro", no. 42/11

services, the protection of rights in public procurement procedures and other matters relevant to public procurement. This Law is to a great extent aligned with relevant regulations (directives) of the EU, additional anti-corruption measures, individual procedures for conduction of the public procurement are more precisely defined, and additional separation of jurisdictions of institutions was made.

The Law has introduced possibility to unify procurement[59], and a step forward was made in improvement of transparency and monitoring of entire process, by committing contractors to adopt and publish justified plan of public procurement, as well as committing them to publish call for public procurement and award notice on the web site of public procurement, as well as full public procurement contract. The Law has also improved control of the process of the public procurement, by introduction of inspection control for procurement in value less than 500.000 €, and mandatory control of procurements value of which exceeds mentioned amount. When it comes to regulation of possible corrupted behavior and conflict of interest, both on the side of contractor and bidder, Articles 15, 16, 17 and 18 of the Law are prescribing anti-corruption rule and prevention of conflict of interest which foresees nullification of the contract and sanctions in the case of corruption and existence of conflict of interest[60].

In accordance with provisions of the Law, institutional framework for management, control and monitoring of public procurement in Montenegro is constituted of:

Ministry of Finances prepares strategic documents in the area of public procurement and draft Law on Public Procurement in cooperation with the Directorate for Public Procurement. In cooperation with the Directorate, also prepares and adopts bylaws (rules) in the area of public procurement for which has the authority, decides on complaints against administrative/individual acts adopted by the Administration, gives consent on public procurement plans of contractors, conducts control over legality of the work of the Directorate and reports to the Government of Montenegro on situation in the system of public procurement.

Directorate for Public Procurement (hereinafter: DPP), which was established in 2006 with jurisdictions of monitoring of implementation of the Law on Public Procurement. Current Law sets that Directorate, among others, monitors implementation of the system of public procurement; maintains the web portal of public procurement, gives consent to contractor on accomplishment of conditions for implementation of relative public process etc. DPA has status of independent institution of state administration[61]. By rules on systematization and internal organization of

---

59 In accordance with the regulations of the Government of Montenegro (**Regulation on organization and operation of state government**, „Official Gazette of Montenegro, no. 38/03 and „Official Gazette of Montenegro", no.7/11), establishing of central bodies of public procurement was enabled. By this centralization of the procurement process, method of control over public procurement system was significantly simplified.

60 Bylaws were adopted necessary for adequate implementation of this Law:

- Regulation on the forms in public procurement process, „Official Gazette of Montenegro", no. 62/11

- Rulebook on the methodology of translation of sub criteria in the appropriate number of points, methods of evaluations and comparison of bids, „Official Gazette of Montenegro", no. 63/11;

- Regulation on the method of record keeping and contents of anti-corruption registries, „Official Gazette of Montenegro", no. 63/11;

- Regulation on records if public procurement procedures, „Official Gazette of Montenegro", no. 63/11;

Also was adopted the **Regulation on the program and manner of taking professional exam for the work on public procurement jobs**, „Official Gazette of Montenegro", no. 28/12.

61 „Official Gazette of Montenegro, no. 38/03 and „Official Gazette of Montenegro", no.7/11

public procurement administration[62] it is composed of four organizational units: the Department for Monitoring Procurement Procedures and Management of Electronic Procurements, the Department of Vocational Training and International Cooperation and the General Affairs and Finance Office. For conducting of work of jurisdiction of DPP, 18 civil servants including the Director of DPP are allocated. The DPP prepares annual reports on public procurement which is adopted by the Government.

The Commission for the Control of Public Procurement Procedures was established in 2006, while its jurisdictions were overtaken by the **State Commission for the Control of Public Procurement Procedures** in February, 2012 (hereinafter: State Commission) Under the new Law, State Commission has jurisdiction to: consider complaints submitted by bidders with regard to the public procurement procedures and decide on them; to examine whether the Law on Public Procurement has been correctly applied and propose and undertake corrective measures in order to provide competitive behavior among bidders and transparency of the procurement process; lay down principles and policies aimed at uniform law application; control public procurement procedures valued over 500.000€, etc.

Under the Article 137 of the Law, the State Commission was defined as independent legal entity with prohibition of influence on its work, while articles 136 and 146 of the same Law provide legal remedy for its decisions. Since the Law on Public Procurement does not prescribe a way of preventing conflicts of interest on the side of the State Commission, but the Article 16 and 17 of this Law prescribe only the cases and how to prevent conflicts of interest on the side of contracting authorities and bidders, the newly formed State Commission in its Rules of Procedure adopted at the first meeting held on March 19, 2012[63], prescribing the manner to prevent conflicts of interest of the President and Members of the State Commission. According to Article 142 of the same Law, the State Commission shall submit an annual report to the Parliament of Montenegro for adoption, not later than June 30 for the previous year.

Directorate for Inspection - Department for Inspection of Public Procurement and the relevant public procurement inspector performs inspection in relation to the regularity of the public procurement from 3,000€ to 500,000€. Also, it is in charge to control the timeliness of submission of procurement plans, invitation to tender, the decision of the public procurement procedures; public contracts; etc.[64] Prior to the establishment of the Directorate for Inspection[65], workplace of the inspector for public procurement was positioned within the Directorate for Public Procurement. Directorate for Inspection shall prepare an annual report and submit it to the Government.

The Administrative Court of Montenegro, in administrative proceedings provides legal protection in the public procurement procedures. In fact, Articles 136 and 146 of the Law on Public Procurement provide that administrative dispute may be carried out against the decisions of the State Commission for Control of Public Procurement Procedures in order to review the legality of its decisions.

State Audit Institution (SAI) audits the legality and efficiency of the management of the state property and liabilities, budgets and all financial affairs of subjects whose

62 Available at: http://www.ujn.gov.me/wp-content/uploads/2013/05/Sistematizacija.pdf

63 " Official Gazette of Montenegro" no.16/12.

64 Article 148 of the Law on Public Procurement

65 Directorate for inspection was established by **Regulation on Organization and manner of work of the State Commission** („Official Gazette of Montenegro", no 5/2012)

financial resources are public or are acquired by using the state property. Subjects of the audit of SAI are required to purchase goods and services and contracting of works carry out in accordance with the provisions of the Law on Public Procurement. SAI, in accordance with the Law on the State Audit Institution, reports on its activities to the Parliament and Government.

3.2. The effectiveness of the institutional and legal framework

3.2.1 Restrictions in the regulations

The Law on Public Procurement provides that the contractor signs the contract on public procurement with the supplier whose tender is selected as the most favorable. However, the Law does not specify how to proceed if the contracting authority (the competent authority of the contracting authority) does not accept the proposal decision on the best offer. Such case, i.e. the contracting authority did not accept the decision of the Commission for Opening and Evaluation of Tenders, occurred in practice, and the aforementioned decision was published on the website of the State Commission[66]. Also it is unclear whether the responsible person of the contracting authority, the Procurement Officer could be members of the Commission for Opening and Evaluation of Tenders.

Procurement officers and other persons involved in the public procurement process, particularly members of the Commission for Opening and Evaluation of Tenders, are not covered by the provisions of the applicable Law on Prevention of Conflict of Interest[67], and are not obliged to submit reports on income and property, which brings into question the effectiveness of control of possible conflicts of interest in this area.

The Law on Public Procurement does not clearly define the procurement procedures by shopping method, especially in the part of determination of eligibility for participation in this process. Also, it is not clearly defined who does the control of the planning process of public procurement and how to combat inexpediency in planning.

For the control of public procurement procedures whose value does not exceed 500 000€, as we have noted, is in charge the Directorate for Inspection, namely the Department for Inspection of Public Procurement. Considering that in this department is employed only one (main) inspector who inspects at the entire territory of Montenegro[68], it is obvious that an adequate and effective control of the accuracy of implementation of the above procedures cannot be achieved, especially if we take into account that the number of such procedures is annually close to 62 000, and that in Montenegro there are over 650 subjects to the Law on Public Procurement[69]. Also, jurisdiction and powers of the newly formed Direction for Inspections are not clearly normatively defined in relation to the Public Procurement in terms of decision making and giving instructions.

Within the framework of the Strategy for Development of the System of Public Procurement for the period 2011 - 2015, and the Action Plan for implementation of the Strategy[70], which are adopted in December 2011, was not adequately prescribed the manner of achievement of goals, in particular those relating to the prevention of

66 http://www.kontrola-nabavki.me

67 „Official Gazette of Montenegro", no. 41/11 and 47/11

68 „Report on the work of Directorate for Inspection for 2012", p.88, available at: www.gov.me/ResourceManager/FileDownload.aspx?rId=126710&rType=2

69 Ibid, str. 13

70 Available at: http://www.ujn.gov.me/wp-content/uploads/2012/01/25_46_22_12_2011.pdf

corruption and irregularities in the public procurement process, as well as the objectives of the process of harmonization with the European standards in the long term. Also, measures and effectively verifiable indicators to improve the control and monitoring functions of the Directorate for Public Procurement and State Commission for Control of Public Procurement Procedures are not clearly defined.

3.2.2 Shortcomings in implementation

According to Article 18 of the Law on Public Procurement, the contractor is obliged to record cases of conflict of interest and to promptly notify the competent authority about it. The Ministry of Finance has adopted "Rulebook on maintaining records and content of violations of anti-corruption rules"[71], which was published on the website of the Directorate for Public Procurement[72] and came into force on January 01, 2012. The rulebook contains the manner of managing of the record, content of the record, report on actual corrupt practices, as well as forms for official records and records containing information on violations of anti-corruption policies. Contracting authorities are obliged to twice a year, until June 31st and December 31st submit to DPP the report, according to which the body prepares an annual report to the Government of Montenegro, with the deadline May 31st for the previous year. However, from the annual report of the Directorate[73], it is evident that a very small number of contractors submitted reports.

In the period from February 23, 2012 to September 1, 2012, the Administrative Court rejected 65 decisions of the State Commission for Control of Public Procurement Processes[74], and in the period from September 1, 2012 to March 31, 2013, 76 decisions were rejected and 76 were refused[75]. As we were told by representatives of the State Commission[76], the Administrative Court annulled the decision of this institution under the provisions of the Law on Administrative Procedure[77], not referring, to the provisions of the Law on Public Procurement. These data, however, bring into question the effectiveness of the State Commission.

There is no regular two-way communication between Directorate for Public Procurement and Directorate for Inspection, which raises the questions about the effectiveness of inspections in this area[78].

The State Audit Institution controls the legality of the conduct of public procurement procedures, but there is still no effective control of the implementation of the signed contracts on public procurement.

---

71 Official Gazette, no. 63/11

72 www.ujn.gov.me

73 "Report on public procurement of Montenegro for 2012", available at: www.ujn.gov.me

74 Annex to the report of the European Commission on the progress of Montenegro for 2012 (for the period of April 25 to September 1, 2012)

75 Annex to the report of the European Commission on the progress of Montenegro for 2013 (for the period of September 1 to April 25, 2013)

76 Note from the conversation with Suzana Pribilovic, President of the State Commission for Control of the Public Procurement Procedures, held on September 18, 2013.

77 "Official Gazette of Montenegro", no. 60/03 and "Official Gazette of Montenegro", no. 32/11

78 Transcript of the interview with the Director of Directorate for Public Procurement PHD Mersado Mujevic, held on June 21st, 2013.

3.4. International standards

In the fight against corruption in public procurement procedures, researchers usually start from the OECD principles which are designed as starting point and baseline for the implementation of the international instruments to combat fraud and irregularities in public procurement. In OECD principles it is emphasized that a good management is crucial for the suppression of corrupt actions and protection of state interests. OECD defines the following ten basic principles:

1. To provide an adequate level of transparency during the entire procurement process in order to promote fair and equitable treatment for potential bidders;
2. To improve the transparency of tender procedures with maximum precautions in order to improve accuracy;
3. Public funds in procurement must be used in accordance with predetermined and actual needs;
4. The officers involved in public procurement must be professionals with a high level of education, skills and integrity;
5. To provide adequate mechanisms for prevention of risks of corruption and breach of integrity;
6. Private sector and Government should work together in order to maintain high standards of accuracy, especially in the implementation phase of the contract;
7. To provide specific mechanisms for monitoring of public procurement as well as the imposing of sanctions in cases of unlawful conduct;
8. To develop and establish a clear system of responsibilities with effective mechanisms of control;
9. To consider complaints from potential bidders in a fair manner and reasonable deadline;
10. To strengthen the role of civil society organizations, media and general public in the control of public procurement procedures[79].

3.5 Proposals for the improvement

Taking into account the above principles of the OECD, and identified deficiencies in this area, we believe that it is necessary to take the following actions:

1. To establish a system of reporting of income and property of the officials for public procurement (especially the members of the Commission for Opening and Evaluation of Bids) and other persons involved in the public procurement process. Regular control of personal and family property records and information on incomes would increase supervision of the work of employees who are a key link in the procurement process.
2. To clearly define the position and organization of all participants in the public

79 Translation of the document of OECD titled: „Recommendations of the Council of OECD for the improvement of integrity in public procurement“, C(2008)105, containing the above principles available at: http://parco.gov.ba/cyrl/?page=25&kat=5&vijest=2986

procurement procedures, including the phase of monitoring of contractual obligations. To conduct a regular safety audits of delivery and performance of obligations from the contracts.

3. To consider the possibility to clearly establish by law the competent (an independent) authority to control the implementation of public procurement.
4. To monitor the effectiveness of the public procurement planning. To do detail control of justification of the request for public procurement procedures of a higher value, for example, through the control of existing supplies.
5. To ensure that contracting authorities regularly and in legal timelines submit to the Public Procurement the report on actual corrupt practices, as well as forms for official records and records containing information on violations of anti-corruption policies and to misdemeanor sanction the entities which are not recording violations of anti-corruption policies.
6. To define shopping procedure in accordance with EU regulations.
7. To precisely define the jurisdiction of the newly formed Directorate for Inspection in relation to the Directorate for Public Procurement. To ensure that Directorate for Public Procurement has clear integrations and authority regarding decision-making and giving instructions to the Department of Inspection of Public Procurement.
8. To recommend strengthening of the competence and the capacities for inspection in the public procurement with amendments to the Law on Public Procurement.
9. To reduce formalism and unnecessary bureaucracy - the public procurement process should be simplified and it should facilitate the participation of a large number of bidders (original proof of eligibility to seek only from the winner, to allow correction of formal deficiencies of an offer in a specific legal term).
10. To develop manuals for customers and for suppliers on the rights and obligations that they have, but with warnings about the type of sanctions in cases of bid rigging.
11. To pass regulations on the exercise of unified public procurement, as stipulated by the Law on Public Procurement. Previously, it is needed to prepare the appropriate analytical paper on the feasibility of introducing the unified procurement (for which public procurement and responsible body for enforcement of procedures).

4. Exchange and Securities Market

Due to relatively poorly explored area of corruption in exchange and securities market, we will list main forms of corruption, which can occur in this area:

- Insider trading - when a person in possession of a secret information related to securities, initiates their buying or selling
- Manipulations with security prices – where participants at the exchange and securities market circulate false information, which later influences on decrease or increase of price of shares
- Short selling – investors can borrow securities and sell them, expecting that prices of securities will keep falling, so they can buy them again by lower price and gain

a price difference. This is a practice in many countries, however it carries risk for occurrence of corruption: namely certain investors can influence fall of security price by selling it, and they could make fictional transactions, selling and buying securities while their owner remains the same.

Also, it is important to mention possibility of money laundering trough exchange and securities market – through fictional transactions, manipulations with custody accounts etc.

4.1 Characteristics of legal and institutional framework

Control of exchange and securities market is governed by the Law on Securities, Law on Investment Funds, Law on Takeover of Joint Stock Companies, as well as with the Criminal Code in Chapter XXIII. Laws regulating some aspects of exchange and securities market are: Law on Privatization of Economy, Law on Secured Claims, Law on Ownership and Management Transformation, Law on Pension Funds, Law on Banks, Law on Bankruptcy The Law on Enterprises, the Law Accounting and Auditing , Law on Current and Capital Transactions with Foreign Countries, Law on Prevention of Money Laundering and Financing of Terrorism, Property Relations Act, Law on Restitution of confiscated Property and Compensation , the Excise Taxes Act , Law on Audit of the EU Funds and the Law on Insurance.

Law on Securities determines types of securities, regulates issuing and trade with securities; rights and obligations of subjects on the exchange and securities market; organization, jurisdiction and powers of Exchange and Securities Commission.[80] This law recognizes series of misdemeanors and prescribes sanctions for infringement of the Law in amount from 2 500€ to 20 000€. It defines main forms of corruptive behavior on exchange and securities market: abuse of confidential information which can provide advantage over other participants in trading with securities (insider trading); causing inaccurate perception on prices of securities by false statements (manipulation with prices); giving false statements which can cause selling or buying of securities, as well as influencing price of securities by fictional transactions.[81] Law on Securities doesn't recognize practice of short selling, nor does it address possible related abuses.

However, this Law is not applicable on following procedures: procedures of privatization of economy, procedures regulating outstanding shares issued in accordance with the Law on Ownership and Management Transformation, procedures related to open investment fund, or transactions with securities issued by central (national) banks.[82]

Adoption of the Law on Exchange and Securities Market was foreseen by legislative plan of the Parliament for IV quarter of 2012, was delayed for IV quarter of 2013. This Law should address existing ambiguities in legislative framework which regulates this area and to align standards of trade on exchange and securities market with European directives.

Law on Overtake of Joint Stock Companies sets conditions, modalities and procedures of overtake of joint stock companies, conditions for ređuje uslove, the conditions

80 Law on Securities, Article 1 – „"Official Gazette of Montenegro", No. 59/00 from 27/12/2000, 10/01 od 28.02.2001, 43/05 from 21/07/2005, 28/06 from 03/05/2006, "Official Gazette of Montenegro", No. 53/09 from 07/08/2009, 73/10 from 10/12/2010, 40/11 from 08/08/2011, 06/13 from 31/01/2013)

81 Law on Securities, Articles 102-106– "Official Gazette of Montenegro", No. 59/00, 10/01, 43/05, 28/06, No. 53/09, 73/10, 40/11, 06/13),

82 "Official Gazette of Montenegro, No 18/2011" – Law on Takeover of Joint Stock Companies, Article 5

for public offering of takeover and the rights and obligations of participants in the takeover.[83] This Law was brought in 2004 and it was innovated in 2011 for the last time. Key novelties introduced in the Law are:

» The threshold for mandatory takeover of joint stock companies has shifted from 40% of ownership stake to 30% of ownership stake. Namely, when acquirer buys from issuer over 30% shares, he is obliged to publish a takeover bid for shares of every shareholder in that company at the same price.

» Compulsory acquisition of shares from small shareholders (squeeze out) was introduced. This practice gives the right to major shareholder, who acquires 95% of shares in joint stock company can purchase remaining 5% of shares at the same price he acquired remaining shares, without consent of minority shareholders.

Important document for prevention of corruption and economic crime is **Guidelines on risk analysis for money laundering and procedures for the detection of suspicious transactions**, adopted in 2008, on the basis of the Law on Prevention of Money Laundering and Financing of Terrorism. These guidelines are defining risk factors for acceptance of a client, possibilities of control of high risk transactions and clients, methods of client identification, methods of determining of politically exposed persons, as well as degrees of confidentiality of data. It is significant to point out that participants on exchange and securities market have the obligation to lead registries of politically exposed persons in electronic databases, as well as to conduct in depth inspections of transactions.[84]

Criminal Code in Chapter XXIII sets prison sentences for following crimes: forging securities, illegal conducting of stock exchange, issuing of fraudulent securities and disclosing of business secret. Also, amendments of the Criminal Code, which are in parliamentary procedure, are addressing insider trading and manipulation of the stock market.[85]

Exchange and Securities Commission is an independent institution elected by the Parliament of Montenegro on proposal of the Government. Criteria for election of members are precisely defined, and financing is done from own resources, which makes Commission independent in their functioning. Annual report of Commission shall be submitted to the Government and the Parliament.

Central Depository Agency - is a joint stock company which is founded by the state and its shareholders be: the state, authorized participants on the exchange and securities market, stock markets, banks and other legal entities. Biggest shareholders of CDA are: 35% - Central Bank of Montenegro, 25% - Private Investment Fund „Aureus“ from Croatia, 15% - OTP bank (CKB), 10% - Collective custody account, 7% - Atlas Fin and four minor banks 2%.

4.2 Effectiveness of legal and institutional framework

Exchange and Securities Commission (hereinafter: ESC) is authorized to conduct control

83 “Official Gazette of Montenegro”, No 18/2011” – Law on Takeover of Joint Stock Companies, Article 1

84 Guidelines on risk analysis for money laundering and „know your client“ and other procedures for the detection of suspicious transactions

85 Data of ESC on implemented measures in fight against corruption 18/06/2013.

of operations of subjects to the Law on Securities. Also, the Commission can conduct investigation in cases of fraud, deception and embezzlement as well as to demand information from all registered security owners, entities who have rights from securities, as well as from entities who presumably own securities or rights from securities.[86]

Besides regular controls conducted by the Commission, Guidelines are setting 10 risk indicators which are requiring in-depth investigations of transactions with securities: geographical risks (state of origin of the client, or entities trading with client is on the list of off-shore countries), client or entities that are trading with client are on the list of persons against which were conducted measures for ensuring international peace and security, unknown or unclear source of funds of client, suspicion that client acts on demand of a third party, unusual way of transaction, indications that the client conducts suspicious transaction, client is a politically exposed person, accounts of other persons connected with client, specificity of client's job.[87]

Securities and Exchange Commission is notifying Commission for Prevention of Conflict of Interests on ownership positions of public officials.

Securities and Exchange Commission, in accordance with its jurisdictions, has had a significant impact in fight against corruption on securities market: In 2012, ES C has directly submitted 2 demands for initiation of misdemeanor procedure and through other institutions 803 demands. Until July 2013, ESC has filed 4 demands for misdemeanor procedures and through other institutions 307 demands. In the first half of 2013, total of 573 controls was conducted, ESC brought 2 decisions on nullification of 23 transactions, on the basis of violation of Articles 102-106 of the Law on Securities.

Regarding coordination with other institutions in the field of curbing corruption in securities exchange market, in 2012 ESC has submitted to the Administration for the Prevention of Money Laundering and Financing of Terrorism 1 notification on suspicious transaction and in the first half of 2013, two notifications on unusual transactions. ESC has in 2012 submitted to the Commission for Prevention of Conflict of Interests 5954 information on ownership positions for 3 069 public officials.[88]

Central Depository Agency (hereinafter: CDA), Brokers and Stock Markets, through regular activities and reports of suspicious transactions are notifying Administration for the Prevention of Money Laundering and Financing of Terrorism on financial transactions on securities market. Reports are submitted to the Administration in hard copy and electronic form. Through analysis of reports, certain transactions are extracted by application of indicators. If there are enough data which are indicating on possible money laundering, Administration is opening an analysis for this entity.[89] However, these analyses are encompassing a large amount of data on physical or legal entity, so there is no statistics on number of processed cases of money laundering through exchange and securities market.

In accordance with the first recommendation of the FATF, it is planned to conduct risk assessment from money laundering in period 2013/2014, in 5 different areas, one of

86 Law on Securities, Articles 108-111– "Official Gazette of Montenegro", No. 59/00, 10/01, 43/05, 28/06, No. 53/09, 73/10, 40/11, 06/13),

87 Guidelines on risk analysis for money laundering and „know your client" and other procedures for the detection of suspicious transactions.

88 Exchange and Securities Commission– replies to questionnaire of CeMI

89 Administration for the Prevention of Money Laundering and Financing of Terrorism – Reply to Free Access t the Information Demand No. 0601-9/2-13, 4/07/ 2013

which is exchange and securities market. This assessment should provide guidelines for more precise defining of control of this area, as well as to improve results in prevention of money laundering through securities market.

4.2.1 Limitations of existing system of control

Taking in consideration that **Central Depositary Agency is a joint stock company,** owned by different issuers of securities, an issue of protection of confidential data of other subjects on exchange and securities market arises. Namely, there is a possibility for shareholders of CDA, who are at the same time participants at the securities market, to access and abuse confidential information in possession of CDA, which are related to other competitors on securities market. Also, bearing in mind that membership in CDA is necessary in order to perform transactions on securities market, the possibility of delay and refusal of decision on membership, which is left to CDA is problematic. This possibility is offered through Rules of Central Depository Agency, in the part of the accession procedures, by provision 3.7 „Agency can delay bringing of the decision on membership, up to the moment in which it will possess adequate capacities and equipment for data processing or other working material to provide services for new members". Although such cases in practice were not documented, provision of this kind leaves the impression that membership in CDA could be prevented or delayed on the basis of unclear criteria. When we are speaking about functioning of central depositary bodies, in the region there are only two depositary agencies which are established as shareholder companies – Central Registry of Securities in Macedonia and Central Registry of Securities from Banja Luka, while depositary agencies of Slovenia, Croatia, and Serbia, are state institutions. Additionally, Rules on functioning of Central Registries of Securities from Banja Luka and Macedonia are foreseeing possibility of declining membership only in case that the applicant doesn't fulfill conditions set by the law.

Important segment of securities market – **privatization through acquisition of majority package of shares**, is still not adequately regulated. Namely, this procedure is still being regulated by the Law on Privatization of Economy of Montenegro, adopted in 1999, and in period 1999-2013 only amendment was shortening of the Law for several articles. This Law still envisages Agency for Reconstruction of the Economy and Foreign Investments as relevant authority for control of the implementation of this Law, and this Agency seized to exist several years ago. This jurisdiction is later entrusted to Ministry of Economy, by special law. Legal acts controlling this area are not treating issues of conflict of interests, insider trading, manipulations with stocks and giving false information. Previous contracts on privatization are not published entirely, although that is commitment of Montenegro foreseen in Open Government Partnership. Members of 3 tender commission who are conducting privatization processes, are appointed by the Privatization Council, on the basis of professional criteria and working experience[90], but those criteria are not defined by any document. Privatization and Capital Projects Council is not conducting control of conflict of interests among members of tender commissions.

Privatization through acquisition of majority package of shares can be done through market or non-market transaction, but in both cases there is no control of this transaction by an independent institution, in a way it is regulated for other securities transactions.

90 Interview with Secretary of the Privatization Council, 19/06/2013.

One of the key problems of transactions on securities and exchange market is a **concept of squeeze out of minority shareholders**, defined in Article 39 of the Law on Overtake of Joint Stock Companies. This article provides possibility to shareholders who own 95% of a shareholder company to acquire remaining 5% stocks from minority shareholders, at the same price by which remaining shares were acquired, without their consent. This provision of the Law is very problematic from the point of constitutionality, taking in consideration that the Constitution of Montenegro guarantees inalienability of personal property, which is endangered by this provision. Main purpose of the Law on Overtake of Joint Stock Companies was to protect minority shareholders, and this provision completely nullifies potential good effects of the law.

Finally, **coordination with other institutions** and civil society in the process of the fight against corruption should be more effective. On the first place it is necessary to intensify cooperation with Comission for Prevention of Conflict of Interests and Administration for Prevention of Money Laundering and Financing of Terrorism. By the Law adopted in 2011, Commission for Prevention of Conflict of Interests has obtained mandate to control data from reports on income and property of public officials, which requires data on real estate, private companies and transactions on securities market related with public officials. So far, SCE has submitted annual report on ownership positions of public officials. Each change in ownership position of public official should be immediately reported to the Commission for Prevention of Conflict of Interests, in order for this body to have insight not only in annual data, but also in interests of public officials, which are shifting in line with their changing of stock holding. SCE has adopted conclusion that electronic linkage of data of SCE, CDA, custodians and CPCI is a priority for the next period.[91]

Lack of transparency of shareholder companies' ownership structure also represents an obstacle in discovering and decreasing of conflict of interests. Namely CDA publishes a list of 10 major shareholders of stock company, but not the list of minority shareholders. Also, some of majority shareholders are collective custody accounts, whose identity is known only to custody bank. This prevents access to the information on public officials to citizens, media and interested civil society organizations, while institutions which are dealing with fight against corruption and organized crime have to pass the procedure of requesting and obtaining of information, exclusively on their own initiative (ex officio).

Lack of transparency of transactions conducted through custody accounts Namely, transactions on the exchange and securities market can be conducted by banks for the client, through two types of custody accounts: owners' custody accounts and collective custody accounts. While owners' custody accounts are opened in the name of the client and for the client, and those transactions can be easily controlled, collective custody accounts are opened in the name of the bank at CDA, and for the client, so institutions don't have information on owners of those accounts until banks themselves notify them on risky transactions, on the basis of which institutions can request data on owners of these accounts.

As it was mentioned, Law on Prevention of Money Laundering and Financing of Terrorism, as well as the Guidelines are setting the obligation for participants at the exchange and securities market to keep electronic registries of politically exposed persons and to notify Administration for Prevention of Money Laundering and Financing of Terrorism

91 Interview with SCE representatives, September 2013

on risky transactions of these persons. Taking in consideration that institutions don't have direct insight in the registry of politically exposed persons, question of **conflict of interests** arises when politically exposed persons, or persons connected with them, are also shareholders in the custody banks. Will those banks treat their owners the same way they treat other clients, and will they report on their owners' suspicious transactions? During controls conducted by SCE, in the last three years, cases of concealing of risky transactions by custody banks were not found.

4.3 Conclusions and recommendations

1. Type of ownership status of CDA should be reconsidered. Although the biggest shareholder with 35% of shares is Central Bank of Montenegro, majority of shares are in hands of private banks and investment funds which are governed by private interests. In case that CDA still remains shareholder company, it is necessary to increase stake in the ownership of the Central Bank to 51%.
2. Privatization process through acquiring of majority package of shares should be better regulated. Current legislative framework doesn't provide protection from abuses and corruption. It is necessary to introduce control of professional, not only politic body over this process, which could be achieved by inclusion of this process in framework of the new Law on Exchange and Securities Market and Law on Overtake of Joint Stock Companies. In such manner Exchange and Securities Commission would, as independent and professional institution could conduct control of this process and prevent possible abuses..
3. It is necessary to remove Article 39 from the Law on Overtake of Joint Stock Companies, because the concept of squeeze out violates constitutional and human rights and freedoms of minority shareholders.
4. Coordination of work of ESC and CDA with Commission for Prevention of Conflict of Interests should be improved in part of control of data from reports on income and property of public officials – electronic linkage of data of CPCI, CDA, ESC and custodians would significantly contribute to prevention of conflict of interests at public officials.
5. It is necessary that CDA provide higher transparency of ownership structure and publish at least 15 biggest shareholders of each shareholder company, as well as to keep record on owners of custody accounts.
6. Improve statistics related to money laundering through exchange and securities market Administration for Prevention of Money Laundering and Financing of Terrorism should keep the registry of all controlled transactions on securities market, in accordance with the item 38 of the preamble of EU Directive 2005/60/EC
7. Taking in consideration that banks are obliged to keep registries on transactions and to provide information on clients defined by Guidelines for risk analysis for prevention of money laundering and financing of terrorism, it is necessary to control these registries in banks where such clients have stake in ownership.
8. It is necessary to strengthen responsibility of banks through reporting obligations and suitable control procedures.

PREVENTIVE MECHANISMS - THE INTEGRITY AND TRANSPARENCY

3

1. Integrity plans and ethical codes

Given the fact that Montenegro does not have embedded culture of awareness of the harm and the moral dimension of accession and acts of corruption, great importance should be given to the awakening of awerness of the citizens so they will not commit acts that may create corrupt relationships. In addition, the main role has moral standards, codes of ethics and integrity plans of the individual and society.

1.1 Characteristics and effectiveness of the legal and institutional framework

Integrity plans[92] are one of the most modern preventive methods for establishing the legal and ethical work of government and other institutions in society, which prevents and combat possibility for development of corruption in the certain institution. It can be defied as a set of legal and factual measures which are being planned and undertaken in order to eliminate ways of corruption and prevention of the occurrence of possibility for corruption within the organization as a whole or parts of the organization and individual jobs. Due to a very important and effective role in the fight against corruption, creation and implementation of the integrity plans in Montenegro must be institutionally and professionally supported and plans have to be legally binding.

The **Law on Civil Servants and State Employees,**[93] which started being implemented since January 2013, foresees the obligation of state bodies to create a new integrity plans, recognizing integrity plans as an effective mechanisms for improvement of the institutions' integrity and strengthening institutional capacities for protection from corrupt influences in exercising their duties. Namely, by the Article 68 of the Law on Civil Servants and State Employees, based on the estimation of susceptibility of a certain positions to the occurrence and development of corruption and other forms of biased actions, stipulates that each state agency should adopt an integrity plan that includes measures to prevent and eliminate the possibility of the emergence and development of corruption. At the same time, this Law obliges the administrative authority in charge

92 Integrity means also the way of behaviour of the institution and persons who are acting fair, indipendent, impartial, transparent, etc. *The person which has integrity acts in accordance with the moral and is not not subject to unethical or immoral (corrupt) activities.*

93 The Law on Civil Servants and State Employees, Officaial Gazzete of Montenegro no. 39/2011 from August 4, 2011. http://www.usscg.me/docs/Zakon%20o%20drzavnim%20sluzbenicima%20i%20namjestenicima.pdf

of anti-corruption policies, to adopt guidelines for the adoption of Integrity Plans of institutions. The body in charge of monitoring of the implementation of integrity plans is the Directorate for Anti-Corruption Initiative.

Obligation to adopt integrity plans in all organs of state administration is also stated in the **Innovated Action Plan for the Implementation of the Strategy for the Fight against Corruption and Organized Crime for the period 2013-2014.**[94] The action plan includes the obligation which obliges the administrative authority that is in charge of anti-corruption, to adopt guidelines for the adoption of Integrity Plans of authorities.

Although it is the requirement to adopt integrity plans in all public administration bodies, provided by the Law on Civil Servants and State Employees, and confirmed in the Innovated Action Plan for the Implementation of the Strategy for the Fight against Corruption and Organized Crime for the period 2013-2014, this obligation was met only by five institutions: the Directorate for Anti-Corruption Initiative of Montenegro[95], Ministry of Finance, Customs Administration, Real Estate Administration and Tax Administration.

Legal obligation to define guidelines for creating integrity plans of state bodies, provided by Article 68 of the Law on Civil Servants, was implemented by the Ministry of Justice by adopting the document containing guidelines for the adoption of integrity plans whose application relates to the state authorities. [96]

Directorate for Anti-corruption Initiative, the body in charge for monitoring the implementation of integrity plans, created a form and draft of integrity plan which helps to other state administration bodies in the process of defining their integrity plans. [97] In order to achieve better implementation of guidelines for developing integrity plans, Directorate for Anti-Corruption Initiative has conducted six trainings for managers of integrity, for representatives of 26 Montenegrin institutions, in order to facilitate effective implementation of guidelines for development of integrity plans.

During 2012 and 2013, the Human Resource Management has implemented 8 seminars for 105 officers from the Police, Customs, Tax Administration, Parliament of Montenegro, Ministry of Economy, Ministry of Transport, Ministry of Culture, Pension Insurance Fund, and Administration for the Prevention of Money Laundering. Earlier Human Resource Management has implemented 5 seminars for 51 officers from the Tax Administration, Ministry of Interior, Ministry of Health, Ministry of Sustainable Development, Ministry of Foreign Affairs and European Integration and Ministry of Defense and Directorate for Gambling.[98] At the same time, HRM has implemented several trainings with the Association of Municipalities, which aimed to raise awareness on the significance of the fight against corruption and commitment of municipalities to implement measures aimed at detecting and combating of corruption, as well as to promote creation of

94 The Action Plan for the implementation of the Strategy for the fight against corruption and organized crime for the period 2013-2014 http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=7:&Itemid=91

95 Integrity Plan adopted by the Directorate for Anti-corruption Initiative

96 Guidelines for creation of integrity plans adopted by the Ministry of Justice http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=31:integritet-smjernice-i-obrasci

97 http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=31:integritet-smjernice-i-obrasci

98 Data about implemented trainings of Human Resource Management, on the topic of integrity, are collected through requests for free access to information, as well as interviewing the officer in charge of the Human Resources Management (July 4, 2013).

integrity plans. These integrity plans should include identification of structures and procedures susceptible to risk of abuse of powers as well as establishment of procedures and standards that promote integrity and also reduce the risk of corruption.

During 2013, Directorate for Anticorruption Initiative, with help of experts from the Federal Office of Administration BVA, has conducted in total four two-days trainings for 75 representatives from 52 institutions, as well as numerous seminars and trainings on the promotion and implementation of integrity plans.

From the data on a very small number of institutions that have adopted integrity plans, in Montenegro integrity plan is still not used as an important anti-corruption measure, which should be the result of the assessment of exposure of a certain institution to risks for formation and development of corruption and undertaking of ethical and professionally unacceptable activities.

Besides integrity plans, a very significant place take **Code of Ethics,** whose adoption is aimed at building trust between government officials and citizens, strengthening of the role and responsibility of public officials and local government employees, as well as the establishment of an effective mechanism in the fight against corruption on the national level. These codes are set of regulations and they include a set of ethical rules and standards of conduct of public officials.

Code of Ethics for Civil Servants and State Employees was adopted in March 2012 („Official Gazette of Montenegro'', no 20/2012), and came into force on January 1st, 2013.[99] Code of Ethics stipulates an obligation of institutions to ensure establishment of mechanisms for the implementation of the Code through the work of disciplinary authorities, as well as obligation of periodic reviews of compliance with the code in order to ensure that service-oriented government administration builds the trust of citizens as service users. Namely, the Code of Ethics defines the ethical standards and rules of conduct for civil servants and state employees in ministries, government institutions, service of the President of Montenegro, the Montenegrin Parliament, the Government, Constitutional Court of Montenegro and the State Prosecutor's Office. At the same time, the Code of Ethics is applying to the employees of the Pension Insurance Fund of Montenegro, Health Insurance Fund of Montenegro, Employment Agency of Montenegro, Labor Fund and the Agency for the Peaceful Resolution of Labor Disputes. Aim of adoption of Code of Ethics is preservation, recognition and improvement of dignity and reputation of civil servants and state employees and strengthening of the public trust in the work of authorities.

Violation of the provisions of the Code of Ethics is subject to disciplinary responsibility of a state officer and it is considered a minor violation of official duty. In this regard, the Code of Ethics provides the establishment of the **Ethics Committee**, which is responsible for monitoring the implementation of the Code itself. The Board consists of four members: three representatives employed in the judiciary, public administration, the Parliament of Montenegro and one representative of the representative trade union organization. All the members are appointed by the Government, at the proposal of the state government. Although it was founded in March 2013, the Committee had met only once until July 2013, when the Committee adopted the Regulation on the work of the Ethics Committee, but without concrete work results. [100] However, according to

99 The Code of Ethics is available on the official web site of the HRM of Montenegro http://www.uzk.co.me/index.php?option=com_content&view=article&id=1536&Itemid=237&lang=sr

100 On June 21, 2013 was interviewed the President of the Ethics Committee, Ms. Dubravka Bozovic by phone

the Regulation on the work of the Ethics Committee, the Committee shall meet when needed, but at least once a month. At the same time, the competencies of the Committee have been clearly defined. Ethics Committee, based on the Code of Ethics' jurisdiction:

- gives an opinion on the complaints against conduct of the state officers;
- provides opinions regarding the implementation of the new Code of Ethics;
- monitors the implementation, initiates amendments to the legislation in the field of official ethics;
- promotes ethical standards and rules of conduct in public bodies.[101]

What is particularly remarkable is that the Ethics Committee at its meetings gives an opinion on complaints against the conduct of state officers, whereas the opinion is distributed to the complainant and the head of the body, which employs the officer against whom is the complaint filed. Opinions on complaints are made by majority of votes of the members of the Ethics Committee. Therefore, with the complaint is initiated the procedure of determining of violation of rules defined in the Code of Ethics, while the disciplinary proceeding itself is initiated by the head of the state authority on a proposal of direct superior.

However, in state bodies in Montenegro there is no routine of implementation of disciplinary procedures in cases of violation of ethical standards and rules of conduct prescribed by the Code.[102] In fact, implementation of disciplinary proceedings and imposing of disciplinary measures in cases of violations of the above rules and standards, especially in cases of acts of corruption, is a real rarity. [103]

The Code of Ethics also foresees for the employees of the certain state institutions, following the ethical standards and rules of conduct prescribed by the Code of Ethics, depending on the nature and specifics of their work, possibility of establishment of a specific ethical code of conduct.[104] Thus, since January 2013, Customs Administration implements a specific Code of Ethics for Customs Officers and Servants, implementation of which is monitored by the Ethics Committee, in order to establish the mechanism for prevention and detection of corruption and conflicts of interest among customs officers. At the same time, the Code of Ethics of the Agency for the Protection of Personal Data and the Free Access to the Information came into force in 2010.

In order to train officers and servants on the national and local level on the Code of Ethics, the Action Plan for Fight against Corruption and Organized Crime has foreseen the implementation of several training programs, as well as the commitment to respect the rules defined in the Code of Ethics related to signing of the declaration of acceptance of the Code of Ethics, in the process of employment. In this regard, in the first half of the 2013, the HRM has implemented trainings for state officers and servants on the Code of

101 Article 19 of the Code of Ethics

102 Tax Administration has implemented disciplinary proceedings against two officers who have violated the provisions of the Code of Ethics, without the elements of corruption, on what was based the fine.

103 From 46 respondents of the state authorities, only the Tax Administration had two cases of disciplinary proceedings and punishment of officials for violation of ethical rules and standards of behavior defined in the Code of Ethics. **It is especially interesting that until now there were no disciplinary proceedings against judges for corrupt actions.**

104 Article 20 of the Code of Ethics

Ethics of State Officers and Servants, which was attended by 17 officers from different government bodies, as well as trainings on ethics in the conduct of civil servants, which was attended by 54 civil servants.

In particular, it is important that the authorities are obliged to prepare annual reports on the implementation of Codes of Ethics, and the first publication of these reports is expected early in 2014.

1.2 Conclusions and recommendations

1. In order for Montenegro to progress in the field of adoption of anti-corruption systems based on integrity, and in that way, in accordance with the tradition of modern democratic societies, to leave dominant repressive model of the fight against corruption, it is necessary to legally regulate this area by adopting a comprehensive Law on Integrity. Specifically, it is necessary to establish the duty of all state bodies to develop integrity plans, by a special law, which is very important in the context of risk assessment for occurrence of corruption. Also of a great importance is to clearly set the control over implementation of these legal obligations, as well as specific measures for evaluation of the implementation of integrity plans.
2. Bearing in mind that Montenegrin state bodies haven't adopted integrity plans, it is necessary to implement this legal obligation, in accordance with defined deadlines. In addition, it is very important to strengthen the integrity plans, and codes of ethics, in terms of defining the jurisdiction for processing of violations and the imposing of appropriate sanctions for them. At the same time, in order to effectively reduce corruption, development and implementation of integrity plans and codes of ethics should be institutionally and professionally supported, adapted to the needs of each individual institution. It is also necessary to include risk assessments for occurrence of corruption, description of work processes, methods of decision-making and evaluation of corruption susceptibility for all positions, into integrity plans, as well as to define preventive measures to prevent corruption.
3. It is necessary to strengthen the capacities and powers of the Ethics Committee.
4. Jurisdiction and scope of action of existing bodies responsible for combating corruption are very limited. In accordance with the recommendations of CeMI, which are integrated in the Action Plan for the Chapter 23,[105] strengthening of the institutional framework for the fight against corruption should be a key priority for

105 In accordance with the recommendations contained in the Action Plan for 23, in order to further develop, strengthen and specify the coordination in the field of prevention, as well as the implementation of this goal, it is necessary to approach the establishment of a new, more efficient and more effective anti-corruption body, based on the law. In this sense, it would be established the Anti-Corruption Agency as an independent and autonomous anti-corruption body (in accordance with the Article 6 of the UNCAC and ACA standards) that will enhance competencies of the existing jurisdiction of UAI, CPCI and competence of the SEC in the control over the funding of political parties and election campaigns, and responsibilities of the National Commission for the implementation of the strategy for the fight against corruption and organized crime. The agency will combine human and technical capacities, UAI and CPCI and part of the staff in the service of SEC, ie. and also employ a number of new staff to meet the new requirements of the Agency's responsibilities.

the further development and progress in this area. Among other responsibilities,[106] the Agency should have the jurisdiction over coordination of institutional actions, monitoring of regulations and implementation of strategic documents for the fight against corruption with supporting action plans, coordination and supervision of the adoption and implementation of integrity plans, as well as powers to define and implement sanctions in case of violation. Jurisdictions should also include the protection of whistleblowers and the responsibility to initialize conclusion of the international agreements and submitting amendments to existing regulations aimed at the full implementation of international anti-corruption standards.

2. Protection of Whistleblowers

Persons who report corruption, so-called "Whistleblowers"[107] are very important in the process of detection and prosecution of various offenses of corruption, particularly having in mind a difficult identification of corruptive acts, and even more difficult process of substantiation of such acts. Due to this important role of these people in detection and suppression of acts of corruption, modern democratic states guarantee protection of these persons through laws, in particular job protection against dismissal or potential abuse by employers.

2.1. Characteristics and effectiveness of the legal and institutional framework

According to the existing legal regulations in Montenegro, a person that has knowledge or suspicion of committed corruptive act, or who can provide information of interest for the detection of corruption offenses and on their perpetrators, in accordance with the law, may file report and provide information to authorities or officials authorized to receive reports on corruption. In Montenegro, it is possible to report corruption to numerous institutions including: Directorate for Anti-Corruption Initiative[108] and Police (by phone, fax, mail, e-mail, on-line at the website or directly at the premises of these institutions), while other institutions have open phone lines through which citizens can report cases of corruption. Among these institutions are: Ministry of Health, Ministry of Education and Sport, Judicial Council, Supreme Public Prosecutor's Office, Customs Administration, Tax Administration, Directorate for Gambling, Directorate for Public Procurement, Investment and Development Fund of Montenegro, National Commission for the Implementation of the Strategy for the Fight against Corruption and Organized Crime.

However, systemic protection of whistleblowers doesn't exist in Montenegro. The area

106 Responsibilities of the agnecy would be related to coordination and monitoring of the implementation of strategic documents for the fight against corruption with supporting action plans; coordination and supervision of the implementation of integrity plans; direct implementation and application of the Law on Lobbying (certification and registration of lobbyists, control and monitoring of lobbying); administrative control in terms of preventing conflicts of interest and funding of poliltičkih parties, protection of whistleblowers and the initiation of the international agreements and amendments of reglations aimed at the full implementation of international anti-corruption standards.

107 The term whistleblower comes from the English word "whistleblower", and refers to a person who reports illegal conduct to the competent authorities.

108 Directorate for Anti-Corruption Initiative does not have executive authorizations, or its officials are not trained to receive reports and further process it to authorities.

of protection of whistleblowers is regulated by the following documents:

Labor Law and Amendments to the Labor Law[109] provide the protection of all employed persons, while there are not explicitly mentioned mechanisms and ways of employee protection on the grounds of reporting corruption cases.

The Law on State Officers and Civil Servants[110] guarantees the protection of all persons who report criminal acts of corruption. This protection provides protection for disclosure of the identity to unauthorized persons and protection from abuse, deprivation or restriction of the rights guaranteed to employed persons by the law. The Law also provides the protection, in accordance with the special regulations on the protection of witnesses, if a person is exposed to real and serious danger to life, health, physical integrity, freedom or property.

The Strategy for the fight against corruption and organized crime for the period 2010 - 2014, as well as the **Action Plan** for its implementation for the period 2013-2014, foresees concrete actions to improve the mechanisms and measures for the protection of whistleblowers. Based on the Action Plan for the Fight against Corruption and Organized Crime, in 2008 the Police have adopted **Technical Manual on Procedures for Reporting Criminal Acts of Corruption and Protection of Persons who Report these Crimes to the Police.** This Instruction stipulates procedures for reporting criminal acts of corruption to the Police, conduct of an authorized police officer on reports of corruption, protection of citizens who report corruption and methods conducting protective procedures. The person who reports corruption to the Police can do it in several ways: in writing or verbally, by mail, telephone, fax, electronic or otherwise. According to the provisions of this Manual, the authorized officer shall also protect both the identity of the whistleblower and the contents of the application and take all necessary measures to protect such persons. Thereby, the authorized officer must comply with the following principles: respect for human rights and dignity of the person; legality; encouraging people to report corruption, secrecy and confidentiality; prohibition on the use of data, contrary to the purpose for which it was collected and the efficiency and rationality in their work.

Authorized officer, for the protection of persons who report corruption offenses, is obliged to: protect the identity of the whistleblower; protect contents of the report or data on corruption; take immediate security assessment of the threat focused on the whistleblower; protect from threatening and unworthy influences a person who reports corruption or who revealed information about it; take measures to protect persons in accordance with the law, if he finds that the threat is reasonable; take measures for the protection of witnesses in accordance with the relevant law.

Directorate for Anticorruption Initiative and other relevant institutions in Montenegro over the past two years have carried out several anti-corruption campaigns in order to encourage citizens to participate in the fight against corruption, introducing them to ways that they can use to report corruption to authorities. On the other hand, the Human Resources Administration in the past few months has organized four trainings for 79 participants on the topic fight against corruption, with the special emphasis on the protection of citizens who report acts of corruption.

---

109 Labor Law and Amendments to the Labor Law („Official Gazette of Montenegro“, no. 59/11), November 24, 2011.

110 Decree on the Promulgation of the Law on State Officers and Civil Servants (“Official Gazette of Montenegro”, no. 50/08 from August 19, 2008)

However, in Montenegro, as in many other countries, people are very reluctant to notify the competent institution of corruption offenses about which they are informed. Therefore it is very important that national regulations are very clear, and at the same aligned with the international regulations when it comes to the protection of whistleblowers.

Although it was one of the measures identified in the Action Plan for Implementation of the Strategy for the Fight Against Corruption and Organized Crime for the period 2013-2014, the mandatory reporting on semi-annual analysis of the application of regulations concerning the protection of whistleblowers, which included information on the number of reports of acts of corruption in the private and public sectors, the number of new investigations, the number of prosecutions, court judgments and the number of persons for suffered consequences because they reported corruption, the relevant institutions have not carried out this kind of analysis.

According to data provided by the police, in the last year there have not been cases of complaints on the grounds of suffered consequences due to reporting the corruption. At the same time, according to data from reporting documents, there were no reports on corruptive actions submitted by officers, with the exception of the Customs Administration which in the last year recorded 23 reports of corruption. However, official data are showing that over the past two years, the competent institutions submitted 178 corruption reports, of which 140 are referred to local prosecutors and police for further procedure.

When it comes to international regulations in this area, we should bear in mind that the Article 33 of UNCAC, which defines protection of whistleblowers,[111] as well as the Article 22 Council of Europe's Criminal Law Convention on Corruption stipulate protection of collaborators and witnesses.[112] In this Scope, especially important document is the *Legal Guide for the implementation of the UN Convention against Corruption* which stipulates that "as long as people don't feel free to witness and report their experience or knowledge on corruption, all the objectives of the UN Convention against Corruption will be threatened".[113] In accordance with this, states signatories have the duty to undertake necessary measures to prevent possible revenge or intimidation of witnesses, victims, or experts. States are also encouraged to adopt rules to enhance protection of whistleblowers. Additionally, it is recommended to adopt special law which would contain mechanisms of witness protection, and protection of experts and other persons reporting on corruption, including state employees, officers and other citizens.

2.2. Conclusions and recommendations

1. It is necessary to adopt a comprehensive law on protection of whistleblowers, in order to define protection of these persons and motivational awards for reporting of corruption, clear reporting and processing procedures and further measures of protection and sanctions in cases when whistleblowers are threatened or penalized.
2. The area of protection of whistleblowers in existing legal regulations should be

111 United Nation Office on Drugs and Crime, United Nations Convention againts Corruption, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

112 Criminal Law Convention on Corruption, 1999. http://conventions.coe.int/Treaty/en/Treaties/html/173.htm

113 *Legal Guide for the implementation of the UN Convention against Corruption*, 2006, Article 141.

expanded and strengthened. Namely, in the Labor Law and the Law on Civil Servants and Employees more attention should be paid to methods and mechanisms of protection of these persons, both in domain of protection of their identity and in domain of protection against discharge or abuse on their working place on the grounds of their report. In defining of mechanisms and rules of witness protection within the existing legislative in Montenegro, it is very important to bear in mind European and international standards regarding clear rules, standards of ethic and conditions under which persons could report on corruption: reporting of corruption should be done bona fide and in general interest; procedure of reporting and substantiation of corruption should be clear and precise, with guaranteed legal remedies against harmful consequences; discrimination on any grounds in these procedures must be banned; relevant authorities should undertake all measures to stimulate reporting corruption and strengthen internal order.

3. Competent institutions should undertake significant efforts to stimulate reporting of corruption. Sanctioning of responsible officials in institution where whistleblowers are employed on the basis of intimidation, limitation or castigating of these persons, is very important for improvement of this area in Montenegro.
4. In accordance with abovementioned CeMI's initiatives, integrated in recommendations of international community for improvement of the institutional framework for the fight against corruption, future Agency, as strong, independent anticorruption body would have important authorizations for oversight of adoption and monitoring of strategic and legal documents that regulate area of protection of whistleblowers.

3. Free Access to the Information

3.1. Characteristics of institutional and legal framework

Free access to the information is of crucial importance for civil control of the governance. The new **Law on Free Access to Information**[114] is in force since January 17th 2013 (adopted in July 2012), and it is used by the civil society and media as a significant instrument for research and control of implementation of policies and laws. Implementation of the Law on Free Access to Information is within jurisdiction of all governance bodies, defined by this Law, which encompasses: state bodies, institution of local self-administrations, companies and other legal entities founded, co-founded or partially owned by the state, legal entity mainly funded from public funds, as well as entrepreneur, physical or legal entity who conducts public authority, or manages public funds.

Besides the Law on Free Access to Information, laws applied in the process of obtaining information of public interest are: the Law on protection of Personal Data, Law on Data Secrecy, the Law on Administrative Procedure, Law on Administrative Disputes and the Law on inspectional supervision.[115]

114 Zakon o slobodnom pristupu informacijama ("Službeni list Crne Gore, broj 44/2012" od 9.8.2012.) preuzet sa internet stranice Službeniog lista Crne Gore http://www.sluzbenilist.me/

115 Podzakonska akta koja regulišu ovu oblasti su: Vodič za pristup informacijama, Uredba o naknadi troškova u postupku za pristup informacijama i Pravilnik o sadržaju i načinu vođenja informacionog sistema pristupa informacijama

Taking in consideration that the new law on access to information was adopted in July 2012, as one of the measures from Innovated Action Plan for the Fight against Corruption and Organized Crime (2013-2014) it is very important to assess provisions of this law against recommendations of the international community for improvement of this area. Within the analysis we will also point out novelties in respect to the previous Law. In this context it is important to point out following provisions:

» By the new Law principles on the regulation of the procedure for the free access to information are precisely regulated. However, urgency of procedure contained in the previous law is excluded from the new Law, which is further reflected in the extension of the deadline for the state authorities to resolve the requests for access to information, from initial 8 to 15 working days. This solution can be considered understandable in the case of delivering comprehensive and extensive information, but it is not favorable for the applicant in cases of emergency;

» The new law further elaborated provisions on the access to information, especially in the part of regulation of the guides for the access to information. Each authority is obliged to provide clearer insight into the data that may be of public interest, and to facilitate the process of obtaining the necessary information to stakeholders. This practice is still not accepted in the work of institutions, and thus it slows down the fulfillment of the aim of the openness and transparency in work of the Government. Regularly updated guides for access to information should contribute to informing the interested parties about any changes that would be beneficial to exercise their rights on free access to information;

» The new Law has defined and specified obligations of state bodies regarding the publishing of the information and deadlines for action, through a proactive approach to information, which is a novelty comparing to the previous law. Through this way of action the authorities allow interested parties to, through the availability of all relevant documents, get the information they are interested for without the request.

» The Law precisely lists the situations in which the authorities have the right to restrict access to information:

- The novelty of the new Law in this area is that it contains provisions that define **duration of the data confidentiality and harm test** for disclosure of information. Provision of the harm test for disclosure of information does not stipulate in which way this test should be performed and by what criteria, which leaves an opportunity of various abuses by the authorities.

- The law allows the restriction of access to information in **the interest of security, defense, monetary, foreign and economic policy of Montenegro**, in accordance with the regulations governing the confidentiality of information, for information labeled as classified. This provision is not enough precise and it leaves doubts regarding degrees of confidentiality, since it is not clear whether this provision applies to all, or only certain degrees of confidentiality. This provision also leaves possibility for authorities to assess prevailing public interest, without guarantee that the responsible body will objectively assess the interest.

- Legal provision regarding duration of the confidentiality **represents a positive solution in domain of access to the information**, due to the fact that

confidentiality has expiry date and leaves possibility of access to the information after expiring of this period;

» The new Law foresees detailed procedure for access to information, and introduces a novelty- possibility of verbal request for access to information, which is improvement in comparison to the earlier legislation which only provided a written request. A verbal request shall be submitted to the authorities when direct access to an information is needed or when the applicant is located in the premises of the authority;

» The new law insists on the commitment of authorities to, in accordance with their responsibilities, assist the applicant to gain access to the requested information. This legal arrangement implies that the authority should not refuse a request for free access to information, if it can determine to which information request refers, which is not the case in the current practice, which was verified even in the creation of this policy study;

» Another novelty of the Law is provision which stipulates that there's no need for the authority to pass a decision on request for free access to the information, when this access is granted through direct insight into public register, immediately upon submission of the request;

» The new Law also sets deadlines for execution of the decision, which is a positive change, since it leaves no room for delay in the proceedings. The deadline for implementation of the decision is three working days from the day of the delivering the decision to the applicant, or within five days after the applicant has submitted proof of payment of court costs, if they are foreseen by the decision;

» The new Law has transferred jurisdiction of control over its implementation, from the Ministry of Culture and Media to the Agency for the Protection of Personal Data and Free Access to Information;

» Majority of objections to the previous law, emphasized by the European Union, were related to lack of a second instance appellate authority for the implementation of this Law, and lack of balance between the Law on Free Access to Information and the Law on Protection of Personal Data[116], the most important novelty introduced by the Law, is the process of deciding on the appeal against the decision of the public authority which decides upon the request for access to information. Namely, by the new Law jurisdiction to decide on the appeal was given to the Agency for the Protection of Personal Data and Free Access to Information, which is an independent supervisory body. The law defines the responsibilities and powers of the Agency and of the Council of the Agency, as well as the operation and cooperation with other authorities. This legal decision on the two-instance procedure is an important solution for progress in this area. Disputable issue arising in relation to this solution is the lack of capacities (few people and insufficient training) to address the complaints, having in mind the importance of exercising the right to information. On the other hand, although the Law allowed possibility of appeal to response of the authorities, the main flaw of this legal solution is lack of regulation for cases of „ administration silence ", i.e. in cases when the governmental body does not respond to the request of the applicant at all, which is a very common case in Montenegro;

116 The report of the European Commission on the progress of Montenegro for 2011, p 61

» The definition of authority is quite broad, which is good for transparency, but some border situations remained insufficiently defined. The Law stipulates that subjects to the law, i.e. "public authority" are also companies founded by the state, or partially owned by the state, but it does not specify what percentage of the shares is necessary in order to observe a company as the public authority, subject to the law. So far, this provision was interpreted in the way that the state must be a major shareholder in a company, in order to be observed as public authority, leaving some companies, which have a significant impact on the state and its budget, beyond the scope of the Law.

» Also, the new Law introduces an exception for appeals on decisions restricting access to information that contains data classified as confidential, against which it cannot be appealed, but only the complaint may be filed for initiation of an administrative dispute. These provisions are also specifying valid reasons for submission of appeals. The Council of the Agency for Protection of Personal data and the Free Access to Information decides on the appeal. This body is consisted of President and two members who shall be appointed by the Parliament of Montenegro, at the proposal of the competent working body. [117]

117 The Council of the Agency decides by majority of votes from total number of the members of the Council. The key responsibilities of the Council of the Agency are to make rules of the Agency; adopts statute and act on systematization, with consent of the working body, as well as other acts of the Agency; prepares annual and special report in the condition of protection of personal data; determines annual plan of work and annual report on the work of the Agency; determines the proposition of the financial plan and balance sheet; makes decisions upon requests for protection of rights and in other cases after the performed control (Article 52,56 and 57 The Law on the Protection of Personal Data; Official Gazette no. 79/08 and 70/09).

Since July 2013, the Agency has decided on 209 cases, of which in 33 cases was adopted a decision on termination of the procedure, while in 176 cases a decision is made. Below is a statistics of the number of submitted requests to the Agency for the Protection of Personal data and Free Access to Information, in the first degree procedure[118], as well as the tabulation of the number of complaints submitted to the Agency for the protection of Personal Data and Free Access to Information until June 2013, in the first degree procedures.

Total of received demands	254
Approved	154
Partially approved	10
Transferred to another body	1
Rejected	77
Dismissed	3
Withouth decision	9
Lack of information	49
Published information	8
Not in jurisdiction of the Agency	7
Rejected as groundless	6
Rejected because it requested a new information	3
Rejected because of privacy protection	1
Rejected without stating any reasons	1

Total received complaints	140
Adopted compalaints	94
Suspended proceedings by conclusion	33
Partially adopted complaints	2
Rejected complaints - total	11
Rejected complaints on grounds of “legal entity is not subject to the law”	1
Rejected complaints on grounds of “legal entity is not prevalently financed from the public funds”	7
Rejected complaints on grounds of “improper implementation of the Law on FAI”	1
By decision is fully adopted request of the FAI	1
Information published on the Web site of the body	1

Other responsibilities of the Agency for the Protection of Personal Data and Free Access to Information are related to the control over the implementation of the law and legal proceedings for violations of the law. The Council of the Agency initiates the cooperation with the authorities through the right to require providing of documents and information which are necessary for decision upon a request and initiates an inspection control that determines whether a public authority holds the requested information.

In order to enable the Agency to conduct a unique information system that provides access to information and databases, it is necessary to strengthen the capacities of this body and to create the information system so the Agency can be able to apply this provision in practice, as well as a very substantial part of cooperation between all authorities with the Agency. This legal determination absolutely was not implemented in the practice. Furthermore, this causes the fact, that keeping the registry, although provided by the

118 For the preparation of this report the data were obtained during interviews with the competent persons of the Agency.

new Law, is not implemented in practice and there is no reliable data showing that the percentage of answered requests increased. According to data provided by the Agency, it has been notified on 376 requests for free access to information that are sent to the first degree bodies, while in 117 cases the requests were rejected.

The inspection supervision over the implementation of the Law was assigned to the Ministry of Interior, in difference to the previous law, which was determining for the supervisory authority the Ministry responsible for the media and the Ministry of Culture. Types of violations by public authorities are defined by the Law, as well as fines for each offense.

3.2. Recommendations for improvement

1. It is necessary to very precisely determine sanctions for bodies that do not respond to free access to the information demands and implement these provisions in practice. At the same time, in creation of this new legal solution, it is necessary to refer to the EU Regulation no 1049/2011 on public access to documents of the European Parliament, Council and Commission, which foresees the submission of confirmation that request is received. In that case, if the second answer is omitted, the applicant has the right to appeal, because it is considered that the answer is negative.
2. It is necessary to clearly define the criteria by which would be decided on the public interest for disclosure of information or denial of access to the information.
3. It is necessary to pay more attention to informing the public of its right to access to official documents and how that right can be exercised, as well as to implement adequate training of civil servants on their responsibilities regarding facilitation of exercising of that right.
4. In order to promote transparency of state administration and improvement of its efficiency, as well as to encourage civic participation in matters of public interest, it is recommended that the public authority itself, on its own initiative and in accordance with the legal and ethical requirements and standards, disclose information in their possession.
5. It is necessary to precisely determine exact percentage of ownership that state should have in a company in order for this company to be defined as a public authority and subject to the Law. Our proposal is that it should be every company in which the state has over 10% of shares, or it is in the top 10 shareholders.
6. It is necessary to strengthen the capacities of the Agency for Protection of Personal Data and Free Access to Information through engagement of additional staff and ensure the financial independence of the institution.

CONCLUSION

In the past year it was possible to monitor the implementation of the set of anti-corruption laws passed in 2011-2012: Law on Financing of Political Parties, the Law on Prevention of Conflict of Interest, the Law on Public Procurement and the Law on Free Access to Information. These laws have been significantly amended, which induced the improvement of results in fight against corruption in these areas. However, despite the engagement of the civil society and the international community's recommendations, a number of necessary changes were not introduced to these laws, which was later noted through the problems in their implementation. In this reporting period, through the adoption of measures for the Action Plan for Chapter 23, the decision makers have acknowledged that the legislative framework was not designed properly, and that it should be further modified and each one of these laws will be amended over the next two years. An additional problem is too extensive period for the establishment of the Agency, which is supposed to deal with the implementation of most of these laws, which leaves us in doubt whether the laws will be changed twice in the next 3 years - before and after the establishment of the Agency? A number of changes to the laws don't provide time for the track record of its implementation, which is one of the essential conditions for the successful closure of the Chapter 23.

The basic preconditions for improving the area of fight against political corruption are strong, politically, functionally and financially independent institution, with adequate capacities to enforce the law; Laws based on international standards and their consistent implementation, as well as a number of specific measures that are listed individually in each separate area of this study.

In the area of the economic corruption, legislative activity is much slower, and for a long time there have not been a change of the fundamental laws necessary for the prevention and suppression of corruption in the creation of the state budget and disposition of public funds and property. The Law on Budget and Fiscal Responsibility, Law on SAI, Law on Securities, Law on Overtake of Joint Stock Companies, and Law on Privatization, have not been significantly changed for many years and do not properly address the needs of anti-corruption policies.

In order to successfully combat and prevent economic corruption, it is necessary to ensure a participatory and transparent procedure for the adoption of the budget, an efficient and effective control over government spending, coordination between institutions that would guarantee timely investigations and appropriate sanctions for budget users who consciously manage funds or misuse them; greater responsibility of capital market participants and greater control of conflicts of interest for them and independent control of the privatization process.

Finally, the main precondition for the fight against corruption at all levels is a stronger political will than was shown in the past and de-politicization of public administration which is dealing with the implementation of anti-corruption policies. This is the first step in converting the quantitative results, which we had so far, to qualitative results that indicate substantial and not nominal law enforcement at all levels.

CENTAR ZA MONITORING I ISTRAŽIVANJE