



# **THE ANTI-CORRUPTION AGENCY – ARE WE READY?**

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# The Anti-Corruption Agency – are we ready?

## Introduction

The Law on Prevention of Corruption, adopted in December 2014, came into force on the 1st of January 2016, simultaneously with the beginning of work of the Agency for Prevention of Corruption established by this law. Even before official start of its work, the Agency faced numerous problems. The aim of this policy brief is to analyze legal framework for the Agency's functioning, capacities at its disposal and effects of its work in the first two months of its existence, as well as to propose ways for solution of existing problems and obstacles for full efficiency of the Agency.

### 1. Amendments to the Legal Framework

Taking into consideration that CeMI has already several times analyzed the legal framework for the fight against corruption in Montenegro and its numerous amendments, in this policy brief we will concentrate only to those amendments which came into force and/or started to be implemented after January 1st. Law on Prevention of Corruption, adopted in December of 2014, besides establishment of the Agency, brought numerous novelties in anti-corruption legal framework<sup>1</sup>:

- For the first time in Montenegro, a legal act defines the corruption as any abuse of public, business, or social function in order to obtain personal gain or gain of the third person.
- Scope of the term „public official“ was decreased. Namely, while previously public officials were, among others, persons who were exercising public authority, i.e. activities of a public interest in any company in which state owned 25% of the capital, in the new Law this threshold increased to 33% of the ownership, which decreased the number of enterprises which are considered public, and consequentially the number of public officials.
- An obligation for public institutions to report sponsorships and donations was introduced, as well as the obligation of the Agency to determine whether these sponsorships and donations could influence legality,

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1 The Law on Prevention of Corruption (“Official Gazzete of Montenegro”, No. 53/2014)

objectivity and impartiality in the work of this institution. Agency also issues an opinion and notifies the institution.

- For the first time in the legal system of Montenegro, the term „whistleblower“ is defined and the framework for whistleblower’s protection is developed (previously this area was partially regulated by the provisions of the Law on Public Servants and Employees and Labor Law): 27 articles of the law is provided the definition of whistleblowers, definition of methods for whistleblowing, explanation of procedure for protection of whistleblowers’ identity, protection from retaliation and possibility of rewarding.
- The area of integrity is regulated by setting obligations to adopt integrity plans in all public bodies, to implement them, to appoint integrity managers and to report on implementation of plans.
- The Agency is provided with the possibility of the administrative investigation<sup>2</sup>through the procedure for determination of violation of the law in area of conflict of interest. All public institutions, state and local self-government bodies, public and private enterprises and other physical and legal entities are obliged to provide all requested data, necessary for determination of facts and circumstances, to the agency. Also, administrative investigation is prescribed in the procedure of verification of the whistleblowers reports, by reference to articles 33-36.

In accordance with this law, jurisdiction of the Agency covers prevention of conflict of public and private interests, limitations in exercising of public functions, verification of data from declarations on property and assets of public officials, processing the reports of whistleblowers.

**Law on Financing of Political Subjects and Electoral Campaigns** has not been changed since 2014. However, with establishment of the Agency, the control function over the implementation of this law was entrusted to this body. More precisely, this function encompasses control of annual financial reports of political subjects, as well as the control of reports on financing of electoral campaigns, control of media advertising, control of use of public offices and vehicles during the campaign, control and oversight over implementation of prohibitions and limitations prescribed by the law, control of employment in public bodies, control of pardoning of debts in the electoral campaign and social welfare assistance, and control of budgetary expenses.

In implementation of this Law, the Agency also disposes with power of administrative investigation.

**The Law on Lobbying** was adopted in 2011 for the first time, but it was never implemented. In the December of 2014, within the package of anti-corruption Laws, was adopted and came into force new Law on lobbying, but it started with the implementation only on January 1st of 2016.

Out of the important changes in this law, in regards to the one from 2011, we should point out:

<sup>2</sup> Law on Prevention of Corruption Art. 33 -36 (“Official Gazette of Montenegro”, No. 53/2014) and Law on lobbying Art. 2 (Official Gazette of Montenegro”, No. 52/2014)

- Definition of the public authority body– which is different from the definition of the public authority body in the Law on Prevention of Corruption. Namely, while Law on Prevention of Corruption includes companies with 33% of state ownership into the public authority bodies, the Law on lobbying stipulates that public authority bodies are only companies in majority ownership of the state (50%+ of the capital).<sup>3</sup>
- While the previous Law stipulated that lobbied persons could be only public officials as defined by the Law on Prevention of Conflict of Interests, the new Law on lobbying expands the definition of lobbied persons to all elected, nominated or appointed persons in the public authority bodies, persons for whose election, nomination or appointment approves the public authority body and other persons in the authority who participate in the preparation and adoption of regulations and other general acts, or can influence the content of legislation and other general acts.<sup>4</sup>
- The definition of the conflict of interests in lobbying is introduced – which occurs if lobbyist advocates for two or more clients with different interests. Also, upon signing of every contract on lobbying, submitting the statement on inexistence of conflict of interests is requested.<sup>5</sup>
- Conditions and qualifications necessary for conducting of lobbying are more precisely defined, as well as the competencies of the Agency regarding registration of lobbyists and registry keeping.
- Provisions foreseeing that each contract on lobbying should be submitted to competent body eight days after signing of the contract, as well as provisions stipulating inspection control over implementation of the law, were erased.
- The power of the Agency to initiate misdemeanor procedure or to issue misdemeanor sanction warrant, on the basis of report initiated by the lobbied person, was introduced

In accordance with the Law on lobbying, jurisdictions of the Agency are constituted in keeping of the lobbyist's registry, issuing licenses for lobbying, issuing certificates on passed exam for conducting of the lobbying, initiation of misdemeanor procedure or issuing misdemeanor sanction warrant in case of illegal lobbying.

Taking into the consideration that in Montenegro so far there was no organized lobbying, regulation of this area represented a special challenge. However, even before the start of the implementation, there are visible weaknesses of the Law on lobbying which can negatively reflect to its implementation. Namely, there are at least three problems in this law:

- lack of the inspection surveillance over the implementation of the law – even though this oversight was foreseen by the previous law, in the new law this provision was erased

3 Law on Prevention of Corruption Art. 3 ("Official Gazette of Montenegro", No. 53/2014) and Law on lobbying Art.2 (Official Gazette of Montenegro", No. 52/2014)

4 Law on lobbying Art.4 (Official Gazette of Montenegro", No. 52/2014)

5 Ibid, Art. 13.

- in previous law was stipulated the obligation to provide all signed contracts between lobbying clients and lobbyiststo the competent authority, which has disappeared from the current legislation. These contracts should also contain signed declaration on inexistence of the conflict of interests. Taking into consideration that the inspection oversight was cancelled by the new law and the fact that Agency lacks power of administrative investigation in conducting of this law – a question arises – who is verifying existence of this statement in all contracts and its validity.
- differently from other laws in the competence of the Agency, where procedures for determination of the breach of the law can be initiated ex-officio, in this area the procedure can be initiated only on the basis of report of the lobbied person.

There is also a paradox situation in three laws, adopted in the same month (Amendments to the Law on Prevention of the Conflict of Interests, the Law on lobbying and the Law on Prevention of Corruption), which define differently the **percentage of the state ownership** in the company required to make that company a public authority body (25%, 33% and more than 50%). In such way, for example Jugooceania, where state owns 47% of capital<sup>6</sup> is considered as the public authority body, while it is not considered as the public authority body by the Law on lobbying. On the basis of the Law on Prevention of Conflict of Interests from 2014, elected or appointed persons in Aluminum Factory Podgorica (KAP), where state owns 29% of the capital, were considered as public officials, after adoption of the Law on Prevention of Corruption they are losing this status, including their previous obligations to report income, assets, sponsorship and donations.

**Administrative investigation**, as one of the biggest leaps forward achieved by the new legal framework, is foreseen in investigation of breaches of the Law on Prevention of Corruption in parts dedicated to prevention of conflict of interests, control of assets and income, verification of whistleblowers reports, and in case of breaches of the Law on Financing of Political Subjects and Electoral Campaigns. However, it is not provided for the investigation of breaches of the Law on lobbying.

## 2. Establishment and Political Independence of the Agency

When CeMI prepared the model of reform of anti-corruption institutions in 2010, which has foreseen establishment of the new Agency for the Fight against Corruption, it was clearly stated: „In order to improve the quality of efforts in prevention of corruption it is necessary to form the body which will be provided with independence in implementation of anti-corruption laws, from executive and other two branches of power, and certainly independency from influence of political parties and centers of financial power“. Also, in the very introduction of this study it was pointed out that „it is necessary to ensure independency, wide powers and sufficient capacities of this institution, in order for it to provide tangi-

ble results”<sup>7</sup> In accordance with the Article 6 of the UNCAC „Each State Party shall grant the body or bodies (anti-corruption bodies) the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.”<sup>8</sup>

In the process of defining of the articles of the Law on Prevention of Corruption, which regulated this area, lawmakers sought to provide the political independence. However, instead of CeMI’s proposal from 2010 where it was proposed for the Government to appoint 11 members of the Governing Board of the Agency, from authorized proponents, lawmakers decided to form the Commission for Election of the five members for the Council of the Agency. This solution had two negative aspects:

- Instead of the Governing Board with higher powers of control and supervision over the work of the Agency, it was decided to form a smaller Council with insignificant powers, except in the process of appointment of the Agency’s director. While the Director is accountable for the organization of the work of the Agency and its results, makes decisions, gives opinions and recommendations, the Council is established only to adopt his proposals of the budget and annual reports and to give recommendations for improvement of the work of the Agency.
- Instead of direct appointment of the members of the Council, an artificial intermediary body was created, which mediated in the election of the Council, in the mode that neither the Parliament nor the Government could be accountable for elected members. This intermediary body was dissolved immediately after election of the Council members, thus it could not be held responsible for its decisions.

The lawmakers tried to introduce several levels of decision-making between the Parliament and appointment of the Director of the Agency, who holds the highest powers, in order to weaken the political influence and prevent compromises between parties, which were done in the past.

In such manner, Commission for the Election of members of the Council of the Anti-Corruption Agency, in accordance with the Law, should have been consisted of: two members of the Parliament of Montenegro (one member from parliamentary majority, one member from the parliamentary opposition, one representative from Judicial Council, one representative from the Prosecutorial Council and one representative of civil society organizations.<sup>9</sup>

In the practice, members of the Commission were: Predrag Bulatović (DF), Obrad Mišo Stanišić (DPS) as representatives of the Parliament, representative of the Judicial Council Dobrica Šljivančanin (SNP), representative of the Prosecutorial Council Slavko Lukić (University of Montenegro) and representative of NGO Civic

7 “Reform of Anti-Corruption Institutions in Montenegro: How to make the System More Efficient?”, CeMI 2010

8 United Nations, Convention against Corruption, Article 6

9 Law on Prevention of Corruption Art. 85 (“Official Gazette of Montenegro”, No. 53/2014)

Alliance Zoran Vujčić. In such way constituted Commission was more like the small Parliament than an independent body.

There was 10 applications for 5 members of the Council of the Agency. Even though the Law on Prevention of Corruption clearly stated (Article 84, paragraph 3) that persons who held office in the political party for the last 10 years, can't be elected for the members of the Council, out of 10 candidates 2 were not eligible by the law, one candidate withdrew the application, there were 2 representatives of civil society organizations, four candidates from DPS and one candidate from SNP. Truth to be told, they were not holding office in the political party within the last ten years (due to incompatibility of party functions with their public offices), but their party affiliation was doubtless. In a result, we got the Council of the Agency, constituted out of three representatives of DPS, one representative of SNP and one representative of civil society organizations. In the process, the Law on State Audit Institution was broken, by the election of the state auditor to the position of the member of the Council. Namely the Law on State Audit Institution, clearly states that state auditor can't be the member of management body of any legal entity.<sup>10</sup> Even though the Commission for Prevention of Conflict of Interests has brought the decision that these two functions are incompatible<sup>11</sup>, and that election of this member violates both the Law on State Audit Institution and the Law on Prevention of Conflict of Interest, this member to this day holds both offices.<sup>12</sup>

In accordance with the Law, this body published call for applications for the Director of the Agency. The conditions for the Director of the Agency, besides the conditions which were prescribed for the member of the Council<sup>13</sup>, included the provision which stipulated that Director of the Agency can't be the person which held the public office in the last five years.<sup>14</sup> In the draft law, this period was 10 years; however, it was decreased to five years in the process of adoption. Candidates for the Director of the Agency were: a lawyer, two employees of the Directorate for the Anti-Corruption Initiative and ex- Head of the Criminology Department in the Police. Upon election of the current director, the appeal was initiated by the lawyer Zeljko Tomovic, who claimed that the decision of the Council was

10 The Law on State Audit Institution Article 41 and Article 45 ("Official Gazette of Montenegro", No 28/04 from 29.04.2004, 27/06 from 27.04.2006, 78/06 from 22.12.2006, "Official Gazette of Montenegro", No. 17/07 from 31.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 31/14 from 24.07.2014)

11 The decision of the Commission for Prevention of Conflict of Interests, december 2015

12 <http://www.antikorupcija.me/me/o-nama/savjet-agencije-za-sprjecavanje-korupcije/radule-zuric/>

13 1) Higher education, the seventh qualification framework level, sub-level VII-1; 2) Ten years of working experience of which at least five years of working experience in the conduct of affairs in the field of fight against corruption or protection of human rights; and 3) At least three opinions on professional and working qualities by a company, other legal person or entrepreneur for which he/she works or has worked, or with which he/she has business cooperation.

A person may not be elected as a Member of the Council if he/she, within the last ten years, performed or performs: 1) Function of an MP or councillor; 2) Function of a member of the Government of Montenegro; 3) Function in a political party (party president, member of presidency, their deputies, member of the executive and the central committee or other officials in a political party).

14 The Law on Prevention of Corruption Article .91

brought even before the procedure of election and that it is illegal as such.<sup>15</sup> The audio recordings of candidates' interview, which were published in November, are supporting this complaint.<sup>16</sup>

In spite of all of these controversies, and obviously politically instructed process of the appointment of members of the Council and the Director of the Agency, this body has continued with its work.

### 3. Capacities and the Financial Independence of the Agency

The Council, together with the Director of the Agency, has adopted the Rules on Internal Organization and Systematization of the Agency and Agency's Statute. For the bigger portion of positions within the Agency, there was no open competition, and these positions were filled with the previous employees of the Directorate for the Anti-Corruption Initiative and Commission for the Prevention of Conflict of Interests.

In accordance with the Rules on Internal Organization and Systematization of the Agency, it has been defined that the Agency has two sectors with three departments each, two sections and on service. The Sector for Prevention of the Conflict of Interests and Control of Financing of Political Campaigns has 19 positions for employees, out of which one assistant director, 10 positions for prevention of the conflict of interests department, 5 positions for the department for control of financing of political subjects and electoral campaigns and three positions in the department for initiation of misdemeanor procedures and issuing of misdemeanor warrants. Out of this number, two months after start of the work of the Agency – only 9 positions are filled.<sup>17</sup>

In the sector for prevention of corruption, integrity, lobbying and application of international standards, 14 positions are foreseen, out of which one assistant to the director, 3 positions in the department for processing the whistleblowers reports and protection of whistleblowers, 6 positions in the department for integrity and lobbying, and four positions in the department for prevention of corruption, monitoring of regulations and giving opinions on regulations from area of anti-corruption. Out of 14 planned positions, to this date was filled 8, while in the department for processing the whistleblowers reports and protection of whistleblowers there are no employees at all.<sup>18</sup>

Within the section for international cooperation and standards, and in the section

15 <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=517323&datum=2015-11-02&naslov=Radonji%E6%20nezakonito%20izabran%20za%20direktora>

16 <http://www.prelistaj.me/2015/11/21/dokumenta-kako-je-sreten-radonjic-postao-direktor-agencije-za-suzbijanje-korupcije-cini-mi-se-da-je-lako/http://www.mans.co.me/audio-snimci-sjednica-savjeta-agencije-za-sprecavanje-korupcije/>

17 <http://www.antikorupcija.me/me/o-nama/agencija-za-sprjecavanje-korupcije/sektor-za-sprjecavanje-sukoba-interesa-i-kontrolu-finansiranja-politickih-subjekata-i-izbornih-kampanja/>

18 <http://www.antikorupcija.me/me/o-nama/agencija-za-sprjecavanje-korupcije/sektor-za-preveciju-korupcije-integritet-lobiranje-i-primjenu-medjunarodnih-standarda/>

for IT technologies are planned three positions. Out of these 6 planned positions, currently only two are filled.<sup>19</sup>

In the service for general duties and finances, was planned 14 positions, out of which is 4 currently filled.<sup>20</sup>

In total, out of 55 planned positions, together with the director and his advisor, only 25 positions are filled, which makes less than a half of employees foreseen by the systematization.

The first month of its work the Agency spent **without offices**, due to the fact that designated offices of the Real Estate Administration were not vacant or adjusted in time. Regarding public procurement procedures, so far was only published call for bids for the package of the regulations of the Agency.<sup>21</sup>

In order to prevent a possible pressure on the Agency through decrease of income of its employees and means for work, Law on Prevention of Corruption<sup>22</sup> stipulated that the least amount of the annual budget of the Agency amounts to 0.2% of the current state budget. Draft budget, in accordance with the Law is proposed by the Council of the Agency, which submits it to the relevant parliamentary committee for consideration. As it was already mentioned in other analyses of this type<sup>23</sup>, the draft budget was prepared by the director, and the Council had the opportunity to see it only after it was approved by the Government, i.e. when it couldn't be amended. The Director of the Agency, in the starting year of the agency, when offices should be provided and salary for new employees, as well as the expert help for establishment of the body, has created the budget completely in line with the legal minimum.

#### 4. Work of the Agency, Transparency and Functional Independence

As we already pointed out an anti-corruption body should be sufficiently independent, both from executive and legislative branch of power. However, before the start of the Agency's work, all bylaws necessary for Agency's functioning were prepared by the Directorate for the Anti-Corruption Initiative and Ministry of Justice, which is the first indicator of influence of the executive power to the Agency.

It is already foreseen that all employees of DACI and employees of the Commission for Prevention of the Conflict of Interests, will be automatically employed in the new Agency. Taking into consideration their results so far, and the facts that

19 <http://www.antikorupcija.me/me/o-nama/agencija-za-sprjecavanje-korupcije/1602230953-odjeljenje-za-informacione-tehnologije/http://www.antikorupcija.me/me/o-nama/agencija-za-sprjecavanje-korupcije/odjeljenje-za-medjunarodnu-saradnju-i-standarde/>

20 <http://www.antikorupcija.me/me/o-nama/agencija-za-sprjecavanje-korupcije/sluzba-za-opste-poslove-i-finansije/>

21 Portal of the Directorate for the Public Procurement: <http://portal.ujn.gov.me/delta2015/search/displayNotice.html?id=95177&type=InvitationPublicProcure>

22 Law on Prevention of Corruption, Article.95

23 NVO Institute alternative, „Happy (new) agency“, january 2015

employees of the Directorate for Anti-Corruption Initiative were directly dependent on the executive power, it becomes obvious that this aspect of independence failed in practice as well.

According with the Article 3 of the Rules of Procedure of the Council of the Agency, the work of the Council is public. The general public is notified by the internet page of the Agency, through the press releases, or in other way. Non-governmental organizations and accredited representatives of the media can attend sessions of the Council, only by the decision of the Council. So far, sessions of the Council of the Agency have been closed for the media, and the Council decides individually on each submitted request for attendance by the civil society organizations. During adoption of the bylaws for the Law on Financing of Political Subjects and Electoral Campaigns, non-governmental organizations which haven't provided written recommendations for amendments in foreseen deadline, were denied access to the session. Among other, request of CeMI, as an organization which worked on creation of the Law on Prevention of Corruption, was denied. Minutes from these sessions are available on the internet page of the Agency but, according to the allegations of the members of the Council, these records are „edited and they are containing incomplete information“<sup>24</sup>. Another obstacle for the transparency of the Agency's work is their webpage, which is not providing user friendly access to all information from one area.

Additional problem for functioning of the Council is claim of the Director that one of members, from non-governmental organizations is not elected in accordance with the Law on Prevention of Corruption. However, despite her efforts to initiate the procedure in which the official decision would be made on this issue<sup>25</sup>, the Council refuses to put this question to the agenda.

As already mentioned, the bylaws necessary for the functioning of the Agency were adopted: Statute of the Agency, Rules of Procedure of the Agency, and Rules on Internal Organization and Systematization of the Agency. Additionally, a set of bylaws was adopted for the following areas:

1. **Prevention of the Conflict of Interests** - Rules on the methods for gifts managing by public officials (MP), Regulation on registration of sponsorships and donations and content of reports on received sponsorships and donations, Instructions for completing of Report on income and assets, Rules for the verification of the data from the report on income and assets of the Agency Director, Notification on gifts, The reporting form for income and assets of public officials, as well as the Rules of the Agency for Prevention of Corruption in the prevention of conflicts of interest of public officials.
2. **Financing of Political Subjects** - Instructions for the Form of Reports on origin, amount and structure of collected and spent funds from public and private sources in the electoral campaign for the election of MPs and councilors; Instructions on the Form of Reports on origin, amount and

24 Transcript of the 15th meeting of the Council of the Agency for Prevention of Corruption, page 2, [http://antikorupcija.me/media/documents/Zapisnik\\_sa\\_15.\\_sjednice\\_Savjeta\\_Agencije\\_za\\_sprjecavanje\\_korupcije.pdf](http://antikorupcija.me/media/documents/Zapisnik_sa_15._sjednice_Savjeta_Agencije_za_sprjecavanje_korupcije.pdf)

25 Transcript of the 15th meeting of the Council of the Agency for Prevention of Corruption, pages 2 and 3, [http://antikorupcija.me/media/documents/Zapisnik\\_sa\\_15.\\_sjednice\\_Savjeta\\_Agencije\\_za\\_sprjecavanje\\_korupcije.pdf](http://antikorupcija.me/media/documents/Zapisnik_sa_15._sjednice_Savjeta_Agencije_za_sprjecavanje_korupcije.pdf)

structure of collected and spent funds from public and private sources for the electoral campaign for the election of the President of Montenegro; Instruction on the content of the Report on the contributions of legal entities and individuals to political subjects during the election campaign; Instructions on the procedure for reporting and processing complaints filed during the election campaign; Rules on the methods of control of political subjects and the control and monitoring during the election campaign; and the Rules on the calculation and reporting of in-kind contributions to political subjects.

3. **Integrity** - Rules for the preparation and implementation of integrity plans
4. **Lobbying** - Rules on the form and content of the lobbyists' license; Rules on the form and manner of the registry keeping of lobbyists' registry; Rules on the form and content of the Report on the work of lobbyists and legal entities registered for carrying out lobbying activities; Rules on the form and content of the Request for authorization to carry out lobbying activities; Rules on the program and method of taking the lobbying exam.
5. **Whistleblowers' protection** - Rules on the keeping the Registry of whistleblowers' reports and requests for protection of whistleblowers ("Official Gazette of Montenegro", No. 75/15, dated 25 December 2015); Rules on the more precise method of Processing the reports of whistleblowers on endangering of public interest, which implies existence of the corruption ("Official Gazette of Montenegro", No. 77/15 of December 30, 2015)

Out of analyzed bylaws, the special problem are representing the **Rules on the methods of control of political subjects and the control and monitoring during the election campaign**. Namely, the new Law on Financing of Political Subjects and Electoral Campaigns has met some of the GRECO recommendations, which were disregarded before. Independent control of this area, which should be provided by the Agency, has the key role in achievement of these results. However, while this Law entrusts the control role to the Agency, which should provide regular spending of resources for funding of electoral campaigns and prevent abuse of state resources, these Rules are foreseeing decreased scope of the control conducted by the Agency, decreased scope of its powers and it potentially enables conducting of political pressure to certain political subjects.

In accordance with the Article 3 of these Rules, the Agency adopts the plan of the control and supervision during electoral campaigns, based on the risk assessment, i.e. the Agency assesses which subjects should be controlled during the electoral campaign.

The fact that the Agency decided not to control financing of all subjects in the electoral process, but to choose several of them (there is no precise number) on the basis of the risk assessment, means that in the practice some parties and candidates will be controlled only by the discretionary decision of the Agency. Also, these Rules are stipulating that the control of the institutions, over the abuse of state resources, will be done in the same way. This kind of control has several substantial problems:

In the first place, in such manner, the law which foresees control of all political subjects is changed by the Rules. Risk assessment is not a legal category which

could be used to identify political subjects which should be controlled: In accordance with the Law the Agency is obliged to control all political subjects.

Leaving the discretionary possibility for the Agency to decide which political subjects will be controlled, would mean providing the Agency with the possibility to exercise political pressure to the certain parties and candidates.

Institutions and persons which should provide information to the Agency in the process of control have remained unidentified, so employees of the Agency should decide by themselves from whom to ask information and in which form. Taking into consideration that employees of the Agency have never done this type of control before, we should be very worried for the outcome of this deliberately defined sub-legal framework.

On the first example of adoption of the Control Plan for the Electoral Campaign for Municipal Elections in Tivat, employees of the Agency applied legal approach and decided to conduct the control of all political subjects, as well as the public authority bodies encompassed by the law. Even though this scope of the control is high for current number of employees, and for the number of employees planned, it represents a positive example which should be applied in the control of the electoral campaigns on the state level, of course with strengthened capacities.

## 5. Conclusion and Recommendations

Establishment of the Anti-Corruption Agency and its efficiency represent one of the key steps which should have been undertaken by Montenegro in order to complete the tasks posed by the EU and the NATO. The first months of the functioning of this body are very important for gaining of the public trust for a new institution and for establishment of the practice of efficiency, effectiveness and accountability to the citizens for the results in fight against corruption.

Despite some obvious weaknesses, the new Law has done a lot regarding empowerment of this institution, giving it possibilities of administrative investigation and direct sanctioning for misdemeanors and offered a minimum of conditions to form a politically, financially and functionally independent body, which should be adequately used.

However, in current activities of the Agency, as well as in the legal framework, there are weaknesses which need to be resolved in order for the Agency to achieve planned results:

- Definition of the public authority body, in terms of percentage of the state ownership in the companies, is not unified in Law on Prevention of Corruption and Law on Lobbying;
- Powers of the Agency in the implementation of the Law on Lobbying are excluding the possibility of administrative investigation and initiation of ex-officio procedures in case of the law violations;

- The manner in which the Council was established and in which Director was appointed are still open and they present a permanent obstacle for the work and efficiency of the Agency;
- Planned organizational structure of employees foresees insufficient number of employees for the scope of the work in the area of control of financing of political subjects and electoral campaigns, and on the other hand, unnecessarily large number of employees for registration of lobbyists and for general duties and finances;
- Half of the positions are not filled, which represents a problem particularly in the light of the forthcoming elections and scope of work in this area;
- Agency's budget for the first year of work has to be bigger in relation to other years, due to the necessary engagement of expert staff for education, procurement of materials and preparations for the work. However, for the first year the budget is set to the legal minimum;
- Model of cooperation with civil society is still not established, and the decisions of the Council on attendance of civil society organizations to the sessions of the Council are arbitrary;
- Webpage of the Agency is currently underdeveloped. Classification of the documents is not adequately provided and whole page is not user friendly
- Out of available bylaws, the biggest concern is provoked by the Rules on the methods of control of political subjects and the control and monitoring during the election campaign, which abrogates provision of the Law on Financing of Political Subjects and Electoral Campaigns, which makes the control partial and deliberate.

In accordance with the exposed problems, and based on the analysis of legal acts and institutional performance, in order to improve the situation, we propose following measures:

1. To unify definition of the public authority body in the Law on Prevention of Corruption and Law on Lobbying
2. To provide administrative investigation and initiation of procedure ex-officio within the Law on Lobbying
3. Council of the Agency should refer all complaints regarding elections of its members and appointment of the Director to the Administrative Court in order to reach the final decision and continue unobstructed work in different, or the same composition.
4. Through the legal amendments, it is necessary to create the balance of powers between the Council of the Agency and Agency Director – in order to ensure mutual control of both bodies and provide higher level of the accountability
5. To conduct the needs assessment of the Agency and based on it redesign the act on internal organization in respect to the number of employees needed to conduct certain scope of work.

6. To increase number of professional staff and to decrease number of employees on strictly administrative positions
7. Fill all planned vacant positions
8. The Council of the Agency, in accordance with the needs assessment should prepare draft budget for the following year.
9. To publish all bylaws at the webpage of the Agency
10. To divide the webpage of the Agency by areas, in order for each department to have its own part of the website, that contains: law, bylaws, decisions and opinions adopted in the process of the law implementation. Enable search by different criteria
11. To create model of cooperation with the civil society, that shall contain clear conditions for the participation of the civil society organizations on sessions of the Council. If these conditions are met, participation to the session shall be automatically approved.
12. To amend *Rules on the methods of control of political subjects and the control and monitoring during the election campaign*, in order for it to be aligned with the Law on Financing of Political Subjects and Electoral Campaigns and to foresee control of all of the political subjects in electoral process.
13. In course of electoral campaign, to conduct control of all institutions which are obliged to report on use of the state resources in this period (employment, analytical cards, travel claims)

## 6. Bibliography

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4. Transcript of the 15<sup>th</sup> meeting of the Council of the Agency for Prevention of Corruption

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