CENTAR ZA MONITORING I ISTRAŽIVANJE

ANNUAL REPORT ON IMPLEMENTATION OF ANTICORRUPTION POLICIES IN MONTENEGRO

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I INTRODUCTION

The past year in Montenegro was marked by the beginning of the implementation of the Action Plans for the Pre-accession Negotiations for Chapters 23 and 24. Anticorruption policies, which are one of the backbones of both of these plans, had an especially dynamic development. The process of creating a new institutional framework for the fight against corruption began, as well as amendments of the legislative framework in the areas of conflict of interests, financing of political parties, public finances and public procurement.

This study is the third annual report on the measures taken in the field of fight against corruption. It contains a detailed analysis of the legislative and the institutional framework, evaluation of their effects in the previous year and suggestions for improvement of the effects of all mechanisms in the fight against corruption. In the past two years we created a starting point from which we measured progress in each area. Thus, this year, we can show some of the trends in specific areas, as well as the statistical data on the adopted and implemented measures which CeMI suggested in the previous years.

The study was created through methodology used in the previous two reports, which CeMI created with the assistance of the Research Committee of CeMI, which includes: Drago Kos, member of the International Commission for Fight against Corruption in Afghanistan and the president of the OECD working group for fight against bribery; Marijana Trivunović - international expert for fight against corruption and OSI consultant; Drino Galičić – associate at the University in Graz and consultant in the area of methodology for numerous international organizations. The study aims to evaluate the effectiveness of anticorruption policies in Montenegro and to formulate suggestions for improvement through an analysis of the relevant international standards, as well as comparative experiences.

As in the previous years, we note that the study does not include all of the areas covered in the Action Plan for Fight against Corruption and Organized Crime, but only those areas we consider to be of key importance for prevention and suppression of corruption.

Each of the assessments provided in this report is formed on the basis of months of research, monitoring of implementation of strategic documents, interviews with representatives of institutions whose work is evaluated and through consultation with international experts.

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

1.1 Characteristics of the institutional and legal framework

The legal framework for the control role of the Parliament is made up of the Constitution of Montenegro, the Law on Parliamentary Investigation and the Rules of the Procedure of the Parliament. In this reporting period the Parliament adopted the new Rules of Procedure[1] in which the regulations that define the control role of the Parliament remain unchanged. Therefore, the problems we identified in the legislative area in the previous report remain.

High criteria for initiating parliamentary investigation – Through the constitutional amendments in June 2013, the criteria requiring 27 representatives for the initiation of parliamentary investigation have not been amended. The same regulation is contained in the Law on Parliamentary Investigation and in the Rules of Procedures of the Parliament. As we stated in the previous report, this is a harsh criteria and is not in accordance with examples of international good practice where the number of representatives required to initiate a

1("The Official Gazette of Montenegro",49/13)

parliamentary investigation is between 1 and 1/5 of the total number of representatives.[2]
The narrow circle of persons who can be called to testify by the Inquiry Committee – The Law on Parliamentary Investigation prescribes a circle of persons who are obliged to testify when called by the Parliament[3] while the Rules of Regulation allows for statements to be taken from individuals without the prescribed obligation of the said individual to respond. Neither of the documents prescribes misdemeanor sanctions for failure to respond when called to testify. This is in opposition to good international standards. For example, in Croatia, the Law on Inquiry Committees prescribes fines as well as prison sentences from 6 months to 5 years for a person who fails to submit the requested documentation to the Inquiry Committee or refuses to testify when called to do so by the Inquiry Committee.[4]
The lack of effect of the conclusions reached in the course of parliamentary inquiry and hearings – In current practice we determined that the conclusions reached during parliamentary inquiry, as well as during control and consultative hearings, are not followed by the Parliament in terms of their implementation and that there are no sanctions when these conclusions are not executed. Through the conclusions of the Parliamentary Committee of the European Parliament for Stabilization and Association of the European Union and Montenegro, the Parliament is called upon to look into the need to amend the Law on Parliamentary investigation in the aim to further strengthen this institute[5]. Furthermore, it is recommended to strengthen the implementation of the conclusions from hearings and to create normative behaviors in this area.
Besides the control role of the Parliament, the Action Plans for the Fight for Corruption and Organized Crime from 2010 until today require the strengthening of the normative frameworks for procedures in the Parliament through the adoption of the Law on Parliament. However, there are no concrete activities of the Parliament in this field. Until now, the service of the Parliament, that is the Research Center, completed research on the topic of the Law on the Parliament through a comparison between the experience of 31 Parliaments in terms of their normative regulation of the work of the Parliament, especially in the countries which have the Law on Parliament. This work is to serve as the basis of eventual draft of the law on the Parliament of Montenegro. The production of the Draft of the Law is planned for 2014.[6]
In the reporting period, two Action Plans for the Strengthening of the Legislative and the Control Role of Montenegro have been implemented (for 2013 - 68 measures and for 2014 - 77 measures). These plans are divided into three parts. The first part is directly related to the strengthening of the legislative and the monitoring function of the Parliament of Montenegro through the preparation and the adoption of acts, greater usage of the monitoring mechanisms, and through work of the plenums and working bodies. The second part contains activities and measures directed at strengthening of the administrative and expert capacities for which the Service of the Parliament is responsible. The third part is dedicated to activities directed at improving the openness and transparency of the Parliament towards citizens and civil organizations. At the beginning of each part, the findings and the recommendations of the European Commissions from the 2012 Progress Report that have been taken into consideration in defining the planned activities can be found.[7] However in Part 1, which should improve the adoption of acts and

2More in the study Hirorary, Y. *Tools for parliamentary oversight - A comparative study of 88 national parliament*, Inter-parliamentary Union 2007, pg. 41

3 Management staff, officers and employers in state entities, local government bodies, institutions, legal persons, former holders of state functions in executive or legislative government (the President of the Government, of the Parliament, ministers, representatives), former and current holders of functions in local government.

4 Articles 25 and 26, Law on Inquiry Committees, Class: 700-01/94-01/04, Zagreb, 15th of March 1996

5 Parliamentary Committee of the European Union and Montenegro for Stabilization and Association, Declaration from the 7th joint meeting, 11-12 of December 2013, Strasburg

6 Report of the work of the Parliament for 2013

7 Action Plan for Strengthening of the Legislative and the Control Role of the Parliament of Montenegro in 2013

greater monitoring role of the Parliament, the usage of quantitative controls and monitoring mechanisms have been prescribed without considering the improvement of the normative framework which would increase its efficiency.
One of the most important institutional mechanisms for the participation of the Parliament in the fight against corruption is the Anticorruption Committee. However, this Committee faces a lack of normative framework for its action as there is a lack of procedures for consideration of citizens applications and due to their role as a "secondary" Committee - an interested Committee in considering basic legal acts from their jurisdiction. The Anticorruption Committee currently functions without one member as a member of the Committee resigned due to a change in role.

1.2 Effectiveness of the institutional and legal framework

During 2013 there were 15 control and 28 consultative hearings in the meetings of the working bodies. Unfortunately, there is no data as the effect of these measures, that is to sat there is no reporting concerning the implementation of the recommendations and conclusions given during these hearings. In the same period, there were 49 questions to the Prime Minister and 196 questions of the representatives, as well as 13 additional questions.
The Anticorruption Committee has, in 2013, considered 4 Law Bills as an interested working body (the Bill of the Law on Amendments to the Law on Data Secrecy, Bill of the Law on Confirmation of the Initial Agreement of the International Academy for Anticorruption, the Bill of the Law on Confirmation of Agreement between the Republic of Montenegro and the Republic of Macedonia in the field of police force cooperation and the Bill of the Law on Confirmation of the Agreement between the Republic of Montenegro and the Czech Republic in the field of cooperation in the area of fight against crime and submitted its opinion to the Head Committee). The Committee has, jointly with the Committee for Security and Defense, considered the Bill of the Law on the Budget for 2014 in order to submit its opinion to the Head Committee – Committee for Economics, Finance and Budget. We are of the opinion that this Committee should have, as an interested Committee, participated in the consideration of the Bill of the Law on State Audit Institution, since this Law regulates the area of the monitoring over the consumption of the state resources, as well as the work of the institution of prime significance in the field of fight against corruption. Because of these reasons, we recommend that the Anticorruption Committee be an interested Committee during the consideration of the Bill of the Law on Public Procurement considering that this area is one of the most vulnerable fields for corruption and considering that the Law contains provisions relating to prevention of corruption, which need significant improvement.
The Anticorruption Committee has, in the period of June 2013 to July 2014, conducted 2 control hearings related to frequent attacks on journalists and the measures and activities the State Prosecutor's Office took in response to the publishing of audio recordings and transcripts of the meetings of the entities and bodies of DPS. During the hearing of Veselin Vučkovic, the Prosecutor left the meeting because of this the hearing stopped and finished without reaching conclusions.[8] Such proceedings indicate once again the necessity to prescribe misdemeanor sanctions when there is a failure to respond to the call to testify, as well as the need to regulate proceedings during meetings of the Committee. The Anticorruption Committee has, on the 30th of December 2013, on the authority of Article 75, paragraph 3 of the Rules of Regulations of the Parliament of Montenegro, begun a control hearing relating to the sale of the motel "Zlatica" and its associated land in order to solve the question of accommodation of the special units of the Police Department. After the hearing of the Minister of the Internal Affairs, the Vice-President of the Government and the Minister of Foreign Affairs, the meeting was adjourned due to the absence of the Deputy State Prosecutor. During this period, an initiative was sent to

8 Minutes from the 7th session of the Anticorruption Committee

the Committee on Security and Defense requesting information concerning the findings in the Telekom affair, which resulted in a control hearing of the Chief State Prosecutor and the hearing of the director of the Directorate for Prevention of Money Laundering and Terrorism Financing. A control hearing is expected on the activities of the Prosecutor Office aiming to discover and prevent sale of ID cards of Montenegrin citizens.

This Committee conducted 2 consultative hearings relating to the removal of identification numbers from the website of the Central Register of Business Entities (CRBE) and the Real Estate Management Office (REMO), as well as relating to securing the independence of the Council and the regional units for misdemeanors through the implementation of the legal framework related to the appointment and dismissal of the judges presiding over demeanor cases. In the consultative hearing relating to the removal of identification numbers from the website of the CRBE and REMO, the Committee concluded that the availability of removed data is of great importance for research of the phenomena and the holder of organized crime and corruption and those journalists and NGOs working in the area. In this sense, the availability of identification numbers for owners of business enterprises and real estate enterprises is crucial. In accordance with this conclusion, the Committee decided to suggest to the Collegium of the President of the Parliament to consider this question and come to a decision to form a working group consisting of representatives of the representative clubs and at the same time to secure representation of the representatives of the Committee for Economics, Finances and Budget, the Committee for Political System, Justice and Administration and the Anticorruption Committee; together with the joint presidents from the government and the opposition. This working group would deal with the harmonization of the aforementioned regulations and produce a draft of the amendments before the Spring Session of the Parliament.[9] As of the date of this publication, no steps have been taken for these decisions to be implemented. This indicates the lack of effect of the conclusions of the Committee.

During 2013 the Anticorruption Committee had 6 petitions to consider. The representatives of the Committee consider that there is an obvious lack of framework needed for the Committee to proceed while considering petitions. In light of the importance of considering petitions in the fight against corruption and organized crime, the Committee contacted the Collegium of the President of the Parliament to consider this question and to help settle it. The Parliament of Montenegro asked for expert assistance of TAIEX to establish regulations for the acting of the Committee for Human Rights and Freedoms and Anticorruption Committee on the basis of petitions and complaints of the citizens and legal entities. TAIEX, through an official written communication (on the 29th of August) confirmed the request of the Parliament of Montenegro. It is expected that TAIEX will organize and expert mission to Montenegro in 2014 in order to finalize the process.

1.3 Recommendations

In accordance with the problems identified in relation to the implementation of the control role of the Parliament in the process of fight against corruption and organized crime we recommend:

1. Establish procedures relating to the consideration of petitions of the citizens to the Anticorruption Committee.
2. Establish a procedure for monitoring of the implementation of conclusions that are reached through parliamentary investigation during control and consultative hearings, as well as misdemeanor liability when these conclusions are not fulfilled.

9 Minutes from the 11th session of the Anticorruption Committee

3. Improve co-operation between the Anti-corruption Committee and the Supreme State Prosecutor's Office.
4. Consider the possibility of additional amendments to the Constitution in order to enable a decrease of the necessary number of representatives for the submission of the bill to open a parliamentary investigation that will enable a parliamentary investigation to be initiated at the request of 1/3 of the representatives during a regular assembly of the Parliament of Montenegro.
5. Improve the content of the Law on Parliamentary Investigation so that the text provides sanctions when there is a failure to submit information, failure to respond to a call to testify and in cases of false testifying.
6. Expand the circle of persons obliged to respond to the call of the Inquiry Committee to testify within the legal text – that is, to include a requirement for all persons to respond to the call of the Committee to give statements, respond to questions from the Committee members concerning the facts familiar to them in relation to the subject of parliamentary investigation and to submit all documentation relating to the case in their possession.
7. Establish co-operation with the representatives of the civil sector and the Anticorruption Committee so that this Committee contains representatives from the non-government sector as is foreseen by the Action Plan for Chapter 23.
8. Intensify the use of control mechanisms in the field of monitoring the implementation of current anticorruption laws since the use of control mechanisms needs to result in concrete conclusions, measures and activities.

2. Financing of political parties

2.1 Characteristics of the institutional and legal framework

The Law on Amendments of the Law on Financing Political Parties was adopted in March 2014. The Law was amended by the Working Group for Building Trust in the Election Process, which finished its work in December 2013 without a consensus concerning the basic provisions of the Law. Later on, the work on the Law was taken over by the Collegium of the President of the Parliament of Montenegro. This Law introduced multiple provisions without precedent in national, regional or international practice in the area of the financing of political parties. The Working Group and Collegium were supposed to create a Law which will remove uncertainties and irregularities stated by the SAI during the audit of political parties, as well as a law which will fulfill international standards defined through GRECO recommendations, given in the third evaluation round. However, during the creation of the Law these aims failed to be taken into consideration while the introduced novelties are in significant opposition with the Constitution of Montenegro and all examples of international practice.
The Law has, to a certain extent, contributed to solving problems indicated in CeMi's previous report:

- The problem parties had being reimbursed for resources needed for regular work by local government was solved with the introduction of the provision which foresees that, in the case of failure to pay these resources, accounts of local governments will be blocked as a last resort.[10]

- This Law has finally separated the control of financing political parties and the auditing of resources. The control role now lies with the State Election Commission and the auditing role remains with the State Audit Institution. Besides numerous new authorizations the SEC received through the authorization to control financing political

10 The Official Gazette of Montenegro 10/14 "The Law on Amendments of the Law on Financing Political Parties", Article 3

parties, this institution received significant powers relating to the implementation of its authorizations.[11] New articles of the law provide for: a procedure for verification of the violation of the law, administrative inquiry, access to data, direct access to documentation, administrative hearings, expert assistance in implementation of administrative inquiry, initiation of misdemeanor procedure and the responsibility to report criminal acts. However, SEC is not guaranteed the administrative capacities that such authorizations and powers require. SEC will still be left without an expert service and the function of all of the members of SEC will not be professionalized.

In order to remove the irregularities which SAI indicated in its report and which are related to loans taken by political parties in business banks, the first article of the Law on Amendments defines the possibility of taking out loans and foresees a guarantee for these loans on the side of the Ministry of Finance.[12] The Ministry of Finance needs to, on the basis of realizing budget revenues of the parties and resources allocated to the parties through the annual budget, assess the possibility for a party to take out loans and be an endorser of the loan of a specific party. Within this solution there are two crucial problems:

1. Considering that parties primarily take loans in the pre-election period in order to cover campaign expenses – how will the Ministry assess the annual budget for the work of the party if 80% of the given resources regular work parties receive are based on mandates gained during elections?

2. The Ministry was given discretion to decide whose loans it will endorse. This puts parties in an unequal position.

The Law forbids receiving donations from persons convicted of criminal offences involving corruption and organized crime, or persons who are under investigation, or persons against whom a court proceeding is being led.[13] While this limitation is understandable, the limit on receiving donations from persons under investigation is impractical and opposes with the assumption of innocence. Namely, besides the fact that it is unclear as to what decides that a person is under investigation; this provision assumes guilt of the person under investigation ahead of time and in this way limits the rights of the said person.

The Law on Amendments of the Law on financing political parties is dedicated to the prevention of abuse of state resources through a series of provisions relating to social benefits and short-term help, employment, writing off debts for public services, subventions etc. Article 9 foresees responsibility of all state and local budget units to publish analytical cards from all accounts in their possession. Even though we recognize the intention of this provision is to prevent abuses which the "Snimak" affair highlighted, we do not consider that publishing the names of the recipients of social aid is the right way to solve this problem. This type of provision threatens the right to privacy of the recipient of social aid and is in opposition with international practice. In addition, the right to privacy is threatened for other citizens of Montenegro by the provision of regular publishing of the list of owners for electricity, in Article 19c of the Law on Amendments of the Law on Financing Political Parties.

Especially problematic are the provisions relating to employment, which foresee the prohibition of employment in the period between the day of calling elections until a month after the holding

11 The Official Gazette of Montenegro 10/14 "The Law on Amendments of the Law on Financing Political Parties", Article 15 which introduces new articles 29a, 29b, 29c, 29d, 29e, 29f, 29g, 29h, and 29i

12 The Official Gazette of Montenegro 10/14 "The Law on Amendments of the Law on Financing Political parties", Article 2

13 The Official Gazette of Montenegro 10/14 "The Law on Amendments of the Law on Financing Political Parties", Article 5

of elections in state entities, government entities, local government entities, public enterprises, public institutions, state funds and business enterprises whose funder or major owner is the state.[14] The intention to limit the influence of voters during employment is undeniable, however, limiting of the right to work and stopping the functioning of the state during the election process is not the solution. Aside from violation of the constitutional right to work, there are various obvious problems that arise in the practical implementation of the Law:

1. The Law does not make a distinction between local elections and state elections so in the period when elections are held in one municipality, employment in the public sector in all municipalities is limited.

2. An exception is foreseen in the case of employing seasonal workers for tourism needs, but only for hotels and tourist enterprises in which the state is the major owner and for local governments, while other enterprises in which the state is not a major owner and who need a seasonal work force (ex. Plantations), are left without the possibility of employing workers during elections.

3. Urgent need for a temporary worker (when an employee is on a sick leave, maternity leave or an unpredicted firing happens) is not covered by this Law. Thus, in the case such a need arises during the election period, the worker will not be replaced.

4. Extending the contract for a definite amount of time is disabled in the election period so the workers whose contract ends in the election period are left without work.

One more novelty that the Law introduces is parliamentary monitoring over implementation, prescribed in Article 32a, which the Anticorruption Committee will conduct. In this way, the parties will have double control over the process of financing parties: on the one side the control will be done by the SEC which will consist of representatives of the parties; on the other hand the control will be done by the representatives of the Anticorruption Committee who are representatives of those same parties. The control over financing financial parties will in this way be completely separated from the domain of professional control and will be moved into the domain of political monitoring.
This Law was supposed to solve problems SAI indicated in their previous report. However, it failed to address major issues affecting the efficiency of audit[15]:

1. The new Law on Financing Political Parties does not regulate cash payments that were seen as a problem in the previous report.

2. Bank loans are regulated in an inadequate manner. Besides problems of guarantees given by the Ministry of Finance as previously mentioned, the recommendation of SAI was to set a limit of borrowing through the new Law, as well as to define the source of loan re-payments. These recommendations were not adopted.

3. Last year SAI recommended for the Ministry of Finance to adopt an act that would regulate the way in which political parties keep accounting books. This was not adopted. Parties still keep their books in different manners: while some parties keep their books as an institution, others keep their books as business subjects and as such further complicate and make the process of auditing more difficult.

The Law duplicates provisions covered by the Criminal Code and do not belong in the field of financing political parties. Namely, in the Article 7, prevention of all kinds of pressure on

14 The Official Gazette of Montenegro "The Law on Amendments of the Law on Financing Political Parties, Article 12

15 Interview with Sanja Šaranović, Adviser for Legal Questions and Anticorruption for the State Audit Institution, 13th of May, 2014.

physical or legal persons which would affect the result of the elections is foreseen. This action already represents a criminal act, and its sanctions include a fine or a sentence of imprisonment of one year.[16] This provision has no concrete relation to the subject of this Law.
During the production of this analysis, most of the provisions of the Law have been declared unconstitutional. It remains to be seen how the numerous questions this Law exposed will be answered.

2.2 Effectiveness of the institutional and legal framework

The amended Law on Financing Political Parties was implemented the day following its adoption. Thus new authorizations were conferred upon the Commission even though the needed legal and institutional pre-conditions for the implementation of the Law were not secured. The basic problems SEC faced in the implementation of this Law were[17]:

1. Appropriate implementation of the Law on Inspectional Control presupposes special authorizations in the proceedings that the SEC has insufficient capacities to fulfill. These authorizations cannot be temporarily passed on to those employed in other services.

2. The new institute of administrative hearings is inapplicable. Namely, it is foreseen that the Commission will make a decision within 48 hours of receiving the report. In this period, the Commission has the right to conduct an administrative hearing led by an authorized person in the presence of a member of the Commission and the secretary. A large volume of reports of potential law violations which was present during the elections could not be adequately processed because the member of the Commission and the secretary were not physically able to organize and be present at all of the hearings. In addition the Law did not clearly define whether administrative decisions are binding if the member and the secretary of the Commission are not present. Also, it is not prescribed if the secretary or the member of the Commission can authorize someone else to be present at a hearing in their place.

3. The control phase lacks explicit definition as to whether the Commission can initiate a procedure on the basis of the SAI recommendations when the party does not fulfill the recommendations. However, even if the Commission decides to initiate a proceeding in these cases there still remains the issue of the lack of administrative capacities.

4. It is stated in the Law that SEC can initiate a proceeding on the basis of a request and on its own initiative. Due to a lack of capacities, in the period of the implementation of the Law, there were no proceedings initiated on the basis of SEC's own initiative.

16 The Official Gazette of Montenegro 70/03 "Criminal Code" Article 186: (1) Whoever, by force, threat or in any other illegal way forces someone else or affects someone else to exercise or not exercise his right to vote during elections or during referendum, or pressures him to vote for or against a specific candidate, election lists or a proposal of an election list, will be punished by a fine or imprisonment up to a year. (2) By penalty from paragraph 1 will be punished a person who demands or accepts a gift or some other benefit for himself or another person in order to vote or not to vote in favor of or against a specific person. (3) The accepted gift or another benefit will be repaid. (4) If an act from paragraph 1 and 2 of this Article is conducted by a member of the Election Committee or another person in official function in relation to voting, this person will be imprisoned for three years. (5) Whoever, after conducted elections or during referendum, calls upon the voter to justify his vote or demands of him to say whom he voted for and why he voted or did not vote will be penalized by a fine or imprisonment up to a year.

17 Interview with the Secretary of the State Election Commission, Milisav Ćorić, 14th of May, 2014.

5. It is unclear if a preliminary decision serves to decide on initiating proceedings, or for deciding the merit of the request to initiate a proceeding. SEC has independently decided to take the institute of preliminary decision to mean a decision on whether to initiate a proceeding or deny the request for one.

Since the new Law was enacted there were 26 requests to initiate a misdemeanor proceeding related to employment during the election period. In all of cases decisions to initiate proceedings succeeded. SEC asked for statements in these cases and concluded that the law was not violated in any of them.

Total number of political parties in Montenegro	40
Number of parties which submitted reports concerning the cost of membership for the current year in 2014	31
Number of parties which did not submit reports concerning the cost of the membership for the current year in 2014	9
Number of parties which submitted reports on property, income and expenses for 2013	30
Number of parties which did not submit reports on property, income and expenses for 2013	10
Number of requests submitted by the SEC due to the failure to submit reports concerning the cost of membership	10
Number of resolved requests by the SEC in relation to a failure to submit reports concerning the cost of the membership	6
Number of denied requests of the total number of resolved requests in relation to the failure to submit reports concerning the cost of membership	3
Number of suspended requests of the total number of resolved requests in relation to the failure to submit reports concerning the cost of membership	3
Number of requests submitted by the SEC in relation to the failure to submit report on property, income and expenses	10
Number of resolved requests by the SEC due to the failure to submit reports on property, income and expenses	3

Number of denied requests of the total number of resolved requests relating to the failure to submit reports on property, income and expenses	1
Number of suspended requests of the total number of resolved requests in relation to the failure to submit reports on property, income and expenses	1
Number of penalized parties in the total number of resolved requested relating to the failure to submit reports on property, income and expenses	1
Requests to initiate misdemeanor proceedings by the SEC relating to employment during the election process (decisions to initiate proceedings were adopted) from the adoption of the Law	26

As the table above shows there are still a significant number of parties that have failed to submit reports on the cost of membership for the current year and on property, income and expenses. Interviews with the representative of the Commission indicated that these are usually the parties that consistently fail to comply with this obligation, and have so for a period of years, be they active or inactive. There are parties which have not participated in elections in the past six years and which the Ministry should erase in accordance with their official authorities. It is also noted the Law fails to define that a party must submit the final bill to the Commission. The Law only states that the SEC must publish the bill seven days upon receiving it. There are ongoing misdemeanors proceedings against parties which did not submit reports.

Finally, it must be noted that the president of the Commission highlighted an important systematic problem during the interview. This problem relating to initiation of misdemeanor proceedings against the aforementioned mentioned parties. Namely, when parties do not submit an identification number of the authorized person in the party to the SEC ahead of time (as the Law foresees), the SEC cannot submit it in the request for the proceeding against the party and thus, the request is denied.

In 2013, the State Audit Institution conducted 13 individual audits. These 13 reports on audits and one collective report which include recommendations are available on the website of the SAI. Audits of political party campaigns were conducted including local elections in Petnjica, Mojkovac and Cetinje. In the mentioned period of time there were 6 misdemeanor requests submitted to the Prosecutor. Of these 6 requests - 2 proceedings are finalized, 1 is suspended while the others remain ongoing. Proceedings related to the failure to submit reports in the prescribed timeframe, as well as to the inexistence of bank accounts of political subjects and the inexistence of the person authorized for spending of resources for the campaign. The suspended proceeding was problematic because of the unsolved legal status of the association due to which the SAI could not submit the necessary documents to the Prosecutor. In the previous period, the SAI conducted the audit of annual reports of political parties for 2012, as well as the audit of political parties for 2013 at the beginning of May this year in accordance with the new Law on Financing Political parties. The SAI has, in this period, adopted multiple negative opinions that were forwarded to the Prosecutor. However, the Prosecutor did not respond to the SAI the provided opinions. The basic problems noted during the audit of individual reports are[18]:

18 Individual reports of audit of political parties are available on SAI's website.

1. Cash payments: in 5 cases the carriers of the lists paid cash for a large number of collected resources (from 37.34% to 92%) which is not in accordance with the recommendation of SAI to decrease the sum which is paid in cash.

2. A special account for financing electoral campaigns was not open and the person authorizedfor intentional spending of resources and submission of reports was not named: this was not fulfilled in two cases.

3. Failure to submit reports with all of the documentation: in five cases reports were not submitted or were submitted without all of the documentation.

4. Inaccurately shown amount of collected and spent resources: deficiencies were found in two cases.

5. Lack of credible documentation for justification of shown expenses: deficiencies were found in four cases.

As new problem which SAI faces in the field of financing political parties is the need to regulate financing from the party's own resources, which is the case in a certain number of parties. SAI recommends that the regulation of a party's own sources for financing its work should be solved by changing the currently used form in submission of reports to the authorized Ministry so that the party's own sources are clearly defined on it.

SAI recommends for media to begin exercising control of media financing and expenses related the carriers of the election lists during elections considering that some the parties show these expenses in their reports while others do not.

2.3 International standards

In this part, we will compare the way requests of GRECO's 3rd round of evaluation are fulfilled and the way objections from the Screening Report for Chapter 23 are addressed.
GRECO recommendations that were not implemented in the previous reporting period are as follows:

1. Introducing clear rules and directives for usage of public resources for party activities and pre-election campaign – new legal provisions which aimed to define the use of public resources during the pre-election campaign have, instead of limiting abuse of state resources, limited the rights and freedoms of the citizens of Montenegro.

2. Giving independent authorizations and resources to an institution that monitors the financing of political parties – besides the significant authorizations the SAI received through the Law on Financing Political Parties its resources failed to be improved. The Law on Election of Councilors and Representatives gives SAI the property of a legal entity, as well as a special budget line in the Budget of Montenegro. However was no work to strengthen its administrative capacities was implemented. This is the weakest link in the process of financing political parties. In addition, precise deadlines for the formation of SAI were not determined thus local elections were held on the technical mandate of the old SAI.

3. Strengthening audit of political parties, especially through: (I) assessment of the need for rules to be adopted so that parties have consistent and clear audit obligations, including an assessment of the existing limit of the amount required for audit of an account of a campaign; (II) introduction of provisions which will secure auditors independence

when doing the audit of political parties. Through the Constitutional amendments in July 2013 the independence of SAI has been strengthened however the first part of this recommendation has not been addressed.

4. To better adjust existing sanctions related to the violation of the rules of financing in the area of politics in order to secure that they are efficient, proportional and appropriate. These adjustments should include the expansion of the scale and specter of potential sanctions and cover all possible violations of the law. Sanctions are predominantly punitive but there is a move forward with the introduction of blocking accounts of the local government if they do not reimburse resources for regular work of political parties.

Objections from the Screening Report for Chapter 23 which were not addressed in the previous reporting period:

1. Current laws in this area (the Law on Financing Political Parties and the Law on Financing Campaigns for the Election of the President of Montenegro, of the Mayor and the President of Municipalities) do not foresee adequate supervision over the system of financing political parties – The Law on Financing Campaigns for the Election of the President of Montenegro, the Mayor and the President of Municipalities has not been amended even though it was foreseen for the Law on Financing Political Parties needed to be amended into the Law on Financing Political Subjects in order to improve, within itself, the Law on Financing Campaigns.

   Thus, there is still a problem of control of financing electoral campaigns for the elections of the President of the state that is regulated by the old legislation and for whose control the internal auditor of the Ministry of Finance is in charge. The Law on Amendments of the Law on Financing Political Parties introduces parliamentary supervision over the implementation of the Law which will be done by the Anticorruption Committee. However, instead of making the supervision of financing political parties independent and professional, this provision puts the Law further into the domain of political supervision.

2. It is necessary to strengthen the accounting obligations and obligations of report submission of political parties – the Ministry of Finance did not adopt an act which regulates the through which the manner of keeping accounting books of political parties. Parties still keep their books in different manners: some keep their books as institutions while other keep them as business subjects.

3. SAI publishes reports but does not complete further monitoring on the outcome of their reports. Expert capacities of SAI must be strengthened in order to secure complete, efficient and independent supervision – While the authorizations and powers of SAI are expanded through the new Law no provisions related to the strengthening capacity of this institution are present. The inclusions of these provisions would ensure these powers are conducted in an adequate manner.

4. The State Audit Institution, which is in charge of the audit of the final annual bill of the political parties and reports on expenses of the pre-election campaign does not have sufficient access to information or capacities to notice fraudulent behavior – the new Law failed to take action to solve this objection. However the proposed amendments of the Law on State Audit Institution provide partial improvement in this area. Additionally, through the recent reorganization, SAI now has a member of the Council who is in charge of questions of audit of political parties.

5. Strengthening of the capacities of supervisory bodies is recommended (of the State Audit Institution and State Election Commission) and the securing of a clear separation of assignments and the framework of the co-operation – this recommendation has largely been adopted through provisions relating to separation of the control of financing political parties and audit of resources, so that SAI has the control role while SEC has the auditing role. In the previous period there was improvement in the field of strengthening capacities of SAI. However, as is already stated, there were no changes in the field of strengthening capacities of the SEC.

6. It is recommended for the system of financing political parties to be improved, through reliable reports, efficient control and the possibility of sanctions implemented through an independent body – as we noted, the control in the new provisions is significantly strengthened. However, the authorized institution has no resources or capacities for adequate implementation of the provisions.

2.4 Recommendations

1. Considering that the most of the provisions of the Law on Financing Political Parties have been declared unconstitutional by the Decision of the Constitutional Court, it is necessary to amend this law as soon as possible in order to secure harmonization with the Constitution and also fulfill international standards. It is necessary for this Law to encompass not only the financing of political parties but also financing of other subjects (such as coalitions or candidates for presidents) in order to effectively complete the regulation of all election processes in Montenegro.

2. It is necessary to regulate the question of loans for political parties through the Law since this was not adequately solved by the previous legal solution. Namely, it is necessary to establish a limit to borrowing as well as the source of returning the borrowed sum. It is not possible for the Ministry of Finance to endorse the loans of political parties.

3. Financing from a party's sources needs to be defined as well as the limits for this financing.

4. It is necessary to determine an exact timeframe in which a political party is obliged to submit the final bill to the State Election Commission.

5. The Ministry of Finance should adopt an act defining the way in which political parties are required to manage their accounting books (as institutions or as business entities).

6. It is necessary to regulate cash payments of political parties and sanction inadequate documenting of expenses.

7. Control of financing political subjects and electoral campaigns must be done by an institution independent from the executive power. CeMI has, in the previous period, advocated for the establishment of an independent Agency for Fight against Corruption which would have the authority to control the financing political parties and electoral campaigns in Montenegro. In accordance with the measures of the Action Plan for Chapter 23 of the negotiations of Montenegro and the EU, a law has been drafted that includes the establishment of an independent Anticorruption Agency that should have the authorization to control financing political parties and electoral campaigns. It is necessary that this Agency, by its date of establishment, will take over the control of financing political parties. The Agency should conduct research on the process of control of financial management and not only doing accounting control of the way budget

resources are disposed of.

8. Until the moment of the establishment of the Agency (1st of January 2016 according to the Action Plan for Chapter 23) it is necessary to create administrative capacities of the SEC which would allow it to implement the powers given to it by the new Law. We consider that powers of administrative investigation that were given to the SEC by the repealed Law should remain present but that SEC should have the administrative capacities needed for their implementation.

9. As previously mentioned the Law on Financing Political Parties, which was in force until June 2014, placed special emphasis on the abuse of state resources however provisions of this law were at odds with constitutional provisions and the jurisdiction of other institutions. It is necessary to remove these provisions or at least adjust them to:

- ✓ The removal of provisions concerning the prohibition of employment during elections. CeMI proposes the implementation of the existing regulations and to regulate abuses in this area by giving labor inspection authorities the authority to control provisions concerning systematization and organization of all entities of the public sector. If there are great deviations in the election period and a discrepancy in the acts on systematization with the needs of the entity, this information is to be submitted to the Prosecutor, the SEC or the Ministry of Finance.
- ✓ To remove provisions relating to publication of analytical cards and to exchange them with provisions under which the Ministry of Labor and Social Welfare gains authority to control total amount of social giving and that this amount if published yearly. When there are violations of these rules, this should be reported to the Ministry of Finance, SEC and the Prosecutor.
- ✓ To remove provisions relating to publishing of the names of the list of owners for electrical energy and public services.

10. Introduce the control of financing in the media through media advertising space.

3. Prevention of conflicts of interests

In accordance with the Action Plan for Prevention of Conflicts of Interests and the Action Plan for the Accession Chapter 23, a draft of the Law on Prevention of Conflicts of Interests has been created. The Commission for Prevention of Conflicts of Interests actively participated in the drafting of this Law mostly giving expert opinions to the Directorate for Anticorruption Activities. The draft Law is under consideration by the Government and the Action Plan for Chapter 23 expects its adoption in July 2014.
Taking into consideration that the draft has not been adopted and that we have considered the characteristics of the current Law in the previous report, we will, in this report, look into the basic novelties that the adoption of the draft of the Law would bring. The effectiveness of the legal and institutional framework will be still tied to the current regulations.

3.1 Characteristics of the institutional and legal framework

The draft Law addresses many problems that previous reports on the implementation of anticorruption policies highlight.

a) Definition of a public official

Based on the recommendations of the European experts, the definition of a public official has been expanded to include persons appointed by the Government or the Parliament without consideration of the constancy of performance of functions and compensation.

Public officials, who are allowed to have membership in an executive body of a public enterprise or a public institution, or an institution in which the state or the municipality is the main owner, do not have to right to compensation on the basis of this membership.

The law prescribes that on the request of the Commission the government entity is obliged to report to the Commission concerning every choice, appointment and dismissal of public official through which updated lists of these officials is created. The deadline for report submission is 15 days as a result of the request of the Commission to reduce the previously suggested deadline of 30 days in order to increase efficiency. The Commission also demanded that Article 21 of the Law be amended to allow for a report on income and assets of a public official to contain data on the name of the father, of the mother and the maiden name of the mother of the official, in accordance with the Law on Misdemeanors. However, the entities authorized to appoint officials still fail to submit to the unique identification numbers of the newly appointed officials to the Commission. Therefore the aforementioned problem with initiating a misdemeanor proceeding against these officials, indicated in the previous report remains unsolved. However, the provision which stipulates that the government entity is required to submit requested information to the Commission followed by the infringement liability of the entity solves this problem adequately even through it lengthens proceedings.

b) Submission of reports on property

One of the most important amendments that the new Law brings is that the Report on Income and Assets will be considered an official document, thus incomplete and inaccurate reporting will be considered a criminal act of falsifying official document and will be punishable in accordance with the Criminal Law. This amendment brings about important improvement of the current state of affairs and, to a certain extent, covers the deficiency of the institute of unjustified enrichment in Montenegrin legislation. In addition, this amendment will result in greater activity of the Prosecutor's Office in the field of conflicts of interests which was not present so far. [19]

The responsibility to report property has been expanded to include movables whose value is over 5000 Euros, which is an important improvement as previously only movables which required registration with the officials were required to be reported.[20] Valuable objects such as artwork, animals, jewelry etc. will now be encompassed by the report and will give a clearer picture of the financial status of the public official.

c) Restrictions on termination of office

In addition to the existing restrictions defined in the current Law on Prevention of Conflicts of Interests, a restriction on a public official not to be able to initiate a work engagement or business co-operation with a legal person, organization or an entrepreneur has been introduced for all those persons who have, on the basis of the decisions of the entity the public official was in office of, made benefited from it.[21] In this way, the possibility of corruption in a public office due to future benefit is limited.

d) The composition of the Commission

The draft law does not amend the appointment of the members of the Commissions. New

19 Draft of the Law on Prevention of Conflicts of Interests, Ministry of Justice, Article 20.

20 Draft of the Law on Prevention of Conflicts of Interests, Ministry of Justice, Article 21.

21 Draft of the Law on Prevention of Conflicts of Interests, Ministry of Justice, Article 14.

provisions will not be included until the Anticorruption Agency is formed, a body which will take over the supervision of the implementation of the new Law from the Commission. However, during pre-election of the members of the Commission in June this year, the Administrative Committee faced the problem of a lack of criteria for the election of the members of the Commission. Namely, previous legislation states that the only condition for the president and the member of the Commission to be elected it that he or she has a Bachelor of Laws, completed their bar examinations and that he is a person who has, through his expert work and moral qualities, proved his neutrality and conscientiousness. Besides the fact that these provisions are broad, provisions foreseeing that the president or the member of the Commission must fulfill general conditions for work in government entities are missing, as well as the provision requiring that the person in question have no previous convictions.

e) Verification of property card

The new Law includes an amendment of the form of the Report on Assets and Income which will entail the signature of willing approval of verification of accounts with all banks and other financial institutions. This completes the recommendation we gave in our report "Possibility of administrative Investigation, including authorization to gain information from banks, insurance companies, pension and investment funds, as well as the authorization for researching the source of the assets."[22] This provision enables efficient verification of the data in the Report on Income and Assets. However, it is clear from previous reporting periods that the Commission does not possess capacities needed to do verification of all of the reports on income and assets. Additionally the Law does not clearly define the manner in which officials whose property cards will be verified will be selected. From the Commission for Prevention of Conflicts of Interests we found out that there are two possibilities when making a decision on this question: verification on the basis of accidental sample and verification in accordance with the analysis of the risks of corruption for holders of state functions.[23]

The current legal solution does not allow for the verification of the source of income of public officials. However, the new draft of the Law foresees that public officials are obligated to, on the request of the Commission, in the process of verification of data from the report, submit detailed data on the basis of acquisition of property and income within the 30-days timeframe.[24]

f) Declared measures

The previous Law on Prevention of Conflicts of Interests prescribed that the entity authorized to do appointments must inform the Commission 30 days after the decision is made concerning the sanction about the said sanction but it did not give a deadline to make a decision for a dismissal from function or decision of disciplinary sanction. This caused problems in the implementation of declared measures since the Commission did not inform on implementation of its decisions from the authorized entity. The new Law prescribes a deadline of 60 days for the implementation of the decisions of the Commission. This begins from the day of the making of the final, legally binding decision[25]. This provision should improve the implementation of the decisions of the Commission as there is now a fine for the authorized entity from 1000 to 10000 Euros for failure to fulfill this provision.

The new Law removes the power of the Commission to give an opinion concerning the infringements of the Law or concerning the existence of the conflict of interests. Instead of an opinion, the Commission makes a decision that is final and legally binding from the day it is

22 "Analysis of the Effects of Anticorruption Policies in Montenegro 2012/2013", CeMI 2013, pg. 26.

23 Interview with the representatives of the Commission for Prevention of Conflicts of Interests, 19th of May, 2014.

24 Draft of the Law on Prevention of Conflicts of Interests, Article 22.

25 Bill of the Law on Prevention of Conflicts of Interests, Article 38, 2nd of April, 2014.

made. Appeals can be made against the Commissions decisions. This removes the possibility for the officials to correct violations of the Law, and effectiveness of the Law will be improved, as well as its implementation in the area of misdemeanor provisions. What remains to be resolved are opinions of potential conflict of interests for violation of the Law which are yet to happen.[26] The new draft Law has addressed the issue found in its predecessor where for certain categories of public officials (representatives and councilors elected directly by the citizens) a measure of dismissal from a public function could not be applied. The draft law introduces different types of sanctions (suspension of income and loss of rights to income if an official (within 90 days from the day the decision is made) does not correct the proceedings opposing this Law).

g) Data secrecy

The draft Law, stipulates that the amount of information available to the public from the Report on Property and Assets will be shortened to: address of immovable property and data on minors. Even though such provisions are in accordance with the practice of the European Court for Human Rights, we consider that data relating to property of minors who are children of public officials should be available to public, since Montenegro has still not built a degree of institutional trust which would secure supervision by civil society. It is possible for public officials to ascribe most of their assets to their children keeping the Montenegrin public from the true state of affairs. The data on home address are not published by CPCI for the past three years even though this was required because of the difference of property prices depending on location. Data on minors are not published for three years only except for their initials and property.

3.2 Effectiveness of the institutional and legal framework

As previously stated, this part of the study will consider effectiveness of the current legislative framework.

Since the new Law on Prevention of Conflicts of Interests was adopted in 2011 there has been a constant growth in the number of public officials. In 2014 this number reached 3904.[27] As was noted last year, automatic mechanisms of recognition and registration of public officials are lacking. There are still public officials who can avoid responsibilities of this Law until the Commission is asked for an official opinion on their status.
While the number of officials who failed to submit reports on property and assets within the framework has decreased in comparison to last year, the current legislative framework does not provide efficient sanctions that would influence timely submissions of the reports. The procedures for requesting the initiation of the misdemeanor process gives an opportunity for public officials to remove irregularities and burdens the system even more. Certain officials avoid submitting reports on property until they receive a misdemeanor warning, while only a warning sanctions officials who submit their report during the ongoing procedure. The draft Law will significantly improve this area if the provisions that allow the decision of the Commission to be final are kept, as there will be no space left for “removal of irregularities”.
In the last three years there has been a growth in the number of verified property cards from 731 in 2012 to 1166 in the first half of 2014.

26 Potential conflict of interest is a situation which does not exist in the moment of seeking of the opinion but would exists if the applicant of the request takes over an additional function.

27 Interview with the Expert Service of the Comission on Prevention of Conflicts of Interests, 19th of May, 2014.

	2012	**2013**	**Until the 1st of June 2014**
Number of public officials	3495	3797	3 904
Persons who have not submitted Reports on Property and Assets in the legally binding deadline	3,8%	14.5%	6,4%
Persons who reported property greater than 5000€	53	51- self-initiated 157- after the warning of the Commission	8 – self-initiated 70 after the warning of the Commission
Persons doing two functions	1074 -31%	633 or 16,7%	5
Persons doing three functions	3%	126 or 3,31%	No data
Persons doing unrelated functions	12	11	6
Number of checked reports	731	1489	1408
Number of reports on property and assets where inaccurate data was provided	76	206	358
Decision of the violation of the Law	882 decisions - 649 violations of the law	1 493 decisions – 1021 violations of the law	468 decisions – 304 violations of the law
Requests for misdemeanor proceedings	442	455	
Requests for dismissal, suspension or declaration of a disciplinary measures	22	31	3
Total amount of declared fines	16 530,00 €	24 355,00 €	6 785,00 €

We can note a growth in the number of public officials who have submitted inaccurate or incomplete reports on property and assets from the table. This is a result of better coordination of exchange of information between the Commission for Prevention of Conflicts of Interest with other institutions who possess relevant data. However, the current legal framework only prescribes misdemeanor sanctions for these officials and does not contain verification of the source of unclaimed property. In addition, data from banks, insurance companies et al are still missing but should be introduced through the amendments of the Law.
There is a decrease in the number of officials doing two or more functions. This points towards the efficacy of sanctions prescribed. However, in the area of unrelated functions there is still a problem as the Law forbids membership in executive and supervisory bodies but does not forbid positions in public institutions, enterprises, Ministry of Transport and Maritime Affairs and other legal persons. Therefore some officials cover multiple unrelated functions. This is not in opposition with the Law on Prevention of Conflicts of Interests.
Even though the commission verifies the data from property cards, it is clear from the report that there is not all property cards are verified. We are concerned that there is no methodology according to which selection of property cards for verification is done, which can result in the exclusion of officials whose functions are especially vulnerable to the risk of corruption.
The following problems indicated in the previous report are still present:

- ✓ When the Commission forwards the authorized entity a decision concerning dismissal, suspension or declaration of a disciplinary measure for an official, this entity often does not inform the Commission of the implemented sanctions. Namely, the Law states that the entity must inform the Commission in 30 days after the decision is made concerning the sanction but does not give a deadline for the making of the decision.
- ✓ An additional mitigation is the fact that officials who do not want to declare their property even when threatened by misdemeanor sanction, have as a backing the opinion of the Agency for Protection of Personal Data and Free Access to Information which disables publishing of the names of the officers who are sanctioned. Without the pressure of the public, with relatively low sanctions, this kind of protection of identity can contribute to the appearance of extension of corruptive activities. Even though the legislative framework for data protection has been changed, this opinion is still not in accordance with the principles of publishing information of public importance so it is remains being applicable.
- ✓ The failure to declare a change in financial status larger than 5000 euros can point towards acquisition of property through illegal means. The Commission still does not have the authority to verify the source of the property, which significantly decreases the effect of property declaration. Montenegrin legislation still does not recognize the term “unjustified enrichment“, nor the procedures related to this , which leaves space for various abuses of the position and acquisition of personal gain on the account of the state.

The Commission, has, within its capacities, achieved significant improvement in the field of prevention of conflict of interests and the prevention of corruption. However, it is clear that the implementation indicated deficiencies of the Law which must be removed during its amendments. We consider that the draft of the Law on Prevention of Conflicts of Interest is an adequate basis for better regulation of this area.

3.3 International standards

We will compare the current legislative framework and the future amendments of the Law in relation to the recommendations of GRECO and SIGMA which have not been fulfilled since the last report:

1. Independent and proactive body which would control conflict of interests.[28] – Amendments of the Law do not foresee an institutional change in this direction. An additional problem is that the current Law on Prevention of Conflicts of Interests very poorly regulates the choice of the president and the members of the Commission. The current legal framework fails to foresee the election of an independent and professional body, but also fails to state general conditions for work in state entities such as: citizenship, condition that the candidate is not convicted etc. However in March 2014 the Law on Prevention of Corruption was drafted, which will establish an Anticorruption Agency. Considering that the authorization of this Agency will be the area of preventing conflicts of interests, it remains to be seen whether this Law will enable the election of an independent and proactive body that will begin work in January 2016.

2. Differentiation of sanctions and responsibilities, according to officials of executive government and officials of legislative government who elect the Commission.[29] – While the current legislative framework does not allow for sanctioning by suspension and dismissal of representatives, the draft Law on Prevention of Conflicts of Interests includes the suspension of a portion of the income of a representative until violations of the Law cease.

3. The criminalization of unjustified enrichment and authorization of the entity in charge of verification of declarations on property to verify the source of the property[30] - Though there is a need to amend the Criminal Code in order to criminalize unjustified enrichment, the draft Law included that the Report on Property and Assets will represent an official document. Through this provision it will be possible to consider incomplete or inaccurate reporting of property and assets as falsification of official documents and a criminal act. In this way, the recommendation is partly covered.

4. The possibility to expand verification of property by gaining information from banks, insurance companies and pension funds.[31] – This current legislative framework does not allow this; however, the draft of the amendments of the Law on Prevention of Conflicts of Interests foresees possibility of verification of this data.

5. A wider spectrum of dissuasive sanctions foreseen for violations of the Law.[32] – The current Law foresees misdemeanor and disciplinary sanctions, as well as the possibility of dismissal and suspension. Adoption of provisions included in the draft of the amendments of the Law on Prevention of Conflicts of Interests would expand this scope to include suspension of income as well as criminal sanctions in the cases of incomplete and inaccurate reporting.

3.4 Recommendations

The draft Law on Prevention of Conflicts of Interest, which is currently under consideration before the Government, represents a great advancement in relation to the current legal framework. It is especially important that the following provisions the draft Law are adopted:

- ✓ The definition of public official is expanded to persons who are named by the Government or the Parliament without consideration of constancy of performance of functions and recommendation;

28 Sigma Assessment Montenegro 2011.

29 Ibid.

30 Progress Report Montenegro 2012, EC.

31 Ibid.

32 GRECO, II Round of evaluation, Montenegro 2007.

- ✓ The Report on Property and Assets as an defined as an official document;
- ✓ The possibility for the Commission to ask for data from banks, insurance companies, pension and investment funds, and authorizations to research source of income during the verification of property cards;
- ✓ Limitations of employment upon termination of office;
- ✓ Deadlines for the implementation of decisions of the Commission by authorities as well as the finality of the decisions of the Commission.

However, this draft of the Law still contains several deficiencies that should be removed to ensure the area of conflict of interests is completely covered and harmonized with the international standards:

1. It is necessary to include precise provisions concerning appointment of the members of the Commission in the Law to harmonize them with general rules of employment and work in a government body. It is expected that a new independent body for control of this area will be formed after the adoption of the Law on Prevention of Corruption and the formation of the Agency for Fight against Corruption.
2. It is necessary to improve expert and administrative capacities of the Commission for Prevention of Conflicts of Interests to respond to the expanded authorizations and powers of this body.
3. It is necessary to establish a methodology of the selection of reports on property and asserts which will be verified in order to enable an objective picture and a greater expanse of verification.
4. In the following period, until the work of the Agency for Fight against Corruption begins, it is necessary to keep public data concerning property and assets of minors who are children of public officials, without publishing their identifying data.

In addition, it is necessary to remove the implementation of the opinion of the Agency for Protection of Personal Data which disables publishing of the names of the officials who violate the Law on Prevention of Conflicts of Interests.

II ECONOMIC CORRUPTION

1. Public finances

Over the last year Montenegro has secured the transparency of public finances through multiple legal amendments and has improved responsible and effective spending of public resources. This area is characterized by its dynamic legislative framework changes over the past few years in the aim to harmonize it with the European regulation. This year we will provide an overview of the following areas that are at risk of corruption:

a) Adoption of the state budget
b) Financial management and control, and its internal audit
c) Management of EU funds
d) Tax collection

1.1 Characteristics of the legal and the institutional framework

a) Adoption of the budget

In April 2014, the Law on Budget and Fiscal Responsibility was adopted. The Law on Budget and Fiscal Responsibility regulates the adoption, recording and management, preparation and planning and execution of the budget of Montenegro, as well as of the budgets of municipalities, loans and guarantees, internal auditing, accounting related to the budget, responsibilities and measures. This Law is partly harmonized with Directive 2011/85/EU, in relation to the implementation of the ESA 95 and the publication of detailed data of the influence of tax expenses on revenues.

The current Organic Law on Budget does not formally regulate issues related to fiscal rules on the basis of which the Government establishes and implements fiscal politics, mid-term budgetary framework which encompasses the limits of spending for three fiscal years, responsibilities of the fiscal executor, inspection supervision and other questions of importance for the strengthening of fiscal discipline and responsibility.[33]

Through the new Law, the Parliament adopts the fiscal strategy, a set of measures for the sanctions of the deficit, the budget of the state, financial plans of the consumer units etc.

b) State Audit

The area of state auditing is under the jurisdiction of the State Audit Institution. The State Audit Institution audits the legality and the success of state property management and responsibility, of budgets and all financial activities of subjects whose sources of finance are public or whose income is generated through the usage of public property. The basis of the functioning of the SAI is the Law on State Audit Institution which was adopted in 2004 (and amended in 2006, 2007, 2011). Besides the Law on State Audit Institution, this body is the authorized body for the implementation of the Law on Accounting and Auditing during the audit of the activities of the private sector.[34]

The Constitution amendments in 2013, implemented a higher degree of independence of the State Audit Institution through a guarantee of functional immunity to SAI members. In the second half of this year, a working group was formed made up of representatives fro SAI, Parliament, the Ministry of Finance and of non-governmental organizations. This working group drafted a Bill of the Law on Amendments of the Law on State Audit Institution which was unanimously passed by the Committee for Economics, Finances and Budget, as well as by

33 Report on conducted Analysis of Assessment of the Effect of Regulations (RIA), Ministry of Finance, 2014

34 For details concerning characteristics of these laws see previous CeMI reports on anticorruption policies

the General Directorate for the Budget. Its adoption is expected during the plenary assembly of the Parliament.[35] The previous bill of the Law, which was established in 2011, was pulled from parliamentary procedure.

The bill of the Law provided a positive step towards SAI's financial independence – namely, it has been determined that the draft of the budget of SAI is to be suggested by the Council[36]. The Council forwards the draft of the budget to an authorized body of the Parliament and the Parliament forwards it to the Government. If the Government wants to make changes to the draft of the budget it must send a written explanation to the SAI of as to why they want those changes. This is the first step towards the independent management of resources and financial independence of the SAI.

In order to improve the effectiveness of realizing SAI's recommendations, the new bill of the Law states that it is the responsibility of the auditee to submit a report on the implementation of SAI's recommendations in the timeframe stated. However, the bill of the Law still does not provide sanctions, or the possibility to initiate misdemeanor proceedings in cases when the auditee fails to submit a report within in the designated timeframe. This significantly decreases the effect of these provisions.

In the field of institutional changes, there was improvement in capacity strengthening and reorganization of SAI's internal structure. The new Rule Book for Internal Organization and Systematization was created as recommended in the Action Plan for Chapter 23. The number of employees of the institution has increased in comparison to the previous period, and various new departments have been formed with specialization for certain fields of audit. Of special importance is the newly formed Department for Anticorruption and Submission of Misdemeanor Criminal Charges. In the following period employment of the executive of this department is expected. In addition, it is important to note that the new Council member in charge of the area of financing political parties has been selected.

c) Financial management and control, internal audit

Financial management and control encompasses activities related to the planning and execution of the budget, implementation of the processes of public procurements, payment of obligations in accordance with concluded contracts and other responsibilities, protection of property from loss, incorrect usage and fraud and other non-financial activities relating to the management of the subject.

The Sector for Central Harmonization of Financial Management and the Control and Internal Auditing in the Public Sector (CHU) are within the Ministry of Finance. The main assignment of CHU is co-coordinating the establishment and development of PIFC-a at a central and local level. In other words, CHU exists in order to secure the uniform development of PIFC structures and procedures, which coordinate financial management, control and internal auditing of budgetary beneficiaries. CHU has two departments: the Department for development of the control of financial management (FMC) and the Department for development of internal auditing (IA).

The Law on System of Internal Financial Controls in the Public Sector (the Law on PIFC), was adopted in November 2008. Amendments adopted in 2011 and 2012 significantly improved the existing text. During 2012 secondary legal acts were adopted which mostly complete the legal framework in this area. In the reporting period a bill of the Law on Amendments of the Law on Internal Financial Controls in the Public Sector was created which includes:

- Bi-annual reporting on the system of financial management and internal controls
- The possibility to employ an auditor who has not passed the examinations of an autho-

35 Interview with Sanja Šaranović, Adviser for Legal Questions and Anticorruption for the State Audit Institution, 13th of May, 2014

36 In the earlier Law this was done by the Head Committee of the State Audit Institution (prim. Aut)

rized auditor in the public sector with the condition to pass this exam within a year of the beginning of their employment

- The conditions which the internal auditor can be released from the obligation to do the exam of an authorized internal auditor

In the previous reporting period Directions for Establishing and Implementing the Process of Managing Risks in Subjects in Public Sector were adopted. The Directions aim to establish efficient risk management thus strengthening the existing managing structures, especially in the process of planning and decision-making. In turn this would contribute to developing risk management standards, a widely accepted concept and basic part of management. This would optimize the use of public resources, both national and EU resources. The Directions define a few categories of risk:

- Everything which is a threat to accomplishing the targets of the subject, of the program or of service-provision to the citizens;
- Everything that can threaten the reputation of the subject and the trust of the public in his work;
- Insufficient protection of inadequate behavior, wrong practice, damage and small value for money;
- Violation of regulations;
- The inability to react or manage a situation of changed circumstances in a manner that will avoid or to a minimize negative effects of the changes to the provision of public services.

Institutional support of the system of risk management is made up of the person in charge of coordination, establishing and implementing the risk management system, as well as the Risk registry. The system of risk management is made up of: identification of risks, evaluation of risks, reaction to risks and implementation and reporting on risks.

d) External Audit of EU funds

On the basis of the **Law on Audit of EU Funds**, adopted in February 2012, the **Audit Body** (as an independent and autonomous legal entity) was established, which is functionally and operationally independent from all participants in the systems of governance and control of the resources of EU funds. The law determines the subject of audit, individuals who are being audited, authorities of the Audit body, the manner of conducting audit of resources from EU funds in Montenegro etc. (naming of auditors and deputy auditors, qualifications, compensation etc.) The task of the Audit Body is to examine and verify the efficiency and stability of the functioning of the system of management and control of resources from EU funds in all entities in charge of management, control and implementation of EU programs. The law prescribes sanctions to the subject of audit for non-compliance with the provisions of the law, failure to fulfill certain obligations (for example: if auditors are not allowed free access to the official offices of the subject of audit or they are not secured the complete documentation necessary for audit.) It is important to note that this Law introduces the obligation to submit a criminal report if during the process of audit it is determined that there is a basis for a doubt for a criminal act to have been committed.

Until the Law on Revision of Resources of EU funds was adopted, the Audit Body was the temporally established and located in the State Audit Institution.

e) Tax collection

In 2013 preparatory activities for the development of the Strategic Plan of Tax Administration

began. The Strategy represents a basic document of Tax Administration for the planning of future activities, establishing priorities including the improvement of IT and monitoring of progress. The development of the Strategic Plan is the condition for all international projects for which the Tax Administration Office has applied for.[37]
The new Rule Book on Systematization introduced a new sector – Sector for Tax Police Force. The Sector for Tax Police Force is expected to fight challenges related to tax evasion and underground economy, as well as in the areas of preventing of money laundering, organized crime and corruptive acts, and detection of criminal acts in the area of tax and economic crime. The Tax Administration Office systematization requires 611 civil servant and state employee positions and 68 civil servant and state employee administrative positions for the Ministry of Finance. In 2013, the Tax Administration Office employs 504 civil servants and state employees.

1.2 Effectiveness of the legal and the institutional framework

a) Adoption of the budget

In relation to the draft of the Law, which was analyzed in the previous year, there was a significant advancement to amend the Law in order to strengthen the supervision over the process of creation and implementation of the budget and decrease the space for inefficient spending of budgetary resources. In relation to the Draft from last year, improvements include[38]:

- ✓ Adoption of a fiscal strategy – which is not only done by the Government but is submitted to the Parliament for adoption.
- ✓ Removal of the collision with the Law on PIFC – in a manner that it foresees for budgetary auditing to be done under the implementation of the Law.[39]
- ✓ The body authorized for initiation of the misdemeanor proceeding is defined, as well as the body is authorized to implement the Law.[40]
- ✓ Financial independence of SAI has been strengthened by its inclusion within the 3 spending units against which the Ministry cannot take sanctions.[41]
- ✓ The specter of misdemeanors has been expanded and misdemeanor sanctions have been augmented.

However, the role of the Parliament in the process of the creation of the budget remains minimal due to the inadequate budgetary calendar. The draft of the Law on Budget is submitted to the Parliament by the 15th of November for the next fiscal year, and the Parliament must consider and adopt it by the 31st of December. This schedule is not in accordance with international standards that require that the draft of the Law on the Budget be submitted at least three months before the end of the fiscal year.[42] In addition, the bill of the Law on Execution of the Budget for the previous year is submitted to the Parliament by the 15th of October, which gives the Parliament very little time to consider this Law as it is almost the same time as the consideration of the law on the Budget for the following year which is submitted by the 15th of November.
In the adopted bill of the Law, the Parliament remains the key body in the process of creating the capital budget and the process of managing public debt.

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37 Annual Report of the Tax Administration Office for 2013

38 Interview with the Analyst Marko Marko Sošić, 27th of June, 2014

39 Law on Budget and Fiscal Responsibility, Article 78

40 Law on Budget and Fiscal Responsibility, Articles 77-79

41 Law on Budget and Fiscal Responsibility, Article 75

42 OECD "Best Practices for Budget Transparency", 2002

b) State Audit

SAI has, in the period from October 2012 to October 2013, conducted the audit of the Final Budget of Montenegro. This included 1 audit of regularities, 1 audit of sections and regularities, 1 thematic audit of the sections, 7 general adults, 2 financial audits, 2 financial and audits of regularities and 1 control audit.[43]

It is concerning that the Law on the Final Budget of Montenegro recieved a mixed opinion from the SAI, due to important irregularities present. The most important ones related to the appearance of corruption follow:

- ✓ Deficit of the Budget is greater than what is shown in the final budget;
- ✓ In 17 spending units it was indicated that there was greater spending than allowed by the Law within the total amount of 9,98 million of euros;
- ✓ Inadequate payment and recording of public revenue;
- ✓ Irregular submission of the IOPDD form of personal income;
- ✓ Misuse in spending of resources from the capital budget.[44]

In SAI's annual report numerous irregularities are indicated with different subjects of audits: violations of the Law on Public Procurement and failure to apply the Law (Montenegrin Olympic Committee), non-realistic plans of public procurement, lack of transparency in the conduction of proceedings, failure to appoint officers for public procurement, case sharing, incomplete reporting, acceptance of a price greater than the one published through the public tender in one case (Plav municipality), violation of the prescribed limit of the value of public procurement through direct agreement (JU CSU) and irregularities in the conduction of public procurement through the shopping method etc. 4 negative opinions were given (JU Center for professional education (negative opinion relating to the financial report), JU Center of Modern Art, JU Bureau for Books and Teaching Resources (negative opinion relating to the harmonization of business activities), Municipality of Plav). All negative opinions are followed by recommendations and conclusions. 2 of the opinions, related to the JU Center for Modern Art and JU Bureau for Books and Teaching Resources will be, within the Report of SAI (in accordance with the rules of SAI to submit all reports with negative opinions to the Prosecutor) submitted to the Prosecutor in order to determine if there is the possibility of a criminal act. There are no data on whether these findings have led to investigation or submission of request for law violation.

In its Annual Report SAI emphasizes that cooperation with the Prosecutor's Office and the Directorate for Prevention of Money Laundering and Terrorism Financing has been intensified. The report also highlights SAI's cooperation with the Directorate for Anticorruption Initiative, Commission for Control of Procedures of Public Procurement, the Human Resources Management, Tax Administration Office and other state entities. There are no statistical indicators of the results of this cooperation and there are no individual examples of successful cooperation between these institutions.

c) Financial management and control, internal audit

In the field of internal audit, Ministry of Finance submits a report on implementation of internal controls on the basis of which it can be concluded that most of the entities have internal control and that they have appointed a person responsible for internal audit. However, there are still no reports on the implementation of internal controls. The government was supposed to do a complete systematization of the places for internal audit. However, there were no advancements

43 Annual Report of SAI relating to conducted audits and activities of the State Audit Institution of Montenegro for the period of October 2012 to October 2013

44 Ibid, pgs. 11-33

in this field.
State Audit Institution has indicated in this year's report that "improper spending which was discovered during the audit of the Final Budget Account points towards insufficient efficiency of the established system of internal audit."[45] The problem with effectiveness of the current Law is found in the fact that the Law does not foresee the responsibility of reporting to the Parliament or the SAI. The representatives and the auditors do not have an insight into the number of conducted audits, the number of recommendations and the percentage of their implementation, nor can they find out what the problems and irregularities are which auditors face in their work. In this way, the recommendations of the European Commission are not fulfilled even though they undoubtedly recommend for consolidated report to be submitted do the Parliament in order to improve parliamentary supervision over the process of risks and control which the administrative structures in the public sector are authorized to do.[46]
By the decision of the Ministry of Finance, the Report on Internal Audit has been declared a confidential document. NGO Institute Alternative filed a complaint to the Administrative Court about this[47] but despite the decision of the Administrative Court which canceled the decision of the Ministry of Finance in April 2013 and determined that the practice of proclaiming this report is against the Law on Data Secrecy, the Ministry of Finance has not made this report public.
Furthermore, the Law on PIFC declaratively states that the executive of the unit for internal audit is independent in his work and that he cannot be placed somewhere else or fired for stating certain facts or giving recommendations in the report on conducted audit.
Finally, there aren't any punitive provisions in the Law on PIFC related to failure to submit the report on implementation of planned activities and establishment and the development of the system of financial management and controls, for failure to submit quarterly reports on the work of internal audit and implemented activities related to the implementation of given recommendations of internal audits, or for the failure to submit annual reports on the work of internal audit.
Guidelines for establishment and implementation of the process of risk managements in the subjects of public sector represent a good way to manage risks and an elaborate strategy of reacting to risks. However, none of the registers of risks, nor the report on managing risks of organized units are available to public and thus, we cannot evaluate their effectiveness.

d) External audit of EU funds

Even though the transfer of powers from the EU to Montenegro for the first 4 IPA components has been planned for last year[48] (help in transition and strengthening institutions; cross-border cooperation; regional development; human potential development), including the fifth and the most extensive component (rural development), powers have been transferred only for the third component (regional development) on the 25th of April 2014. It is expected that audit will begin after the beginning of the implementation of the first projects in September. In the beginning, the focus will be on the audit of the system while audit of the operations is planned for later (after the first payments to DIS), as well as audit of financing.
In comparison to the last reporting period when the Audit body employed 6 officials, it now has

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46 "Welcome to the world of PIFC", European Commission, DG Budget, http://ec.europa.eu/budget/library/biblio/documents/control/brochure_pifc_en.pdf via Institute alternative: "Suggestion of added amendments of the Law on PIFC"

47 www.institut-alternativa.org

48 Center for Monitoring and Research, *"Analysis of the Effects of Anticorruption Policies in Montenegro 2012/2013 – Suggestions for Improvement"*, September 2013, pg. 31

13 officials and 11 of those are trained to do audit work (head auditor, assistant head auditor and 9 auditors).[49] Through systematization it is foreseen that the number of employed in this institution will be 20 (16 auditors) by the end of 2015.[50] During the first half of July work on increasing capacities of the Audit body is planned through „Twinning light" mid-term project focusing on updating Guides on Auditing, training of the employed (including two pilot audits), as well as updating of the by-laws. The Draft of the Guide on official IDs is prepared and its adoption is expected during 2014.[51] Two seminars for cooperation with OLAF and AFKOS are also planned and it is expected that there will be refinement of the ways of cooperation of the Auditing body with these institutions during those seminars.
There was advancement in the sense of filling capacities of this body and trainings and the accreditation of the 3rd component (regional development). In addition, the procedure for transference of authorities from the European Commission for components II and IV has been initiated so the Audit Body will begin implementing audits starting in 2015. However, it should be noted that 2 years after this body has been established, it is still prevented from conducting activities foreseen through its establishment.

e) Tax collections

With the aim of favoring "regular" taxpayers, the Tax Administration Office published a list of 135 most regular tax payers which was updated on the 30th of January 2014 and contains information on those taxpayers who have the highest degree of fiscal discipline.
With the aim to make tax debt collection transparent in accordance with the Law on Conditions and Criteria of the Publishing of the List of Tax Debtors, there are lists of tax debtors on the website of the Tax Administration Office containing information on those taxpayers with a highest debt who have not continuously settled their tax debts in the period of 12 months or longer.
Total realized gross collection in 2013 is greater for 9% in comparison to the last year. Gross collection of taxes in 2013 is greater for 6%. Gross collection of contributions in 2013 is greater for 11% in comparison to 2012.

1.3 Recommendations

1. Amend the Law on Budget and Fiscal Responsibility so that:
   - ✓ The Budget Calendar is adjusted to the international standards that require the draft of Law on Budget is submitted to the Parliament three months before the end of a fiscal year at the latest and that the Bill of the Law on the Final Account of the Budget is submitted to the Parliament at least 4 months before the end of the fiscal year;
   - ✓ The Parliament and the State Audit Institution should be included in the process of creating the capital budget and in the of public debt management;
2. The Bill of the Law on Amendments of the Law on State Audit Institution should establish a way for election of the members of the Senate of this body which would enable greater political independence of the body;
3. Establish statistical reporting on the results of cooperation including examples of individual successful instances of cooperation between the SAI and the Prosecutor Office, Directorate for Prevention of Money Laundering and Terrorism Financing, Directorate

49 Interview with the Head Auditor of the Audi Body for Audit of EU Funds (Mila Barjaktarović), 13th of June, 2013
50 Interview with the Head Auditor of the Audi Body for Audit of EU Funds (Mila Barjaktarović), 13th of June, 2013
51 Interview with the Head Auditor of the Audi Body for Audit of EU Funds (Mila Barjaktarović), 13th of June, 2013

for Anticorruption Initiative, Commission for Control of Public Procurement Processes, Human Resources Directorate, Tax Administration Office and other state entities;

4. State entities - which in accordance with the Law on the System of Internal Financial Controls in the Public Sector - are obligated to establish a system of internal controls that secure proper implementation of the Law on PIFC through the transparent reporting of the results of their work;

5. Revoke the Decision of the Ministry of Finance which declares the Report on Internal Audits a confidential document and there allow public access to those reports as well as access to the registries of risks which the organizational units possess;

6. It is necessary that the Government, in accordance with the Law on the System of Internal Financial Controls in the Public Sector and the Law on Establishing Internal Audit in the Public Sector, accelerates the process of establishing an internal audit of the public sector in such a way as to enable filling the missing number of systematized work places for internal auditors;[52]

7. It is necessary to strengthen the independence of internal auditors/executives of internal auditing units through the requiring the executive of the subject to inform the Ministry of Finance about reasons for conduction disciplinary measures, transfers or firing of internal auditors before such acts are done and to submit documentation of the explanation.[53]

8. It is necessary to include punitive provisions in the Law on PIFC, which would specify misdemeanor sanctions for the failure to submit a report on implementation of planned activities in the process of establishment and in the process of development of the system of financial management and controls, for the failure to submit quarterly reports on the work of internal audit and conducted activities on implementation of given recommendations of internal audit, as well as for the failure to submit annual reports on the work of internal audit.[54]

9. It is necessary to accelerate the transfer of powers from the EU to Montenegro for the first four IPA components[55] (help in transition and strengthening of institutions, cross-border cooperation; regional development; human potential development).

2. State property and property expropriation

2.1 Characteristics of the institutional and the legal framework

In the reporting period there were no advancements in the field of legal and institutional framework relating to state property and property confiscation. Prevention of abuses during the usage, management and disposal of state property is regulated by the Law on Financing State Property,[56] by the Articles 19 and 20 of the Law on Financing Political Parties,[57] as well as by Article 71 of the Law on State Officials and Employees.[58] The area of management and

52 Recommendation in accordance with the findings of SAI from their annual report for 2013

53 Recommendation of the Institute Alternative from the Comment on the Bill of the Amendments of the Law on PIFC

54 Ibid

55 Center for Monitoring and Research *"Analysis of Effects of Anti-corruption Policies in Montenegro 2012/2013 – Suggestions for Improvement"*, September 2013, pg. 31

56The Official Gazette of Montenegro, 21/09 and 40/11

57 The Official Gazette of Montenegro 42/11, 60/11, 1/12

58The Official Gazette of Montenegro 39/11, 50/11, 66/12

disposal of property (which is defined by law as state property) is regulated by the Law on Management of Temporarily or Permanently Confiscated Property[59], while the procedure of temporary or permanent expropriation of property gained through criminal acts is regulated by Articles 91-97 of the Law on Criminal Procedure of Montenegro.[60] The Directorate for Property and the Protector of Property and Legal Interests of Montenegro are the key institutional actors in this area.

In past years we have highlighted defects that obstruct efficient implementation of regulations. These defects remain, including: the inexistence of a unified state property registry; the inexistence of disciplinary procedures for entities that fail to submit written inventory lists on time, or have submitted inaccurate or incomplete data on state property; a lack of adequate legal framework for the work of the Protector of Property and Legal Interests of Montenegro and the inexistence of adequate legal framework for regulating the expropriation of property gained through criminal activities.[61]

In the reporting period the execution of the Law on Expropriation of Property Gained through Criminal Acts began. This Law remains in its preparatory phase. Moreover, an improvement was made in terms of cost recovery of the Protector of Property and Legal Interests through the Draft of the Law on Amendments of the Law on Civil Procedure made in November 2013 within Heading XII. The new Article – 152b foresees that "provisions on expenses apply to parties represented by the Protector of Property and Legal Interests of Montenegro. In this case the expenses of the procedure encompass the amount which the party would have in the name of the reward to the lawyer." The new article responds directly to the initiative of the Protector of Property and Legal Interests dated 14th of December 2011, in which they suggested that Heading XII of the Law on Civil Procedure be amended to include a new article to enable the Protector to have the same expenses as those stated in the Rules for the Work of Lawyers for Representation of the State and that those expenses be considered revenue of the Budget of Montenegro.

Besides numerous objections by civil society and the international community there were no further activities in this area.

2.2 Effectiveness of the institutional and the legal framework

In accordance with the Law on Organization and the Manner of Work of State Administration, inventory lists are an obligation of: 16 ministries and all bodies which the ministries supervise (administrations, bureaus, inspections, agencies, directions etc.); 6 independent administrations; 2 secretariats; 6 boroughs; 1 directive; 1 agency and 23 municipalities (entities and services whose establishers are municipalities). In addition, the Parliament of Montenegro, the President of Montenegro, the Government, the Constitutional Court of Montenegro, State Audit Institution and other services established by Montenegro are also obliged to submit a list of property.

The University of Montenegro, public institutions, state funds and other entities and organizations with public authority that are established by Montenegro or municipalities are obliged to submit the inventory list and data. From this group and within the legally assigned timeframe, only 62 state entities and 9 municipalities submitted inventory lists for 2013. So far no punitive action has been taken in relation to the inventory of state property. It is important to mention that the authenticity of the submitted inventory lists remains unverified.

SAI's 2013 report determined that there are still inconsistencies in the implementation of legal provisions relating to the recording of state property and reporting to the authorized state

59 The Official Gazette of Montenegro 49/08, 31/12

60 The Official Gazette of Montenegro 71/03, 7/04, 47/06 and The Official Gazette of Montenegro 57/09,49/10

61 For more detail look at „*Analysis of Effects of Anticorruption Policies in Montenegro and Suggestions for Improvement*" 2012 and 2013

entity. SAI came to this conclusion through the auditing of the management of state property conducted with the consumer units of the budget.
State entities are, in accordance with Article 50 of the Law on Property, are obliged to submit data on movable and immovable property to the entity authorized to maintain the register of immovable property – that is the electronic accounting records of moveable property.
Through the audit it was established that activities relating to the implementation of the software for the electronic register of state property have not been finalized. There are cases where the consumer units of the budget have not conducted an inventory of property and do not submit data in accordance with the prescribed form. [62] In addition, the report determined that data is not submitted in the prescribed form and that Reports on Inventory Lists have not been made.[63]
In the reporting period there was only one request for temporary expropriation of property because of criminal acts with elements of corruption and organized crime submitted.
On the website of the Directorate for Property there is no Report on Activities for the period of June-December of 2013. The website only contains the report for the period of January-June 2013.[64] There are no results in the field of solving problems related to management of confiscated property. A unified electronic register of confiscated property which would contain the type and the estimated value of the property is not available even though it was, according to information from the Report on Implementation of AP for Chapter 24, created in September 2013.
In 2013 a new Rule Book on Internal Organization and Systematization of the Expert Service of the Protector of Property and Legal Interests of Montenegro was created and adopted by the Government of Montenegro. In accordance with the Rule Book new solutions on arrangement and the number of employees was made. Between the beginning of 2013 and 12th May 2014 the statistics of the Protector of Property and Legal Relations concerning the number of received cases are as follows [65]:

Litigation	Extrajudicial and other civil proceedings		Executive	Legal opinions	Forwarded by the Protector
4658	2617	2249	14097	29	1063

The Protector of Property and Legal Interests has a large caseload but the capacities of the institution are insufficient to ensure the cases are processed in a timely fashion. The biggest problem in the functioning of the institution of the Protector is the lack of the Law on Protector of Property and Legal Relations. This would regulate the process for selecting officials, the constancy of the function and detail procedures of work. This would improve the independence and effectiveness of this institutions work.

2.3 Recommendations

1. The Ministry of Finance should, in accordance of the Law on State Property, conduct measures for sanctioning non-timely submission of inventory lists, as well as for submission of incomplete or inaccurate data.

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63 Annual Report of SAI concerning conducted audits and activities of the State Audit Institution of for the period of October 2012 to October 2013

64 file:///D:/PODACI/Downloads/izvje%C5%A1taj_o_radu_za_period_januar-jun_2013.pdf

65 Response to the request for free access to information, Protector of Property and Legal Interests of Montenegro, 270/14

2. Conduct inspectional supervision over entities that did not submit inventory lists.
3. It is necessary to create a unified electronic registry of state property that is updated on a daily basis.
4. It is necessary to create a specific Law that would encompass material and procedural provisions on management and tending of confiscated property. This law would aim to improve legal basis for the possible expropriation of property and improvement of proceedings of management and tending of confiscated property, within the timeframes proposed by the Action Plan for Chapter 23.[66]
5. Make the electronic register of confiscated property with the type and estimated value of property available for public.
6. It is necessary to adequately implement the Law on Property and the Law on the Manner of Record Keeping of Movable and Immovable Property and of Inventory Lists of State Property, by ensuring the obligations related to the entering of data in a prescribed form and their submission to the Directorate for Property are consistently met. In accordance with Article 11 of the Rule Book on Deadlines and Conduction of Inventory Lists and Harmonization of Accounting Condition with the Real State ("Official Gazette of Montenegro" number 34/09 from 29.05.2009.) it is necessary to create a Report on the Conducted Inventory List.[67]
7. It is necessary to adopt amendments to the Law on Amendments of the Law on Civil Procedure which enables the Protector to have expenses in accordance with the rules for the work of lawyers for state representation and that those expenses be revenues of the budget of Montenegro.
8. Create a specific Law that would regulate the work of the Protector of Property and Legal Interests of Montenegro.
9. It is necessary that the Prospector of Property and Legal Interests of Montenegro, in cooperation with the entity of state administration in charge of IT, create a web presentation of its institution, regularly update data and make them available in order to ensure greater transparency of the institutions work.

3. Public procurement

3.1 Characteristics of the institutional and legal framework

The current Law on Public Procurement was adopted on the 29th of July 2011, and was implemented on the 1st of January 2012.[68] Institutions whose work is relevant in the prevention of corruption in public procurement are: the Directorate for Public Procurement, the State Commission for Control of Procedures of Public Procurement and the Directorate for Inspection. In order to improve anticorruption mechanisms in accordance with the measures prescribed in the Chapter 23 Action Plan, the Draft of the Amendments of this Law was created and is currently before the Government. The adoption of the new Draft would somewhat improve the legal framework regulating this area especially when taking into consideration the completion of specific measures contained in the Action Plan aimed at fulfilling requirements of Chapter 23, such as:

- The obligation for at least one member of the Commission for Opening and Evaluating of Offers to possess a professional certification for work with public procurement;
- The authorization of Directorate for Inspection inspectors to conduct control over the

66 Recommendation of CEDEM from the Annual Report of the Coalition on Monitoring of Negotiations for Chapter 23

67 Recommendation from the Annual Report of SAI

68 "The Official Gazette of Montenegro" 42/11

implementation of assigned contracts.[69]
The draft of the Law further specifies people who the law is applicable to, such as – purchasers and bidders, as well as exceptions to the law.
In last year's report we indicated that the procedure for public procurement through tendering is insufficiently defined, especially those articles related to determining fulfillment of conditions for participation in this procedure.[70] In the Draft of the new Law 'tender' was redefined as an open procedure of public procurement of small value. This definition is completely integrated in the prescribed procedure in terms of the conditions for initiating and conducting public procurement, as well as relating to conditions of participation in such procedure, in light of the specificities of authorization to conduct this procedure, deadline to submit offers and criteria used to evaluate the offers.[71]
Article 16, which defined procedures for prevention of conflicts of interests in relation to purchasers, has been amended. Persons who prepare tender documentation, persons who participate in the planning of public procurement and persons who are directly or indirectly included in the process of public procurement are, in the Draft of the Law on Amendments, excluded from the provision on the prevention of conflicts of interests. This definition was exchanged with the term "authorized person of the purchaser", which does not cover adequately all categories of persons. Furthermore, the deadline for which persons cannot initiate a work relationship with the purchaser has decreased from 2 years to 6 months. This increases the risk of corruption. Finally, the person who prepares the technical documentation (of which the subject is procurement, and work is executed on this basis), is enabled to cooperate with the purchaser in the preparation of the offer, which opens new possibilities for the conflict of interests and corruption.[72]
In the case of a discovered conflict of interest in the process of public procurement, the process is declared void, and the person who has the conflict of interest is not excluded from the process of public procurement. However, there are no sanctions provided for the person who does not report the existence of the conflict of interest thus diminishing the strength of this provision.
Article 30 of the Law on Public Procurement covers the amounts for which direct agreement of public procurement is allowed. These remain unacceptably high.
The Draft of the Law increases the transparency of public procurement procedures through provisions relating to tender documentation, its publishing, submission and availability. In addition, the Draft of the Law specifies the requirements of the commission for opening and evaluating offers. However it does not provide a legal basis for the adoption of a rulebook that would regulate provide clear procedural criteria and the manner of electing commission members.
The new Draft removes the jurisdiction of the State Commission for Control of Public Procurement in the control of procurements for the value greater than 500000 Euros, in accordance with the Article 68 of the Draft of the Law on Amendments of the Law on Public Procurements relating to Article 139 of the current Law. Inspection supervision is put under the authority of the Inspector for Public Procurement and the Directorate for Inspection in accordance with the recommendation of experts of the European Commission and the World Bank.[73] Considering that this Department currently has only one inspector, and that the new systematization foresees

69 Action Plan for Chapter 23 – Justice and Fundamental Rights, Government of Montenegro, 2013. pg. 99

70 "*Analysis of Effects of Anticorruption Policies and Suggestions for Improvement*" CeMI, 2013, pg. 45

71 Article 29 of the Law on Public Procurement and Article 17 of the Draft of the Law on Amendments of the Law on Public Procurement

72 Article 16 of the Law on Public Procurement and Article 9 of the Draft of the Law on Amendments of the Law on Public Procurement

73 Article 148 of the current Law on Public Procurement, Article 71 of the Draft of the Law on Amendments of the Law on Public Procurement

three new work places, we consider that capacities of this body are insufficient to conduct supervision over such a great number of procedures of public procurement. Besides this, even if systematized places of the Directorate for Inspection are filled, three persons cannot conduct all duties foreseen by the Draft of the Law through which authorities of the inspector for public procurement are significantly expanded.

It is unclear from the Draft of the Law if it is possible for the bidder to initiate a complaint directly to the commission or whether it is only possible to initiate a complaint through the purchaser. This lack of clarity provides the purchaser with the possibility to decide if he will submit the complaint to the State Commission or not, as well as the possibility to change it. We believe that the copy of the complaint should be submitted to the State Commission for Control of Procedures of Public Procurement.

The new Draft of the Law does not provide punitive sanctions for purchasers who submit incorrect or incomplete information in the reports on public procurement, who do not submit Report on Violation of Anti-corruption Rules or who do not submit Reports on Public Procurement continuously. Additionally, there is a lack of dissuasive mechanisms and adequate control has not been established. If a statement on the existence of a conflict of interest is submitted as well as the Report on Violation of Anti-corruption Rules, without complaints of a participant of the process of public procurement, there is no control over accuracy of these documents.

The adoption of the Draft of the Law as is would bring practical problems. The representatives of the Directorate for Inspection indicated[74]:

-According to the paragraph 2, Article 78 of the new Law (which amends and complements Article 148 of the current Law) the inspector is obligated to complete inspectional supervision in relation to the activity and the decision of the purchaser within the timeframe prescribed for declared complaints (8 days). Considering the number of procedures of public procurement, it is assessed that this solution makes the work of the inspector difficult and pointless considering that the deadline relates to all authorizations of the inspector.

- The obligation stated in the Chapter 23 Action Plan, and the recommendation of the experts of the European Commission and the World Bank to give the authorization to control over implementation of given contracts of public procurements to inspectors for public procurement would not be fulfilled.

Civil sector organizations working on this question indicate that it is necessary to introduce negative references of the bidder, including the prevention of participation to bidders in the process of public procurement if they have failed to meet deadlines and/or other provisions of the contract on public procurement. Considering that the Draft of the Law does not foresee introducing negative references or black lists of bidders or the prevention of participation to these bidders.[75] However, the opposite argument is that there is no such procedure in the comparative practice and that such provisions would be in opposition with constitutional solutions.[76]

3.2 Effectiveness of the institutional and legal framework

The entire contracted value of public procurement for 2013 is 277.001.460,50 €.[77] The basic issues arising out of the current legal frameworks are discussed in last years report.[78]These issues remain during the implementation of the Law this year:

74 Interview with representatives of the Directorate for Inspection, 19th of May, 2014

75 Commentary on the Draft of the Law on Amendments of the Law on Public Procurement, Institute Alternative, 2013

76 Interview with the Director of the Directorate for Public Procurement, Mersad Mujević, 15th of May, 2014.

77 Report of the Directorate for Public Procurement for 2013

78 "Analysis of Effects of Anti-corruption Policies in Montenegro and Suggestions for Improvement", CeMI 2013

- ✓ The lack of capacity of the Directorate for Inspection – Contracts on Public Procurement of value below 500 000 Euros are controlled by one employed inspector. It is clear that it is impossible for there to be adequate and efficient control of regularities of implementation of aforementioned procedures, given that the number of procedures on an annual level is close to 62 thousands and that Montenegro has 698 persons obligated to follow the Law on Public Procurement.[79]
- ✓ Inexistence of control over implementation of the contracts on public procurement.
- ✓ Provisions concerning the conflict of interest in the Law on Public Procurement are not adequately regulated. The inexistence of sanctions for officials who violate provisions on conflicts on interests makes adequate protection from corruption impossible.

The State Commission for Control of Procedures of Public Procurement adopted a new Rule Book on Work of the State Commission in July 2013 through which the systematization of expert service of the State Commission was conducted and resources were filled in by legal practitioners, while the number of places was decreased and systematized through the restructuring of the expert service. In this way 10 places were systematized and now have 11 executors, as one place requires two executors.[80] However, it is important to indicate that the State Commission is functioning without one member as of the 15th of August 2013.

For this analysis we will present State Commission for Control of Public Procurement preliminary results. However final statistical data for the period in question will be available after the adoption of the annual Report of the Work of State Commission. This report should be submitted to the Parliament and adopted before the 30th of June 2014.[81]

Case	2012	2013
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Directorate for Inspection has, during 2013, conducted 84 inspection reviews (38 regulars, 37 according to initiatives and 9 control reviews), with the addition of 51 controls in the period of January to April 2014. 67 irregularities have been found. In the aim to remove found irregularities indicator measures (36) were stated, and in the cases where found irregularities are removed during the review, official minutes were made. In the reporting period 19 misdemeanor orders

79 Report on the Work of the Directorate for Public Procurement for 2013

80 Interview with the President of the State Commission for Control of Procedures of Public Procurement, Suzana Pribilović, 20th of May, 2014

81 Interview with the President of the State Commission for Control of Procedures of Public Procurement, Suzana Pribilović, 20th of May, 2014

were given for a total of 24.000,00€.[82] The most common irregularities the Directorate finds concern the making and the keeping of documentation in relation to fulfilling deadlines, fulfilling conditions for officials for public procurement and the timely submission of plans of public procurement.[83]

Directorate for Inspection has, in the period from the first half of 2013 to firs quarter of 2014, done 68 inspection reviews in relation to the implementation of Article 15 (anticorruption rule) of the Law on Public Procurement. Irregularities were found in 28 cases (relating to failure to submit reports on procurement). After the order of the Directorate all irregularities were removed, that is reports were submitted. In the same period there were 56 supervisions in terms of the implementation of Articles 16 and 17 of the Law (rule of prevention of conflicts of interests). It is important to note that the authority of the Directorate relates to question of complete documentation and does not relate to the accuracy of the documentation.

Three procedures of inspection review are suspended due to submitted complaints to the State Commission for Control of Procedures of Public Procurement.

Taking into consideration that the Directorate currently has only one employed inspector for public procurement it cannot be expected that the number and quality of inspections will be increased in the following period. The Directorate foresaw through the systematization that the number of inspectors will rise to three, and indicated that one place is to be filled as soon as possible following the expiry of the deadline for prevention of employment for the period of one month after the election (Article 21 of the Law on Financing Political Parties).[84] The representative of the Directorate for Inspection has indicated that, if new authorizations of the Directorate foreseen by the Bill of the Law on Public Procurement are adopted, it will be necessary that there are four inspectors for public procurements in order for the Directorate to conducts its authorization adequately.

3.3 International standards

In last years analysis we indicated 10 basic principles of OECD that are the origin and basis for implementation of international instruments in the prevention of abuses and irregularities in public procurement:

1. Secure an adequate level of transparency during the whole procedure of the procurement, with the aim to promote fair and neutral treatment for potential bidders;
2. Improve transparency of tender procedures with the maximum measure of care in order to improve correctness;
3. Public resources in procurements must be used in accordance with the needs which are determined ahead of time and are realistic;
4. Officials doing public procurement must be professionals with a high education level, and the same level of skill and integrity;
5. Secure adequate mechanisms which will prevent the risk of corruption and violation of integrity;
6. The private sector and the Government should cooperate with the aim to preserve high standards of correctness, especially in the phase of implementation of contracts;
7. Secure special mechanisms for the monitoring of public procurement as well as implementation of sanctions in cases of dealings against the law;
8. Establish and determine a clear system of responsibility with efficient control mechanisms;

82 Annual Report on the Work of the Directorate for Inspection

83 Interview with the representatives of the Directorate for Inspection, 19th of May, 2014

84 Interview with the representatives of the Directorate for Inspection, 19th of May, 2014.

9. Consider complaints of potential bidders in a fair manner and in a reasonable timeframe;
10. Strengthen the role of civil society organizations, media and the wider public relating to control of procedures of public procurement.

On the basis of the above conducted analysis, we considered that the greatest problem is in the fulfillment of the principles 4, 5 and 7. Namely:

The current legal framework and the draft of the Law on Amendments of the Law on Public Procurement does not guarantee all participants in public procurement are qualified, specifically relating to the content of the tender commission for opening and evaluating offers.

Risks of corruption, especially through the conflict of interests, are not adequately addressed by the current legal framework or by the draft of the amendments.

Mechanisms of supervision lack administrative capacities to adequately conduct their control function so their effectiveness is significantly diminished.

3.4 Recommendations

The Draft of the Law on Amendments of the Law on Public Procurements, despite amendments aiming to harmonize it with European standards still does not secure effective anti-corruption mechanisms and is a step backwards in comparison to the previous legal solution.
The following amendments need to be included in the Draft of the Law:

1. It is necessary to regulate conflict of interests in an effective manner. Categories of persons encompassed by this provision need to be expanded, and the control of statements concerning the inexistence of conflicts of interests. Other factors need to be controlled rather than the single requirement of the existence of a conflict of interest.

2. It is necessary to introduce sanctions for persons who submit false statements concerning the inexistence of the conflicts of interests. For example by declaring statements to be official documents, the signing of statements would carry full material and criminal responsibility.

3. It is necessary to decrease the limit for contract making through direct contracts, in order to diminish the space for corruption.

4. Preventing the bidder on a tender in participating in the creation of technical documentation for the tender, because this undoubtedly leads to conflict of interests, no matter the subject matter of the tender.

5. Consider the possibility of introducing negative references for bidders, in accordance with the suggestions of the civil sector.

6. Harmonize deadlines, so that inspectional supervision covering reasons for complaints is completed within the 8 day deadline prescribed for the declaration of complaints; while the deadline for elements of inspection that are not the reason for complaint should be completed in line with general administrative procedures. This solution would enable the inspector to do their authorizations after the expiry of the deadline of 8 days and enable more efficient inspection.[85]

7. Harmonize legislative wording for reasons for complaint in Article 68 and authorizations from Article 78 of the new Law, thus making the Law clearer, and easier to conduct inspections that would be slowed down because of potential multiple interpretations of the provisions.[86]

85 Interview with the representatives of the Directorate for Inspection, 19th of May, 2014

86 Action Plan for Chapter 23 – Justice and Fundamental Rights, Government of Montenegro, 2013, pg. 99

Institutionally, it is necessary to:

8. Significantly improve the capacities of the Directorate for Inspection – Department for Public Procurement, in order to be able to conduct control of public procurement of both higher and lower value. Current capacities of this Department are insufficient to even control procurements of lower value.

9. Improve capacities of the Directorate for Inspection for control of given contracts and strengthen the supervision with the assistance of SAI.

4. Exchanges and Securities Market

In this Analysis we will look at the common abuses on the exchange and securities market, in accordance with the definitions from the EU Directives.

- ✓ Insider trading – when a person in possession of secret information related to securities initiates the buying or selling of the securities, for their own benefit or for the benefit of a third party, directly or indirectly, or of financial instruments related to this information.[87]

- ✓ Illegal publishing – when a person possesses secret information and publishes it to any other person, except when publishing is done during the regular publishing of work , profession or duty, including cases when the publishing is qualified as testing of the market in accordance of the Article 11 (1) to (8) of the EU Regulative 596/2014.[88]

- ✓ Manipulation of the security and exchange market – when a person initiates a transaction of trading or any other behavior which:
    - Provides false or misleading signals concerning supply, demand or the price of the financial instrument related to a spot contract; or
    - Establishes a price of one or multiple financial instruments related to a spot contract on an abnormal or an artificially formed level;
    - Besides when the reasons for such behavior are on the side of the person who began transaction or gave order to trade legitimately, and transactions or an order to trade are in accordance with the accepted market practice of the trading place in question;
- ✓ The beginning of transaction, the beginning of trading activities or of any other activity and behavior which affect the price of one or more financial instruments or related spot contracts, and which imply any fictional mechanism of deception;

- ✓ Disseminating information through media, including the internet, or in any other way, in which incorrect or misleading signals are given concerning the supply, demand and the price of financial instrument or the related spot contracts, or the price of one or more financial instruments or the related spot contract is being ensured at an abnormal or artificially formed level, in the case when persons responsible for dissemination of information in question receive from such actions profit or advantage for themselves or other persons,

- ✓ Transmission of incorrect or misleading information or provision of false or misleading input or any other behavior which manipulates the counting of the benchmarks.

87 Directive 2014/65/EU Article 3(2)

88 Directive 2014/65/EU, Article 4(2)

4.1 Characteristics of the institutional and legal framework

The Government planned to adopt of the Law on Exchange and Securities Market by the end of 2012, however it postponed to the end of 2013 and finally to the end of 2014. The Ministry of finance initiated the law. The draft of the Law, while having existed for two years, is not available to public.

Institutions whose activities are most significant for prevention of abuses on the exchange and securities market are: Exchange and Securities Commission, Central Depository Agency and the Directorate for Prevention of Money Laundering and Terrorism Financing.

The current legal framework for the regulation of the exchanges and securities market[89] is partly harmonized with the European directives regulating this area.[90]

Montenegro introduced Article 422a of the Criminal Code in order to criminate insider trading and market manipulation. However, the amendments were criticized because they failed to clearly define insider trading and market manipulation on the basis of international definitions. Namely, three basic elements of insider trading are not encompassed: insider, dissemination of information and the use of insider information on the side of a third party. Besides this, the Article dealing with the market manipulation is not in accordance with the internationally accepted understanding of this concept. Article 422a prescribes up to 3 years of imprisonment, while harmonization with the EU standards demands a common frame of criminal sanctions for all member states which includes fines and a maximum level of sanctions of at least four years imprisonment for manipulations of the exchanges and securities market, insider trading, recommendation or guidance of another person to be included in the insider trading, and two years of imprisonment for illegal disclosure of secret information.

There are, however, other articles (280-281) of the Criminal Code that jointly create a basis of 5 years imprisonment for insider trading in its basic form and contain sanctions of up to 10 years of imprisonment when there are incriminating circumstances. Formulation of these articles in the Criminal Code is, mainly, in accordance with the international understanding of such misdemeanors. However, even though the use and transfer of information to third parties is present within these provisions; provisions of the articles 280 and 281 do not cover criminal liability of a third party in the event of the use of disseminated information. Thus the criminalization of insider trading is not entirely solved. As has already been stated, criminalization of market manipulation is still not present in the provisions.[91] The EU Directive forbids the guidance of third parties, encouraging, assisting, supporting and trying to conduct defined misdemeanors that are not encompassed by this Law.[92] Harmonization of legislation with EU standards would prevent investors who practice such behavior from avoiding sanctions by using differences in the laws between the member states of the EU.

89 Control of the exchanges and securities market is regulated by the Law on Exchanges and Securities, the Law on Investment Funds, the Law on Takeover of Stock Companies, as well as by chapter XXIII of the Criminal Code. Laws which also regulate certain aspects of the exchanges and securities market are: the Law on Privatization of Economy, the Law on Pledge as Means of Ensuring Claims, the Law on Property and Administrative Transformation, the Law on Voluntary Pension Fund, the Law on Banks, the Law on Bankruptcy, the Law on Business Enterprises, the Law on Accounting and Audit, the Law on Current and Capital Business Activities with Foreign Countries, the Law on Prevention of Money Laundering and Terrorism Financing, the Law on Property Relations, the Law on Regulation of Responsibilities and Claims on the Basis of Foreign Dept. and Foreign Currency Savings of the Citizens, the Law on Restitution of Property Rights and Compensation, the Law on Excise, the Law on Audit of the Resources from EU Funds and the Law on Insurance.

90 Directive on Abuses of the Exchanges and Securities Market

91 Report on Progress and written analysis of the Secretary of Basic Recommendations (2012). Committee of Experts on Evaluation of Measures against Money Laundering and Terrorism Financing (MONEYVAL).

92 Directive 2014/65/EU, Article 6.

The Exchange and Securities Commission conducts regular controls, controls by request and daily controls. Each subject is controlled twice a year within a regular control. Controllers' assignments are limited by law since the party has, after the decision is made, an opportunity to respond within a specific timeframe and remove irregularities. The party is sanctioned if they do not do so and subject to higher sanctions in the event of repeated misdemeanors.

Controls by request are conducted on the request of the citizen or authorized participants on the exchange and securities market. Such controls are conducted within a 30 day timeframe from the day the request is received.

Daily controls include controls during a price change +/- 15% during one day, and of all transactions over 15 000 EUR. Also, continuous controls are conducted in order to discover irregularities not apparent on a daily basis but apparent through continued monitoring. Controls include triple relation, so it is possible to verify if a broker or a member of the board of directors is misusing their position and information gained at the brokerage firm to gain personal benefit. Such controls function preventively as well, since from the beginning of their implementation irregularities of this type are highly uncommon. Article 33a of the Law on Exchanges and Securities gives the Commission the authority to verify all transactions that are difficult to explain.

The Commission is a member of AIOSC and has, through being connected with other bodies for the regulation of the exchange and securities markets, control of custody accounts abroad using information on the transfer of resources from domestic to foreign custody accounts.

In cases where the procedure of control identifies the existence of elements of a criminal act the Commission files a criminal report. In the case when there is only a suspicion that elements of a criminal act exist the Commission forwards the information to the authorized entity.

During the harmonization of the Law on Takeover of Stock Companies with the European legislation, Montenegro legalized the forced displacement of minor shareholders. Namely, if a shareholder possesses 95% of the shares of a stock company, he can buy the remaining 5% from minor shareholders without their consent.[93] Even though this provision is in accordance with the directives of the EU, CeMI believes that it is in opposition with the constitutional right to property and the protocol of the European Convention on Human Rights that Montenegro ratified. On the basis of provisions from the Constitution and the Convention, CeMI launched an initiative to evaluate whether this provision is constitutional before the Constitutional Court of Montenegro.

Montenegro is partly aligned with the legal demands for entrepreneurship related to collective investing of transferable exchanges and securities (UCITS). UCITS sets up basic rules for authorization, supervision, structure and activities of investment funds for facilitation of cross-border distribution inside the EU and securing adequate protection of the investors. National legislation in this area consists of the Law on Investment Funds. However, the following deficiencies exist: definitions, authorizations of UCITS, responsibilities connected to management of companies, depositary, investment policies and merging policies, master-investor of the structure, information to investors and general responsibilities for UCITS. It is necessary to completely harmonize legislation with the Directive 2011/61/EC on alternative management of investment funds and the Directive 2007/16/EC and 2009/65/EC on coordination of the Law, regulation and administrative provisions related to UCITS.

The adoption of the Bill of the Law on Prevention of Money Laundering and Terrorism Financing was planned for the 1st quarter of 2014. Through this Law the class of people covered under the law will be expanded and new categories of persons introduced, such as building contractors (through which the field of construction is completely covered and includes all from contractors to investors and the overturn), marketing and consulting activities in relation to business activities and other management, provision of tourist services, redemption of secondary

93 "The Official Gazette of Montenegro, 18/2011" – Law on Overtaking of Stock Companies, Article 39

products and online sales. The Law also more specifically defines cases in which measures of determination and verification of the identity of a client, as well as monitoring of his business activities, and cases when the party can refuse to enter into a business relationship. Bylaws, including the Manual on the Analysis of the Risks of Money Laundering and Procedures for Recognition of Suspicious Transactions, will be amended in the following period.

4.2 Effectiveness of the institutional and the legal framework

In the first part of this analysis we will focus on problems indicated in the previous CeMI report relating to: the ownership structure of CDA, weak control of the process of privatization by overtaking of the majority packages of shares, limited access to data on the ownership structure of stock companies, as well as minor deficiencies which existed in the cooperation with the Commission on Prevention of Conflicts of Interest.

As stated in the previous report,[94] it is unusual that the Central Depository Agency is established as a stock company in which major ownership belongs to private banks who are participants in the market. This opens a potential space for a conflict of interest and abuse. However, the Exchange and Securities Commission considers that this system does not negatively affect the integrity of the institution, and that the established protection from corruption with possibility of removing public authorizations of CDA if the function is being badly executed, as well as regular controls of their work, is sufficient. So far, there were no cases where CDA was illegally transferring of ownership or refusing to be entered onto the register.[95]
As pointed out in the previous years, we consider that the Law on Privatization fails to provide sufficient protection from possible abuses specific to the exchanges and securities market, in particular in the process of privatization by the takeover of the majority package of shares. The attitude of the Commission is that the control which this institution conducts - the control on the day of the transition, of the payment and settlement, as well as the control which the Directorate for Prevention of Money Laundering and Terrorism Financing conducts over all transactions higher than 15 000 EUR, is sufficient for the protection from abuses, and that inclusion of the process of privatization under the framework of the Law on the Exchanges and Securities Market would be unnecessary. In addition, the Law on Exchanges and Securities does not encompass the whole social program which the purchaser is obligated to conduct in the case of privatization, so the transfer of the part of the process of privatization into the Law on Exchanges and Securities could have negative effects.[96]
The problem we indicated in the previous two reports – that the public has access to only 10 biggest shareholders in the ownership structure of companies – has been partly solved through a planned project which would enable the Commission to continuously monitor ownership positions of main officials - that is - reporting on ownership positions will not consist of only one moment in the year when the overview of ownership positions is given. This planned project would make it possible to exercise adequate and timely control of changes in the financial status of public officials. However, as emphasized in the chapter on conflicts of interests, we consider that the Commission for Prevention of Conflicts of Interests does not have sufficient capacities to control income and property of all officials. Therefore public control will lead to a better efficiency of the legal framework, at least until the moment when the duties of this Commission are taken over by the Agency for Prevention of Corruption.
Cooperation with the CPCI has seen significant improvement. Namely, through an IPA project, which foresees the joining of the databases of the institutions, continuous monitoring of ownership positions will be enabled. The first phase of the joining, which provides CPCI insight

94"Analysis of Effects of Anticorruption Policies in Montenegro and Suggestions for Improvement", CeMi 2013

95 Interview with the President of the Exchanges and Securities Commission, Mr. Zoran Đikanović, 30th of May, 2014

96 Ibid

into all ownership positions has already been conducted. The second phase is foreseen through an IPA project and will enable the members of the CPCI to see a change in ownership. In addition, there are plans to submit market prices to the Commission, instead of nominal values of the ownership positions, which will facilitate the work of the CPCI in the process of verification of property of public officials. CPCI has access to ownership positions from custodies (complete databases), which significantly strengthens the control over the income of public officials and diminishes space for corruption.[97] On the basis of this data we can conclude that all problems indicated in the previous report, relating to cooperation between the ESC and CPCI, are successfully resolved.

ESC has submitted to the CPCI 6.868 ownership positions for 2.833 officials, that is 4.713 positions for 2.230 family members of officials. In a meeting on the 17th of January, conclusions were made that all accounts be submitted to the CPCI. The report of the register of CDA on the 31st of December 2013 was submitted on the same day (17th of January). In relation to the banks, ESC received 1150 ownership positions, on the day of the 31st of December 2013, for custody accounts of 462 clients. After filtering using the IDs of the officials, 32 ownership positions for 11 officials who are clients of custody banks were determined that is - 23 ownership positions for 9 family members of the officials. The unified report related to custody was made and submitted to CPCI on the 5th of February, 2014.[98]

Comparative statistics of the activities of ESC in the field of prevention of abuses on the exchanges and securities market in Montenegro are presented in the table:

Subject of interest	2012	2013	From 09.05.2014
Conducted controls	1249	1260	428
Direct request for initiation of misdemeanor procedures	2	1	0
Request for initiation of misdemeanor procedures through other state entities	807	785	184
Complaints submitted to the State Prosecutor	1 notice 2 criminal charges	2 notices 1 criminal charge	0
Annulled transactions	12	25	0
Exchange of information with the CPCI	5954	11454	n/a
Exchange of information with DPMLTF	1	9	4

The Commission adopted a Code of Ethics. In the past year, there were no disciplinary proceedings initiated on the basis of this Code.

The FATF Analysis on the risks of money laundering, which will include the risk from money laundering through the exchanges and securities market, is planned for 2013/2014. This analysis is expected in the first quarter of 2015. The analysis is being conducted in cooperation

97 Ibid

98 Response to Request to Free Access to Information, Exchanges and Securities Commission

with international experts and representatives of OSCE, the World Bank and the European Commission and representatives of 25 institutions. The first report, which will be submitted to experts, is expected in May 2013. The finalization of the analysis, as mentioned above, is expected at the beginning of 2015. So far, a few workshops were done in this field, and a special working group was formed with a focus on assessing the risks in the area of exchanges and securities market. The representative of the Exchanges and Securities Commission coordinates this group.[99]

The Directorate for Prevention of Money Laundering and Terrorism Financing, in the field of exchanges and securities market, distinguishes custody accounts and screening of individuals behind their custody accounts as a field especially at risk and open to corruption. In the work with banks and demands of reports of banks on names of owners of collective and anonymous custody accounts there are still irregularities even though improvement in this field is visible. At the moment, the procedure of these reports is based on the Rule Book adopted by the Exchanges and Securities Commission.

In the area of statistical reporting related to money laundering in the exchanges and securities market there have been no advances. While available data still relates to DPMTF's summary results it lacks specific indications for the area of money laundering on the exchanges and securities market.

4.3 Recommendations

1. Just like last year, we indicate that establishment of CDA as a stock company should be reconsidered. Without consideration of the control functions which ESC conducts over CDA, or of the fact that so far there were no suspicions of abuse of authorizations on the side of the owners of CDA, major ownership is still in the hands of banks that have a personal interest - which leaves the door open for manipulation in a future period. If this status of CDA is kept, it is necessary to increase the ownership part of the Bank of Montenegro to 51%.
2. The process of privatization through overtaking of majority package of shares is not adequately regulated. The current legislative framework does not enable protection from abuses and corruption. It is necessary to introduce control by a professional, rather than a political body over this process. This can be partly achieved through the restructuring of the Council for Privatization, in accordance with the measures from the Action Plan for Fight against Corruption and Organized Crime, and partly through inclusion of a part of this process into the framework of the new Law on Exchanges and Securities and the Law on Overtaking Stock Companies. In this way the Exchanges and Securities Commission, as an independent and professional entity, could conduct control over this process and prevent possible abuses.
3. It is necessary to remove Article 39 of the Law on Overtaking Stock Companies, because the concept of forced crowding out of minority shareowners is contradictory to constitutional provisions and basic human rights and freedoms.
4. Harmonize criminal legislation in the field of manipulation of exchanges and securities of the market and insider trading with requests of EU directives, and include sanctions for encouraging market manipulations, as well as of all persons involved in insider trading, manipulation of the market and dissemination of false information which affect the value on the exchanges and securities market.
5. It is necessary for CDA to enable greater transparency of the ownership structure and publish at least 15 major shareholders of a stock company, as well as to keep record of owners of custody accounts until the moment when the control of the implementation of the Law on Prevention of Conflicts of Interests is taken over by the independent Agency for Fight against Corruption.
6. Improve the statistics related to money laundering on the exchange and securities market–

99 Interview with the representative of the Directorate for Prevention of Money Laundering and Terrorism Financing, 16th of May, 2014

DPMLTF should keep a register of all verified transactions on the changes and securities market, in accordance with the recommendation from point 38 of the preamble of the Directive 2005/60/EC.

7. Since banks keep records of transactions and submit data related to clients as defined in the Guidelines for the Analysis of Risks in relation to prevention of money laundering and terrorism financing of the participants of the changes and securities market, it is necessary to supervise these records, especially records of banks in which such clients, or persons related to these transactions, have a stake in the ownership.

III PREVENTION MECHANISMS – INTEGRITY AND TRANSPARENCY

1. Integrity Plans and Codes of Ethics

1.1 Effectiveness of the institutional and legal framework

The entire contracted value of public procurement for 2013 is 277.001.460,50 €.[100] The basic issues arising out of the current legal frameworks are discussed in last years report.[101]These issues remain during the implementation of the Law this year:

- ✓ The lack of capacity of the Directorate for Inspection – Contracts on Public Procurement of value below 500 000 Euros are controlled by one employed inspector. It is clear that it is impossible for there to be adequate and efficient control of regularities of implementation of aforementioned procedures, given that the number of procedures on an annual level is close to 62 thousands and that Montenegro has 698 persons obligated to follow the Law on Public Procurement.[102]
- ✓ Inexistence of control over implementation of the contracts on public procurement.
- ✓ Provisions concerning the conflict of interest in the Law on Public Procurement are not adequately regulated. The inexistence of sanctions for officials who violate provisions on conflicts on interests makes adequate protection from corruption impossible.

The State Commission for Control of Procedures of Public Procurement adopted a new Rule Book on Work of the State Commission in July 2013 through which the systematization of expert service of the State Commission was conducted and resources were filled in by legal practitioners, while the number of places was decreased and systematized through the restructuring of the expert service. In this way 10 places were systematized and now have 11 executors, as one place requires two executors.[103] However, it is important to indicate that the State Commission is functioning without one member as of the 15th of August 2013.
For this analysis we will present State Commission for Control of Public Procurement preliminary results. However final statistical data for the period in question will be available after the adoption of the annual Report of the Work of State Commission. This report should be submitted to the Parliament and adopted before the 30th of June 2014.[104]

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100 Report of the Directorate for Public Procurement for 2013

101 "Analysis of Effects of Anti-corruption Policies in Montenegro and Suggestions for Improvement", CeMI 2013

102 Report on the Work of the Directorate for Public Procurement for 2013

103 Interview with the President of the State Commission for Control of Procedures of Public Procurement, Suzana Pribilović, 20th of May, 2014

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Cases in the area of conflict of interests	1 (case from 2011 and the decision made in 2012)	3 (2 solved by decisions, 1 returned to purchaser for amendment)

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1.2 Characteristics and effectiveness of the institutional and legal framework

Within last year's study "Analysis of Effects of Anticorruption Policies in Montenegro 2012/2013" CeMI placed special attention to the moral standards and integrity plans of an individual and society, and the importance that a fight against corruption based on integrity has for the further democratization of Montenegrin society as a whole. This entails abandoning the dominantly repressive model of the fight against corruption and introducing an "integrity system" based on ethics and which would undoubtedly be more effective in fighting corruption. In addition this approach represents a more efficient mechanism in decreasing the range of corruption in the society. Coupled with the fact that Montenegro does not have an established culture or awareness concerning the harmfulness and the moral dimension of committing corruptive

105 Annual Report on the Work of the Directorate for Inspection

106 Interview with the representatives of the Directorate for Inspection, 19th of May, 2014

107 Interview with the representatives of the Directorate for Inspection, 19th of May, 2014.

acts, a great significance should be put on awakening the consciousness and the conscience of the citizens in order for them not to commit actions that can lead to corruption. This could be achieved though the creation and implementation of legally binding integrity plans, which should be supported both professionally and institutionally.[108]

We would like to remind the reader that integrity plans represent one of the most modern preventive methods for the establishment of legal and moral work of government and other institutions in society - thus preventing the possibilities for the origin and development of corruption in a specific institution. Integrity plans can be defined as a set of legal and fact-based measures which are planned and implemented with the aim to remove paths to corruption and prevent creation of possibilities for corruption inside an organization, specific organizational units or a part of organization and specific working positions. "An integrity plan is an internal anticorruption document which contains a set of measures of both a legal and practical nature which prevent and remove possibilities for origination and development of various types of corrupt behavior inside an entity as a whole, or inside specific organizational units and specific working positions, and which occurs as a result of self-assessment of exposure of an entity to risks for origination and development of corruption, illegal enrichment and conflicts of interests as well as exposure to ethically and professionally unacceptable actions. Integrity plans through a wholesome and proactive approach, systematic assessment of amenability to risks, by adopting and conducting adequate measures enable state officials and employees to accept and conduct their responsibilities in a controlled manner which leads to additional improvement and strengthening of measures for a more efficient prevention of corruption, as well as of other illegal and unethical phenomena."[109]

The Law on Civil Servants and Employees[110] began implementation in January 2013. It foresees the responsibility of state entities to create integrity plans. Namely, Article 68 of the Law foresees that each state entity should, after an assessment of exposure of certain working positions towards origination and development of corruption and other types of biased conduct of state officials, adopt an integrity plan which contains measures which prevent the possibility for the origin and development of corruption. At the same time, this Law obliges all entities, authorized to work on anticorruption activities, to adopt Guidelines for Adoption of Integrity Plans of State Entities. The entity which took over the responsibility of reporting to the Government concerning the number of entities which follow provisons related to Integrity Plans through the implementation of the Strategy for fight against Corruption and Organized Crime for the period of 2013-2014[111] is the Directorate for Anticorruption Initiative. This Action Plan also foresees responsibility of the administrative entity authorized to do work on anticorruption activities to adopt Guidelines for Adoption of Integrity Plans of State Entities.

The Ministry of Justice adopted the Guidelines for the Preparation of Integrity Plans on the 31st of January 2013, in accordance with the legal responsibility defined in the Article 68 of the Law on Civil Servants and Employees.[112] On the basis of these Guidelines, state entities prepare integrity plans. This provision also prescribes that state entities are to appoint a state official

108 Group of authors „Analysis of Effects of Anticorruption Policies in Montenegro 2012/2013", Center for Monitoring and Research, Podgorica, September 2013, pgs. 52-64.

109 Information Concerning the Implementation of the Law on Civil Servants and Employees (Official Gazette of Montenegro, 39/11 and 66/12), Ministry of Internal Affairs, Podgorica, December 2013, pg. 21.

110 Law on Civil Servants and Employees, Official Gazette of Montenegro, 39/2011 from 4.8.2011. http://www.usscg.me/docs/Zakon%20o%20drzavnim%20sluzbenicima%20i%20namjestenicima.pdf

111 Action Plan for Implementation of the Strategy for Fight against Corruption and Organized Crime for 2013-2014. http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=7:&Itemid=91

112 Guidelines for the Creation of Integrity Plans adopted by the Ministry of Justice of Montenegro can be found at: http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=31:integritet-smjernice-i-obrasci

responsible to prepare and implement integrity plans.

While the responsibility of adopting integrity plans for all state entities is clearly defined in the Law on Civil Servants and Employees, and confirmed in the innovated Action Plan for Implementation of the Strategy in the Fight against Corruption and Organized Crime for the period of 2013-2014, many institutions have not fulfilled this responsibility. The Ministry of Internal Affairs of Montenegro, in the Information Concerning the Implementation of the Law on Civil Servants and Employees adopted in December 2013, indicated that there is no data as to how many entities adopted an integrity plan and followed the legal responsibility defined in the Article 68 of the Law on Civil Servants and Employees. The Ministry of Internal Affairs explains this by the fact that the Law does not prescribe responsibility of the entity to inform the Directorate for Anticorruption Initiative concerning the adoption of integrity plans.

In accordance with CeMI's research findings and interviews with the authorized institutions, executors of state entities have appointed 67 integrity managers as of May 2014. Integrity plans were adopted by 26 institutions of the total number of 102 state entities identified in accordance with the Statute on Organization and Manner Work of State Administration, the Law on Courts and the Law on State Prosecutor.[113]

With the aim to implement responsibilities from the Article 69 of the Law on Civil Servants and Employees, the Directorate for Anticorruption Initiative, as an entity in charge of monitoring implementation of integrity plans, created a form and a draft of an integrity plan which aids other entities of state administration in the process of defining their integrity plans.[114] With the aim to increase quality in the implementation of these Guidelines, the Directorate conducted multiple trainings with the representatives of Montenegrin institutions authorized to define integrity plans. For example within IPA 2010 project, whose coordinator was the Directorate for Anticorruption Initiative, with the assistance of German experts, 4 two-day trainings for integrity managers were conducted for 75 civil servants. Also representatives of the Directorate organized multiple conferences and round tables on the topic of creation and implementation of integrity plans for civil servants and employees of state entities, as well as holders of legal and other functions in Montenegro.

In addition the Directorate prepared a Guide "Integrity or corruption – questions and answers" in cooperation with the Human Resources Administration, the Basic Court in Podgorica, the Ministry of Internal Affairs and Real-estate Administration. This guide is aimed at civil servants and employees. The Guide deals with five thematic areas: the Law on Civil Servants and Employees, the Law on Work, Criminal Code, Prevention of Corruption and the Codes of Ethics of Civil Servants and Employees. The aim of the guide is to, through practical question and answers, present the rules of ethical behavior to the officials, as well as to present to them legal responsibilities relating ethical behavior, and to explain how to recognize and react in cases where they suspect the existence of corruption or of some other type of unethical and unprofessional behavior.

Human Resources Administration of Montenegro, in the program "Prevention of corruption/ integrity plans", cooperated with the Directorate for Anticorruption Initiative and held a series of trainings for civil servants and employees:

- 7 trainings on the preparation of integrity plans (creation, adoption and implementation of integrity plans), out of which 5 were held for 100 civil servants and 2 for 44 representatives of local governments;
- 2 trainings on preventive mechanisms in the fight against corruption for 60 civil servants and 1 training entitled "Integrity Plans" for 11 representatives of management and expert personnel

113 Interview with the Director of the Directorate for Anticorruptioon Initiative, Vesna Ratković 14th of May 2014.

114 Form and the draft of the integrity plan can be found at the official website of the Directorate for Anticorruption Initiative: http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=31:integritet-smjernice-i-obrasci

in state entities.
Significant campaigns of the Directorate for Anticorruption initiative directed at raising awareness of citizens concerning the importance of the fight against corruption include: "Not a cent for bribe", included the distribution of 50.400 fliers – "bills with zero value," included the distribution of 104.000 leaflets through daily newspapers with phone numbers of all state entities to which corruption can be reported to. In the past year, 21 billboards in 18 municipalities were erected and a Facebook page of the campaign "Not a cent for bribe" was set up. 120 posters were designed and printed as well as 55 City light posters which were set in several municipalities in Montenegro. Furthermore, 16th Bulletins of the Directorate – Anticorruption - was printed and distributed in Montenegrin (800 copies) and in English (250 copies).
Integrity plans represent very efficient mechanisms for improving the integrity of institutions, as well as for strengthening of institutional capacities for the protection of the organization from corruptive influences in their activities. Apportion of integrity plans is very significant for the improvement and strengthening of preventive mechanisms, for encouraging awareness to sensitive activities, and for creating possibilities of greater integrity of the institution, which, to a great effect, increases efficiency, quality, respect and trust in the institution of the system. In the assistance of the prevention of corruption, they enable prevention of creation of basis and conditions suitable for implementation of corrupt activities. [115]
Certainly integrity plans, as preventive methods for the establishment of the legal and moral work of government and other institutions in society are not sufficient in the fight against the appearance and spreading of corruption. However, in combination with legal regulation of streams of society subject to corruptive activities, they represent the most efficient mechanisms in the fight against corrupt activities. This is why adoption of integrity plans is a very significant step in the direction of adoption of the system of fight of corruption based on integrity This would mean abandoning dominantly repressive model of fight against of corruption and moving into the "integrity systems" based on ethics. Taking into consideration that only a quarter of institutions have adopted integrity plans, we can see that integrity plans are still not used as an important anticorruption measure in Montenegro – a measure which should be a result of the assessment of exposure of a specific institution to the origin and development of corruption and assessment of exposure of the institution towards implementation of ethically and professionally unacceptable activities.
Coupled addition to the integrity plans, the Codes of Ethics which represent a set of standards and rules of conduct of civil servants and employees aiming to keep, affirm and improve dignity and reputation of civil servants and employees and strength the trust of the citizens in the work of state entities.[116] Considering that unethical and unacceptable conduct of civil servants undermines the integrity of the system and represents a risk of corruption - every civil servant and employee is obligated to adhere to the Code of Ethics of Civil Servants and Employees, or to the special Code of Ethics is one was adopted.
The Codes of Ethics of Civil servants and Employees was adopted in March 2012 ("The Official Gazette of Montenegro", 20/2012), and began implementation on the 1st of January 2013.[117] The Code of Ethics foresees a responsibility of insuring mechanisms for implementation of the code through the work of disciplinary entities, and periodic monitoring of the following of the code in order to secure that service-oriented state entities build trust of their beneficiaries – the citizens. The Code of Ethics determines ethical standards and rules of conduct for civil

115 Group of authors „Analysis of Effects of Anticorruption policies in Montenegro 2012/2013", Center for Monitoring and Research, Podgorica, September 2013, pgs. 52-64

116 Group of authors, "Integrity or Corruption – Questions and Answers", IPA 2010 Twining project "Support to Implementation of Anticorruption Strategy and Action Plan", Podgorica, 2014. pg. 19.

117 Code of Ethics is available on the official website of the Human Resources Administration of Montenegro http://www.uzk.co.me/index.php?option=com_content&view=article&id=1536&Itemid=237&lang=sr

servants and employees in ministries, administration entities, and service of the President of Montenegro, Parliament of Montenegro, Government of Montenegro, the Constitutional Court of Montenegro and the State Prosecutor. Finally, the Code of Ethics applies only to those employed in the Fund for Pension and Disability Insurance, Bureau for Employment of Montenegro, Labor Fund and Agency for Peaceful Resolution of Labor Disputes. The Code of Ethics also foresees that civil servants in specific state entities, beginning with ethical standards and rules of conduct established by the Code of Ethics, depending on the nature and the specificity of the activities, should establish a special Code of Ethics.[118] The aim of adopting the Code of Ethics is maintaining, affirming and improving of the dignity and reputation of civil servants and employees and strengthening of the trust of citizens in the work of state entities. In accordance with these rules the official is obligated to conduct activities of a state entity in a way which will not diminish his reputation or the reputation of the state entity, and in a way which secures exercising of rights, respect of integrity and dignity of the citizens.

Violation of the Code of Ethics provisions carries disciplinary action for a civil servant and is considered a small violation of professional duty. In the event of a violations of ethical standards civil servants must communicate to the direct manager in writing, to the official of the entity or to the integrity manager. During the process, if there are facts and circumstances indicating a violation of professional duty, the direct official is obligated to submit a suggestion for the initiation of a disciplinary procedure to the official of the entity that is responsible to initiate it. The Code of Ethics foresees the establishment of an Ethics Committee who would be in charge of monitoring the implementation of the Code. The Committee consists of four representatives: three representatives employed in the judiciary area, state administration, Service of the Parliament of Montenegro and one representative of a syndicate. All aforementioned members are appointed by the Government on the proposal of state administration. This process is in accordance with the provisions of the Rules on Work of the Ethics Committee, adopted on the basis of Article 18 paragraph 4 of the Code of Ethics of Civil Servants and Employees (The Official Gazette of Montenegro, 20/2012).[119] Even though the Ethics Committee was formed in March 2013, it met only a couple of times until July of 2014. In accordance with the Rules on Work of Ethics Committee, the Committee meets in accordance with the need to do so, but at least once a month. Finally, the authorizations of the Committee are clearly defined. The Ethics Committee on the basis of authorizations determined by the Code of Ethics, gives an opinion concerning complaints to conduct of officials in a state entity, gives opinions relating to the implementation of the Code of Ethics, monitors implementation, initiates amendments of regulations in the area of professional ethics, and promotes ethical standards and rules of behavior in state entities.[120] Significantly, in its meetings the Ethics Committee gives opinions on complaints of officials conduct in state entities. These opinions are submitted to the complainee and the official of the entity where subject of the complaint is employed. Opinions on complaints are adopted through a majority vote of the members of the Ethics Committee. Thus, the complaint initiates the procedure relating to the determination of violation of ethical standards and rules of behavior established by the Code of Ethics, while the disciplinary procedure is initiated by an official of the state entity on the recommendation of a direct manager. Similar to the conclusion CeMI stated in "Analysis of Effects of Anticorruption Policies in Montenegro 2012/13", it is uncharacteristic to conduct disciplinary procedures in cases of violation of ethical standards

118 This responsibility is foreseen by the Article 20 of the Code of Ethics. Thus, the Directorate for Customs implements a special Code of Ethics of custom officers and employees whose implementation monitors the Ethics Committee, in the aim of establishing mechanisms of prevention and detection of corruption and conflicts of interests among the officials of the Directorate for Customs. In addition, the Code of Ethics of the Agency for Protection of Personal Data and Free Access to Information is in implementation from 2010.

119 Rules of Work of the Ethics Committee, adopted at the meeting of the Ethics Committee on 01.04.2013.

120 Article 19 of the Code of Ethics.

and rules of conduct established by the codes for Montenegrin state entities. Namely, conducting disciplinary procedures and declaring disciplinary measures in the cases of of rules violations and standards in question, especially those in cases of corruptive activities, is truly rare.[121] On the other hand, in the reporting period, there were no complaints of citizens to behavior of civil servants in state entities not complaints of civil servants to conduct of other civil servants in the state entity.[122]

In accordance with the Action Plan for Implementation of the Program for the Fight against Corruption and Organized Crime, the responsibility of all state entities to prepare annual reports concerning the implementation of Codes of Ethics is foreseen. Even though first publishing of reports in general began at the start of 2014, the publishing of reports on the implementation of the Codes of Ethics did not happen.

Aiming to train civil servants and employees at a local and central level on the Code of Ethics, the Action Plan for Implementation of the Program of the Fight against Corruption and Organized Crime foresees the implementation of multiple training programs which include the responsibility to respect rules defined by the Code of Ethics related to the signing of statement concerning the acceptance of the Code of Ethics during employment. These trainings are mainly done by the Human Resources Administration with the aim to improve knowledge of the attendees in the area of ethics and of appropriate relation to human resources and business organization, and with the aim to introduce them with standards of professional behavior, to raise the quality of communication of the employed and to create positive professional environment.[123]

1.3 Recommendations

The key recommendation of CeMI in this area, in accordance with earlier findings and studies, is the adoption of a wholesome Law on Integrity that would clearly define responsibilities of all state entities to create integrity plans. The adoption of such a system based on integrity would involved the abandoning of the current dominantly repressive model, as is the tradition of all modern democratic societies, This is especially important in the context of assessing the exposure of said institutions at risk of the origin and development of corruption, as well as to risks of the implementation of ethically and professionally unacceptable activities.

Taking into consideration that integrity plans were adopted by 26 of the total of 102 state institutions, it is necessary to implement the legal obligation as defined in the Law on Civil Servants and Employees, in accordance with deadlines defined in the annual action plans. In addition, with the aim to achieve efficient implementation and concrete results, it is very important to strengthen the integrity plans as well as Codes of Ethics from the point of view of defining authorizations for misdemeanor measures declaring and adequate sanctions for violations of the integrity plans and Codes of Ethics. It is necessary to strengthen capacities and authorizations of the Ethics Committee, as well as to ensure the proper following of the Codes of Ethics in institutions, since the adoption of the Codes of Ethics aims to contribute to the building of trust between civil servants and citizens, strengthen the role and responsibilities of the holders of public functions and employees of local government, and it aims to establish an efficient mechanism in the fight against corruption at a state level. In order to establish

121 The Directorate for Customs has, in the reporting period, acting on the suggestions of the Disciplinary Commission, fired one officer due to disciplinary liability, and initiate a disciplinary procedure for 5 officials until there is a legally binding conclusion to the criminal procedure and for 10 officers it proclaimed a disciplinary measure.

122 The Sixth Report on the Realization of Measures from the Action Plan for Implementation of the Strategy for Fight against Corruption and Organized Crime. National Commission for Implementation of the Strategy for Fight against Corruption and Organized Crime, Podgorica, 2013.

123 Program of professional development of civil servants and employees 2013/14, Human Resources Administration, Podgorica, 2013, pg. 72.

adequate mechanisms to fight against corruption, it is important to place special emphasis on the creation and implementation of the integrity plans and Codes of Ethics considering that they must be institutionally and professionally supported, but that they also, in accordance with the specificity of state entities, must be adapted to the needs of specific institutions.[124]
Especially important for the fight against corruption is abandoning the dominantly repressive model currently employed in the fight against corruption and to introduce an "integrity system" based on ethics. This would represent a more effective mechanism in decreasing the range of corruption in the society and would strengthening the institutional framework in the fight against corruption. Both CeMI's and the European Union's Action Plan for Chapter 23 relating to accession process[125] have highlighted the need to strengthen the institutional framework in this area, and that the fight against corruption should be a key priority of further development and improvement in this area. In light of these, the draft of the Law on Prevention of Corruption was adopted which includes greater independence, greater investigative authorizations and greater authorizations of the new Agency for the Fight against Corruption, in relation to previous institutions which dealt with the fight against corruption, and to, in an adequate manner, regulate the defining of mechanisms for fight against corruption. Namely, the draft of the Law on prevention of Corruption, foresees establishment of an Agency, which will have wider investigative capabilities, greater authorizations relating to coordination, supervision over the making and the monitoring of implementation of strategic documents for fight against corruption with the supporting action plans, coordination and supervision over the adoption and implementation of integrity plans, and definition and implementation of sanctions in the case of their violation, protection of whistle-blowers and initiation of conclusions of international agreements and amendments of regulations aiming to fully implement international anticorruption standards.

2. Protection of Persons Reporting Corruption

2.1 Characteristics of the institutional and legal framework

In the process of detecting and processing various criminal acts with characteristics of corruption - especially of those difficult to discover and prove, an important issue is the mechanisms protecting persons reporting corruption, or as they are commonly called - whistle blowers.[126]
Whistle blowers have an especially significant role in the process of detecting and preventing corruptive actions which is why modern democratic countries guarantee their protection by law, especially the protection from being fired or protection from possible misconduct on the side of the employer.
In accordance with the current legal regulation in Montenegro, a person who has knowledge or suspicion that a criminal act with characteristics of corruption was committed, or can give

124 It is necessary to make sure that the plans contain an assessment of the exposure of the institution to corruption, description of work processes, manners of decision-making and exposure of working positions to corrupt activities, as well as the defining of preventive measures for prevention of corruption. See more in: Group of authors, „Analysis of Effects of Anticorruption Policies in Montenegro 2012/2013", Center for Monitoring and Research, Podgorica, September 2013, pgs. 52-64

125 In accordance with the recommendations contained in the Action Plan for 23, which aim to further improve, strengthen and make more specific the coordination in the area of prevention as well as the implementation of this aim; creation of a new, more efficient and a more effective anticorruption entity, based on the law, began. In this sense, an Agency for Anticorruption will be established as an independent and autonomous anticorruption body (in accordance with the Article 6 UNCAC and ACA standards) which unifies current authorizations of DAI, CPCI, as well as authorizations of SEC in the part of controls of financing political parties and electoral campaigns, and the authorization of the National Commission for Implementation of the Strategy for Fight against Corruption and Organized Crime.

126 The term whistle-blower means a person who reports illegal conduct to authorized institutions.

data of interest for the discovering of criminal acts of corruption and the perpetrators, can submit a report and give data to authorized entities.[127] In Montenegro, it is possible to report corruption to numerous institutions such as: the Directorate for Anticorruption Initiative[128] and the Police Administration (by phone, fax, mail, e-mail, online or directly in the facilities of named institutions), while other institutions have open landlines through which citizens can report cases of corruption. Among these we note: the Ministry of Health, the Ministry of Education and Sport, the Court Council, the Supreme Prosecutor's Office, the Directorate for Customs, the Tax Administration Office, Lottery Directorate, and Directorate for Public Procurement, Investment-development Fund of Montenegro, and the National Commission for Implementation of the Strategy for Fight against Corruption and Organized Crime.

However, in Montenegro systemic protection of whistle-blowers does not exist. From current provisions, the area of protection of whistle-blowers is regulated by the following acts:

- The Law on Civil Servants and Employees[129] guarantees protection of all persons reporting criminal acts with characteristics of corruption. This provision provides protection from releasing identity of the person reporting to unauthorized persons and protection from abuse, denial or limiting of rights that the employees have by law. The Law also guarantees protection of witnesses, in accordance with special regulations, in cases where a person faces real and serious danger to their life, health, physical integrity, freedom or property (Article 79);
- The same type of protection is foreseen for those employed outside of state administration through provisions of the Law on Labor. Namely, the Law on Labor, as well as the Amendments of the Law on Labor[130] foresee protection of all persons who are employed but it does not explicitly name mechanisms or the manner of protection relating to the reporting of cases of corruption;
- The Strategy for Fight against Corruption and Organized Crime for the period 2010-2014, as well as the Action Plan for its implementation for the period of 2013-2014 foresee activities for improvement of mechanisms and measures for protection of whistle-blowers. On the basis of the Innovated Action Plan for Implementation of the Program of Fight against Corruption and Organized Crime the Police Force Administration adopted Expert Guideline on procedures for Reporting Criminal Acts with the Elements of Corruption and the Protection of Persons who Report such Actions to the Police Force Administration in 2008. These further regulate the procedure for the reporting of criminal acts with the elements of corruption to the Police Force Administration, including prescribing the behaviors of the authorized police official who receives reports on corruption, the protection of citizens who report corruption and the manner of promoting procedure and protection. Persons who report corruption to the Police Force Administration can do so in multiple ways: in writing or directly, through mail, phone, fax, electronically or in some other manner. In accordance with provisions of this Guideline, authorized police officers are also responsible to protect both identity of the person reporting corruption as well as the content of the report and to take all necessary measures to protect such persons. In addition, an authorized police officer must uphold the following principles: protection of human rights and dignity of persons; legitimacy; encouragement of the person to report corruption; secrecy and confidentiality;

127 Group of authors "Analysis of Effects of Anticorruption Policies in Montenegro 2012/2013", Center for Monitoring and Research, Podgorica, September 2013, pgs. 52-64

128 Directorate for Anticorruption Initiative does not have executive authorities, but their officials are trained to receive report and forward them to authorized entities.

129 Decree on Declaration of the Law on Civil Servants and Employees ("The Official Gazette of Montenegro ", 50/08 from 19.08.2008)

130 The Law on Amendments of the Law on Labor ("The Official Gazette of Montenegro ",59/11) from 24.11.2011.

forbidding the usage of data in opposition to the purpose for which they were collected, and the efficiency and rationality in their work. The authorized official, in terms of the protection of the person reporting criminal act of corruption are obliged to: protect the identity of the person reporting corruption, protect the content of the report, that is of the data on corruption; take urgent security assessment of a threat directed to a person reporting corruption; protect from threats and unworthy impact the person reporting corruption or the person who gave information about it; to take, in accordance with the law, measures relating to the protection of the person, if he determines that a threat is realistic; to take measures for protection of witnesses in accordance with the special law. Moreover, the Action Plan on implementation of the Strategy for the Fight against Corruption and Organized Crime for the period of 2013-2014 defines the responsibility of reporting - a half-annual analysis of the implementation of the regulation relating to the protection of persons reporting corruption, which encompasses information on the number of reports of corruptive acts from private and public sector, number of initiated investigations, number of raised charges, number of legally binding court verdicts as well as the number of persons who faced negative consequences because they reported corruption;

- In accordance with the Action Plan for Chapter 23 a Draft of the Law on Prevention of Corruption was adopted which encompasses the area of protection of whistle-blowers. The Draft of the Law on Prevention of Corruption encompasses the area of protection of whistle-blowers and foresees the protection of whistle-blowers who consciously inform about the threat to or about the violation of public interest in their work place or in the institution they work in; declaring temporary protective measure which suspend actions and activities over the whistle-blower until the procedure is finalized. The Draft foresees the future Agency for the Fight against Corruption as an external entity to which whistle blowers can directly submit a report on the existence of suspicion on the threat to public interests for the reasons which are foreseen by the Law which will centralize preventive activities on the field of prevention of corruption. In this way, provisions which are generally prescribed by the Law on Labor and the Law on Civil Servant and Employees will be further regulated.

The Directorate for Anticorruption Initiative and other authorized institutions in Montenegro conduct a campaign aiming to encourage citizens to participate in the fight against corruption by making them aware of ways in which they can report corruption to authorized entities. The aim of the campaign is to achieve active participation of citizens in the fight against corruption and to raise awareness of the problem. The campaigns are conducted through creation and distribution of informative materials, setting up of billboards, making of public announcement in daily newspapers and organized appearance on radio and TV shows.[131]

In Montenegro citizens rarely decide to inform authorized institutions about corruptive actions which they have information on, which is why it is important for the area of protection of persons reporting corruption to be regulated through clear national regulations which are harmonized with international standards.[132] The draft of the Law on Prevention of Corruption encompasses

131 Directorate for Anticorruption Initiative conducts a campaign "Not a cent for Bribe" within the Twining project of IPA 2010 "Support to the implementation of anticorruption Strategy and Action plan." Human Resources Administration develops a program of trainings on the topic of fight against corruption, with a special emphasis to the protection of citizens reporting corruptive actions.

132 When we speak of international regulations of this area, we should keep in mind the Article 33 of the United Nations Convention against Corruption which defines the protection of persons reporting corruptive actions, as well as the Article 22 of the Criminal Law Convention on Corruption of the Council of Europe which foresees protection of associates and witnesses. Of special importance is the Legislative Guide for the Implementation of the United Nations Convention against Corruption which states that "as long as people do not feel free to testify

the area of protection of whistle blowers but does not precisely and completely regulates the position and protection of whistle blowers in Montenegro. Namely, the Draft of the Law does not contain clear rules for internal reporting of the threat to public interests, security procedures for the protection of whistle blowers, conditions, ways and procedure to exercise the right to protection and the right to reward. The way in which certain phrases and terms in the text of the Draft of the Law are defined creates a risk of difficulties in application in practice, as well as potential abuses of the Law.

Even though one of the measures defined in the Action Plan for Implementation of the Strategy of the Fight against Corruption and Organized Crime for the period of 2013-2014 is the obligation to report on the semi-annual analysis of the implementation of regulative relating to the protection of persons reporting corruption, which entails information on the number of report of corruptive activities from the private and public sector, the number of initiated investigations, number of raised charges, legally binding court verdicts, as well as number of persons who had negative consequences due to reporting of corruption, authorized institutions did not conduct such or similar analysis.

One of the measures from the Action Plan for the Implementation of the Strategy for the Fight against Corruption is the obligation to make an analysis of the implementation of regulations which are related to the protection of persons reporting corruption from the date of establishment of legal framework until today with information on key problems in the implementation of the regulation, number of reports from the private sector, number of reports form the state administration, the number of initiated investigations, number of raised charges, number of legally binding court verdicts, number of persons who had negative consequences due to the reporting of corruption, including data on the number and the type of declared sanctions against these persons, the number of sanctioned managers who use measures of scaring, limiting or punishing officers who indicate corruption, the type and the height of the declared sanctions for managers. However this analysis was not conducted, thus the measure from the Action Plan has not been implemented.

The Statute on Organization and the Manner of Work of State Administration ("The Official Gazette of Montenegro, 5/12 from the 23rd of January 2012), provides that the Directorate for Anticorruption Initiative is authorized to gather data concerning the reports on corruption from entities who receive reports. In accordance with the last Report on the number of reports on corruption of the Directorate for Anticorruption initiative, in the reporting period, 12 state institutions, who have open landlines or some other way in which these activities can be reported, received 118 reports: Ministry of Education 9, Supreme Prosecutor's Office 56, Police Force Administration 6, Directorate for Customs 4 and the Directorate for Anticorruption Initiative 43 reports on corrupt activities. The institutions received the reports indirectly (51), by mail (31), telephone (21), electronically (12) and in other manner (3). From the total number of reports on corrupt activities, in 97 cases applicants of the report did not wish to make their identity known, and only 21 reports were submitted by anonymous persons. Areas to which the reports on corruption and other illegal activities related to are: state administration (28), local government (24), private sector (21), judiciary (15), education (15), health (4), real estate (4), public procurement (2) and other areas (6). Taking into consideration municipalities in

and report their experiences and findings to the government, all aims of the United Nations Convention against Corruption will be threatened." In accordance with this, the signatory states are obligated to take necessary measures to prevent potential retaliation or scaring of witnesses, victims or experts. Countries are also encouraged to adopt rules according to which the protection of persons reporting corruption to authorized entities would be strengthened. During this process, it is recommended for mechanisms of witness protection, protection of experts and other persons reporting corruption, including state officials, employees and other citizens, to be contained in the law regulating protection of persons reporting corruption (so called whistle blowers) and witness protection.

Montenegro, the most reports were in Podgorica -17. There were 14 in Bar, 12 in Berane, 11 in Budva, 10 in Kotor, 9 in Bijelo Polje, 8 in Cetinje, Ulcinj and Herceg Novi, 7 in Tivat, 5 in Niksic, 3 in Plav, 2 in Danilovgrad, and 1 in Rozaje.[133]

2.1 Recommendations

Considering the fact that systematic protection of persons reporting corruption does not exist in Montenegro, it is of key significance to adopt an all-encompassing Law which will regulate this area. The legislation on the protection of whistle-blowers should be all encompassing, considering that other laws do not treat this matter adequately and that they do not solve this question properly. The draft of the new Law on Prevention of Corruption does not, in a specific and all-encompassing manner, contain clear rules for internal reporting of the threat to public interest, security procedure for the protection of whistle-blowers, conditions, ways and procedure for the realization of the right to protection. Moreover, definitions stated in the text of the Draft leave open risks of difficulties in application, especially if we take into consideration that it is not harmonized with the laws on the basis of which internal reporting is done and especially if we take into consideration numerous possibilities of different interpretations, which is an unfavorable circumstance in the practical implementation of the Law.

On the other hand, event though the Directorate for Anticorruption Initiative and other authorized institutions in Montenegro have - for multiple years - conducted multiple anticorruption campaigns in the aim to encourage citizens to participate in the fight against corruption, citizens of Montenegro rarely decide to inform authorized entities about the corrupt activities about which they have information on. The reasons for this can be found in unclear definition of national regulations relating to protection of persons reporting corruption, and the insufficient harmonization with international regulations. In light of the rules and mechanisms to protect witnesses within the legal regulation which is applicable in Montenegro, it is very difficult to keep in mind European and international standards relating to clear rules, instruments of ethical standards and conditions given to persons to report corruption: reporting corruptive action should be done in good faith and general interest; procedure of reporting and proving must be clear and precise, and it must guarantee conducting legal actions with the aim to eliminate damaging consequences; discrimination on any basis in these procedures must be forbidden; authorized entities must do all they can to stimulate reporting of corruption and in this way strengthen the internal order. Finally, the Parliament of the Council of Europe through the Resolution 1729 (2010) in its recommendations invited all members to reconsider their regulations on protection of whistle blowers keeping in mind the principle that legislation on the protection of whistleblowers should be all-encompassing.

Considering that legal solutions regulating internal reporting of the threatening of public interests on the side of whistle blowers which the draft of the Law on Prevention of Corruption, the Law on Labor and the Law on Civil Servants and Employees refer to do not contain provisions which adequately regulate the process of reporting, it is necessary to prescribe by this Law provisions which regulate the procedure of internal reporting in detail.

Finally and most importantly, authorized institutions should make significant efforts to stimulate reporting of the corruption in a higher degree. Certainly, the existing legal regulations and the practice are insufficient to stimulate the reporting of criminal acts with characteristics of corruption, both in public and private sector. Sanctioning authorized managers in institutions in which the persons reporting corruption are employed at, on the basis of them using methods of scaring, limiting and punishing of these persons, is very important for the improvement of this field in Montenegro.

133 Report on the number of reports of corruption for the period of July–December 2013, Directorate for Anticorruption Initiative, Podgorica, 2014

3. Integrity Plans and Codes of Ethics

3.1 Characteristics and effectiveness of the institutional and legal framework

The new Law on Free Access to Information[134] began implementation on the 17th of January 2013 (it was adopted on the 26th of July 2012) and represents an important mechanism for citizen control of the execution of power. Organizations of civil society and media use it as a significant instrument for research and control of the implementation of policies and laws. Implementation of the Law on Free Access to Information jurisdiction extends to all government entities, and they are, in accordance with the provisions of the Law on Free Access to Information: state entities, entities of local government, institutions, business enterprises and other legal persons whose founder, co-founder or major owner is the state or local government, legal persons whose work is mainly financed from public sources, and a natural person, entrepreneur or a legal person having public authorization or managing a public fund. Besides the Law on Free Access to Information, laws which apply to the procedure of realization of rights to free access to information are: Law on Protection of Personal Data, Law on Data Secrecy, Law on General Administrative Dispute, Law on General Administrative Procedure and the Law on Inspection Supervision. Bylaws regulating this area are: Guide for Access to Information, Statute on Recommendation of Expenses for Access to Information and a Rule Book on the Content and the Manner of Managing Informational System of Access to Information.

It is very important to analyze the effectiveness of solutions this Law offers, especially relating to recommendations of the international community for improvement in this area:

- The Law regulating procedure of free access to information provides more detail that in the previous legal solution. However it does not contain the principle of urgency of procedure as was contained in the previous Law, which included the extension of deadline for proceeding of government entities in deciding on requests for access to information that is extended from 8 days to 15 days. Such a solution can be understandable in the case when the information to be submitted is extensive or comprehensive, but it does not help the applicant of the request in cases when the applicant needs the information urgently;
- The Law provides provisions on access to information regulating the guide for access to information so that each government entity must provide better access to data that may be of public importance so that all interested parties are able to receive needed information. Regular updating of the guide for access to information should contribute to introducing interested parties to the changes useful for realization of the right of free access to information. However, the practice in this segment is still not present in the work of the government entities;
- The Law defines and specifies obligations of state entities in terms of publishing information and deadlines for proceeding, through a proactive access to information, which is a significant novelty in comparison to previous legal solution. In this way procedures of the government entity enable interested persons to, through availability of all relevant documents, receive information they are interested in without submission of a request;
- The Law specifically states situations in which state entities have the right to limit access to information, and defines the duration of the limit and the test of harmfulness of providing information. Namely, deviations in the right to access to information should be clearly defined so that public and private interests are protected as well as privacy. Such legal solutions allow government entity to consider what is the leading interest.

134 Law on Free Access to Information (The Official Gazette of Montenegro, 44/2012 from 9.8.2012.) http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B4E05F2A9-6EF6-43F9-B168-396AF8619892%7D

This does not secure that the government entity will objectively assess the interest applicant of the request. Deviations should be applied only in cases where release of the information is harmful, which outweighs public interest. It is also necessary to define criteria on the basis of which such deviations would be allowed. Also, it is very important for government entities to explain reasons for denial of access to information. The Law limits the access to information in the interest of security, defensed, external, monetary and economic policy of Montenegro, which are, in accordance with regulations regulating data secrecy, marked by a degree of secrecy. The degree of secrecy is not specified by legal provisions, thus leaves doubt concerning whether all degrees of secrecy are treated in this way, in accordance with the law on Data Secrecy, or only a specific degree of secrecy. Finally the inexistence of clear criteria on the basis of which assessment of the need for limitation of access to information in this cases is leaves space for potential abuses of named provision of the Law, and arbitrary decision making on the side of government entities.

Legal provision on the duration of the limit means providing a clear definition of deadlines and leaves the possibility of access to information after the deadline passed. The provision on the test of harmfulness of providing information does not prescribe the way in which this test is conducted nor criteria for it which leaves possibility of abuse on the side of the government entity.

- The Law enables written and oral requests to access to information. An oral request is submitted to the government entity when one wants direct access to some information or when the applicant of the request is in the facilities of the government entity. The Law insists on the obligation of the government entity to help the applicant of the request, in accordance with its jurisdiction, to access wanted information. This legal solution means that the government entity should not deny request for free access to information if it cannot be determined which information the request refers to;
- The Law prescribes deadlines for execution of decision and leaves no space to stall the process. The deadline for execution of the decision is three working days from the day of submission of decision to the applicant, that is within five days of the time the applicant submitted evidence on payment of expenses if they are determined by the decision;
- Jurisdiction of the control over implementation of the Law is under the Agency for Protection of Personal Data and Free Access to Information that also has jurisdiction to decide on complaints. The law defines authorizations and powers of the Agency and the Council of the Agency, as well as the manner of work and cooperation with government entities. The legal solution is a second-instance procedure which is moved out of the institutional framework so that the entity conducting inspectional supervision over the work of the government entity that decide on a request does not decide on the complaint – rather an independent body is in change of the decision. This is a significant advancement in this area. Disputed questions on this solution are the expertise of people working on the decision on complaints, taking into consideration the importance of the right to information, as well as independence and neutrality of persons deciding on complaints. On the other hand, even though the Law enables filing a complaint to the response of the government entity, a key deficiency of such legal solution is the lack of definition on the procedure of administrative silence – cases when the government entity does not respond to request of the applicant that is highly common in Montenegro. Finally, due to the lack of administrative capacities and the fact that Agency does not employ a controller who would conduct inspection supervision there were no inspection controls in the reporting period.
- The law foresees that it is not possible to file a complaint against a decision to deny information containing data that are marked by a degree of secrecy, but that the

complaint can only initiate an administrative dispute. These provisions specify reasons for declaration of complaints. The Council of the Agency decides on the complaints, and it consists of the president and two members appointed by the Parliament of Montenegro on the suggestion of an authorized working body.[135]

The Agency for Protection of Personal Data and Free Access to Information recorded 3485 received requests to government entities out of which 1941 were approved by the government entity, 406 partly approved, 73 requests forwarded to a different entity and 190 given notices. Applicants of these requests were mainly non-government organizations (2710), natural persons (481), legal persons (59), business enterprises (150), media (40), institutions (27) and political parties (8). Applicants of these requests mainly asked information of municipalities (1215), ministries (887), administrations (533), the Government (167), agencies (139), courts (70), directorates (69) etc.

The Agency denied 852 requests in the reporting period because: they did not possess information (447), the request had no basis (105), no jurisdiction (52), for the protection of privacy and the degree of secrecy (42), the need to create new information (14) etc.

The following table shows the number of received requests by the Agency in first-instance procedure.[136]

Total number of received requests	3485
Approved	1941
Partly approved	406
Forwarded to a different entity	73
Denied	852
Do not possess information	447
Information published	10
No jurisdiction	52
Denied due to basis for request	105
Due to creation of new information	14
Reference to the Law on FAI	4
Denied for protection of privacy	42
Denied without stating reasons	3

The following table contains number of complaints directed to the Agency during the reporting period at the first-instance procedure.

135 Council of the Agency decides by a majority vote. Key authorizations of the Council of Agency is to adopt rules of the Agency, adopt the statute and the act on systematization, with consent of the working body, as well as other act of the Agency; prepare annual and special report on the state of protection of protection of personal data; determine annual plan of work and annual report on the work of the Agency; determine proposal of financial plan and the final account; make decisions on request for protection of right and other cases after conducted supervision (Article 52,56 and 57 of the Law on Protection of Personal Data; Official Gazette of Montenegro 79/08 and 70/o9).

136 Data gotten during interviews of authorized persons in the Agency for the needs of creation of this report in May 2014.

Total number of received complaints	728
Approved complaints	530
Denied procedure by decision	106
Denied procedure due to no jurisdiction by decision	2
Partly approved complaints	13
Denied complaints – total	75
Dropped complaints	2
Number of submitted complaints to decisions of the Agency	86

Other authorizations of the Agency for Protection of Personal Data and Free Access to Information relate to the control and supervision over the implementation of the Law and initiation of misdemeanor procedure for violations of the provisions of the law. The Council of the Agency initiates cooperation with government entities through the right to demand submission of documentations and information needed to decide on requests, and initiates inspection control determining if the government entity possesses wanted information.
In order for the Agency to keep a unified information system allowing access to information and to databases, it is necessary to strengthen capacities and improve informational systems for this provision to be implemented by the Agency. It is important to have proper cooperation of all government entities with the Agency. The electronic basis that exists is not harmonized with the Law and the Action Plan prepared in accordance with the principles of the Open Government Partnership. There is no categorization on basis of different criteria but only published decisions of the agency, without name and categorization. In this way it is almost impossible to find relevant information so that information which is perhaps already submitted to some applicant must be requested again from institutions.
Inspection supervision over the implementation of the Law is under Ministry of Internal Affairs, in comparison to the previous legal solution where the authorized entity was determined by the ministry in charge of work of media – the Ministry of Culture. In the sanction provisions, misdemeanors of the government entities and the Agency are defined, as well as fined prescribed for each misdemeanor.

3.1 Recommendations

The current Law on free access to Information improves this area to a great extent, especially in comparison to previous legal solutions. However there are significant deficiencies in the current legal provisions. Namely, the Law on Free Access to Information is still not harmonized with other laws (Law on Protection of Personal Data, Law on Data Secrecy). There is a problem in transparency of certain processes for which information of relevant institutions is very difficult to get. Namely, even though the Law enables filing of complaint to the response of government entity, the main deficiency of such legal solution is non-definition of procedure in cases of administrative silence, that is cases when the state entity does not respond to the request of the applicant which is very common in Montenegro. Most often these cases are cases in the process of public procurement, concessions, out-of-budget income of institutions etc. Considering that a number of institutions still do not submit responses on requests for free access to information to applicants, since there is no sanctions of entities which violate the provisions of the Law or decisions of the Council of Agency, in second-instance procedure, it is necessary to specify

sanctions for entities which do not respond to request for free access to information and implement such sanctions. There was no advancement in correcting deficiencies indicated in the previous report because the Council of the Agency for Protection of Data and Free Access to Information still does not decide in cases of administrative silence, that is when there is no responses on request of the request for free access to information.

Considering that the Law enables limiting access to information in the interests of security, defense, external, monetary and economic policy of Montenegro, and which are, in accordance with regulations relating to data secrecy, marked by a degree of secrecy, this legal provision is not clearly specified considering that there is doubt whether all degrees of secrecy are treated like this or only a specific degree of secrecy. Finally, the inexistence of clear criteria on the basis of which assessment of the need to limit access to information in these cases leaves significant space for arbitrary decision-making on the side of government entities. This is why it is necessary to clearly define all criteria used to decide on public interest for access to information or denial to access to information. It is necessary to legally define that all companies in which the state has ownership share are dutiful under the law, no matter the size of the part of ownership.

CONCLUSION

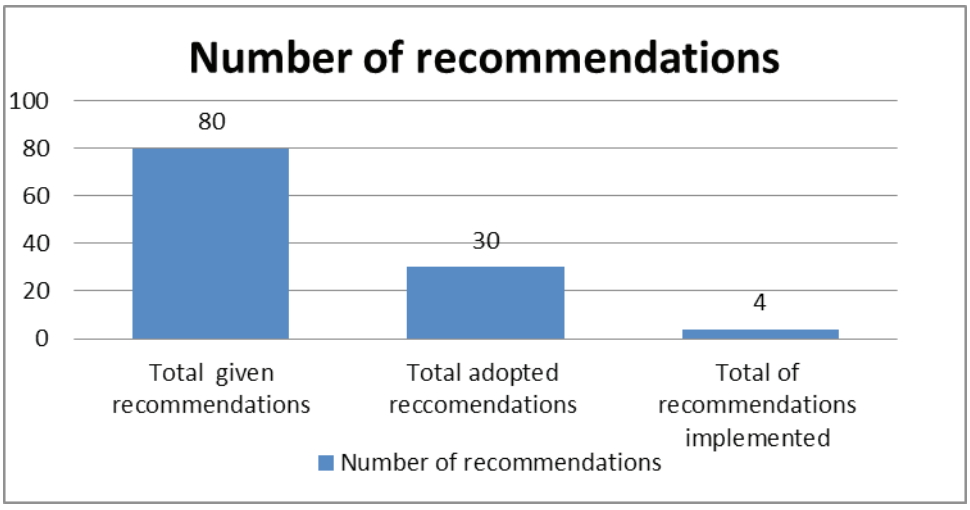
Previous reporting period was again hectic in sense of adoption of new legislation and its alignment with international standards. Implementation of the Action Plan for Chapter 23 has brought many significant changes and important improvements in anti-corruption policies. However, implementation of this document has shown that the deadlines set in it are too ambitiously set and that they are not result of careful planning. As consequence, capacities of state administration are being dispersed and not fully utilized. This brings us to the absurd situations where in certain cases, (e.g. Law on Prevention of Corruption) working groups are creating amendments to laws, which are not yet adopted. This intensive legislative activity impedes effective implementation and creating of the track record of implementation of already adopted laws.
Chief problems by areas in our scope of research are:

- ✓ Scarcely efficient mechanisms of parliamentary oversight, without adequate procedures for its enforcement
- ✓ Lack of political will to establish adequate legislative framework for financing of political parties and to comply to fiscal rules;
- ✓ Lack of criminal investigations for public officials who are concealing their property;
- ✓ Limited participation of the Parliament in creation of the Budget of Montenegro and its complete absence from the process of creation of capital budget;
- ✓ Misuse of the budgetary funds without any action by the Prosecution;
- ✓ Insufficient capacities of public administration to monitor procedures of public procurement, awarding tenders and implementation of awarded contracts;
- ✓ Inadequate managing of state property;
- ✓ Unconstitutional provision of the Law on Overtaking of Joint Stock Companies, which affects property rights of citizens of Montenegro;

However, some important improvements must be marked:

- ✓ Draft Law on Prevention of Corruption was created, which should provide establishment of the new single and strong anti-corruption agency
- ✓ Important improvements are placed in the draft Law on Prevention of Conflict of Interests;
- ✓ Law on Budget and Fiscal Responsibility is adopted, setting for the first time, sanctions which should ensure higher fiscal discipline in budgetary units;
- ✓ State Audit Institution has additionally strengthened its independence through various legislative acts
- ✓ Coordination in the process of verification of data from income and property reports of public officials is significantly improved

After three years of reporting on effects of anti-corruption policies in Montenegro, CeMI is very proud to see adoption of its proposals and their implementation in practice:



CeMI is also very grateful to all the institutions that have provided us with valuable information for compiling of this report. Despite all the obstacles that Montenegro encounters as a small country with limited financial potentials, huge efforts of administration and civil society have brought significant progress in area of fight against corruption, which will in the long run hopefully, bring tangible benefits to all citizens of Montenegro.

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