



REPORT ON NATIONAL ANTICORRUPTION POLICIES MONTENEGRO 2023





Publisher:

Centre for Monitoring and Research (CeMI)
Bul. Svetog Petra Cetinjskog 96, VI/12
E-mail: info@cemi.org.me
www.cemi.org.me

Author:

Teodora Gilic

Year of Issue:

2023



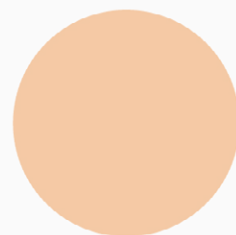
International Foundation
for Electoral Systems



NOTE: The opinions and views expressed in this policy study represent the opinions of the authors and do not necessarily reflect the official views of the donors.

The cover features a large circular inset image showing a person's hands holding a stack of Euro banknotes. The hands are positioned as if presenting or withholding the money. The background of the cover is a light gray with large, overlapping orange and dark gray circular shapes. The title is written in bold white text over the orange circle. A small white horizontal line is located below the title.

REPORT ON NATIONAL ANTICORRUPTION POLICIES MONTENEGRO 2023



CONTENTS

INTRODUCTION	9
CHAPTER 2. INSTITUTIONAL, STRATEGIC, LEGISLATIVE AND SOCIO-POLITICAL ANTICORRUPTION FRAMEWORK IN MONTENEGRO	10
2.1. INSTITUTIONAL FRAMEWORK	10
2.1.1. CONSTITUTIONAL AND LEGISLATION LEVEL	10
2.1.2. HIGH POLITICAL LEVEL	11
2.1.2.1. RULE OF LAW COUNCIL	11
2.1.2.2. NATIONAL COUNCIL FOR THE FIGHT AGAINST CORRUPTION	12
2.1.3. PREVENTION OF CORRUPTION	14
2.1.4. REPRESSION OF CORRUPTION	15
2.1.5. EU INTEGRATION LEVEL	16
2.2. STRATEGIC AND LEGISLATIVE FRAMEWORK	18
2.2.1. STRATEGIC FRAMEWORK	18
2.2.1.1. STRATEGY FOR THE FIGHT AGAINST CORRUPTION AND NEW STRATEGIC DOCUMENTS	18
2.2.2. LEGISLATIVE FRAMEWORK	21
2.3. SOCIAL AND POLITICAL CONTEXT FOR PREVENTION OF CORRUPTION IN MONTENEGRO	22
CHAPTER 3. FOCUS ON ACTIVITIES OF THE AGENCY FOR PREVENTION OF CORRUPTION	24
3.1.1. DEVELOPMENT OF STRATEGIC FRAMEWORK AGAINST CORRUPTION	24
3.1.1.1. STRATEGY FOR THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME	24
3.1.1.2. OPERATING DOCUMENT FOR PREVENTION OF CORRUPTION IN THE AREAS EXPOSED TO SPECIAL RISK	25
3.1.1.3. ACTION PLAN FOR ADDRESSING KEY PRIORITIES IN FULFILLMENT OF REMAINING INTERIM BENCHMARKS IN CHAPTERS 23 AND 24.	26
3.1.2. ANTI-CORRUPTION AGENCY	27
3.1.2.1. ORGANIZATIONAL STRUCTURE	28
3.1.2.2. COMPETENCIES AND HUMAN RESOURCES OF THE AGENCY FOR PREVENTION OF CORRUPTION	29
3.1.2.3. CHALLENGES WITH IT SYSTEM	30
3.1.2.4. ASSESSMENT OF THE APC'S WORK BY INTERNATIONAL ORGANIZATIONS AND COOPERATION WITH INTERNATIONAL AND MONTENEGRIN CSOS	30
3.1.2.5. COOPERATION OF APC WITH OTHER STATE INSTITUTIONS	33
3.1.2.5.1. THE APC AND THE GOVERNMENT AND THE PARLIAMENT OF MONTENEGRO	33
3.1.2.5.2. THE APC AND JUDICIARY	34
3.1.2.5.3. THE APC AND STATE PROSECUTOR OFFICE	35
3.1.2.6. THE APC'S OPINIONS RELATED TO THE PREVENTION OF CORRUPTION.	36
3.1.2.7. COMMUNICATION AND AWARENESS RAISING	38
3.1.3. PREVENTION OF CONFLICT OF INTEREST - LIST OF PUBLIC OFFICIALS	40
3.1.4. PREVENTION OF CONFLICT OF INTEREST IN THE AREA OF ASSETS DECLARATION - LAW ENFORCEMENT	43
3.1.5. CODE OF ETHICS FOR MEMBERS OF EXECUTIVE AND LEGISLATIVE	45
3.1.6. INTEGRITY OF ADMINISTRATION, NEW INITIATIVES AND LOBBYING	46
3.1.7. POLITICAL PARTY FINANCING	49
3.1.8. WHISTLE-BLOWERS PROTECTION	53
CHAPTER 4. RECOMMENDATIONS	57
4.1. FOR THE PARLIAMENT AND GOVERNMENT OF MONTENEGRO	57
4.2. FOR THE AGENCY FOR PREVENTION OF CORRUPTION	58
4.3. FOR THE JUDICIARY AND STATE PROSECUTORS' OFFICES	59

INTRODUCTION

This study has been created within the project of ECAC, “Effective Combat Against Corruption Project in Montenegro”, which is implemented by IFES and CEELI Institute, with the Center for Monitoring and Research (CEMI) as a local implementing partner in Montenegro.

This study is dedicated to exploration of overall aspects of the anticorruption policies and their implementation in Montenegro, with the focus on prevention of corruption, relevant anticorruption institutions and legal framework that has been related to that specific issue.

The goal of the study is to explore recent historic developments and to define current state of play in the area of prevention and fight against corruption, with definition of certain conclusions and number of recommendations for the improvement of the institutional, legislative and functional framework of the prevention and fight against corruption in Montenegro, both in general and in specific issues.

In the first part of the Study, we have been exploring institutional, strategic, legislative and socio-political anticorruption framework in Montenegro, in which we wanted to create a brief overview of general aspects of the prevention and fight against corruption for the past several years.

The second part of the study is dedicated to concrete achievements in the area of prevention of corruption within the period of the last decade in Montenegro, with the focus on the role, functions and results of the Agency for Prevention of Corruption. In order to create general framework for this research and to create connections between the issue of anticorruption and advancement in the process of EU Integration of Montenegro, we have used a model of benchmarks for EU-Montenegro negotiations in the area of the rule of law and security (Chapters 23 and 24), with specific attention to 8 benchmarks related to the fight and prevention of corruption, where the Agency for Prevention of Corruption plays a significant role in terms of fulfillment of these benchmarks and achievement of needed results for implementation of reforms in this area.

Through the use of this framework of benchmarks, we have analyzed achievements of the Agency for Prevention of Corruption, but also number of activities of the Government, Parliament, judiciary, prosecutors’ offices in Montenegro in the same area, with the look at the connections and joint activities with international stakeholders, local partners from civil society and media, with the focus on the period January 2021 – July 2023.

Finally, at the third and final section of this study, we have defined number of conclusions and recommendations for improvement of policies and concrete activities and results in the area of the fight and prevention of corruption, including recommendations for the Government and Parliament of Montenegro, judiciary and prosecutors’ offices and finally, recommendations for improvement of the work and results of the Agency for Prevention of Corruption of Montenegro.

Considering concrete methods of research, we have predominantly used desk and on-line research and analysis of the official legislative, international treaties and other documents of public institutions from Montenegro and abroad related to the fight and prevention of corruption. In addition, we have used interviews with local stakeholders and various kinds of local institutional and media reports, including use of data from reports of international organizations and different structures of civil society.

CHAPTER 2.**INSTITUTIONAL, STRATEGIC, LEGISLATIVE AND SOCIO-POLITICAL ANTICORRUPTION FRAMEWORK IN MONTENEGRO****2.1. INSTITUTIONAL FRAMEWORK**

Institutional set-up for the fight against corruption in Montenegro consists of a number of bodies at constitutional and legislation level, high-political level, as well as preventive, repressive and EU integration level.

2.1.1. CONSTITUTIONAL AND LEGISLATION LEVEL

The Parliament of Montenegro along with the structures of Government has the most decisive role in creation of the general legislative framework for the fight against corruption, in establishing of general strategic anti-corruption initiatives, as well as in controlling functions of other state institutions, organizations and social structures. Beside General Assembly sessions, the most prominent set of tools for the fight against corruption is in the hands of the Anti-Corruption Committee of the Parliament of Montenegro. This important body, by definition, has following tasks in its mandate:

- monitor and analyze the work of state entities, institutions, organizations and bodies in the fight against corruption and organized crime;
- consider issues and problems in the implementation of laws related to the fight against corruption and organized crime;
- propose additional measures to improve strategies, action plans and other documents related to the fight against corruption and organized crime;
- consider petitions and sends them to competent authorities in accordance with paragraph 1 of Article 48a of the Rules of Procedure of the Parliament of Montenegro.¹

The Government of Montenegro, by definition, has the biggest role in legislative initiatives and creation of new legal proposals, including those that are directly or indirectly related to the fight against corruption. In addition to that, the Government has a right to create a serial of sub-law legislation, as well as the most significant strategic documents for creation of a general framework for the fight against corruption. The Government also coordinates cooperation among institutions and creates structures for institutional cooperation in the area of the prevention and repression of corruption.

¹ Unfortunately, the Anticorruption Committee of the Parliament of Montenegro has never had a more important role in the real and more sustainable efforts to recognize and suppress the sources of the corruption in all social, political and institutional structures. This negative tendency was rooted in a partisan depicted divisions and policies within this body. This was especially visible during the last mandate of the Parliament, August 2020-July 2023, when predominant number of members of the Committee abused their mandate in many aspects, creating unlawful decisions and undermining various initiatives for creation of legislative and practical efforts towards improvement of the entire framework for the prevention and repression of corruption. This lack of readiness for legal and institutional approach in the anticorruption initiatives was extremely visible in relations of the majority of members of the Anticorruption Committee towards the Agency for Prevention of Corruption and initiatives, documents and procedures that this institution was initiating in front of this Committee.

2.1.2. HIGH POLITICAL LEVEL

2.1.2.1. RULE OF LAW COUNCIL

On the high-political level, the Rule of Law Council was established with the aim to facilitate co-ordination and monitoring of the implementation of obligations under negotiating Chapters 23 and 24 in the process of Montenegro's accession to the European Union as well as to make recommendations to the relevant institutions for urgent action in order to implement these commitments. According to the last Decision on establishment of the Rule of Law Council, adopted by the Government of Montenegro on 26 April 2023, the Council consists of a president, a vice president and twelve members.

The president of the Council is the president of the Government. The vice president of the Council is the minister of European affairs. Members of the Council are as follows:

1. Minister of justice;
2. Minister of interior;
3. President of the Supreme Court of Montenegro;
4. President of the Judicial Council;
5. Supreme state prosecutor;
6. Chief special prosecutor;
7. Director of the Police Directorate;
8. Director of the Agency for Prevention of Corruption;
9. Head of the Negotiating Working Group for chapter 23 - Judiciary and fundamental rights;
10. Head of the Negotiating Working Group for chapter 24 - Justice, freedom and security;
11. Representative of the Prosecutorial Council from among the members of the Prosecutorial Council;
12. Representative of NGO "Juventas".

THE COMPETENCES OF THE RULE OF LAW COUNCIL ARE THE FOLLOWING:

- to monitor the implementation of obligations from chapters 23 - Judiciary and fundamental rights and 24 - Justice, freedom and security in the process of accession of Montenegro to the European Union, in accordance with the recommendations of the minister of European affairs and negotiator for cluster 1 - Fundamentals;
- to monitor the implementation of obligations in order to fulfill the interim benchmarks in chapters 23 and 24;
- to monitor the implementation of obligations in order to fulfill the closing benchmarks in chapters 23 and 24;
- to consider the reasons for the delay in the implementation of obligations and make recommendations to state bodies, state administration bodies and other bodies and institutions for urgent action in the implementation of obligations from chapters 23 and 24;
- to perform other tasks, in accordance with the Decision on establishment of the structure for negotiations on the accession of Montenegro to the European Union.

In addition to the Rule of Law Council, on 28 July 2022, the Government of Montenegro adopted the Decision on establishment of the National Council for the Fight Against Corruption. The

Council consists of:

- prime minister of Montenegro, president of the Council;
- minister without portfolio in charge of implementing policy in the field of fight against corruption, deputy president of the Council;
- minister of justice, member;
- minister of interior, member;
- minister of finance, member;
- deputy prime minister for foreign policy, European integration and regional cooperation and minister of European affairs, member;
- deputy prime minister for regional development and minister of capital investments, member;
- minister of ecology, spatial planning and urbanism, member;
- minister of education, member;
- minister of health, member;
- director of the Agency for Prevention of Corruption, member;
- director of the National Security Agency, member;
- director of the Police Directorate, member;
- director of the Inspection Affairs Administration, member; director of the Revenue and Customs Administration, member;
- supreme state prosecutor, member;
- special state prosecutor, member;
- president of the Supreme Court, member;
- member of the Senate of the State Audit Institution, member;
- president of the Chamber of Commerce of Montenegro, member;
- representative of the Union of Municipalities of Montenegro, member;
- and three representatives of non-governmental organizations, members.

The tasks of the Council are to:

- prepare the Strategy for the fight against corruption with accompanying action plans in cooperation with the Ministry of Justice;
- monitor the implementation of the Strategy; organize, synchronize, monitor the priorities, dynamics and deadlines for the implementation of activities carried out by state bodies, state administration bodies, local self-government bodies, local government bodies and other competent institutions and evaluate the results achieved in achieving the Strategy's goals;
- and submit to the Government reports on the implemented activities with an assessment of the state of play and a proposal for further measures for a more successful implementation of the Strategy, at least twice a year.

2.1.2.2. NATIONAL COUNCIL FOR THE FIGHT AGAINST CORRUPTION

After creation of the Decision on the National Council for the fight against high-level corruption, in December 2020, the Government of Montenegro created a five-member National Council for Fight Against High-level Corruption in February 2021. However, this process was not transparent and an insufficient level of information on the work and role of this Council was available to general public and local and international stakeholders.

Very soon after its creation, a line of negative reactions about this Council came from the local and international stakeholders. The most problematic part of creation and work of the

National Council for the Fight Against High-level Corruption was related to visible interference and the overlapping of the Council with the work of other institutions.

This was confirmed through the Opinion on the Decision on the National Council for the Fight Against High-level Corruption, issued by the APC in April 2021, where clear evidence has been presented about endangering of the public interest due to insufficient precision of the articles of the Decision, the lack of transparency and wide discretionary powers in certain procedures, which could have created a space for various abuses. This potential abuse was also recognized by international partners.²

In addition to this, 3 out of five members of the National Council for the Fight Against High-level Corruption resigned soon after its creation and all three of them were coming from the civil society structures (CSOs and academia). The two remaining members were ministers from the Government and there was no quorum for the work of this Council since replacements from the ranks of civil society members have never been selected after their resignations.

Because of these resignations and a formal lack of legitimacy for work, as well as because of critical attitudes from local and international stakeholders, the National Council for the Fight Against High-level Corruption soon ceased to exist and it has been replaced by the new body which has been created in autumn of 2022, under a new name - the National Council for the Fight Against Corruption.

This new National Council for the Fight Against Corruption was created after initiative of the members of the Council of the APC from the civil society, representatives of EMIM and CEMI, and at the basis of this initiative a new proposal of the Decision on Creation of the National Council for the Fight Against Corruption has been created by the APC management and delivered to the Prime Minister in July 2022³.

This initiative was accepted, and it has been developed since then within one Ministry with no portfolio but that has been in charge of anticorruption policies and functioning of the National Council for the Fight Against Corruption, since its creation. This newly shown respect for procedures and legal framework have created completely new atmosphere for functioning of the new National Council for the Fight Against Corruption and the Ministry and the Government got significant support by several international partners at the level of expertise and financial contributions for realization of different aspects of the work of the newly created Council.

International partners recognized development and adoption of a new national anti-corruption Strategy as one of the most important duties for the work of the new National Council for the Fight Against Corruption. This is why the main tasks of the new National Council for the Fight Against Corruption became:

- to prepare the Strategy for the fight against corruption with accompanying action plans in cooperation with the Ministry of Justice;
- to monitor the implementation of the Strategy;
- to organize, synchronize, monitor the priorities, dynamics and deadlines for the implementation of activities carried out by state bodies, state administration bodies, local

² GrecoEval5Rep(2022)2, page 13, "GRECO recommends that clear role and missions be assigned to the National Council for Fighting Corruption so as to ensure the consistency of the overall strategy for preventing and fighting corruption"

³ Interview with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović, July 2023

self-government bodies, local government bodies and other competent institutions and evaluate the results achieved in achieving the Strategy's goals;

- to submit to the Government reports on the implemented activities with an assessment of the state of play and a proposal for further measures for a more successful implementation of the Strategy, at least twice a year.

Beside these activities, the National Council for the Fight Against Corruption is in charge for receiving eventual submissions of the citizens, discussing them and eventually forwarding them to relevant institutions in charge. The Council members also discuss different subjects related to the prevention and fight against corruption and foster coordination between institutions in these matters. The National Council for the Fight Against Corruption is consisted of:

- President of the Council – Prime Minister,
- Deputy President of the Council – Minister in charge of the fight against corruption
- Members of the Council: Vice-president of the Government for Economic issues,, Minister of Justice, Minister of Internal Affairs, Minister of Finance, Minister of Tourism, Rural Development and Spatial Planning, Minister of Education, Minister of Health, Head of Supreme Court, Supreme State Prosecutor, Head Special State Prosecutor, Director of ANB (Agency for National Security), Director of the Police Authority, Director of the Agency for Prevention of Corruption, Director of the Inspection Authority, Director of the Tax and Customs Office, President of the Chamber of Commerce and four representatives of CSOs.

2.1.3. PREVENTION OF CORRUPTION

The central body at the level of prevention of corruption in Montenegro is the Agency for Prevention of Corruption, which became operational as of 1 January 2016. The Agency was established as an independent and autonomous anti-corruption body (in line with Article 6 of the UNCAC and ACA standards), by encompassing the competences of the former Anti-Corruption Initiative Administration, Commission for Prevention of Conflict of Interest as well as competences of the State Election Commission in the area of control of financing political subjects and election campaigns.

The APC work is regulated within the three laws - the Law on Prevention of Corruption, the Law on Financing of Political Entities and Election Campaigns and the Law on Lobbying. The legislative framework elaborate safeguards of autonomy and mechanisms of accountability of the Agency.

The Agency's managing bodies are the Council and the Director. The supervisory function over the work of the Agency is performed by the Council of the Agency, whose members (five in total) are appointed by the Parliament, at the proposal of the Parliament's competent committee. The selection of candidates is based on a public vacancy announcement. The Council selects the Director based on a public call. The Council also decides on the dismissal of the Director. The design of the procedures aims to ensure publicity and transparency, while minimizing possible undue influences. The Council proposes the draft budget of the Agency to the Parliament via the competent committee. The Agency submits reports to the Parliament of Montenegro.

ACCORDING TO THE LAW ON PREVENTION OF CORRUPTION, THE COMPETENCES OF THE AGENCY FOR PREVENTION OF CORRUPTION ARE AS FOLLOWS:

- establishing the existence of conflict of interest in the exercise of public function and taking measures for its prevention;
- control of restrictions in the exercise of public function;
- conducting control of receiving gifts, sponsorships and donations;
- conducting control of the data from the Report on income and assets of public officials; giving an opinion on the existence of threats to the public interest that indicate the existence of corruption and making recommendations for preventing threats to the public interest and the whistleblower protection;
- monitoring the adoption and implementation of Integrity Plans, making recommendations for their improvement and assessment of the efficiency and effectiveness of Integrity Plans in accordance with this Law;
- adoption of acts under the jurisdiction of the Agency in accordance with the law;
- taking the initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption or to bring them in line with international standards in the field of anti-corruption;
- giving opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption; initiating and conducting proceedings for establishing the violation of the provisions of this and other laws governing the responsibilities of the Agency;
- cooperating with the competent authorities, higher education institutions and research organizations and other entities, in order to implement the activities in the area of prevention of corruption;
- keeping records and registers in accordance with this Law;
- issuing misdemeanor reports and initiate misdemeanor and other proceedings;
- conducting educational, research and other preventive anti-corruption activities;
- exercising regional and international cooperation in prevention of corruption;
- performing other duties prescribed by law.

The Agency shall conduct supervision over the implementation of regulations governing lobbying and implement measures of control of financing of political entities and election campaigns, in accordance with a special law.

2.1.4. REPRESSION OF CORRUPTION

When it comes to **repression of corruption**, the **Special State Prosecutor's Office (SSPO)**, as a key institution for the fight against high-level corruption and organized crime, was established on the basis of the *Law on the Special State Prosecutor's Office* and became operational as of July 2015. According to the Law, the SSPO is responsible for prosecuting the criminal offenses of organized crime, regardless of the prescribed penalty; high corruption (a. if the public official committed the following criminal acts: abuse of authority, fraud in the service, illegal influence, alluding to illegal influence, receiving a bribe, paying a bribe; b. if a financial benefit exceeding the amount of forty thousand Euro was obtained by committing the following criminal acts: abuse of position in business operations, abuse of authority in the economy); money laundering; terrorism; war crimes; violations of electoral rights prescribed in Chapter Sixteen of the Criminal Code of Montenegro.

A public official, in the sense of this law, is an elected, appointed or appointed person in a state body, state administration body, local self-government body, local government body, independent body, regulatory body, public institution, public enterprise or other economic society, i.e. a legal entity that exercises public powers, i.e. activities of public interest or is state-owned, as well as a person whose election, appointment or appointment is approved by the government body.

The Law on the SSPO contains several guarantees for the independence, transparency and accountability of the SSPO.

The Prosecutorial Council elects the chief special prosecutor and special prosecutors on the basis of a public announcement. The tenure of the chief special prosecutor is five years while a special prosecutor shall be elected to serve life tenure if he/she has worked for at least four years as a state prosecutor or as a judge. However, the autonomy of the SSPO is limited in that the supreme state prosecutor may directly exercise all powers and undertake all actions for which the head of the SSPO is authorized.

According to the Article 26 of the Law on the Special State Prosecutor's Office, police affairs related to criminal offenses from the competences of the *Special State Prosecutor's Office* is performed by police officers who work in a special organizational unit of the administrative body responsible for police affairs with the Special State Prosecutor's Office (Special Police Unit). The head of the Special Police Unit is appointed by the director of the administrative body responsible for police affairs (Police Directorate), with the consent of the chief special prosecutor.

The *Rulebook on internal organization and systematization of the Ministry of Interior - Police Directorate*, adopted on 8 August 2022, places a special emphasis on the organization of criminal police, which will ensure greater support to the Special State Prosecutor's Office in the fight against high-level corruption and organized crime. According to the Rulebook, the **Department for fight against corruption, economic crime and conducting of financial investigations** was formed, in which 60 jobs were systematized, while the Rulebook foresees an increase in the number of inspectors in the Special Police Unit from 32 to 50.

The competence of the Department for fight against corruption, economic crime and conduct of financial investigations is related to criminal offenses under the jurisdiction of the High State Prosecutor's Office, but also criminal offenses that are under the jurisdiction of the SSPO at the request or with the approval of the acting special prosecutor, at the national and international level. In this way, the capacities of the Police Directorate were strengthened in order to provide support to the SSPO.

2.1.5. EU INTEGRATION LEVEL

At the EU integration level, having in mind the importance of the reform activities in the rule of law area in the context of accession negotiations of Montenegro with the EU, the **Negotiating Working Group for Chapter 23 – Judiciary and Fundamental rights**⁴ as well as the Ministry of European Affairs, as the coordinator of the negotiating process at national level, are also worth mentioning.

⁴ One of the sub-areas in the negotiating chapter 23 – Judiciary and fundamental rights is fight against corruption (preventive and repressive measures).

In that regard, on 3 August 2022, the Government of Montenegro adopted the Decision on establishment of new structure for negotiations on the accession of Montenegro to the European Union. According to the Decision, the negotiating structure consists of:

1. College for negotiations on the accession of Montenegro to the European Union;
2. Rule of Law Council;
3. Negotiating team for conducting negotiations on the accession of Montenegro to the European Union;
4. Negotiating working groups for preparation and conducting of negotiations on the accession of Montenegro to the European Union according to individual chapters of the negotiations - EU Acquis;
5. Ministry of European Affairs.

Following this decision on the general structure, new Negotiating Working Groups have been formed by the Government, after the process of selection of members from the public administration and civil society structures.

Even though some of the parts of this process related to selection of the civil society candidates could have been depicted with higher level of procedural transparency, finally, on 28 December 2022, the Government of Montenegro adopted the *Decision on establishment of the Negotiating Working Group for Preparation and Conducting of Negotiations on the Accession of Montenegro to the European Union for the Area of the EU Acquis Related to the Negotiating Chapter 23 - Judiciary and Fundamental Rights*.

THE TASKS OF THE NEGOTIATING WORKING GROUP FOR CHAPTER 23 ARE THE FOLLOWING:

- participation in the analytical review and evaluation of the compliance of the legislation of Montenegro with the EU Acquis related to the negotiating Chapter 23;
- monitoring implementation of obligations from the Negotiating Position for negotiating Chapter 23;
- participation in the development, implementation and reporting on the implementation of action plans and other documents of importance for the accession of Montenegro to the European Union in the area of judiciary and fundamental rights;
- monitoring and reporting on the implementation of the closing benchmarks for the area of the EU Acquis related to the negotiating Chapter 23;
- participation in the development and revision of the Program of accession of Montenegro to the European Union, as well as monitoring and reporting on implementation of this program in relation to the negotiating Chapter 23;
- monitoring of the EU Acquis and assessment of the relevance of the sources of European Union law related to the negotiating Chapter 23;
- preparation of contributions and participation in the meetings of the Subcommittee for Justice, Freedom and Security and the Stabilization and Association Committee;
- participating in expert missions and carrying out other tasks of importance for negotiations, with the support of state administration bodies and other bodies and institutions in the area of the EU Acquis related to the negotiating Chapter 23;
- preparation of contributions to the Report of the European Commission on Montenegro and monitoring of the implementation of recommendations from that report.

The Ministry of European Affairs performs, inter alia, administration tasks related to:

- management and coordination of the process of stabilization and association and accession of Montenegro to the European Union in the part related to monitoring of the implementation of the Stabilization and Association Agreement between the European Communities and their member states, on the one hand and Montenegro, on the other, as well as coordination and monitoring of the work of joint bodies established by that Agreement;
- coordination, formation and participation in the work of bodies for the coordination of the process of negotiations on accession and for the process of stabilization and joining the European Union;
- participation in meetings of intergovernmental conferences on the accession of Montenegro to the European Union;
- preparation of strategic documents related to the process of European integration; coordination of the cooperation of the ministries, state bodies and institutions of Montenegro with the institutions and bodies of the European Union, its member states, candidate states and potential candidates in the process of joining and accession to the European Union;
- coordination, preparation and participation in European Union initiatives within the enlargement policy.

2.2. STRATEGIC AND LEGISLATIVE FRAMEWORK

2.2.1. STRATEGIC FRAMEWORK

When it comes to the strategic framework in the field of fight against corruption of Montenegro, it should be underlined that this process is deeply and closely entwined with the rest of the entire process of negotiations on the accession of Montenegro to the European Union.

In other words, talking about negotiating agenda between the Montenegro and the EU, the existence of strategic documents related to prevention and repression of corruption in the country with aspirations to become a full-fledged member of the EU, became one of the most significant prerogatives for fulfilment of the significant demands from the Chapter 23 - Rule of Law and human rights.

However, this part of negotiations was often burdened with lack of efficiency of Montenegrin side, as well as number of changes in the structure and system of fulfilment of this request, as well as changes related to methodology of creation and implementation of different solutions that have been created during the process of negotiations between Montenegro and the EU.

2.2.1.1. STRATEGY FOR THE FIGHT AGAINST CORRUPTION AND NEW STRATEGIC DOCUMENTS

Even before the official beginning of the negotiating process, in a relatively fast and efficient manner, the first (and the only one, up to July 2023) **Strategy for the Fight against Corruption and Organized Crime** was delivered in 2010. This document had been foreseen to last from 2010 to 2014 and it has been followed by accompanying *Action plans*, the first one from 2010-2012 and the second one from 2013-2014. This last **Action plan for the negotiating chapter 23 - Judiciary and fundamental rights**, which was adopted in 2013 was additionally revised in 2015.

Meanwhile, this *Strategy* expired at the end of 2014, and it was necessary to adopt new document of that kind, in order to continue monitoring activities in the areas of the fight against corruption, both in the sense of prevention and repression.

However, that time Government of Montenegro did not fulfill its obligation in the form of creation of the new Strategy for the Fight against Corruption and Organized Crime and opted for creation of new models and methodologies that were related to areas of work of institutions that are exposed to special risk and that were previously covered by the Strategy and the accompanying action plans.

Following that, instead of a new **strategic document**, in 2016, the Government adopted the **Operating document for prevention of corruption in the areas exposed to special risk**. This document have served as equivalent and continuation of the Strategy for the Fight against Corruption and Organized Crime 2010-2014 and following Action plans. This is how the continuity of the previous strategic framework in the field of fight against corruption at the national level was maintained, while the question of actual upgrading or degrading of this process remained open both for local and EU actors.

Since the Operating document continued to monitor activities in the areas exposed to special risk which, until 2015, were covered by the Strategy and the accompanying action plans, it was defined that this document will cover following areas: Public Procurement, Privatization, Urban Planning, Education, Health Sector, Local Government and Police Sector.

This Operating document also included all unimplemented measures from the previous Action plans for the implementation of the Strategy 2010-2014. The implementation of the Operational Document was monitored continuously, and it became an annex to the Action Plan for Chapter 23 (AP23). The quality of implementation of the Operating document for prevention of corruption in the areas exposed to special risk became a subject of a semi-annual based reporting process, according to the same methodology as the implementation of Action Plan for Chapter 23. Since the adaptation of the Action Plan in February 2015, eight semi-annual reports have been adopted by the Government, which was 13 in total, since the beginning of reporting in 2013.

This model of covering of prevention of corruption in mentioned areas lasted for several years of the negotiation process between Montenegro and the EU. The last official semi-annual report on the implementation of the Operational Document for the Prevention of Corruption in the Particularly Vulnerable Areas referred to the period July-December 2018. This Report on the implementation of measures from AP 23 was carried out in continuity with methodology of previous AP implementation Reports, and that eight, the last report after adaptation of AP, was adopted in January 2019. During the reporting period July-December 2018, a total of 200 measures from the Action Plan were up for reporting, out of which 13 measures were implemented (7%), 158 measures were being implemented continuously (79%), 16 measures (8%) were partially implemented, and a total of 13 measures (6%) have not been implemented.

After January 2019, starting from the period January 2019 - June 2019, semi-annual reporting has been changed in terms of methodology of reporting. After the process of consultations between the Government of Montenegro and European Commission it was agreed that the Report is not being delivered in the form of reporting on the implementation of action plans but through providing the answers to the questionnaire sent by the EC to the Office for European Integration. EU Integration Office provided answers to the EC questionnaire in August 2019.

Following that, in accordance with this previous agreement with the EC, and for the purpose of more focused reporting, Montenegro provided a report for the period July-December 2019 only for certain measures from the Action Plans for Chapters 23 and 24. This Report has been sent to the EC in February 2020 and in March 2020, after new round of consultations between European Commission representatives and Government of Montenegro, it has been agreed that there will be no longer reporting on action plans 23 and 24.

However, it is a fact that Action plans for Chapters 23 and 24 have not been updated since February 2015 and that there is no coherent system of inventory of fulfillment of obligations of Montenegro within the process of negotiations with the EU in the area of Chapters 23 - Justice and Fundamental Rights and 24 - Justice, Freedom and Security. Nonetheless, the Government of Montenegro in October 2022 has created a separate document called **Action Plan for Addressing of Key Priorities in Fulfillment of Remaining Interim Benchmarks in Chapters 23 and 24**. This was an *ad hoc* document created upon receiving of priority areas for fulfillment in these two Chapters by the EU Commission and it was created as a kind of improvisation by the Government of Montenegro, with no previous mutual planning and consent from the side of European Union. The consequence of that was that no reports on implementation of this document were created since October 2022 until today, July 2023.

Having that in mind this kind of improvisation and relative confusion related to creation of strategic document and their updating, as well as number of changes in reporting system, it might be seen that this situation could have aggravating and confusing influence on creating of sustainable and coherent system of inventory of fulfillment of obligations of Montenegro within the process of negotiations with the EU in the area of chapters 23 - Justice and Fundamental Rights and 24 - Justice, Freedom and Security.

Meanwhile, the new model of reporting that started since March 2020 (covering the period June –December 2019) was organized through semi-annual contributions for the EU progress report that was consisted of contributions of each institution in their area of work. This also relates to area of the fight against corruption and institutions like Agency for prevention of Corruption are sending so called "Balance sheets" with the tabular overview of their activities in all spheres of their work or within certain particular issues that are demanded from the side of the EU Commission structures.

As for the latest developments, a new initiative for creation of a new Strategy for the Fight Against Corruption came from the Agency for Prevention of Corruption, in April 2022, when the Director of APC and the President of the Council of the Agency introduced the Minister in charge of anticorruption and the Prime Minister of the Government of Montenegro with the Draft Initiative for creation of the new Strategy. This initiative was accepted, and it has been developed since then within one ministry and the National Council for the Fight Against Corruption, since its creation and it was supported by several international partners at the level of expertise and financial contributions for realization of this expert assistance.

The initial plan was to develop and adopt a new national anti-corruption Strategy based on an overall system of corruption risks and gap assessments. As it was mentioned before, the main tasks of the National Council for the Fight Against Corruption became to: prepare the Strategy for the fight against corruption with accompanying action plans in cooperation with the Ministry of Justice; monitor the implementation of the Strategy; organize, synchronize, monitor the priorities, dynamics and deadlines for the implementation of activities carried out by state bodies, state administration bodies, local self-government bodies, local government bodies and other competent institutions and evaluate the results achieved in achieving the

Strategy's goals; and submit to the Government reports on the implemented activities with an assessment of the state of play and a proposal for further measures for a more successful implementation of the Strategy, at least twice a year.

2.2.2. LEGISLATIVE FRAMEWORK

Legislative framework for **prevention of corruption** in Montenegro consists of the Law on Prevention of Corruption, the Law on Financing of Political Entities and Election Campaigns and the Law on Lobbying. These three laws are the legal basis and framework for the functioning of the Agency for Prevention of Corruption.

The **Law on Prevention of Corruption** (Official Gazette of Montenegro, No. 53/14, 42/17 and 73/23) prescribes measures to prevent conflicts of public and private interest, regulates restrictions on the performance of public functions, submission of reports on income and assets of public officials, protection of persons who report threats to public interest that point to the existence of corruption, as well as other issues of importance for the prevention of corruption. According to this law, corruption is any abuse of official, business or social position or influence in order to gain personal benefit or benefit for another.

A public official, in the sense of this law, is an elected, nominated or appointed person in a state body, state administration body, judicial body, local self-government body, local government body, independent body, regulatory body, public institution, public company or other business company, i.e. legal entity that exercises public powers, i.e. activities of public interest or is state-owned, as well as a person whose election, nomination or appointment is approved by the government body, regardless of the permanence of the function and compensation. State ownership, in the sense of this law, is any participation in a business company in which the state or municipality, the Royal capital, i.e. the Capital has at least 33% of the capital.

The **Law on Financing of Political Entities and Election Campaigns** (Official Gazette of Montenegro, No. 3/20 and 38/20) regulates the method of acquiring and providing financial resources for the regular work and election campaign of political subjects, prohibitions and restrictions on the disposal of state property, funds and public powers during the campaign and control, supervision and audit of the financing and financial operations of political subjects in order to achieve the legality and publicity of their operations. Political subjects, in terms of this law, are: political parties, coalitions, groups of voters and candidates for the election of the President of Montenegro. A political party is an organization of citizens that is registered in the Register of political parties with the competent authority in accordance with the law governing the establishment and operation of political parties.

The **Law on Lobbying** (Official Gazette of Montenegro, No. 52/14) regulates the conditions and manner of carrying out lobbying activities, lobbying rules and other matters of importance for lobbying. According to the Article 2 of the Law, lobbying is an activity that exerts influence on the bodies of legislative and executive power at the state or local level, state administration bodies, independent bodies, regulatory bodies, public institutions, public companies and other legal entities that exercise public powers, that is, activities of public interest or are majority-owned by the state in the process of passing regulations and other general acts, within the competence of those authorities, in order to achieve the interests of the lobbying client, in accordance with the law.

When it comes to the repression of corruption, the **Law on the Special State Prosecutor's Office – SSPO** (Official Gazette of Montenegro, No. 10/15 and 53/16) regulates the organization

and jurisdiction of the Special State Prosecutor's Office, the conditions and procedure for the election of the chief special prosecutor and special prosecutors, and the relationship with other state bodies and state administration bodies, as well as other matters of importance for the work of the Special State Prosecutor's Office. As it was mentioned above, the SSPO is responsible, inter alia, for prosecuting the criminal offenses of high corruption (a. if the public official committed the following criminal acts: abuse of authority, fraud in the service, illegal influence, alluding to illegal influence, receiving a bribe, paying a bribe; b. if a financial benefit exceeding the amount of forty thousand euros was obtained by committing the following criminal acts: abuse of position in business operations, abuse of authority in the economy).

The **Law on seizure and confiscation of material benefit derived from criminal activity** (Official Gazette of Montenegro, No. 58/15 and 47/19) regulates the conditions for confiscation of property benefits acquired through criminal activity, the procedure for confiscation and other matters of importance for the confiscation of these property benefits, as well as the management of confiscated property benefits acquired through criminal activity and confiscated property benefits obtained through a criminal offense, criminal offense cases and cases temporarily confiscated in criminal and misdemeanor proceedings and property given as bail. According to the Article 4 of the Law, the procedure for confiscation of property benefits acquired through criminal activity can be conducted before, during and after the end of the criminal proceedings.

Confiscation of property benefit acquired through criminal activity is considered temporary seizure of that property benefit (temporary security measures and temporary confiscation of movable property) or permanent confiscation of that property benefit. The procedure for confiscation of property benefits acquired through criminal activity is carried out in accordance with this law and the Criminal Procedure Code. According to the Article 11 of this Law, by order of the state prosecutor, a financial investigation can be initiated if there is: 1) reasonable suspicion that the property benefit was acquired through criminal activity; and 2) grounds for suspicion that a criminal offense from art. 2, paragraph 1 of this law has been committed.

2.3. SOCIAL AND POLITICAL CONTEXT FOR PREVENTION OF CORRUPTION IN MONTENEGRO

Considering present social and political environment in which the APC is functioning, it would be necessary to remind that the 2020 parliamentary elections in Montenegro brought a significant political change in power structures, after 30 years of domination of DPS. A new majority was formed with 41 of 81 MPs from three main entities: the „Black on White” coalition (dominated by URA), the Democratic Montenegro and the „For the Future of Montenegro” coalition (led by the Democratic Front and SNP)⁵.

Following that, 42nd Government was established with expert members who were not party leaders and representatives, even though their expert positions were shadowed by close connections with ruling parties⁶.

In that moment, end of 2020 and beginning of 2021, there were strong expectations both from

⁵For a full list of parties, see CeMI's Final Report on the Civic Monitoring of Parliamentary and Local Elections 2020, available at: <https://cemi.org.me/storage/uploads/btFLFBp08MAWZr9fKUQbYQUjybYiFRQYqGjOntVA.pdf>

⁶ Except for the Prime Minister Krivokapic from the „For the Future of Montenegro” coalition and his deputy, Dritan Abazovic, president of URA.

international and internal positions that political change will also bring systemic change in terms of strengthening of institutions of the system and lowering of political influence and control over local and central institutions, especially those related to the rule of law..

However, the opposite occurred, and the ruling majority started to abuse institutional powers in various terms, including intentions to take control over institutions that have controlling nature and that should have strong independence in their work.

This situation of abusing institutional powers to the detriment of the principles of the rule of law was especially visible in the case of the Agency for Prevention of Corruption. Namely, instead to offer support for further strengthening of reforms that have been started in the period 2019-2020, the Government and the Parliament of Montenegro and representatives of the ruling parties have started several serious attacks on independence and autonomy of the work of the Agency for Prevention of Corruption.

Namely, there were number of situations where the Parliamentary majority 2020-2023 was organizing different kind of **pressures on APC** within the Committees and Plenary sessions. Similar to these practices, the 42nd Government of Montenegro also tried to undermine independence of the APC through several methods.

The first one was blocking of new employments in the APC according to new systematization, adopted by the Council of the APC in April 2021 and the second attempt was when the Ministry of Finance during 2021 and 2022 attempted to remove obligatory budget percentage for financing of the APC, which was stipulated within the Law on Prevention of Corruption (0,2% of the total national budget).⁷

However, these attempts to undermine independence of the Agency have not been successful and management and the Council of the APC maintained to impose reforms dedicated to strengthening the independency, professionalism and impartial position of the APC.

⁷ Please read more below, section „Relations with other institutions in Montenegro“

CHAPTER 3.**FOCUS ON ACTIVITIES OF THE AGENCY FOR PREVENTION OF CORRUPTION**

Since the opening of negotiations between Montenegro and the European Union in 2012, the Chapter 23 – Justice and Fundamental Rights became a center of interest and engagement of both interested parties. After longer preparatory activities, negotiations within Chapter 23 were officially opened on 18 December 2013 at the Intergovernmental Conference in Brussels.

As a finalized position of the European Union structures, the Common Negotiating Position included the 45 interim benchmarks, in total. This general number of benchmarks included 18 benchmarks from the area of justice, 14 benchmarks from the area of the fight against corruption and 11 benchmarks from the area of the fundamental rights. In addition, 1 benchmark was dedicated to the cooperation with non-governmental organizations and 1 remained as a general benchmark.

The majority of the total number of interim benchmarks is related to the improvement of the legal and institutional framework, in line with the European standards in areas covered by Chapter 23, while a smaller part of activities are focused on the establishment of initial track records in areas of significance.

Considering the prevention of corruption, out of 14 benchmarks from the area of the fight against corruption, **8 interim benchmarks** are directly related to the Agency for Prevention of Corruption and its activities.

In order to have clear overview of the achievements of the APC in the entire system of institutions related to the fight and prevention of corruption, it would be necessary to create an overview of all activities that have been recently performed by the Agency.

This analysis would be created through the detailed overview of performance of the Agency for Prevention of Corruption within the duties and obligations stemming out of the system of benchmarks for negotiations between the Montenegro and the European Union.

3.1.1. DEVELOPMENT OF STRATEGIC FRAMEWORK AGAINST CORRUPTION

Interim Benchmark 20 - Montenegro implements its national strategy for the fight against corruption and organized crime (2010 – 2014) and the Action Plan (2013 – 2014). It continuously monitors and assesses the impact of the various measures and proposes remedial action where needed.

3.1.1.1. STRATEGY FOR THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME

Strategy for the Fight against Corruption and Organized Crime was delivered in 2010. This document had been foreseen to last from 2010 to 2014 and it has been followed by accompanying Action plans, the first one from 2010-2012 and the second one from 2013-2014. This last Action plan for the negotiating chapter 23 - Judiciary and fundamental rights, which was adopted in 2013 was additionally revised in 2015. Meanwhile, this Strategy expired

at the end of 2014 and it was necessary to adopt new document of that kind, in order to continue monitoring activities in the areas of the fight against corruption, both in the sense of prevention and repression.

However, that time Government of Montenegro did not fulfill its obligation in the form of creation of the new **Strategy for the Fight against Corruption and Organized Crime** and opted for creation of new models and methodologies that were related to areas of work of institutions that are exposed to special risk and that were previously covered by the Strategy and the accompanying action plans.

3.1.1.2. OPERATING DOCUMENT FOR PREVENTION OF CORRUPTION IN THE AREAS EXPOSED TO SPECIAL RISK

Following that, instead of new strategic document, in 2016, the Government adopted the **Operating document for prevention of corruption in the areas exposed to special risk**. This document served as equivalent and as continuation of the *Strategy for the Fight against Corruption and Organized Crime 2010-2014* and following Action plans. This is how the continuity of the previous strategic framework in the field of fight against corruption at the national level was maintained, while the question of actual upgrading or degrading of this process remained open both for local and EU actors. Since the Operating document continued to monitor activities in the areas exposed to special risk which, until 2015, were covered by the Strategy and the accompanying action plans, it was defined that this document will cover following areas: Public Procurement, Privatization, Urban Planning, Education, Health Sector, Local Government and Police Sector.

This Operating document also included all unimplemented measures from the previous Action plans for the implementation of the Strategy 2010-2014. The implementation of the Operational Document was monitored continuously, and it became an annex to the Action Plan for Chapter 23 (AP23). The quality of implementation of the Operating document for prevention of corruption in the areas exposed to special risk became a subject of a semi-annual based reporting process, according to the same methodology as the implementation of Action Plan for Chapter 23. Since the adaptation of the Action Plan in February 2015, eight semi-annual reports have been adopted by the Government, which was 13 in total, since the beginning of reporting in 2013.

This model of covering of prevention of corruption in mentioned areas lasted for several years of the negotiation process between Montenegro and the EU. The last official semi-annual report on the implementation of the Operational Document for the Prevention of Corruption in the Particularly Vulnerable Areas referred to the period July-December 2018. This Report on the implementation of measures from AP 23 was carried out in continuity with methodology of previous AP implementation Reports, and that eight, the last report after adaptation of AP, was adopted in January 2019. During the reporting period July-December 2018, a total of 200 measures from the Action Plan were up for reporting, out of which 13 measures were implemented (7%), 158 measures were being implemented continuously (79%), 16 measures (8%) were partially implemented, and a total of 13 measures (6%) have not been implemented.

After January 2019, starting from the period January 2019 - June 2019, semi-annual reporting has been changed in terms of methodology of reporting. After the process of consultations between the Government of Montenegro and European Commission it was agreed that the Report is not being delivered in the form of reporting on the implementation of action plans but through providing the answers to the questionnaire sent by the EC to the Office

for European Integration. EU Integration Office provided answers to the EC questionnaire in August 2019.

Following that, in accordance with this previous agreement with the EC, and for the purpose of more focused reporting, Montenegro provided a report for the period July-December 2019 only for certain measures from the Action Plans for Chapters 23 and 24. This Report has been sent to the EC in February 2020 and in March 2020, after new round of consultations between European Commission representatives and Government of Montenegro, it has been agreed that there will be no longer reporting on action plans 23 and 24.

3.1.1.3. ACTION PLAN FOR ADDRESSING KEY PRIORITIES IN FULFILLMENT OF REMAINING INTERIM BENCHMARKS IN CHAPTERS 23 AND 24.

However, it is a fact that Action plans for Chapters 23 and 24 have not been updated since February 2015 and that there is no coherent system of inventory of fulfillment of obligations of Montenegro within the process of negotiations with the EU in the area of Chapters 23 - Justice and Fundamental Rights and 24 - Justice, Freedom and Security. Nonetheless, the Government of Montenegro in October 2022 has created a separate document called **Action Plan for Addressing of Key Priorities in Fulfillment of Remaining Interim Benchmarks in Chapters 23 and 24**.

This was an *ad hoc* document created upon receiving of priority areas for fulfillment in these two Chapters by the EU Commission and it was created as a kind of improvisation by the Government of Montenegro, with no previous mutual planning and consent from the side of European Union. The consequence of that was that no reports on implementation of this document were created from October 2022 until today, July 2023.

Having that in mind this kind of improvisation and relative confusion related to creation of strategic document and their updating, as well as number of changes in reporting system, it might be seen that this situation could have aggravating and confusing influence on creating of sustainable and coherent system of inventory of fulfillment of obligations of Montenegro within the process of negotiations with the EU in the area of chapters 23 - Justice and Fundamental Rights and 24 - Justice, Freedom and Security.

Meanwhile, the new model of reporting that started since March 2020 (covering the period June –December 2019) was organized through semi-annual contributions for the EU progress report that were consisted of contributions of each institution in their area of work. This also relates to area of the fight against corruption and institutions like Agency for prevention of Corruption are sending so called “Balance sheets” with the tabular overview of their activities in all spheres of their work or within certain particular issues that are demanded from the side of the EU Commission structures.

Meanwhile, a new initiative for the creation of a new Strategy for the Fight Against Corruption came from the Agency for Prevention of Corruption. Namely, two representatives of civil sector in the Council of the Agency for Prevention of Corruption, coming from the European Movement in Montenegro EMIM and Center for Monitoring CEMI have created proposal to re-start institutional initiative to create new Strategy on the Fight Against Corruption.

This initiative was transformed in to the first Draft of the Strategy and it has been officially passed from the APC to the Government of Montenegro in April 2022, when the Director of APC and the President of the Council of the Agency introduced the Minister in charge

of anticorruption and the Prime Minister of the Government of Montenegro with the Draft Initiative for creation of the new Strategy. This initiative was accepted and it has been developed since then within one ministry and the National Council for the Fight Against Corruption, since its creation and it was supported by several international partners at the level of expertise and financial contributions for realization of this expert assistance.

The initial plan was to develop and adopt a new national anti-corruption Strategy based on an overall system of corruption risks and gap assessments. As it was mentioned before, the main tasks of the National Council for the Fight Against Corruption became to: prepare the Strategy for the fight against corruption with accompanying action plans in cooperation with the Ministry of Justice; monitor the implementation of the Strategy; organize, synchronize, monitor the priorities, dynamics and deadlines for the implementation of activities carried out by state bodies, state administration bodies, local self-government bodies, local government bodies and other competent institutions and evaluate the results achieved in achieving the Strategy's goals; and submit to the Government reports on the implemented activities with an assessment of the state of play and a proposal for further measures for a more successful implementation of the Strategy, at least twice a year.

In this moment, July 2023, the new Strategy for the Fight Against Corruption is still being drafted from the side of the team of the Ministry in charge and no draft version has been presented to the public neither to the other officials from the National Council for the Fight Against Corruption. However, as informed by the Ministry representatives, it could be expected that the first Draft will be presented to the public during the autumn 2023, by the UNDP external experts who were engaged to assist in its creation.

3.1.2. ANTI-CORRUPTION AGENCY

Interim benchmark 21 - Montenegro establishes a new Anti-Corruption Agency with a clearly defined mandate and effective powers. This agency should demonstrate a pro-active attitude, enjoy the necessary independence, sufficient resources, including as regards merit-based recruitment and well - trained staff and be well connected to other relevant authorities (and their databases). Montenegro ensures that the nomination of the head of the Anti-Corruption Agency is conducted in a transparent manner, on the basis of merit and objective criteria, including professional skills.

In order to fulfill this request related to the system of prevention of the corruption, in Montenegro, the Anti-Corruption Agency (ACA) was established on 1 January 2016, with a relatively clearly defined mandate and effective competencies.

This formulation about relatively clearly defined mandate is mostly related to questions, doubts and limitations in the work of the Agency that came out of implementation of three Laws that are defining its competencies within the period 2016 -2022.

However, in January 2016, the Agency for Prevention of Corruption was established as an independent and autonomous body, according to the Law on Prevention of Corruption that was previously voted by the Parliament of Montenegro.

Beside this originating Law, the other two laws, the Law on Financing of Political Entities and Election Campaigns and the Law on Lobbying are creating a general legal framework for the functioning and decision making of the Agency for Prevention of Corruption of Montenegro.

3.1.2.1. ORGANIZATIONAL STRUCTURE

According to the Law on Prevention of Corruption, the supervisory function over the work of the Agency is performed by the Council of the Agency. Inter alia, Council is in charge of appointment and dismissal of the Director of the Agency, adopting of the budget, working plans, annual reports, systematization plans, rules for Integrity plans and other strategic documents of the APC. The Council has five members in total that are elected by the Parliament.

The last Council had been elected in 2019 and the Parliament of Montenegro failed to respect legal procedure and to start the procedure for election of the new Council within legal time framework.

Namely, the Parliament had a legal obligation to start legal procedure of selection and appointment of the new Council composition from 2023 to 2027. Even though the President of the present Council 2019-2023 was warning representatives and leadership of the Parliament of Montenegro and the Anticorruption Committee on this fact and their legal obligation.

However, this institution and their representatives failed to fulfill it. This is why the current situation in August 2023 is that the Agency for Prevention of Corruption has no Council in charge due to expiration of the mandate of the previous Council 2019 -2023. Meanwhile, during that period of four years, the Council was headed by a representative of the non-governmental sector, representative of European Movement in Montenegro EMIM.

Since the election of the new composition of the APC Council, in July 2019, significant reform efforts have been started in order to improve the operation of the APC, in accordance with recommendations and findings of the EC Annual Progress Report, GRECO, other international partners and relevant CSOs.

The Council has faced negative legacy of the work of the management of APC within the period 2016-2019, with constant questioning of independence and impartiality of the APC. In addition, this was followed by a very negative image of the institution in general and strong resistance of the management of the institution towards new reform initiatives.

This situation resulted with a **change of the management of the institution** at the beginning of 2020. The assessment of the Council was that radical reform change should take place in terms of the process of selection of the new Director and quality of selected candidates. For that purpose Council of the APC had organized even public interviews with candidates, directly transmitted through YouTube video channels, accessible to media and general public, which was the first time among Montenegrin institutions.

However, within the first four public calls for the appointment of the director of the APC, the Council members have not been satisfied with the quality of candidates and the Council was persistent to repeat public calls in order to encourage quality candidates to apply and to reject any kind of speculations about eventual political appointment.

This strong determination of the APC Council to select professional candidates with strong integrity track-record brought visible results only in July 2020, when, following five public announcements, respecting full transparency of the process⁸, the Council of APC selected

⁸ The Council organized public interviews for the candidates, which was the first time to have such transparent process within Montenegrin institutions.

the new director of APC, with the “full respect for the merit - based approach, respecting the knowledge, experience, professional skills, abilities and integrity of applicants, in order to provide for transparent and lawful functioning of the APC”⁹.

3.1.2.2. COMPETENCIES AND HUMAN RESOURCES OF THE AGENCY FOR PREVENTION OF CORRUPTION

According to the Law on Prevention of Corruption, the Agency performs tasks of preventing conflicts of public and private interest, restrictions in performing public functions, verifying reports on income and property of public officials, acting on whistleblower reports, protecting whistleblowers, and other tasks stipulated by the law

At the beginning of the functioning of the Agency, only 55 members of the staff were selected, which was not the number that could have been satisfactory in terms of the quantity and quality of the work stemming out of the legal obligations of the APC. That was the reason for the new management to propose a new systematization that was adopted by the Council of the APC in April 2021. Unfortunately, this request, to have additional 20 employees, 75 in total, was blocked by the Ministry of Finance of the Government of Montenegro since then until October 2022.

According to the interviews¹⁰ with the President of Council of APC and Director of APC, this was only one of the models of pressure and blocking of functioning of the APC by 42nd Government of Montenegro. According to same sources, that Government also tried to undermine independence of the APC through removal of the obligatory budget percentage for financing of the APC, which was stipulated within the Law on Prevention of Corruption (0,2% of the total national budget). However, that attempt to undermine the independence of the Agency was not successful and in addition, new Minister of Finance approved the request of the APC for additional employments. In addition, a new systematization was adopted in June 2023, additionally matching resources with activities of the APC.

Today, in July 2023, the Agency has 63 employees and employment of 7 others is in the pipeline. According to the leadership of the APC, it is expected that until the end of 2023 all 75 employees will be in place and fully functional. Related to the procedure of strengthening of capacities of the APC, recommendation of GRECO (as well as of the EU), are that all employments should be conducted through “ensuring independent merit-based recruitment procedures providing for integrity testing of new staff, and to ensure that the number of permanent staff of the ASK is increased to a level that is in accordance with its rules and foreseen workload”¹¹. Considering other forms of the capacity building of the Agency, it has been raised and improved through different capacity building activities, financed by the APC itself and/or international partners, as well through different technical assistance programs.

During the previous period, through the establishment and development of the Agency’s IT system, the control of regular reporting of the political entities and authorities was significantly improved. The Agency now has access to real-time **databases** of Tax authorities, Central Bank (register of incomes and loans of public officials) and Cadaster of Montenegro.

⁹ Interview with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović, July 2023

¹⁰ Interviews with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović and the Director of the APC, Ms Jelena Perović, July 2023

¹¹ GrecoEval5Rep(2022)2, Preventing corruption and promoting integrity in central governments (top exec. functions) and law enforcement agencies, Page 17

The Agency also has direct access to various external databases such as the population register, the vehicle register, the weapons register, register of sanctions (criminal sanctions and fines), the ownership structure of the register of legal entities, and the register of shares and securities. Although electronic access is enabled, the Agency may not store information on its devices and may not access historical information in external databases..

3.1.2.3. CHALLENGES WITH IT SYSTEM

All data from the beginning of the Agency's work (1 January 2016) have been incorporated into its IT system.

However, **IT system of the APC** and data handling were not efficient as demanded by contemporary needs and standards and "became outdated and dysfunctional in many aspects"¹².

Those were the reasons why management, during 2022 and 2023, started a series of activities on introducing new IT solutions, which will decrease costs, provide additional security and increase efficiency in the work of the APC. In the period from January to mid-June 2023, the APC developed new software solutions that will significantly automate the work and increase efficiency of implementation of measures to control the financing of political subjects and election campaigns.

It is also planned to introduce new IT reforms in the system for assets declaration and prevention of conflict of interest and according to management, this entire IT system will be in place until the end of 2024.

As announced by APC management, the new IT software will finally establish the system of electronic **red flags**, in order to improve control of public officials, public institutions and political entities.

Such a system of red flags will eliminate or significantly reduce any kind of eventual individual influence on the system of control of political parties, institutions, conflict of interest and assets declaration.

In addition to these technical changes, the APC has introduced other reforms in cooperation with international partners, where most of the expert assistance was focused on improving the work and legal framework for the APC.

The first analysis of the work of the APC during 2020 and 2021 was provided by the experts of the World Bank, who analyzed the system of work and function of the APC, providing advice and recommendations for improvement of internal procedures and processes of work.

3.1.2.4. ASSESSMENT OF THE APC'S WORK BY INTERNATIONAL ORGANIZATIONS AND COOPERATION WITH INTERNATIONAL AND MONTENEGRIN CSOS

Analysis continued through expertise of the European Commission and the Delegation of the European Commission in Montenegro who have introduced one of the most important

¹² Interviews with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović and the Director of the APC, Ms Jelena Perović, July 2023

evaluations of the work of the APC in April 2021, within the "Peer Review Mission on Functioning of the Anti-Corruption Agency of Montenegro". This Peer review report provided for 75 recommendations for the improvement of the function of the APC, where 29 recommendations were addressed to the Agency itself, and 46 are mostly related to legal changes that could have been provided by the Parliament and Government of Montenegro.

According to the APC report, until July 2023, all 29 Peer Review recommendations for the APC itself were adopted and implemented, while all other 46 addressed to the Government and Parliament of Montenegro and mostly related to the change of the legal framework, have not been realized yet.

Also, within the EU and Council of Europe Horizontal Facility for the Western Balkans and Turkey " I, II and III, during the period 2021 -2023, three in-depth analyses of the legal framework related to the work of the APC have been delivered. Those were, "Analysis of the parts of the Law on Prevention of Corruption which regulate the setup and functioning of the Agency for Prevention of Corruption", "Analysis of the parts of the Law on Prevention of Corruption which regulate conflict of interest, restrictions in the exercise of public functions (incompatibilities of functions), assets declarations, gifts, donations and sponsorships" and "A Review of the Legislative Framework of Montenegro on Whistleblower Protection ", from March 2023.

The Council of Europe also provided the APC with the necessary expertise for creation of the Communication Strategy 2023 - 2025, and it is still supporting the Agency in implementation of that strategy. Communication Strategy of the APC was also subject of analysis of local CSOs like Centre for Monitoring and Research (CEMI), which introduced advice on corrections of the Strategy, as well as on annually and quarterly reporting patterns, contributing to improvement of entire system of reporting and communication, both internally, within the APC system and externally, between the APC and other stakeholders.

In parallel, the Embassy of the United States of America in Montenegro and the INL office have supported the APC through providing of technical equipment and covering of the costs of introducing of the ISO 9001 standard in the work of the APC. This standard was officially introduced in February 2023.

The UNDP office in Montenegro was providing the experts for creation of the Strategic plan for the Agency 2022-2024, as well as for the following Action plans. The UNDP office in Montenegro also provided for creation of the video for promotion of protection of whistleblowers, as well as for longer video with instructions for fulfilling of the assets declaration form for the public officials. Additionally, CeMI in cooperation with the APC prepared shorter video with the same purpose supported by IFES.

During the 2022, UNDP also provided expertise for the improvement of the Methodology for assessing the risk of corruption in regulations in Montenegro with the aim of determining risk areas from the occurrence of corruption, especially the part of the Methodology that refers to the list of risks.

The aim of these efforts was to provide for an easier and more objective identification of future regulations that would be the subject of the Agency's analysis. UNDP also provided expert assistance to the APC in creation and implementation of the Methodology for the assessment of anti-corruption instruments in the systems of state administration and social and child protection, as well as Methodology for assessing the application of anti-corruption

measures - Judicial system, with the aim of improving the content and effects of integrity plans of judicial bodies

Considering cooperation with the **Regional Anti-corruption Initiative (RAI)**, the **APC** is a beneficiary of the three-year project on whistleblowers “Breaking the silence: strengthening policies and culture for whistleblower reports in the Western Balkans and Moldova”. Also, the APC and RAI are implementing the project “Southeastern Europe - Together against corruption”, which includes support in the areas of integrity plans (Corruption risk assessment - CRA) and giving opinions on regulations (Corruption proofing of legislation - CPL). After finalizing of the mapping of the two most sensitive sectors to corruption - the higher education sector and the public enterprise sector, CPL and CRA guidelines with checklists for the mentioned two sectors were developed, which were presented to the relevant Montenegrin institutions.

Finally, the APC is actively involved in promotion of the International Data Exchange Agreement for the purpose of verifying asset reports (signed by Montenegro, Serbia and North Macedonia), which was initiated by RAI. For that purpose, the APC has organized a regional meeting in Podgorica, in 2022, which was dedicated to further steps regarding the implementation of the Agreement, which aims to more thoroughly and comprehensively verify the assets of public officials in the region of the Western Balkans.

OECD was also closely cooperating with the Agency during creation of the “SEE Competitiveness Outlook 2021” and this international structure was also bringing some positive remarks about the performance of the APC. OECD conclusion was that “largely due to support and monitoring by the Agency for Prevention of Corruption, the system for corruption risk assessment and elaboration of integrity plans in public authorities has a strong potential for streamlining integrity standards and practices throughout the public sector.”

The appointment of new leadership of the APC provides a renewed opportunity to focus on strategic public communication and robust application of legal norms in order to mitigate concerns about the lack of effectiveness and independence of the Agency.

Similar to OECD, the GRECO Fifth Evaluation Report¹³, from October 2022 also stipulates improvements in the work of the Agency, where GRECO experts “noted that in the recent years, in particular since the election of the new Director of the ASK in December 2020, the independence of this body appears stronger, not least vis-à-vis the executive power. Furthermore, under the leadership of its current Director, the ASK has begun to demonstrate a more proactive approach, especially in stepping up its communication and outreach activities towards the general public. This has been acknowledged by other international actors, including by the EU delegation in Montenegro. The GET is pleased to note that the functioning of the ASK appears to go in a direction towards more independence, efficiency and with a more pro-active approach.”

However, GRECO underlined that further efforts are needed in order to maintain “full operational independence” of the APC, as well as that the administrative capacities of the Agency for Prevention of Corruption should be “further strengthened by ensuring independent merit-based recruitment procedures providing for integrity testing of new staff, and to ensure that the number of permanent staff of the ASK is increased to a level that is in accordance with its rules and foreseen workload”.

¹³ GrecoEval5Rep(2022)2, Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies

These conclusions of GRECO are particularly important due to the complicated set of relations between the APC on one side and other institutions, especially Parliament and the Government, on the other side.

3.1.2.5. COOPERATION OF APC WITH OTHER STATE INSTITUTIONS

Regarding relations between the APC and other institutions, the most important connections are those with the Government, Parliament, judiciary and prosecutors' offices on all levels.

3.1.2.5.1. THE APC AND THE GOVERNMENT AND THE PARLIAMENT OF MONTENEGRO

Even though regular institutional cooperation and mutual support of institutional efforts in the fight and prevention of corruption should be a constant in relations between the APC and the Parliament and the Government of Montenegro, there were number of situations where the Parliamentary majority 2020-2023 was organizing different kind of **pressures on APC** within the Committees and Plenary sessions¹⁴.

For example, in contrary to legislation, majority in the Parliament and in the Anticorruption Committee were voting several times on the Annual Report of the APC, even though they were warned by the APC that no voting on these reports is allowed, according to the Law, in order to strengthen independent position of the APC.

Similar to these practices, the 42nd Government of Montenegro also tried to undermine independence of the APC through several methods. The first one was blocking new employments in the APC according to new systematization, adopted by the Council of the APC in April 2021. This initiate for capacity building of the APC, to have additional 20 employees, 75 in total, was blocked by the Ministry of Finance of the Government of Montenegro since then until October 2022.

The second attempt was also performed through the Ministry of Finance during 2021 and 2022, with the attempt of removal of the obligatory budget percentage for financing of the APC, which was stipulated within the Law on Prevention of Corruption (0,2% of the total national budget). However, these attempts to undermine the independence of the Agency have not been successful, and the APC was regularly financed throughout the years, maintaining its independency through independent financial position.

According to the overview of the budget of the Agency for the last 5 years, the percentage of spending was always high and in correspondence with development and reforms of the APC.

The total budget of the Agency for 2019 amounted to 1,493,710.29 EUR, while total spending were 1,340,327.61 EUR, creating the percentage of execution at 89.73 %. The budget of the Agency for 2020 was rounded on 1.537.308,00 EUR, with lower rate of spending (due to COVID Pandemics), amounted to 1.270.622,03 EUR, with lowest percentage of execution at only 82,65 %. The budget of the Agency for 2021 amounted to 1.408.936,53 EUR, with 1.275.715.73 EUR of spending, with the percentage of execution at 90,54 %. Finally, the budget of the APC

¹⁴ In each case, they voted negative and next to this illegal voting, they have been sending out strong partisan messages against the work of the APC:

for 2022 was amounted to 1.809.298,00 EUR and 1.507.360,53 EUR have been spent, with the percentage of execution at 83,31 %. The reason for this latest fall of the percentage was a sudden increase of the total national budget for 2022, as well as legal limitations of spending related to electoral rules, which were in force almost throughout the entire 2022.

3.1.2.5.2. THE APC AND JUDICIARY

However, there are still many direct and indirect obstacles in this cooperation. These obstacles are stem out from lack of legal harmonization between different laws, lack of communication between institutions and lack of coordination mechanisms between them.

As one of the most visible examples of this situation, one of the most significant problems in relations between the APC and judiciary came because of a disharmony between the Law on Prevention of Corruption and the Misdemeanor Law. The inconsistency between these two laws reflects on general impacts of the efforts of the APC in prevention of corruption, since the system of punishment through the fines cannot be implemented efficiently because of discrepancy of the level of fines in these two Laws.

Such condition results with the low level of fines individually and in total on annual level, while the amounts that are suggested in decisions on initiation of misdemeanor procedures by the APC are significantly higher.

More precisely, the general disharmony between the Law on Prevention of Corruption and the Misdemeanor Law lies in the fact that the fines prescribed by the Law on Prevention of Corruption are significantly higher, but the cases are being adjudicated in accordance with the Misdemeanor Law, where fines are significantly lower, if any.

On the other side, there is a significant lack of communication and coordination between the APC and higher level of judiciary. There is no coordination group or working group for resolving systemic and/or individual problems and the regular channel for communication is missing as well. According to the President of the Council of the APC¹⁵, the Council of the APC has sent an initiative to the Head of the Supreme Court in November 2019, with the intention to create a joint working group for overcoming of obstacles in mutual communication and cooperation, but also to jointly address eventual systemic changes in relation of harmonization of laws.

However, according to the APC sources, there was no response of any kind from the side of the Supreme Court officials and in spite of repeated initiative in 2022, there was no progress in this area of institutional cooperation in the fight against corruption.

Still, the essential need for improvement of communication and cooperation between judiciary and the APC remains and further concrete steps in this meter should become a part of future institutional initiatives, but also, a goal for reaching of internationally recognized benchmarks. Regarding the regular and contemporary cooperation with judiciary, the trend is positive and it has been increased during the 2022, when the APC submitted a total of 1,556 requests to initiate misdemeanor proceedings to the competent misdemeanor courts for violations of anti-corruption laws. This figure was 34% higher in comparison to 2021 and significantly more compared to previous annual levels of operation.

¹⁵ Interview with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović, July 2023

This was primarily generated by the large number of misdemeanor proceedings initiated in the area of income and property verification, but also by a significant increase in the number of proceedings initiated due to violations of the Law on Financing of Political Entities and Election Campaigns, due to a high number of electoral cycles and prolonged time for campaign. Sanctions were imposed in 92.6% of completed cases, and the total amount of fines amounted to €103,590.

This increase of the number of cases also continued during the first half of 2023, since the Agency submitted a total of 1,482 requests for initiation of misdemeanor proceedings to the competent misdemeanor courts. The reasons were related to violations of two crucial anti-corruption laws: 1,312 due to violations of the Law on Prevention of Corruption and 170 due to violation of the Law on Financing of Political Entities and Election Campaigns. Out of that number, a total of 754 procedures were completed in front of the Misdemeanor Courts, including procedures based on requests from previous years. .

Court procedures ended up with sanctions in 86.2%, where the majority ended up with warnings in 406 cases, while in 244 cases fines have been imposed. These fines in total amounted to €53,880.

The inconsistency between the number of cases and low amount of fines is a consequence of general disharmony between the Law on Prevention of Corruption and the Misdemeanor Law, where fines in the LPC are significantly higher, but the cases are being adjudicated in accordance with the Misdemeanor Law, where fines are significantly lower, if any.

According to the Report of the Working Group of the APC¹⁶ which has been created at the initiative of the member of the Council of the APC from civil society, coming from CEMI, this discrepancy is radical and produces the consequences in reducing of the level of discipline among public officials and general respect of the Law on Prevention of Corruption.

For example, fines ranging from 500 to 2,000 euro are provided for offenses under the Law on Prevention of Corruption, while the range of imposed fines in practice is ranged from 30 to 1000 euro. However, this higher amount is being imposed in a very small number of cases, while in most cases the courts impose fines in the amount of 150 to 300 euro.

Finally, in practice, the evident from the survey of the same Working Group confirms the fact that in over 95% of cases of the fines prescribed by the APC, a smaller amount than that prescribed by the Law on Prevention of Corruption is imposed on those public officials who were breaking the Law.

3.1.2.5.3. THE APC AND STATE PROSECUTOR OFFICE

Regarding the **cooperation between the APC and the public prosecutors' offices** on all levels, in some cases, difficulties in communication and cooperation could be found, similar to situation with the judiciary. Namely, according to the 1st and 2nd paragraph of the Article 57 of the Law on Prevention of Corruption, in case when during the acting of the APC a suspect is found that a possible criminal offense is committed which is prosecuted ex officio through the threats to public interest, the APC is obliged to submit an application to a public prosecutor in charge, without delay, with all gathered evidence.

¹⁶ Report of the Working Group on collecting data on offenses and imposed sanctions in the period 1 January 2016 – 30 June 2021

However, paragraph 3 of the Article 57 stipulates that the competent authority shall inform the APC about the outcome of the proceedings.

According to the leadership of the APC¹⁷, this legal situation in reality is creating problems for functioning of the APC, since there is no regular communication between two institutions regarding the cases that are submitted to the public prosecutors by the APC under the suspense of committed criminal offense.

This situation is even more problematic when it comes to dozens of cases that have been submitted to the Special State Public Prosecutor Office. Namely, as confirmed by the APC representatives, since May 2021 until July 2023, dozens of cases that have been submitted to the Special State Prosecutor have not been finalized yet, and the feedback to the APC came only in cases when the APC requested information, which was limited to basic information that the case is still in the process of investigation.

Because of this situation, the APC initiated consultations with the Acting Supreme State Prosecutor. The meeting was held in July 2023, and it was agreed that SSP will intervene in order to facilitate communication between the APC and the Special State Prosecutor Office and that new options for cooperation will be further considered. From the side of the APC a concrete proposal was delivered that the APC can offer services of the direct link to different databases to which SPOs still do not have direct access. This exchange of data between APC and SPOs might speed up criminal investigation and make outcomes of proceedings more efficient.

Having previously findings in mind, it would be recommendable to create new models and methods for communication and cooperation between the APC and public prosecution structures on all levels, whether in the form of legal changes or in the form of upgrading of inter-institutional cooperation.

3.1.2.6. THE APC'S OPINIONS RELATED TO THE PREVENTION OF CORRUPTION.

In terms of **strengthening of the position of the APC within entire institutional system** of Montenegro and within the framework for the fight against corruption, since the end of 2020, the APC is using some new methods that could be seen as pro-active use of legal and institutional opportunities.

This is mostly related to the newly established system of issuing of different kind of opinions related to the prevention of corruption.

In those terms, there are **three types of opinions** that could be seen as crucial in for creation of pro-active role of the APC in the system of the fight against corruption and institutional system in general.

The first and the most common type of opinion is the one related to the APC mandated to render preventive **opinions on specific situations** referred to it by public institutions to prevent situations of conflicts of interest or other integrity related issues. Usually, institutions or individuals are submitting request for opinion on their position and work, in order to avoid potential conflict of interest.¹⁸

¹⁷ Interview with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović, July 2023

¹⁸ For example, In 2021, the APC was requested by the Clinical Centre of Montenegro to provide an opinion on whether the Minister of Health could perform secondary activities in the medical field in public medical practice.

The second type of opinions are **non-binding opinions** on issues such as threats to the public interest and the existence of corruption. These opinions could be initiated ex officio or at the request of an authority, company, legal entity, entrepreneur or natural person. In the case of these opinions, the APC assesses the compliance of actions with the anti-corruption legislation.

Finally, the third type of opinions and the most influential from the point of social and institutional impact are **opinions on the draft legislation**, *ex-officio* or upon request from any entities, including the Government or Parliament. This practice of providing opinions started more intensively during 2021, when the APC issued ten opinions on pieces of legislation in the field of anticorruption, more than during three previous years.

This trend continued during 2022, when the APC issued 30 opinions, where 9 of these were related to systemic laws like the Opinion on the Law on Civil Servants and State Employees, Opinion on the Law on Health Care; Opinion on the Law on Montenegrin Citizenship, Opinion on the Law on Free Access to Information; Opinion on the Law on employment mediation and rights during unemployment and the Employment Agency Statute (2 regulations); Opinion on the Draft Law on Amendments to the Law on Local Self-Government and Amendments; Opinion on the Draft Law on the Government of Montenegro.

During the first half of 2023, an additional five opinions are finalized, while five more are in the process of finalization. The finalized opinions include: Opinion on the Law on Salaries of Employees in the Public Sector; Opinion on the Law on Public Procurement, with special reference to the latest amendments; Initiative to the Parliament of Montenegro on the need to harmonize the Law on the Financing of Political Entities and Election Campaigns with the Law on Misdemeanors, the Law on Labor and the Law on the Election of Councilors and Members of Parliament. Opinion on the Draft Law on Amendments to the Law on Electronic Communications; Opinion on provisions relevant to the election of the President of the Supreme Court of Montenegro

As an example of the social and institutional impact that have been delivered through the creation of opinions of the APC, we would like to underline two: Opinion on provisions relevant to the election of the President of the Supreme Court of Montenegro

In the case of Opinion on provisions relevant to the election of the President of the Supreme Court of Montenegro, the APC was questioning both the procedures within the Supreme Court, right of the appellant to appeal about the related procedure and documents, as well as the right of the Administrative Court to decide on the subject. In all cases the Judicial Council accepted the arguments of the APC and the judge of the Supreme Court who applied for the status of the candidate for the Head of the Supreme Court did not pass further procedures and the new Public Call was announced by the Judicial Council.

In the case of the Opinion on the Decision on the National Council for the fight against high-level corruption, that opinion was motivated by previous activities of the Government of Montenegro that came under the radar of local and international stakeholders. Namely, in February 2021, a five-member National Council for Fight Against High-level Corruption was set up. However, this process was not transparent and an insufficient level of information on the work and role of this Council was available to general public and local and international stakeholders.

The most problematic part of this operation was related to the visible possible interference of the Council in the work of other institutions. This was confirmed through the Opinion on the

Decision on the National Council for the fight against high-level corruption, issued by the APC in April 2021, where clear evident and conclusion have revealed that this Decision may lead to potential risk of endangering the public interest. As stipulated in the Opinion, endangering of public interest was recognized due to insufficient precision of the articles of the Decision, the lack of transparency and wide discretionary powers in certain procedures, which could have created a space for various abuses. This potential abuse was also recognized by international partners.¹⁹

This Opinion had a significant impact on the functioning of the National Council for Fight Against High-level Corruption, which soon ceased to exist, and it has been replaced by the new National Council for the Fight Against Corruption in autumn of 2022.

Previously, this new Council was created on the basis of the new proposal of the Decision that was created by the APC and delivered to the Prime Minister in July 2022²⁰.

As the impact of the opinions of the APC was growing, the need for improvement of the methodology for their creation also became a necessity for the APC structures. This was the reason why the APC, in cooperation with UNDP, intensified the work on the improvement of the Methodology for assessing the risk of corruption in regulations in Montenegro with the aim of determining risk areas from the occurrence of corruption.

This was especially related to the part of the Methodology that refers to the list of risks, all with the aim of easier and more objective identification of future regulations that would be the subject of the Agency's analysis. As a result of these efforts, from November 2022, in the implementation of the anti-corruption assessment of the laws, the APC is primarily using this innovative methodology for the analysis of regulations and creation of opinions.

3.1.2.7. COMMUNICATION AND AWARENESS RAISING

Considering the issue of communication and awareness raising components of the activities of the APC, it should be notified that this institution was significantly suffering from lack of capacities and activities for more sustainable and effective impact on general public and specific target groups. This was especially visible in the period 2016-2020, when this negative situation was followed with a number of questionable decisions in terms of the merit of the work of the APC.

These decisions, their negative reflection and overall lack of serious and sustainable strategy and efforts in the field of communication and awareness raising, created a seriously negative image of the APC among general public and local and international target groups. The APC was a closed structure with a low level of transparency and efficiency in communication with CSOs, media and institutional and international partners.

However, since the arrival of the new Council in 2019 and the new management of the Agency in 2020, numbers of new and recognizable efforts have been introduced in the field of communication with the public and target groups, as well as regarding awareness raising in relation to the APC competence.

The most important reform step in this area was cooperation with the Council of Europe in

¹⁹ GrecoEval5Rep(2022)2, page 13, "GRECO recommends that clear role and missions be assigned to the National Council for Fighting Corruption so as to ensure the consistency of the overall strategy for preventing and fighting corruption"

²⁰ Interview with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović, July 2023

providing the APC with the necessary expertise for creation of the Communication Strategy 2023-2025. The Council of Europe is still supporting the Agency in implementation of this Strategy, which became a backbone of the APC efforts to improve their image among the general public and specific target groups.

Beside these strategic efforts, in addition, number of smaller scale cooperation with international partners was introduced, in order to fill in the gaps in specific communication areas. For example, the UNDP office in Montenegro provided for creation of the video for promotion of protection of whistleblowers, as well as for longer video with instructions for fulfilling of the assets declaration form for the public officials. These two promotional videos were significant for promotion of both areas of the work of the APC and for practical assistance to users of the APC services.

*In addition to these efforts, upon recommendation of the members of the Council of the APC coming from civil society, **CEMI and EMIM**, the Agency created the “Day of Open Doors”, a specially designed model for cooperation with civil society organizations during electoral campaigns.*

Each week CSOs are free to come to APC premises and exchange their views, information, filing complaints and other kinds of reports, with the APC personnel. Very often ideas and advice of CSOs have been adopted by APC and they are becoming an integral part of their practice for monitoring of elections in Montenegro²¹. Other ways of cooperation with CSOs are mostly related to different projects, financed by international or local donors and implemented by CSOs, where the APC acts as a partner or beneficiary of these projects.

Besides that, the APC has improved cooperation with the general public through line of other pro-active models of communication. For example, as an integral part of the Control and Supervision Plan for the Election Campaigns for the elections held on 30 August 2020, serial of local elections during 2022, presidential elections in April 2023 and finally parliamentary elections in June 2023, the PR Action Plans of the APC during the campaigns were developed. This practice resulted in a significant increase of visibility of some of the APC activities during the aforementioned election campaigns periods.

In addition to abovementioned activities, the APC introduced serial of new practices for different target groups, like a “Breakfast with APC”, where the APC Annual Reports were presented at the special presentations in more details to international partners, diplomatic core and local and international media in Montenegro.

In terms of outreach towards specific target groups like central and local institutions and specific education programs, the APC has continuous activities according to Annual Programs of Work and extraordinary activities. Education programs are delivered through specialized seminars for public officials and employees regarding their personal and institutional obligations (assets declarations, reporting during elections...).

During 2022, the Agency intensified implementation of educational activities on various topics within its own competence. According to the Annual Report from 2022²², independently and in cooperation with other institutions the APC organized as many as 29 trainings of these trainings, with 369 participants, which was the highest number of trainings since the

²¹ Interviews with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović and the Director of the APC, Ms Jelena Perović, July 2023

²² The Annual Report on the Work of the APC for 2022

establishment of this institution.

At the first half of 2023, 5 trainings were organized for central and local authorities and their employees about their legal obligations related to the work of the APC. At the same time, during first half of 2022, employees of the APC participated in 22 trainings and education programs for internal capacity building of the APC departments.

Meanwhile, the APC continued to improve its work in the field of public relations. According to media analysis for 2022, more than a thousand positively intoned announcements were recorded, more than the total for two previous years. In the same time the number of positive media reports exceeded by two and a half times the number of negative announcements.

However, there are still many interpretations based on lack of information among specific target groups and general public about the role, authorities, legal framework and mission of the Agency for Prevention of Corruption in Montenegro. The APC should continue to strengthen its efforts in communication sphere, in order to decrease level of misinterpretation, labeling and accusations from different social factors that are coming out from the lack of knowledge about the mandate, role and legal authority of the Agency.

Positive tendencies regarding public image of the APC could be also found in the results of the public opinion survey "Public attitudes on corruption and familiarity with the work of the APC", which was conducted during 2022, for the needs of the APC by Agency Defacto Consultancy.

According to that survey, the APC is the leader among institutions in terms of confidence of citizens for eventual reporting of corruption. Cumulatively, 63.5% of respondents answered that they have confidence in the work of the APC, while 68.5% of respondents answered that the Agency contributed to the overall fight against corruption.

Regarding the **quality in work of the APC** during the period of implementation of reforms 2020-2023, a higher level of quality of **decisions** has been confirmed within the processes before the Administrative Court. According to the results of the proceedings that have been started in front of the Administrative Court during 2022 by public officials, the work of the APC was confirmed in a high percentage of the cases. Out of 48 judgments in proceedings on lawsuits against the Agency's acts, the Administrative Court confirmed 41 decisions of the APC and rejected the lawsuits as unfounded. The Court annulled 5 Decisions of the APC and sent the case back for retrial and suspended the procedure in 2 cases.

3.1.3. PREVENTION OF CONFLICT OF INTEREST - LIST OF PUBLIC OFFICIALS

***Interim benchmark 22** - Montenegro amends the Law on Conflicts of Interest and puts in place an effective system to prevent conflicts of interest at all levels of the state/public administration. Montenegro provides an initial track record showing an increase in the number of detected and resolved conflict of interest cases, including deterrent sanctions and effective recovery of damages caused to the public budget where relevant.*

The first version of the Law on Conflict of Interest was created in 2004, with the purpose of exercising public control over the work of public officials and the aim of preventing conflicts of private and public interest, in order to raise public trust in performing public functions. This Law was amended in 2009 and 2011.

However, after the opening of negotiations with the EU, in accordance with the recommendations of the EU and international bodies, a new Law on Prevention of Corruption²³, in the form of the *lex specialis* has been created in 2014. This Law incorporated number of areas related to conflict of interest, to integrity of public officials and employees, to assets declarations of public officials, to whistleblowers, to restrictions on the membership of public officials in the management boards of public companies, to prescribing authorizations regarding verification of the reports on property and income of public officials, and specifying sanctions to violations of the rules on the prevention of conflicts of interest, especially in the part of non-declaration of property and inaccurate data in property records. The last changes and amendments of this Law have been introduced during 2017.

At the basis of this Law, a new Agency for Prevention of Corruption has been created and since then, within the legal competencies, the Agency is obliged to act proactively in terms of detecting conflicts of interest of public officials.

In purpose of implementing of its duties in the area of preventing and sanctioning of the conflict of interest, the APC is authorized to: determine the existence of a conflict of interest in the performance of a public function and undertakes measures, to prevent it; to control restrictions on the exercise of public office; to control the receipt of gifts, sponsorships and donations; to check data from the Report on Income and Assets of Public Officials; to give an opinion on the existence of threats to the public interest, which points to the existence of corruption (caused by conflict of interest, among other), and to give recommendations for the prevention of threats to the public interest (caused by conflict of interest, among other).

In order to provide a higher quality process of the control of the conflict of interest of public officials, the APC has to have a precise list of positions in the state and local administrations matching the status of the public officials.

All the way from 2016 until 2022 the precise list of that kind did not exist, and the APC created a Working group which for the first time, at the beginning of 2023, delivered a final list of public officials in Montenegro. This was a great step towards full implementation of authorities of the APC regarding the control of conflict of interest.

However, according to current legislation, state bodies and institutions do not have the obligation to submit a list of named persons and their data to the APC on a regular basis, with updating of the newly appointed and dismissed officials.

Because of that, the APC decided to be proactive and to send regular monthly reminders in the form of individual letters to the state and local bodies and institutions in order to collect and receive feedback of this data.

Unfortunately, this requires the engagement of a large number of human resources and working hours and it would be necessary to urgently change legal framework and create obligations for the state bodies and institutions to send these updates on regular monthly basis to the APC, without constant reminding.

In addition to that, the definition of "public officials" in Article 3 of the Law on Prevention of Corruption is very broad and implications of this broad definition are serious in terms of unnecessary increased bulk of work for the APC employees and department for prevention

²³ Law on Prevention of Corruption in Montenegro, "Official Gazette of Montenegro", No. 53/2014 and 42/2017

of corruption.

The essence of the problem is that the same definition and regime applies to all individuals who fall into the group of public officials, although the nature of their "public" position is very different and vary in all aspects of these functions. For example, some of them are not considered as professionals and they are engaged on a part-time basis, while some of them are not even paid for their engagement.

This is why it would be also necessary to create legal changes and to re-define the definition of the "public official".

Nonetheless, the APC has regular obligations when it comes to preventing conflicts of interest and controlling restrictions on performing public office. The statistics in this area statistic tendencies of rising of educational and controlling function of the APC.

When it comes to the first analyzed period, between 2016 and 2019, a total of 289 public officials resigned due to the actions of the APC. This figure includes the total number of resignations and dismissals. Namely, the total number of submitted resignations of public officials for the period 2016-2019 was 250, where 75 was in 2016, 39 in 2017, 77 in 2018 and 59 in 2019.

The remaining number of 39 is related to dismissals from public office, in accordance with the decisions of the APC for the period 2016-2019. Annually, these numbers do vary significantly, from the high 26 in 2016, all the way down to four in 2017, five in 2018 and four in 2019.

These figures are suggest that after the initial year of implementation, the level of personal responsibility of public officials to report their conflict of interest in various forms is raising.

This tendency of strengthening of the role of the APC and educational character of the measures taken in previous years could be also found in figures related to the period beginning of 2020 until the first half of 2023. Namely, there is a total of only 107 public officials who resigned due to the actions of the APC, including the total number of resignations and dismissals.

This was two and half times less than in the previously monitored period. Out of that figure of 107, the total number of submitted resignations of public officials for the period 2020 first half of 2023 was 103, where 41 was in 2020, 26 were in 2021, 24 in 2022 and 12 in the first half of 2023.

The total number of dismissals from the public office, following the decisions of the APC for the period 2020-first half of 2023, was only four, where one was notified in 2020 and three in the first half 2023.

Considering the structure of resignations and dismissals, these decisions included ministers, directors of directorates in ministries, councilors, presidents and members of boards of directors of public companies, directors of the public companies, members of commissions and leading management of institutions under the state control, etc.

Finally, even though the APC is showing progress and signs of sustainable activity in the area of the controlling of the conflict of interest, there is an emphasized need for urgent improvement of legal framework, in order to facilitate, improve and make this control more efficient.

3.1.4. PREVENTION OF CONFLICT OF INTEREST IN THE AREA OF ASSETS DECLARATION - LAW ENFORCEMENT

Interim Benchmark 23 - Montenegro provides an initial track record of effective implementation of the asset declaration and verification system, including dissuasive sanctions for non-compliance and appropriate follow up measures (including through criminal investigations where relevant) in cases where the reported assets do not correspond to the reality.

According to the Law on Prevention of Corruption, the Agency continuously conducts all activities regarding the assets declaration of the public officials, including the verification of reports on revenues and assets of public officials. Since 2018 it also performs a complete verification, as the most complex type of control of revenues and assets of public officials.

The Department for Assets Declaration of the APC is responsible and obliged to perform annually the following duties: to perform an administrative and technical check of all assets declarations (this was varying from approximately 8000 to 11,500 of different kind of assets declarations per year); to compare the reported data with the data from the databases of the competent authorities in order to check whether the submitted data corresponds to the real data (initially, approximately 800 persons per year, today more than 1700); to perform in-depth (complete) lifestyle checks for 20 persons; to analyze all kinds of notifications about possible violations that are received from all sources.

Considering the track record of the APC in this area, during 2019, 8,149 reports on revenues and assets have been by public officials. Additional verification was carried out by the APC for 911 reports. That year the APC initiated 119 administrative proceedings and found violations and irregularities in 54 decisions. Sanctions were imposed in 17 cases, 15 in the form of warnings, one in the form of dismissal, and one in the form of salary reduction.

During 2020, 8,108 reports on income and assets have been submitted to the APC by public officials on the basis of the Law on Prevention of Corruption. According to the Annual Audit Plan for 2020, additional verification of the accuracy and completeness of the reported facts has been performed in cases of 872 reports.

Since 2021, there is a significant increase in the number of reports and that year the Agency received a total of 10,657 reports on income and assets on various grounds of submission. The Annual Verification Plan for 2021 envisaged that 884 reports on income and assets, submitted on various grounds should be verified for accuracy and completeness of data, but the Agency exceeded that number and in total 974 reports have been verified.

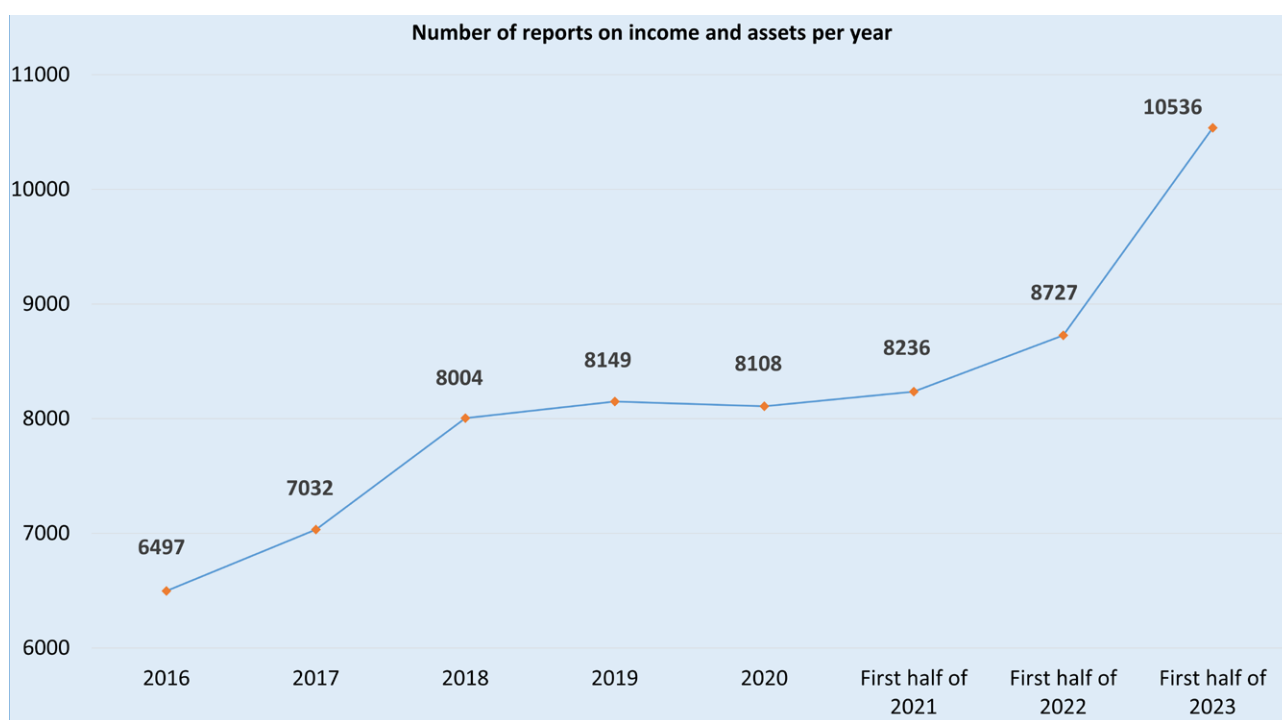
In 2021 APC initiated 295 administrative proceedings and found violations and irregularities in 160 decisions, including cases from the previous period. Sanctions were imposed by authorities in 9 cases, 8 in the form of warnings, and one in the form of salary reduction.

A further increase of the number of reports has been noted during the 2022, when a total of 11,784 reports on income and assets were submitted to the Agency on various grounds of submission. In addition to this increase, the APC intensified the work regarding completeness and accuracy verification of the data and in accordance with the Annual Plan for verification of reports on income and assets, which was initially exceeded by about 29,2%. However, even that plan for the increase was upgraded and on various grounds, ex officio and/or on request, during the 2022, the APC completed a verification of total of 1,778 reports, in terms

of accuracy and completeness. That was almost 60% more than the number of accuracy and completeness verifications in 2021, and significantly more than and compared to all previous year's work of the APC.

When it comes to violations of the Law on Prevention of corruption in the area of assets declaration, during 2022, the APC initiated 423 administrative proceedings and found violations and irregularities in 376 decisions, including cases from the previous period. In addition to these administrative proceedings, the APC started 1057 misdemeanor procedures, where 519 were against public officials whose mandate has expired and 534 against actual public officials.

Out of the total number of 1057 misdemeanor procedures during the 2022, 220 were for non-reporting within the deadline of 30 days after ending of the mandate of the public official, 299 were for non-reporting within the deadline of 1 year after ending of the mandate of the public official, 295 omission to submit regular annual report on income and assets, 163 non-reporting within the deadline of 30 days after appointment of the public official, 67 because of submission of reports with incorrect and incomplete data and 9 for omission of the public official to inform the APC about transfer to the new public duty.



Finally, during the first half of 2023, a further increase of the number of reports on income and assets was detected with the total of 10,536 reports that have been submitted to the Agency on different basis of submission,

That was 20,7% more compared to the same six-months reporting period of the previous year (8,727 in first half of 2022). The Annual Verification Plan for 2023 has just started in the first half of year and it planned to have at least 1,496 verifications of the accuracy and completeness of the data in the reports on income and assets. In addition, acting ex officio, the APC started the verification of additional 26 reports on income and assets in the first half of 2023.

Within this period of the first half of 2023, the Agency initiated 36 administrative proceedings, while sanctions were imposed by authorities in 20 cases, 17 in the form of warnings and 3 dismissals from public office.

3.1.5 CODE OF ETHICS FOR MEMBERS OF EXECUTIVE AND LEGISLATIVE

Interim Benchmark 24 - Montenegro adopts and implements ethical codes for members of the legislative and executive at all levels that would cover rules on conflict of interests, incompatibilities and other unethical or corrupt behavior and puts in place corresponding accountability tools and a dissuasive sanctioning system for violations of these rules.

Considering fulfillment of recommendations of international bodies (GRECO, EU) regarding the area of introduction of the ethical codes among public institutions and state employees, the first in line was the Code of Ethics for Employees of the Agency for Prevention of Corruption, from April 2016. In that context, the Agency for Prevention of Corruption, was a pioneer and this institution was later assisting others in creation of similar documents.

Even though other institutions of the public administration of Montenegro did not follow the APC at the same pace, the next in line was the Code of Ethics for Civil Servants and State Employees in the Administration for Execution of Penitentiary Sanctions that was adopted and set into force on 1 January 2019. Following that decision, this institution has also created the Ethics Committee, in order to monitor compliance with the provisions of the Code of Ethics.

Following that, during July 2019, the Parliament of Montenegro adopted a revised Code of Ethics for Members of the Parliament. According with GRECO recommendations, this Code of Ethics introduced a requirement for ad hoc disclosure in eventual case of a conflict of interest between the private interest of MPs and issues under consideration and decision-making process in the parliamentary procedure. This document was delivered in cooperation with the Agency for Prevention of Corruption.

After a series of problems within the Public Bailiffs' Chamber, in December 2019, the revised Code of Ethics of Public Bailiffs was adopted. Following that, the Chamber of Public Bailiffs created a new Ethics Committee for resolving issues related to this Code.

The Agency for Prevention of Corruption continued to create local and international partnership in order to assist in dissemination of the institution of the Code of Ethics and in that context, during 2021, this institution established partnership with the Council of Europe for creation of the Code of Ethics for the Government of Montenegro.

After submitting the proposal to the Government, they faced negative response with explanation²⁴ that the legal framework for this Code of Ethics is missing and that the Law on Government is necessary precondition for adopting of that document.

Because of that, the APC and the Council of Europe renamed the document that was sent to the Government and now it is waiting in the pipeline for adoption under the name "Directions for creation of the Code of Ethics of the Government of Montenegro".

Since then, until today, July 2023, the adoption of the Code of Ethics of the Government

²⁴ Interview with the Director of the APC, Ms Jelena Perović, July 2023

of Montenegro is still in the creation process and being a subject of number of GRECO recommendations.

3.1.6. INTEGRITY OF ADMINISTRATION, NEW INITIATIVES AND LOBBYING

Interim Benchmark 25 - *Within the public administration, Montenegro recruits, promotes and nominates public officials on the basis of clear and transparent criteria, focusing on merits and proven skills. Montenegro reinforces the capacity of the Administrative Inspectorate, implements a risks analysis methodology, adopts integrity plans and appoints trained integrity managers in the public administration. Montenegro provides an initial track record of effective sanctions in cases of breach of ethical values.*

Corruption risk management in Montenegro is entrusted to the APC and the system of developing and implementation of Integrity plans.

Considering the definition of Integrity plans, they are prescribed by the Law on Prevention of Corruption which in the Article 71 stipulates that *"Based on estimates of the susceptibility of certain jobs and work processes to the emergence and development of corruption and other forms of biased conduct of public officials and employees of an authority, the authority shall adopt an Integrity Plan containing measures to prevent and eliminate opportunities for the emergence and development of corruption and providing confidence of citizens in their work (hereinafter: Integrity Plan)"*.

Further on, Article 71 prescribes that *"The Integrity Plan shall be adopted in accordance with the rules for the development and implementation of the Integrity Plan adopted by the Agency"*. These rules have been developed within the document "Rules on the Development and Implementation of the Integrity Plan"²⁵

Institutions are obliged to adopt Integrity plans and to appoint integrity managers, while the Agency for Prevention of Corruption is in charge of the control of implementation through the system of reporting, as well as in charge of continuous providing of support to the state bodies regarding all aspects of integrity plans.

Considering the APC reporting on implementation of the Agency's Work Plan for 2022 in the area of adoption and implementation of integrity plans, a very high percentage of authorities that have fulfilled the obligations stipulated by law was detected in that year.

Namely, since the beginning of the implementation of the integrity policies according to the LPC, a total number of institutions that have adopted and submitted an integrity plan to the Agency is 732 which represents 98.9% of total number of authorities, while even more authorities, a 99.1%, have appointed an integrity manager.

In addition to that, the questionnaire for assessing the efficiency and effectiveness of the integrity plans was filled out by 637 authorities, and 704 integrity plan implementation reports were submitted in 2022.

Although the Law on the Prevention of Corruption does not specify that integrity plans must be sent to the Agency in electronic form through previous activities and good communication

²⁵ This was one of the first documents delivered by the first composition of Council of the APC in December 2015

with the institutions and the integrity managers in them, a good practice has been established to all institutions send integrity plans in electronic form.

All integrity managers are responsible for the preparation and implementation of integrity plans, while the APC is assisting them through creation of tailor-made instructions for each of the institutes on how to identify critical work positions, risks and processes.

Even though this fact is positive in terms of pro-active positioning of the team and management of the APC, this obligation and the more detailed structure of the instructions should be more closely defined through the Law on Prevention of Corruption and the Rules on the Development and Implementation of the Integrity Plan.

However, having in mind the fact that integrity managers are often changing their positions and employment and that new persons are taking their positions, there is still a problem of insufficient training of a number of integrity managers, especially in education, health, culture, public enterprises founded by the state or municipality, social and child protection.

That problem is solved through cooperation with the Human Resources Management Administration and the organization of training for all those institutions and their managers who need additional training. The trainings are organized by the HRMA and the lecturers are from the Agency.

According to the leadership of the Agency²⁶, there is an additional problem in the fact that integrity managers are not remunerated for their job in that field. This problem is also recognized in the reports of international experts²⁷: "Integrity managers should not be required to fulfill their tasks unremunerated in addition to other full-time work duties. It seems appropriate to integrate the tasks of an integrity manager in the employee's job description and limit the rest of his/her workload".

Considering quantity of the feedback regarding the Integrity plans, the APC was registering very stable and solid output, where in 2021 the Agency received 692 reports on the implementation of integrity plans and in 2022 the Agency received 704 reports on the implementation of integrity plans.

This tendency has also continued in the first half of 2023, where the Agency already received 700 reports on the implementation of integrity plans until 30 June 2023.

Every two years all authorities are obliged to evaluate the efficiency and effectiveness of their integrity plans. They are obliged to fill in the Questionnaire for assessing the efficiency and effectiveness of the integrity plan, prepared by the Agency.

During 2022, this questionnaire was filled out by 637 authorities and at the basis of these answers the Agency delivered a Report on the adoption and implementation of integrity plans in 2022, which contains a detailed analysis of integrity plans and reports on their implementation, as well as recommendations for improving of integrity plan.

²⁶ Interviews with the President of the Council of the Agency for Prevention of Corruption, Mr Momčilo Radulović and the Director of the APC, Ms Jelena Perović, July 2023

²⁷ "Analysis of the parts of the Law on Prevention of Corruption which regulate Integrity plans, and Administrative and Misdemeanour procedures, Prepared by: Dr. Valts Kalniņš and Jure Škrbec, Ph.D., CFE, Council of Europe,, page 5

The APC Council adopted this Report in the beginning of 2023, and it includes all integrity plans that were submitted to the Agency from 2016 to the end of 2022, as well as an analysis of information from 704 reports on the implementation of the integrity plan that were submitted to the Agency during 2022. During the second quarter of 2023, the APC began evaluation of the efficiency and effectiveness of the third generation of integrity plans, based on 655 questionnaires filled out by the authorities and submitted to the Agency in 2021 and 2022. The report with conclusions and recommendations will be published in the third quarter.

However, considering this Report and methodology of evaluation of the entire integrity related system, there were several remarks coming from the relevant institutions, like the EU Commission, related to a lack of a more precise assessment of the effects of anti-corruption measures and, according to APC management, pro-active measures have been taken in that direction²⁸.

Namely, a comprehensive new Methodology for assessing the effects of anti-corruption measures has been prepared, during the 2022 and 2023 and it will be presented in September 2023. It is a unique methodology developed on the basis of cooperation with a sister institution from South Korea.

Considering the area of responsibility towards legal obligations prescribed by the LPC, the APC filed 25 requests to the competent misdemeanor courts in 2022 for the initiation of misdemeanor proceedings for the violation of the provisions of the LPC related to the obligation to submit the Report on the implementation of the integrity plan by April 15 of the current year for the previous year. Out of that number, 18 cases were completed according to requests.

During first half of 2023, 40 requests for initiation of violation proceedings were submitted to the Court while five cases were completed based on requests from the previous year, and sanctions were imposed in all of them.

In general, series of positive trends and solid performance in the area of integrity have been already notified by international structures, like the OECD report on the competitiveness of the countries of the Southeast Europe. This OECD report was published in 2021 and it was stating that Montenegro has the most advanced system of support and monitoring of integrity plans in the Southeast Europe region, with a rating of 4.5 out of a possible 5.²⁹

In addition to previously mentioned initiatives, during 2022, three new initiatives have been sent by the APC towards representatives of the executive and legislative authorities in Montenegro. Firstly, **two initiatives for the introduction of Preliminary Control on the Risks of Corruption (CPL Checklist)**, as mandatory in the procedure for drafting the draft laws determined by the Government of Montenegro, as well as in the procedure for proposing laws by deputies independently or on behalf of six thousand voters.

The third one is the **Initiative for unification of the legal framework that regulates the most important issues of management, supervision, real and potential conflicts of interest and transparency of the work of the management bodies of public enterprises.**

When it comes to entire department related to control of lobbying in Montenegro, the APC

²⁸ Interview with the Director of the APC, Ms Jelena Perović, July 2023

²⁹ OECD report Montenegro CO2021 MNE, All Dimensions, page 194en

had a proactive attitude in terms of sending of initiative for changing of the Law on Lobbying in 2020 to the Ministry of Justice and the Government of Montenegro. This initiative was adopted and in 2021 a Working group was created, delivering the new legal proposal for the Law on Lobbying at the end of 2022.

However, the Parliament of Montenegro did not vote on this proposal, and it is still pending in the parliamentary procedure. It would be necessary to adopt this new proposal for the Law on lobbying that will significantly improve regulation of entire area of lobbying and related issues, which is significant part of the prevention and fight against corruption.

When it comes to regular activities in this area, the APC created the Lobbying Exam Commission in 2022, and after three calls for candidates and three exams, nine persons passed the exam. Four of them, after submitting a request for authorization to carry out lobbying activities, became registered lobbyists. During the first half of 2023, two invitations for lobbying exam were published and one exam was organized (the second exam was organized on July 6). Two certificates of passing the lobbying exam were issued.

Considering lobbying entities, nine natural persons and one legal entity are currently registered in the register of lobbyists, and all of them have submitted their work report for the year 2022 to the Agency, within the deadline defined by law.

3.1.7. POLITICAL PARTY FINANCING

Interim Benchmark 26 - Montenegro amends its current legislation on political party financing, ensuring this is fully in line with GRECO recommendations, and reinforces the administrative capacity and independence of supervising authorities. Montenegro provides an initial track record on the correct implementation of the law, including application of deterrent sanctions where required.

The new Law on Financing of Political Entities and Election Campaigns was enacted by the Parliament of Montenegro in December 2019, but it only partially addressed the needs of the electoral process, including the system for the control of the electoral processes and actors by the Agency for Prevention of Corruption.

Following that, the new change came in April 2020, when the Parliament of Montenegro adopted an amendment to this law, which stipulates allocation of social benefits from budget in the election year, in case of war, state of emergency, epidemics and pandemics of infectious diseases.

However, none of these changes dealt with serious and essential shortcomings of the electoral legislation, which was previously relatively precisely defined by local CSOs and international stakeholders.

This was the reason why these shortcomings of the newly established electoral legislation from 2019 also became negatively recognized in the reports of the local CSOs and international partners.

Confirmation of these negative attitudes could be found in the critical phrase that “the OSCE/ODIHR recommendations are only partially met... and that all shortcomings in the existing legal framework on political parties’ financing, including those identified by ODIHR, need to be addressed”. This phrase, as well as other critical recommendations, has been constantly

repeated in all EU Annual Progress Reports since 2019 until today, as well as in reports of other international structures like ODIHR and GRECO.

Even though the APC was proactive in resolving of the problems stemming out from the inadequate electoral legislation, there were only few cosmetic responses from the side of Government and Parliament of Montenegro during the last few years.

The consequence of that is that the control that is performed by the APC is a more of formalistic then essential nature and it does not go deeper into the structure and processes of financing of political parties and electoral processes.

Without powers to conduct administrative investigation of the documentation and procedures performed by the political entities in the electoral processes and everyday functioning, the Agency for Prevention of Corruption has been detached from real potential to prevent corruption in this area.

However, this is not consequence of lack of will of the management and representatives of the APC but a clear consequence of readiness of legislative powers, namely Government and Parliament of Montenegro to change and improve legislation in terms of providing of the much higher level of control abilities for the APC in the electoral processes and financing of political parties.

Confirmation for these claims regarding the low level of activities of legislative institutions in this area could be found in the fact that in November 2019 the Council of the APC submitted 86 proposals for the changes of two systemic laws regulating the field of the fight against corruption. On that occasion, 43 proposals were related to changes of the Law on Financing of Political Entities and Election Campaigns, according to the ODIHR and GRECO recommendations, as well as according to the needs for improvement of the efficiency of the control of these processes by the APC.

However, after longer period of consultations, only 21 proposals were adopted and most of them partially or with significant amending that had changed initial purpose of these proposals.

Some of the changes that have been introduced by the Parliament are related to use of own party funds, which was permitted through these changes, to more defined responsibility of responsible persons in the election campaign, to some extent improved responsibility of political subjects (coalitions and voters groups).

In addition, the limit of campaign expenses was increased, including the amount of total contributions from public sources. Also, some new set of obligations for service providers (media) have been introduced, as well as period for expiring of violations of the law.

Nevertheless, most of the essential proposals have not been addressed.

Among other, area of contributions and donations is still not properly regulated, there is a need for more detailed arrangement of business premises for electoral subjects, for obligations for opening separate accounts for each of the electoral processes individually, as well as the need for prohibitions on giving of contributions for elections only for public institutions and not for other structures and bodies of central and local authorities.

Additionally, the Parliament failed to adopt changes related to a different and regulated

duration of electoral campaign, settlement of obligations before closing of the account in the election campaign, responsibility of the persons in charge for the elections for the President and regularity of operations within presidential electoral cycle. Finally, political parties failed to regulate balancing and commensuration of sanctions to committed offenses during electoral process, as well as misdemeanor liability of coalitions and groups of voters.

All of these areas represent serious and essential part of reforms of electoral processes that should be urgently addressed by the Government and Parliament of Montenegro, in order to provide for full transparency and democratic standards during all sorts of elections in Montenegro.

In addition to these proposals, the APC was assisted by the Council of Europe experts to provide for more than 200 new proposals for changes both of the Law on Financing of Political Entities and Election Campaigns and the Law on Prevention of Corruption. Significant part of these changes should be urgently addressed by the Parliament and the Government of Montenegro, and the process of their adoption should be closely monitored by international partners like EU, GRECO, ODIHR and the Council of Europe.

Considering concrete activities of the Agency for Prevention of Corruption in monitoring of compliance with prohibitions and restrictions during the election campaign, they have been intensified since the number of election cycles was unusually high in last three years, starting from the parliamentary elections held in August 2020, followed by local elections held in 2021 and 2022, and concluding with the presidential and parliamentary elections during the first half of 2023.

The Reports on the monitoring and control of campaign finance for each of these election cycles were transparently and timely published on the Agency's website, except the Report on the monitoring and control of campaign finance for 2023 parliamentary elections that will be prepared and published in the third quarter of 2023.

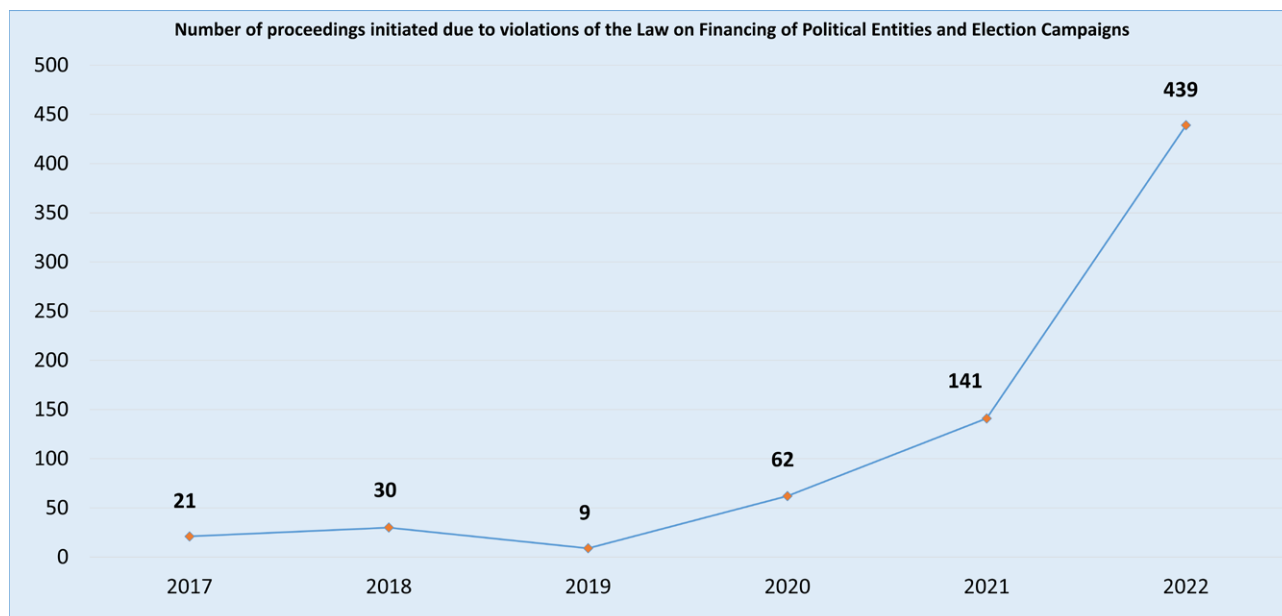
The Agency stipulated in several of its reports that the APC "could not initiate misdemeanor proceedings in all cases where irregularities were found"³⁰ due to the legal restrictions and limitations of the legal framework, which is significant confirmation of the need for the urgent change of legislation.

For example, due to almost complete absence of legal provisions regulating that area, the groups of citizens and coalitions of parties at elections cannot be legally responsible even when the offense is obvious and clear to APC controllers and the APC cannot process them since there were no legal authorities among provisions of the law to start such procedures. The APC and its Council had several attempts towards the Government and Parliament of Montenegro to adopt legal changes in these matters within so called "shortened (fast) procedure", but there was no response from the side of these two institutions.

During the 2022, in the context of election campaigns, the Agency controlled a total of 55,604 reports and other supporting documentation, where 575 belonged to political subjects and/or electoral lists, 54,718 issued by authorities and 311 by media advertising service providers. In order to stimulate subjects of control to deliver reports on time and to create corrections in the case of observed technical irregularities, the Agency pro-actively sent a total of 3,845 warnings, 3,735 to authorities and to 110 political entities. All of the subjects responded

³⁰ Annual Work Report of the APC for 2022

positively which is confirmation of the efficient work of the APC and increased level of discipline and respect of the laws by the subjects of control.



Also, in 2022, due to violations of the Law on Financing of Political Entities and Election Campaigns, the APC launched a total of 439 misdemeanor proceedings, which is 67% more compared to the previous five years of work of ASK collectively. During the entire 2022, a total of 185 complaints were submitted due to suspected violations of the LFPEEC. By the end of December 2022, the Agency initiated 174 proceedings: in 50 cases, a decision was made not to proceed; in 39 cases, a decision was made that there was no violation of the law while other procedures were still progress at that time.

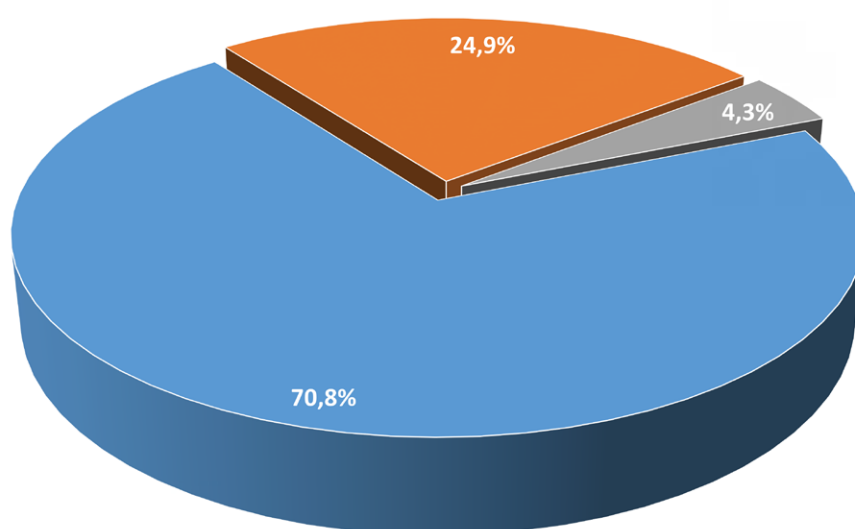
In relation to lawsuits against the acts of the APC in complaints proceedings due to suspected violations of the LFPEEC during election campaigns, the Administrative Court issued 24 rulings in 2022 rejecting the lawsuits and confirming the Agency's rulings.

Further on, during the first half of 2023, in the context of election campaigns, the Agency controlled a total of 37,241 reports and other supporting documentation, where 142 belonged to political subjects and/or electoral lists, 36,792 issued by authorities and 307 by media advertising service providers. In order to stimulate subjects of control to deliver reports on time and to create corrections in the case of observed technical irregularities, the Agency pro-actively sent a total of 1,510 warnings, 1,426 to authorities and to 84 political entities. All of the subjects responded positively, which is confirmation of the efficient work of the APC and increased level of discipline and respect of the laws by the subjects of control.

The Report from the first six months of 2023 stipulated that 772 controls on compliance with prohibitions and restrictions during election campaigns were carried out. In their semi-annual Report, the APC underlined that "despite the legal restrictions due to which it could not initiate misdemeanor proceedings in all cases where irregularities were found" the Agency in the first half of 2023 initiated a total of 170 misdemeanor proceedings, which is as much as 41.7% more compared to the same period in 2022.

Most of these procedures were initiated due to the failure of the authorities to submit employment decisions during the election campaign within the legal deadline. Additionally, a total of 152 misdemeanor proceedings were completed, including those from previous years. In these cases, sanctions were imposed in 91.5% (including 56 fines and 83 warnings). The total amount of fines was €14,485.

Finally, in the first six months of 2023, a total of 118 complaints have been submitted due to suspected violations of the Law on Financing of Political Entities and Election Campaigns. The Agency acted on all objections and in 35 cases, a decision was made not to proceed, in 25 cases, a decision was made that there was no violation of the law while other procedures are still ongoing.



All these efforts of the APC to establish control in this area, in spite of all the limitations of the legal framework, has also resulted with the increase of public recognition of these results. Namely, the public opinion survey in 2022 included the question "How much did the Agency contribute to strengthening the transparency of the use of public resources and financing of political entities during election campaigns?" The answers were that 70,8% recognize that the APC gave significant contribution, while 24,9% said that APC gave little or no contribution to this issue.

3.1.8. WHISTLE-BLOWERS PROTECTION

Interim Benchmark 32 - Montenegro takes steps to improve the effectiveness of its whistle-blowers protection system.

According to the Law on Prevention of Corruption, the Agency for Prevention of Corruption is in charge of proceedings related to whistleblower reports, as well as in charge of providing the whistleblowers with necessary protection, if requested by them.

Considering the legal framework for the whistleblowers in Montenegro and its practical implementation, there is a high level of harmonization with the principles and recommendations of the Council of Europe, as well as in accordance with majority of the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019, on the protection of persons who report violations of the law within the European Union.

Some of the steps to improve the effectiveness of the whistleblower protection system have been proactively taken by the Agency, in accordance with international standards. This is why in the area of practical solutions for additional protection of whistleblowers, the APC has physically separated whistleblower department from the rest of the premises of the Agency. In order to provide for full discretion for the whistleblowers, the APC did not only separate this section from other employees, but also created a separate data base for the whistleblowers department, where only the Head of the Department has full access to all the data of the whistleblowers.

This kind of protection creates an enabling environment for whistleblowers and during 2019 the Agency has received 110 **whistleblower applications**. During following 2020, additional 75 whistleblower applications were submitted.

A more significant increase in submission of reports of whistleblowers was notified during 2021 when 142 reports were submitted to the Agency, which was 89.3% more than during the previous year.

This trend of increase of the number of submissions was continued in 2022, when the Agency received 188 reports of whistleblowers, which was 32,4% more than in the previous year and the highest observed on annual basis since the establishment of the Agency.

Finally, the increase of the number of reports was also notified in the first half of 2023, when the Agency received 110 whistleblower reports - the most since the beginning of the work of the APC at the level of the first six months of the year. Of the total number of whistleblower reports in the first half of 2023, 55 were submitted anonymously.

Considering **requests for whistleblower protection**, during 2019, the APC has received 3 submissions, same as in 2020, when also 3 requests for whistleblower protection were submitted to the APC.

Increase in submission of whistleblowers reports was also followed by the increase in request for protection and in 2021 the APC received new 5 requests for protection of whistleblowers.

An additional increase of number of requests for whistleblower protection was notified in 2022, when 7 new requests have been submitted to the APC.

Finally, during the first half of 2023, three new requests for whistleblower protection has been submitted to the APC.

There are two possible roots for the increase of whistleblower reports to the APC. One could be found in the fact that since the change of the ruling structure since December 2020 produced number of conflicting situations in many public institutions between new managerial structures and employees, where some of them were based on political basis and some on wrongful interpretation of authority and legal framework. The other possible cause for the increase of the number of reports to APC might be an increase of the trust in the work of APC in previous cases, followed by promotional activities of APC for strengthening of public awareness regarding the reporting of suspicions of corruption.

Considering decision making process on applications of whistleblowers, during 2022 the APC has concluded 81 procedures based on whistle-blower reports. Out of that number, only in five cases the APC delivered decisions that a threat to the public interest existed.

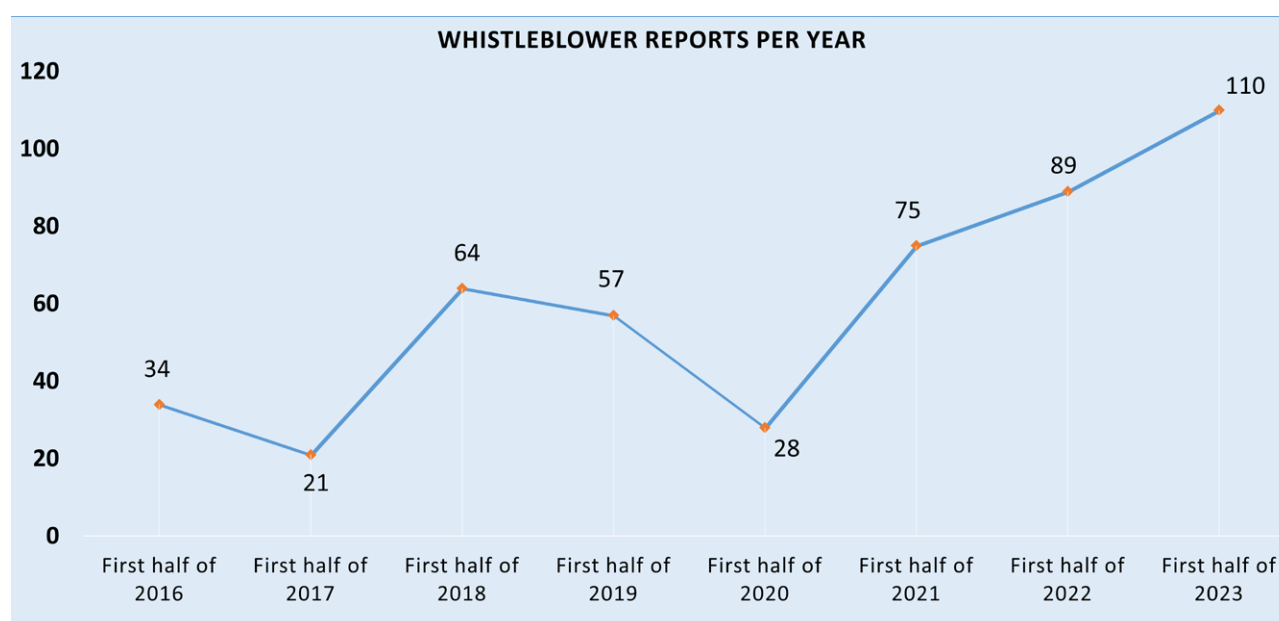
In addition, the APC handed over 12 whistleblower reports to the other competent prosecutor's offices for further processing, while 34 reports were handed over to other competent authorities. The competent prosecutor's offices delivered feedback to the APC that in 2 cases the reports of the whistleblowers were well grounded and that an investigation had been initiated on the basis of these reports.

Finally, the APC initiated 9 *ex officio* proceedings due to the suspicion of endangering the public interest, which refers to the existence of corruption and it also continued to work on 4 *ex officio* proceedings from 2021. Out of these numbers, 6 procedures were completed and in all of these cases the APC delivered decisions that the public interest was endangered.

During 2023, the AP has completed 35 procedures based on whistleblower reports and in 2 of them existence of a threat to the public interest was recognized (in the judicial system and the local self-government body). The Agency delivered 5 recommendations to the legal entities for improving transparency and eliminating corruption risks. Since these recommendations were not implemented, the Agency acted in accordance with the powers arising from the provision of Article 53 of the Law on Prevention of Corruption. That means that Agency initiated a procedure *ex officio*, and these processes are ongoing.

Also, during the first half of 2023, the Agency concluded one procedure initiated *ex officio* from the previous period, in which the existence of a threat to the public interest was recognized. However, the legal entity did not respect instructions for improving transparency and eliminating of corruption risks, so the APC again acted in accordance with the powers arising from the provisions of Article 53 of the LPC.

Additionally, during the first half of 2023, two recommendations from the previous period have been implemented, seven reports of whistleblowers have been forwarded by the Agency to the competent prosecutor's offices. Finally, 11 reports were forwarded to other competent institutions. The feedback for three of these reports was that no irregularities have been found.



Even though these abovementioned results are signaling that activities of the APC in this field are solid and sustainable, there are still many issues related to whistleblowers that should be subject of analysis, redefinition and improvements. Like in all previous areas of work of the APC, these eventual changes are mostly related to changes of the legal framework that is not following developments and achievements in practical area.

Some of these issues are related to doubts about the status of the final decisions, should they be public or not, with necessary protection of data of the whistleblower. Also, the issue of sanctions for malicious reports in the administrative procedure in accordance with the directive of the Council of Europe should be considered as well. In addition, there is a pending question of eventual providing for the Agency's "legal assistance" to whistleblowers during court proceedings, since current position of the APC enables Agency only to prove the cause-and-effect relationship between the report and the consequences.

Finally, the important debate in Montenegrin society after the so called "Ramada" case about protection for associated persons to whistleblowers is still pending, being only partially resolved. Namely, even though new legal solutions were introduced inside LPC, these solutions only regulated the status of "associated persons to whistleblowers", but these legal changes did not offer possibilities for their protection.

Because of that and because of too wide definition of persons who can get whistleblowers status in Montenegro, there is still a need for full approximation with the Directive (EU) 2019/1937. This Directive has more narrower definition of the persons who can get a status of whistleblowers, but also gives full protection for the whistleblowers, their families and associated persons to whistleblowers.

All of these legal issues should be taken in consideration very urgently by Montenegrin institutions, predominantly the Government and Parliament of Montenegro, with the strong participation of the APC, civil society, academia and media, in order to achieve consolidated, sustainable and efficient solutions for protection of whistleblowers and improvement of positive outcomes of their efforts.

From March 2023, Montenegro and the Agency for Prevention of Corruption became full members of the European Network of Integrity and Whistleblowing Authorities (NEIWA).

CHAPTER 4. RECOMMENDATIONS

4.1. FOR THE PARLIAMENT AND GOVERNMENT OF MONTENEGRO

1. There is a significant delay in creation of new strategic documents related to the fight against corruption and organized crime. Following that, there is significant delay in updating of actions plans for related strategic documents in Chapters 23 and 24. As a temporary solution, the Government and the Parliament of Montenegro should provide for that a new updating takes place as soon as possible, in cooperation with the EU Commission structures.
2. There have been several changes in system and methodology in reporting of activities Montenegrin Government related to Chapters 23 and 24 to EU Commission and this is creating confusion and lack of clear overview of achievements in these areas. The Government of Montenegro should take all necessary steps for the new system and methodology of reporting to be established or redefined in cooperation with the EU Commission.
3. Creation of the new Strategy for the Fight Against Corruption and Strategy for the fight against Transnational Crime should be absolute priority for the Government and the Parliament of Montenegro.
4. The Parliament of Montenegro has to respect its own legal obligations and to announce the Call for the Members of the Council of the APC in time, according to the legal obligations stipulated in the Law on Prevention of Corruption.
5. In addition to previous recommendation, the Parliament should initiate further changes in the Law Against Corruption, in the area regulating the status of the Council of the APC, in order to prevent this blocking situation that can lead to disruption of the functioning of the APC. Namely, after the articles regulating the duration of the mandate of the Council, a new article or paragraph should be added that "in the case that the new representatives in the Council are not selected in time, the previous Council should continue to perform its duties in technical mandate until appointment of the new representatives".
6. The Parliament and its bodies should respect the autonomous position of the APC and should not impose practices that are in contrary to the legal framework. This is particularly related to introducing the recently established practice of voting on the Annual Report of the APC, which is not prescribed by the Law.
7. The Government and the Parliament should refrain from the attempt of unilateral changing of the legal framework for the financing of the APC, especially related to guaranteed percentage of 0,2% of the total budget, in order to protect independent position of that institution.
8. In order to contribute to strengthening of the system of the prevention and fight against corruption in Montenegro, it would be necessary for the Government of Montenegro to adopt three new initiatives that have been created by the APC during 2022:
 - a. two initiatives for the introduction of Preliminary Control on the Risks of Corruption (CPL Checklist), as mandatory in the procedure for drafting the draft laws determined by the Government of Montenegro, as well as in the procedure for proposing laws by deputies independently or on behalf of six thousand voters;
 - b. the Initiative for unification of the legal framework that regulates the most important issues of management, supervision, real and potential conflicts of interest and transparency of the work of the management bodies of public enterprises.
9. Integrity managers are not remunerated for their job in that field. This situation should

be overcome through the legal changes and fair compensation to integrity managers and re-composition of their professional tasks (job descriptions) in their institutions. The Government should take urgent changes and activities in order to provide for fair compensation and a professional environment for the integrity managers.

10. It would be necessary for the Government and the Parliament of Montenegro to urgently change legal framework and create obligations for the state bodies and institutions to send updates about newly appointed and dismissed public officials on regular monthly basis back to the APC, without previous reminding. This will serve to keep the final list of public officials regularly updated and punctual, for the purpose of efficient imposing of the control of conflict of interest.
11. For the same purpose, it would be necessary for the Government and Parliament to create legal changes and to re-define the definition of the "public official" in the Article 3 of the Law on Prevention of Corruption, since the present solution keeps this definition very broad and not matching the reality of positions in question.
12. It would be necessary that the Parliament of Montenegro adopts a new proposal for the Law on Lobbying that will significantly improve regulation of entire area of lobbying and related issues in Montenegro, which is significant part of the prevention and fight against corruption.
13. The APC submitted 86 proposals for changing the LPC and the LFPEEC, where 43 proposals were related to LFPEEC. Out of that number, 22 issues are still not considered by the Parliament of Montenegro. These proposals should be urgently addressed by the Parliament and the Government of Montenegro, and the process of their adoption should be closely monitored by international partners like EU, GRECO, ODIHR and the Council of Europe.
14. The APC and the Council of Europe provided for more than 200 new proposals for changes of both the Law on Financing of Political Entities and Election Campaigns and the Law on Prevention of Corruption. Significant part of these proposals for reform changes should be urgently addressed by the Parliament and the Government of Montenegro and the process of their adoption should be closely monitored by international partners like EU, GRECO, ODIHR and the Council of Europe.
15. Protection for associated persons to whistleblowers need to be closer and more precise defined within new changes of legislation, in line with the Directive (EU) 2019/1937.
16. The issue of sanctions for malicious reports in the administrative procedure should be defined in new legislative changes in accordance with the Directive (EU) 2019/1937.
17. A question of eventual providing of "legal assistance" to whistleblowers during court proceedings from the side of the APC should be further analyzed by lawmakers in Montenegro.
18. It is necessary to accelerate process of adoption of the Code of Ethics for all state institutions, with the focus on the Government of Montenegro.

4.2. FOR THE AGENCY FOR PREVENTION OF CORRUPTION

19. Bearing in mind its previous experience, as well as the area of work, the APC should have a leading role in assisting all other state institutions in creation of their Codes of Ethics.
20. The APC management should pay special attention that new process of hiring of the staff on different levels and in different structures within institution (12 places remaining to be filled in) is conducted in a transparent manner, on the basis of merit and objective criteria, including professional skills.
21. More efforts should be made by the APC in order to increase activities in the communication and awareness raising sphere. This should include intensifying activities on implementation of the Communication Strategy, as well as capacity building of the present members of the

team and new employments in the positions related to media, analysis, communication and campaigns.

22. Cooperation between the APC and CSOs and media could be upgraded to a more sustainable level through signing of the memorandums on cooperation and/or through creation of the media pools of journalists that will be specialized for reporting on prevention of corruption.
23. As in the case of providing opinions on legal documents, the APC should continue to have proactive approach in all aspects of its work, where and when possible.
24. The APC should continue with functional empowerment and capacity building of all internal segments and structures and all aspects of its work.
25. The APC should continue to strengthen its efforts in communication sphere, in order to decrease level of misinterpretation, labeling and accusations from different social factors that are coming out from the lack of knowledge about the preventive mandate, role and legal authority of the Agency.

4.3. FOR THE JUDICIARY AND STATE PROSECUTORS' OFFICES

26. It is necessary to establish regular communication and coordination between the APC, prosecutors' offices on all levels and judiciary, in order to establish more unilateral response to challenges in the work of structures dealing with prevention and repression of corruption.
27. Following that, a special Working group should be established between the APC and higher representatives of the judiciary, with the aim to coordinate further joint activities in removing of obstacles in cooperation.
28. It might be recommendable to establish direct channels of communication between the APC and public prosecutors offices in the form of liaison officers or joint working bodies of a different form.

