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"EUROBLOK" COALITION

PROJECT:

"STRENGTHENING CIVIL SOCIETY CAPACITIES TO CONTRIBUTE TO THE EUROPEAN INTEGRATION AND ACCESSION PROCESS"

ANALYSIS OF THE EFFECTS OF ANTI-CORRUPTION POLICIES IN MONTENEGRO

and Recommendations for Their Improvement

Report 2011

This project has been financially supported by the European Union. This study has been produced with the financial assistance of the European Union. The contents of the document are the sole responsibility of EMIM and can under no circumstances be regarded as reflecting the position of the European Union.

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Analysis of the Effects of Anti-corruption Policies in Montenegro and Recommendations for Their Improvement
Report 2011

Publisher:
CeMI
Beogradska 32
81 000 Podgorica
e-mail: cemi@t-com.me
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For publisher:
Zlatko Vujović

Authors:
Ana Selić
Dragan Bojović
Nikoleta Tomovic
Vlado Dedovic
Zlatko Vujovic
Mensur Bajramspahić

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Mensur Bajramspahić

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The public policy study: „Analysis of the Effects of Anti-corruption Policies in Montenegro and Recommendations for Their Improvement", has been prepared within the project "Strengthening the Capacity of Civil Society in Contribution to European Integration and the Accession Process". The project has been implemented by the European Movement in Montenegro, in cooperation with the Monitoring Center CEMI and the Institute Alternative, with the support by the Delegation of the European Union in Montenegro.

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INTRODUCTION

The public policy study: „Analysis of the Effects of Anti-corruption Policies in Montenegro and Recommendations for Their Improvement", has been prepared within the project "Strengthening the Capacity of Civil Society in Contribution to European Integration and the Accession Process". The project has been implemented by the European Movement in Montenegro, in cooperation with the Monitoring Center CEMI and the Institute Alternative, with the support by the Delegation of the European Union in Montenegro.

The main objective of the project is to enhance the contribution of civil society organizations to the integration process of Montenegro, and in particular to strengthen civil society efforts in enhancing national policies under the National Program for Integration. The Monitoring Center CEMI through this study analyzed one of the pillars of the National Program for Integration, i.e. national anti-corruption policy.

The fight against corruption is an integral part of processes of democratization, modernization of the state and public administration, fair market competitiveness, activities of the judiciary and the and the protection and exercise of rights and freedoms of citizens. Corruption is a social evil that requires a systematic effort and absolute commitment of all social forces in its eradication. However, the prevention of corruption represents one of the greatest challenges of modern democratic societies.

For Montenegro as well as for the other countries of the Western Balkans, the issue of corruption has been particularly accentuated due to the processes of transition, whereas elites have often used this situation for different types of corrupt activities and abuses. Due to such state of affairs, it is very important to fight corruption in a comprehensive and effective manner. Corruption, as a key issue of every modern state, erodes foundations and values of a democratic society, thereby hampering the functioning of the government.

Namely, investing illegally obtained money into legitimate businesses, through money laundering and corruption represents the biggest threat to any state system. In this way, crime enters into the legal sphere of the economy, where, given the possession of large amounts of money obtained from criminal activities, it becomes much more competitive that other businesses, often winning public procurements tenders, thereby eradicating healthy elements of the economy.

In order to achieve better insight about conducted anti-corruption measures in Montenegro and their effects, we analyzed several key areas of the Innovated Action Plan for the Fight Against Corruption and Organized Crime, which can be grouped into three following categories: measure related to political corruption, measures related to economic corruption and measures for transparency and prevention. CEMI's research team conducted a series of interviews with decision makers, stakeholders and obtained a vast amount of data through free access to information. Based on the prepared analysis and experiences from the region, we produced a significant number of recommendations for improving these policies.

1 PART I: POLITICAL CORRUPTION

In the first part of the study we have analyzed anti-corruption policies that are usually associated with a political function: the financing of political parties and the conflict of interest. This section will also address the oversight role of legislative body over anti-corruption policy, in order to achieve better insight into the activities of political parties in the fight against corruption and its effects. Given that two key laws were adopted in July, 2011, it was necessary to analyze their structure and the degree of their implementation, as we have done throughout this document.

1.1 Parliament's oversight role in the process of fight against corruption in Montenegro

Parliamentary oversight, as the basis of political control of the executive power, represents an important instrument for the fight against corruption in all democratic countries. The role of Parliament in the fight against corruption does not end in the adoption of anti-corruption laws, but instead Parliament represents the highest legislative authority that conducts constant oversight of the implementation of the adopted laws, so that they could produce the expected results in practice.

The Parliament of Montenegro can exercise a variety of control mechanisms: parliamentary questions, consultative and control hearings, Prime Minister's questions, interpellations, parliamentary investigations, the possibility of delegates' dismissal. Despite the more intensive application of certain control mechanisms in the Parliament and the adoption of recommendations by the parliamentary bodies, this type of oversight has not significantly changed and improved the practice of executive institutions, at least not those that are directly responsible for the implementation of anti-corruption legislation.

Insufficient influence by the Parliament on the development of anti-corruption reforms in Montenegro was recognized in reports of the relevant international organizations. The European Commission's report from 2011,[1] states as one of the key objections that Montenegrin Parliament did not form a working body or a special parliamentary committee to oversee the fight against corruption, as well as that the oversight activities conducted by the institutions are inefficient and unsatisfactory. The European Commission also found that the mobility of legislative and oversight initiatives from the opposition are only partially enabled and depend on the will of the ruling majority, as well as that the Parliament does not have the capacity to verify the harmonization of proposed laws with the EU acquis, and so on.

1 European Commission's Montenegro Progress Report, published on October, 12th, 2011.

Aiming to respond to the objections presented in the EC report, the Parliament of Montenegro has implemented a series of measures, most importantly the recently adopted amendments to the Rules of Procedure of the Parliament of Montenegro (hereinafter: Rules of Procedure), which among other things, seek to articulate the precise manner of parliamentary oversight over the implementation of anti-corruption laws.

This document will analyze the implementation of oversight measures and activities, conducted by the Montenegrin Parliament during the previous year and the first half of this year (until June, 30th), in the area of fight against corruption and organized crime. The document then provides suggestions for the improvement of the work of this institution in the area of fight against corruption and organized crime.

1.1.1 Legal framework

Oversight function of Parliament is defined both by the Constitutions and by Rules of Procedure of the Parliament, as well as numerous laws regulating the operation of institutions and bodies over which the Parliament, or parliamentary committees exercise control and supervision.[2] In conducting its oversight function, the Parliament, as the highest political authority, is obliged to be particularly engaged in preventing and fighting corruption at all levels and in all spheres of the public sector. Moreover, in adopting the Resolution on the Fight against Corruption and Organized Crime (Official Gazette, no. 2/2008), the Montenegrin Parliament clearly expressed its readiness to divert all its capacities into establishment and oversight of the anti-corruption legislation and to establish a more intense international and regional cooperation in the fight against corruption and organized crime.

In the previous year and during the first half of this year, significant changes of the legal framework governing the internal organization, operation and the manner of implementation of oversight and control functions of the Parliament, were introduced. In early May, 2011, Collegium of the President of the Parliament, taking into consideration the objections of the European Commission, the European Parliament, and other relevant international organizations, assessed that it was necessary to initiate changes to the Rules of Procedure of this institution and formed a multi-party working group, which was responsible for the implementation of this initiative. After a full year of negotiations and reconciliation of different party views, the proposal was unanimously adopted at the General Meeting, held on May, 8th this year.

One of the novelties provided by the newly adopted amendments to the Rules of Procedure is the establishment of the Committee for anti-corruption as a special working body. The Committee shall, in accordance with the prescribed authorities, have the responsibility to:

- monitor and analyze the work of governmental bodies, institutions, organizations and authorities in the fight against corruption and organized crime;
- discuss issues and problems in the implementation of laws regulating the fight against corruption and organized crime, and propose amendments to them;
- propose additional measures to improve strategies, action plans and other documents related to the fight against corruption and organized crime;

2 Among many laws, the Law on Parliamentary Oversight of the Security and Defense (Official Gazette, no. 80/2010) enables the Parliament, directly and through the Committee on Security and Defense, to conduct comprehensive oversight of the authorities responsible for the safety and defense and in doing so, protect the rights and freedoms of citizens against possible abuses in this important area.

- consider petitions from citizens and legal persons in the field and submit them to the relevant authorities.

As agreed, the Committee will be chaired by a representative from the opposition.

Beside this, amendments to the Rules of Procedure introduce other changes, most importantly: classification of a number of existing committees, establishment of new working bodies[3], strengthening of certain oversight and control mechanisms, formation of permanent sub-committees as well as the improvement to the progression of acts proposed by the parliamentary minority.

We believe that the newly adopted amendments to the Rules of Procedure provide a solid legal basis for a more intensive and effective role of the Parliament in the fight against corruption and organized crime, as well as in the ongoing process of accession negotiations with the EU. However, the amendments to the Rules of Procedure did not clearly regulate the question of the relationship between Parliament and civil society. In other words, it was necessary to define in a more precise manner the modalities of cooperation and involvement of civil sector in the work of parliamentary bodies (especially newly established: Anti-Corruption Committee and the Committee for European Integration). It is also necessary to point out that the jurisdiction of the Committee on Anti-corruption should have included a provision that would specify the obligation of this body to analyze and prepare for a debate in the Parliament, the key findings from reports of independent bodies that contribute to the fight against corruption (including the reports of the State Audit Institution). This is particularly important because at the plenary sessions these reports are usually not discussed adequately.

Finally, the existing legal framework does not adequately regulate the issue of parliamentary inquiry, which should, among other things, represent the most effective mechanism of the Parliament in exposing possible frauds and corruption in the public sector. The constitutional arrangement in which one-third (27) of the total number of deputies should support the initiation of a proposal to open a parliamentary inquiry, is too restrictive and inconsistent with good examples from international practice, where the number of MPs required to launch a parliamentary inquiry usually ranges from one member to one-fifth of the total number of deputies. [4] In addition, the investigative powers of the inquiry committee related to data collection proceedings, the examination of witnesses, the filing of documents relevant to the parliamentary inquiry – have not been regulated in a detailed manner. Moreover, the Rules of Procedure does not recognize the obligation of government officials and employees, as well as citizens to be heard before the board, nor can they be penalized in case they refuse to respond to the hearing or in the case of providing a false testimony. This type of obligation or sanction can only be imposed by law. Recently, the proposed Law on Parliamentary Inquiry was discussed in the Parliament. However, the proposed solution was incomplete and flawed, because it did not include punitive measures that would sanction possible violations of law.

3 The current Committee for International Relations and European Integrations has been divided into two permanent working bodies: the Committee for International Relations and Imigrants and the Committee for European Integrations.

4 More about this in the study: Hironary, Y., *Tools for parliamentary oversight – A comparative study of 88 national parliament*, Inter-parliamentary Union 2007, page. 41.

1.1.2 Implementation

During the reporting period (January, 01st – June, 30th) the Parliament of Montenegro invested efforts in the implementation of the Resolution on the Fight against Corruption and Organized crime, especially in terms of the legislation: numerous laws and amendments were adopted which, among other things, regulate the criminal offences of corruption and outline special criminal procedures. During the same period, the Parliament finally realized one of the essential obligations of the Resolution (point 7)[5]: the National branch of parliamentarians was established, functioning within the framework of the Global Organization of Parliamentarians Against Corruption (GOPAC)[6]. Also, it is worth noting that, after a full decade, the institute of parliamentary inquiry was re-established.

In the late February of this year, due to the support of smaller coalition partner of the ruling coalition (SDP), the Parliament adopted the proposal of the opposition on opening the parliamentary investigation about possible corruption in the privatization of Telekom. As the newly formed Committee of Inquiry, at the outset of its work, faced with inadequacies and shortcomings of the current legal framework governing the manner of conducting the parliamentary investigation, representatives of the opposition in this body proposed the Law on Parliamentary Inquiry, which was adopted at the fourth session of the Committee (June, 05th, 2012). At the same session, the Committee proposed amendments to the existing Law on Classified Information (Official Gazette, no. 14/08, 76/09, 41/10), in order to provide to the members of this body access to all documents related to the investigation. Both proposed laws were subject to further parliamentary consideration.

Despite these activities and progress that was achieved, it is difficult to argue that the Montenegrin Parliament, during the reporting period, significantly improved its oversight role in the fight against corruption and organized crime. Despite the establishment of the parliamentary inquiry mechanism and a more intense utilization of other control mechanisms, parliamentary oversight over the implementation of anti-corruption legislation has remained weak and inefficient. Therefore, for example, of the 36 consultative and 12 control hearings that were held during the observed period, only three were directly related to corruption and organized crime. The conclusions that were enacted after the held hearings, incurred as a result of a compromise between different political options, and were declarative, general, without clear and concrete proposition of measures and activities that need to be implemented. The same generality has been observed in conclusions that were reached based on the analysis of reports that are submitted to Parliamentary working committees by institutions and bodies responsible for the implementation of anti-corruption laws. So far, none of the working committees, in their official conclusions and reports submitted to Parliament, have instigated and raised issues of political accountability or proposed dismissal of executives in various bodies and institutions who implement anti-corruption legislation, despite the fact that the European Commission and other relevant international organizations have persistently emphasized that Montenegro, of all policies that it implements, achieved the poorest results precisely in the fight against corruption and organized crime. [7]

5 This is an obligation that the Parliament of Montenegro undertook and incorporated into the Resolution in 2007.

6 The National branch of parliamentarians has the authority to monitor and affirm strengthening of anti-corruption legislation in the country, as well as monitor the development of international legislation in the field of fight against corruption, based on obligations that stem from Montenegrin membership in international organizations and institutions. The branch, also, has the obligation to monitor the work of Government and its structures in the area of implementation of legislation, as well as the application of international instruments and standards in the relevant area.

7 Regarding the newly adopted changes to the Rules of Procedure, it is impossible to analyze and assess the degree

1.1.3 Conclusions and recommendations

The Parliament of Montenegro does not adequately utilize all oversight mechanisms, while the utilization of those currently in use, especially in the area of fight against corruption and organized crime, is very weak, bearing in mind that most frequently it does not result with the adoption of concrete conclusions. In cases where concrete conclusions have been endorsed, the Parliament does not oversee their application.

In order to strengthen the role of Parliament in the fight against corruption and improve its oversight functions, we propose:

1. It is necessary to further refine jurisdiction of the Committee on Anti-Corruption, and clearly delineate the responsibilities from the newly formed National Branch of Parliamentarians against Corruption. In this way, the scope of work and responsibilities would be defined a much clearer manner, thereby contributing to the effectiveness of their work.
2. It is necessary to amend the proposed Law on Parliamentary Inquiry and adopt the improved legal text as soon as possible. The new law should contain penal provisions that would be related to the denial of information, the failure to respond to an invitation to testify, as well as to the provision of a false testimony. Also, it is necessary to adopt, in the shortest period possible, the proposed amendments to the Law on Classified Information that would provide all necessary data to inquiry committees.[8]

   Also, amendments to the Constitution should be introduced in order to reduce the necessary number of MPs required for the submission of a proposal for the opening of a parliamentary inquiry, which would allow for a greater number of initiatives and facilitate more frequent statements on initiatives of common interest. This suggestion is based on a good comparative practice.
3. It is essential for Parliament to institutionalize cooperation with representatives of civil sector, i.e. to adopt specific obligatory procedures that need to be upheld by the future Committee on Anti-Corruption (and other parliamentary bodies). This would facilitate participation of civil sector in the process of creating normative and institutional framework in the fight against corruption. In turn, this would render the fight against corruption more comprehensive and transparent and would certainly contribute to the adoption of better solutions in the Parliament.
4. The Parliament should intensify the utilization of oversight mechanisms, when assessing the implementation of current anti-corruption laws. The control mechanisms should be utilized in an efficient way; their application should result in concrete conclusions, measures and actions, whose realization should be under the supervision of competent parliamentary bodies and Parliament as a whole.

of their implementation in practice, because the new Committee for anti-corruption, as well as all other committees will be established in the ensuing period (until July 31, 2012).

8 During the presentation of the working version of this document, at a round table that was organized on July, 10th, 2012, Parliament adopted the Law on Parliamentary Inquiry, as well as the proposed amendments to the Law on Classified Information. The newly adopted Law on Parliamentary Inquiry, however, did not introduce penal provisions that would sanctions potential violations of this law.

1.2 Financing of Political Parties

Funding of political parties was for the first time the subject of a separate law in 1993. This was followed by the legal texts in 1997, 2004, 2005, 2008, 2009 and the last from 2011. The main weakness of the current legislation, prior to the recent legislative amendments (August, 2008 – December, 2011), was reflected in the inadequate institutional framework, more precisely in the fact that the State Electoral Commission (hereinafter: SEC) was not adequately trained or supplied with necessary resources. In turn, this hampered the function of SEC as an independent body that would control the financing of political parties. In other words, the Agency for the Fight against Corruption has not yet been established. Problems in the implementation of the law were, among other things, caused by the unwillingness of the Ministry of Finance to carry out its oversight function, due to the lack of quality external auditing of financial reports of political parties. This was caused by the lack of technical and financial capacities of the SEC, among other reasons. These weaknesses have also been pointed to in reports of the European Commission and GRECO, in 2010. [9]

GRECO's report contains nine recommendations for the improvement of regulatory and institutional frameworks in this area. With the aim of facilitating the mentioned GRECO's reports and resolving the identified deficiencies, the Innovative Action Plan for the Implementation of the Strategy for the Fight against Corruption and Organized Crime for the period 2010 – 2012, included two important measures: (1) the adoption of the new Law on Financing of Political Parties and (2) the adoption of the new Law on the State Election Commission. These measures, however, were only partially realized. Specifically, in July last year, new Law on Financing of Political Parties was adopted (Official Gazette of Montenegro, no. 42/11), while until the beginning of its implementation (January 01, 2012), the adoption of the Law on State Election Commission was agreed upon. Although the working group prepared the law on SEC, the government did not adopt the proposed draft, but instead proposed to amend the Law on Financing of Political Parties, in such a way that would establish State Audit Institution, (hereinafter: SAI) beside SEC, as a body responsible for the supervision of the law enforcement in this area. [10] Consequently, based upon the proposal of the Government of Montenegro, in December last year, new amendments of the Law on Financing of Political Parties were adopted (Official Gazette, no. 1/12).

1.2.1 Legal framework

The newly adopted Law on Financing of Political Parties (with amendments), partially improved legislative framework[11], under which part of GRECO's recommendations in this area were endorsed. We will single out several important improvements: (1) provisions that regulate the issue of in-kind donations have been introduced, (2) rules that prohibit

9 Analytical report of the European Commission from November, 9th, 2010 and the GRECO Evaluative Report on Montenegro, adopted on 49th session of this body, held in Strasbourg, from November, 23, 2010 – December, 3, 2010.

10 According to the official statement of the Government, the Law on State Election Commission was not adopted due to the fact that its enforcement would nullify provisions of the Law on Election of Deputies and Delegates. Off the record, however, it seems that there is no political will for the adoption of this law, in other words, both the ruling parties and the opposition are not willing to renounce their influence in the State Election Commission.

11 The area of political parties, apart from the Law on Financing of Political Parties is governed by the Law on Political Parties, from 2004 and the Law on Financing of Pre-Election Campaigns for the President of Montenegro, mayors and presidents of municipalities, from 2009.

parties' misuse of public resources (state and local) during the election campaign were introduced; (3) the upper limit for fundraising for non-parliamentary parties that are not entitled to the funds has been increased from current 5% to 10% of the total funds allocated for the regular work of parliamentary parties; (4) audit of financial reports of political parties has been strengthened, through the inclusion of the SAI.

Despite these improvements, the new law did not eliminate all of the deficiencies pointed out by the GRECO recommendations, the EC and the civil society. For example, GRECO requires substantial modification of penal policy in this area and recommends introduction of sanctions that are "efficient, proportionate and dissuasive, including the expansion of the scale and range of possible sanctions, so that all possible violations of the law can be covered". This means that, in addition to misdemeanors, the law should have included other types of sanctions, such as: partial or complete loss of the right to public funds, term subtraction, ban on re-nomination to responsible persons for a given period, and even criminal sanctions in cases of serious law violations. However, new legal solution (like the previous) foresees and regulates only misdemeanors. Proposed penalties in the current law are not sufficiently effective, proportionate and dissuasive, and without stricter penal policy the area of financing of political parties cannot be made lawful and transparent.

The new legal text did not adequately resolve the issue of the annual membership fee of political parties, despite the fact that in the mentioned GRECO report, as well as in the EC Progress Report on Montenegro, from 2011, precise regulation of this issue was suggested. The law, however, stipulates that the total amount of the subscription "on an annual basis may not exceed 10% of total revenues". This provision is quite broad and allows for very high payments from membership fees and leaves room for a number of manipulations.

Also, it should be noted that some of the good solutions from the law could be partially compromised by by-laws, which were enacted by the State Election Commission in the first months of this year. [12] On January, 30th, 2012, the SEC adopted a **Form for reports on donations of individuals**, as well as the **Rules on calculations and reporting on in-kind contributions to political parties**. However, none of the elements for the identification of donors have been included in the said Form, other than one's first name. Thus, the SEC has failed to oblige political parties to accurately identify their donors during electoral campaign, and thus hampered an effective control of political party financing.

Furthermore, the other by-law, **Rules on calculating and reporting on in-kind donations** to political parties significantly modifies and reduces the impact of basic legal norms. Specifically, the law provides that in-kind donations to parties are calculated according to market value and reported as income. However, according to the Rules promulgated by the SEC, in-kind donations are calculated as the difference between the paid price paid for the product or service and their market value, but only if such difference is greater than 30%. The first proposal by the SEC was that this difference be 10%, however, based on the advice of the external expert of the UNDP, due to the uneven price rates, this difference was increased to the current 30%. It is obvious that this solution significantly favored political parties in relation to other consumers, because it practically enabled them to achieve discounts of up to 30% , thereby avoiding to reports them as in-kind donations.

Finally, although the latest amendments to the law, which included the SAI in the oversight of its implementation, represent a kind of positive progress (especially in a situation where

12 In the period January – April of this year, SEC adopted 13 by-laws.

SEC is poorly organized and with significant lack of capacities, which adversely affects efficient control of political party financing), we consider that control conducted by the SAI will not provide adequate application of legal norms. Although the SAI demonstrated high degree of professionalism and independence, most of its findings remained without concrete consequences, because none of the violations were actually sanctioned, nor have the other authorities undertake measures that would contribute to effective realization of its observations and recommendations. In addition, it is important to note that the budget and capacities of SAI have not changed to reflect new responsibilities of this institution. This undoubtedly affects the effectiveness of its oversight role, either in this or in other important areas within its competence.

To all of the above mentioned drawbacks and deficiencies of the existing legal frameworks, we need to add an imprecise and delimited scope of work of institutions that are responsible for the implementation of this law. For example, although explicit provisions that forbid misuse of state resources were introduced, the control over the implementation of these provisions was not delegated, while appropriate sanctions for violations have not been prescribed.

1.2.2 Implementation

Since the new Law on Financing of Political Parties entered into force on January, 1st, 2012, it is still not possible to give a comprehensive and objective assessment of its implementation. Local elections in Herceg Novi and Tivat are the first elections to which this Law applies, a detailed analysis of the implementation of the new law in these cases will be of great importance for a more complete evaluation. However, what we can already conclude is high incidence of repeated problems that have characterized the previous implementation of regulations in this area. [13]

1. A significant number of parties have not submitted annual reports and have breached legal obligations and deadlines. For example, political parties were obligated to file to SEC, until January 31, a **Decision on the membership fee for the current year**. Most parties, however, did not fulfill this obligation in a timely manner. Moreover, until May, 16th, 2012, according to the website of the SEC, 10 of the 37 registered parties did not fulfill this legal obligation. A similar situation exists in relation to the obligation of submittal of the Annual report on income, assets and expenditures of political parties in 2011 – 15 political parties did not submit this report. Also, 14 parties did not submit the Annual report on balance sheets of political parties for 2011, even though the deadline for the submission of both documents expired on March, 31st.

13 The application of previous regulation on political party financing was characterized by consensual unwillingness to comply with prescribed requirements, obligations and deadlines. The dominant non-application of regulation was characteristic of the period until the adoption of new laws in 2008 and 2009. After that period, the situation, despite strong resistance, began to improve, if ever so slightly. The parties began with submitting reports, though not all and not for all elections. During the last elections held in 2009, the Ministry of Finance has not properly implemented the law, which resulted in an incorrect payment of funds. After the elections, reports on expenditures were filed only by parliamentary political parties, while those that remained outside the parliament refused to do so. Following an initiative for legal proceedings against political parties and responsible persons, launched by the NGO CEMI, some political parties submitted reports, while others are still in legal procedures ran against them. So far, nobody has been criminally sanctioned for violation of laws that regulate the issue of political party financing and pre-election campaigns, despite the numerous breaches of legislation.

2. Most of the local government units continue with the practice of non-payment of funds for the regular work of parties at the local level. NGO CDT investigated the method of payment of funds to parties from state and municipal budgets during the first months of this year and found that the state-level payments were made regularly and within the legal time limit (until 5th of the month for the previous month), but, on the other hand, most municipalities did not comply with the provisions of the Law on Financing of Political Parties.
3. Misuse of public resources is continual and remains one of the most prominent issues in the area. This was particularly demonstrated during the local pre-election campaigns in Tivat and Herceg Novi, where numerous cases of the use of public resources (both state and local) for promotional purposes of certain political parties, were observed.
4. A small number of reports submitted by the SEC related to the violations of the Law on Financing of Political Parties were processed. The SEC has launched 17 infringement procedures against parties that have not adopted, in a timely manner, the Decision on the membership fee for the current year. The decision has been made in two cases, where in one case a warning has been issued to a political party, while in the second case, the filed report has been refused by the Magistrates Court. 21 infringement procedures have been initiated against parties that have not submitted the report on income in a timely manner. One decision was reached, thereby rejecting the SEC initiative.
5. The competent national authorities are continuing with the practice of inaction and passive approach to problems related to political parties financing. This attitude certainly reduces the possibility of achieving transparency and introducing control in this sphere.

1.2.3 Conclusions and recommendations

New legislation that deals with the financing of political parties represents a progress towards the achievement of international standards in this area, but still contains major flaws. In line with the above-provided observations and comments, we believe that in order to eliminate deficiencies, it is necessary to undertake the following:

1. Improve the institutional framework for the control of political party financing. The existing institutional framework, under which responsibilities are shared between the SEC and SAI, is not adequate and effective. It is necessary to form independent Agency for the Fight against Corruption, which would, in the fight against political corruption, have unified competencies for at least 5 important questions: (1) the financial operations of the party, (2) conflict of interest, (3) misuse of state resources, (4) lobbying and (5) preventive anti-corruption activities. The agency should, naturally, have jurisdiction for other issues, which has been explained in detail in a separate study prepared by the NGO CEMI.
2. The authority that exercises control over the financing operations needs to conduct investigations, not just the accounting control of the disposition of budget funds. This demonstrates the necessity to introduce the possibility of an administrative investigation by the institution that controls financing of political parties. Adminis-

trative investigation should enable the competent authority to investigate financial operations of other subjects (both economic and physical) that are associated with political parties, as well as to conduct hearings of individuals who are to be required to answer such calls. It is only through the establishment of such investigative process, that the full control of financial operations of parties can be achieved.

3. Stricter and wider penal policy needs to be introduced in this area. In addition to the fines, the law should introduce other types of penalties that would be more dissuasive and more adequate for more serious violations of the law. Furthermore, it is necessary to introduce a provision that would, in cases where irregularities would constitute a criminal offense, represent an obligation for the authority to file a criminal charge. Currently, the competent authorities only determine the irregularity and publish it in the report that does not go beyond the website presentation of the institution.

4. Strengthen the implementation of provisions aimed at preventing the abuse of state resources. Such provisions are related to concrete prohibitions that are frequently violated in practice, but so far, without any penalties.

5. Amend certain by-laws promulgated by the SEC, which threaten and hamper the meaning of basic provisions of the law (the Rules on calculations and reporting on in-kind contributions to political parties and the Form for reports on donations of individuals). In this sense, it is necessary to supplement the Form for reports on donations of individuals with the data that would facilitate the identification of donors. The Rules on calculations and reporting on in-kind contributions to political parties needs to be amended, reduce the percentage of the difference in price that needs to be reported is reduced from 30% to 15%.

6. Reduce the membership fee – maximum 50 euros annual fee represents a real constraint that would prevent the possibility of abuse. Also, the law needs to define that the membership fee falls under the existing limitation of the overall contribution from an individual, in other words, the sum of membership fee and donations from an individual may not exceed the amount of 2000 euros.

7. Facilitate discipline at a local level in payments of subsidies to political parties. The competent authorities should take measures to ensure that local governments strictly fulfill this statutory obligation. [14]

8. Re-conduct the analysis of compliance of the legal framework with GRECO recommendations, prepared during the third round of evaluations that were conducted in Montenegro. It is also necessary to harmonize the legal framework based on the mentioned analysis and GRECO recommendations that have not been adequately incorporated in the legal texts.

9. Jurisdiction of the SEC needs to be expanded to control of the misuse of state resources, while appropriate sanctions need to be prescribed for this offense.

14 The law foresees sanctions (from 200 to 2000 euros) for responsible persons in local municipalities, in cases where an obligation to pay monthly installments to parties is not fulfilled.

1.3 Prevention of Conflict of Interest

The prevention of conflict of interest is one of the most criticized area of anti-corruption policies. Since the adoption of the first Law on Conflict of Interest in 2004, this document has been amended twice with the aim of complying with international standards and recommendations made by GRECO, the European Commission and SIGMA. Changes to the law have been more a result of efforts to formally meet requirements of the EU, then to make real progress in the field.

Key objections of international organization and civil society in relation to the implementation of previous laws were:

- Narrowly defined concept of a public official
- Inability to accurately validate property records of public officials
- Lack of provisions that allow independent status of the Commission
- Lack of capacities of the Commission to carry out all provisions stipulated by the law
- Poor coordination between the Commission and other institutions
- The lack of implementation of stricter sanctions foreseen by the law

With the aim of eliminating these deficiencies, endorsing recommendations of international organizations and fulfilling requirements of the European Union, the Parliament of Montenegro adopted, on July, 29th, 2011, amendments to the Law on Prevention of Conflict of Interest. The law was only partially harmonized with international documents, and only after the European Commission's proposal it was withdrawn from the Parliament, and after a few days of work, passed by the Parliament.

1.3.1 Legal Framework

The new Law on Prevention of Conflict of Interest has been significantly improved when compared to the previous legal text. Key innovation of this version, which was the subject of intense public attention, is the expansion of the definition of a public official and of a person directly elected in the elections. In accordance to this provision, members of the Parliament of Montenegro will no longer be able to be simultaneously chairmen of local governments or directors of public companies and institutions. MPs were, according to new legal text, required to abandon their parallel functions until November 1, 2011, while directors and chairmen of local governments were allowed occupation of the MP position until the beginning of March, 2012.

The law expanded the authority of the Commission in the prevention of conflict of interest and strengthened its oversight role (especially in the evaluation of the data submitted by public officials). Currently, the Commission has a duty to check and assess statements made in the property records, in coordination with other competent authorities (the Central Registry of the Commercial Court, the Cadaster system and the Tax Administration).

Deadlines for the submission of information on property and the abandonment of other public functions have been extended, while the fines to be imposed for the lack of adherence have been specified.

1.3.2 Implementation

The law is in effect since March, 1st, 2012, except for the provision relating to the membership of MPs in the management and supervisory boards, which is, as we pointed out, in force since November, 1st, 2011.

According to figures acquired through Requests for Information, as well as the information published on the website of the Commission for the Prevention of Conflict of Interest, on July, 1st, 2012, In Montenegro 3.323 public officials were registered, some of which 1 346 (41%) are state officials and 1.977 (59%) are local officials. Of the total number of registered public officials, 3.174 or 95.2% submitted the Report on the Income and Assets for 2011/12, of which 1.302 or 96.7% state officials and 1.872 or 94.7 local officials. Changes in assets exceeding 5.000 euros in 2011 were reported by 37 officials, and in the first half of 2012, 12 public officials.

The Commission, during this year (until July, 1st) gave 19 Opinions on the existence of conflict of interest and issued 442 Decisions (312 in the First Instance and 130 on appeal), of which in 323 or 73.1% cases public officials were found guilty of violating the law on various grounds[15] , in 116 or 26.2% cases a breach of the law was found retrospectively[16], while only in 3 or 0.7% cases, public officials did not breach the law. Initiatives in relation to violations of the law were largely submitted by the Commission (in 67% of cases).

Against all public officials who violated the law, proceedings were initiated and cumulatively 302 requests were submitted before the Regional authorities for misdemeanors. In 94 cases adjudication has been brought (including the backlogs from 2011), where, in accordance with the Law on Misdemeanors, a total of 6.1000.00 euros of fines were pronounced. Upon the bringing of final decision, the affected party would file a complaint to the Administrative court for 2 and to the Supreme Court for 1 public official. Based on this (and based on claims from the previous period), upon 6 appeals were rejected, while in 2 cases verdicts were subject to the accepted appeal and returned to the Commission.

The Commission has, in 2011, filed 47 requests for the dismissal of public officials to competent authorities.[17] Given the fact that competent authorities have not informed the Commission on the compliance with these requests, the Commission has, on January, 24th, 2012, requested official notification on undertaken measures related to the submitted requests for dismissal. Based on the obtained results, only 3 public officials were dismissed from their positions (school principals).

As regarding the implementation of the new legislation, the Commission has found that one MP violated the law (Commission Decision from December, 23rd, 2011), because until November, 1st, 2011, the MP did not abandon his parallel office. On the other hand, all MPs who decided to keep their positions in the executive branch (presidents of local governments and managers of public enterprises and institutions) have, until March, 1st, 2012, abandoned their parliamentary office.

In order to achieve effective evaluation of the data on income and assets of public officials, the Commission has so far signed cooperation agreements with the Tax Administration,

15 During the previous year, according to the decision issued by the Commission (789 decisions cumulatively), high percentage of violations by the public officials was registered (78%)

16 This means that public officials have retracted from the violation of the law, prior to the finalization of legal proceeding: resigned, submitted the reports, etc.

17 During the first half of 2012 (until July, 1st), no requests for dismissal were filed, because the deadlines for the completion of appellate proceedings have not expired.

the Public Procurement Directorate and the Human Resources Administration. There is no information regarding the implementation of these agreements, as well as no reports have been made on their application. The Commission has also signed cooperation agreements with relevant institutions from 9 different countries.

1.3.3 Conclusions and recommendations

Although the aforementioned legislative amendments undoubtedly contributed to a better normative regulation of the issue of conflict of interest, we believe that even this, improved version of the law is not precise sufficiently, nor is it in accordance with international standards.

Problems that were ascertained earlier by international organizations still remain unresolved:

1. **Independence and competence of the Commission for the prevention of conflict of interest is not enshrined in the law**. The amendments have not identified terms which would, as far as possible, ensure political and financial independence of the body responsible for the implementation of the relevant law. The only significant innovation in this part of the legal text is contained in the provision under which the chairman and members of the Commission are elected through tender. Other solutions are mostly carried over from the previous version of the law, which means that in the ensuing period we can expect: no precise criteria for the appointment of the chairman and members of the Commission;[18] their appointment will be conducted by the Parliament of Montenegro through majority vote; the budget of the Commission depends entirely on the will of the parliamentary majority and the chairman and members of the Commission can be members of political parties. [19] It is evident that these steps do not preclude the possibility of political interference in the work of this body, as the ruling majority (to which legal norms are primarily referring to) arbitrarily decides, on the one hand, on the composition of the Commission (the ruling majority can appoint the most desirable candidates from their own political lines) and, on the other hand, the total amount of funds that are necessary for the functioning of the Commission (they can reduce the budget of the Commission, thereby disrupting its regular functioning).
2. **The legal framework does not contain clear guarantees for the implementation of penal provisions stipulated by the law**. The law should define more precisely the manner of implementation of the new penal policy. Specifically, the current practice in the implementation of the law points to the lack of proper coordination between the Commission for the Prevention of conflict of interest and other administrative bodies or legal persons, who are in charge for the implementation of sanctions, so that certain penalties are generally not enforced in practice. For example, we observed that the Commission during the previous year filed 47 Requests for the dismissal of public officials to competent authorities, but that only 3 of these requests were actually conducted and processed. The revised legal framework foresees new types of sanctions (suspension and disciplinary measures),

18 Only a general provision is provided, under which persons working in the Commission must have professional and moral qualities and that one member of the Commission must be a lawyer who passed the bar exam.

19 The law, namely, only forbids them to be members of bodies of political parties.

however, procedures that would ensure their effective implementation have not been introduced in a clear manner.

3. **Strengthening of capacities of the Commission has not been foreseen, which would enable this body to conduct administrative investigations.** Although the law introduces provisions that provide the Commission with the opportunity to review the allegations from property reports, the composition of the Commission has not been modified in accordance with new competencies, so there is a reasonable suspicion that the Commission will not have enough capacity to carry out this function.

As for the effectiveness of the Commission in the previous period, the data indicates that this body continually invested efforts in fulfilling its responsibilities (a significant number of issued decisions, opinions and launched misdemeanor procedures), but in spite of these efforts, the legal framework is not implemented in a proper manner. A negligible amount of collected fines and failure to implement requests for dismissal, obviously confirm the earlier expressed conclusion that, due to the poor coordination between the Commission and other state agencies, the penal policy in the area of conflict of interest is not properly implemented in practice. If we add the problem of insufficient political and financial independence of the Commission and its limited capacity to conduct administrative investigations, it is difficult to believe that this body will make effective use of new powers and meet new commitments arising from the amendments of the existing law.

A negligible amount of collected fines, and failure to implement requests for dismissal, apparently confirming earlier expressed the conclusion that, due to poor coordination of the Commission and other state agencies, the criminal policy in the area of conflict of interest is not applied properly in practice. If we add to the problem of lack of political and financial independence of the Commission, and its limited capacity to conduct administrative investigations, it is difficult to believe that this body will make effective use of new powers and meet new commitments arising from the amendments to the existing Law.

In thoroughly analyzing the newly adopted amendments to the Law on the Prevention of Conflict of Interest and the manner of its implementation in the previous and in the first half of this year, we note that it is necessary to take the following actions so that the observed deficiencies can be overcome:

1. **The law or a by-law needs to provide that the election of the Chairman and Members of the Commission is conducted by the Parliament of Montenegro through two-thirds majority, rather than a simple majority vote.** Taking into account the importance of the Commission and the fact that those in power have the most "options" to violate the Law on the Prevention of Conflict of Interest, we believe that this would represent a more appropriate solution, because it would reduce the possibility for that those affected by the legislation, to influence the work of the body that oversees the implementation of the law;

2. **The Law should explicitly prohibit all forms of party activism to chairman and members of the Commission.** The Law should explicitly prohibit all forms of party activism to chairman and members of the Commission. It is very important to ensure that the Chairman and members of the Commission are not active advocates of the views of one political party, because it significantly reduces public trust in their work, even if they conduct their job very professionally;

3. **It is necessary to strengthen the financial independence of the Commission.** Adequate funding for the Commission needs to be ensured, along with the provision of alternative (additional) funding sources, so that the total amount of the budget of this body would not fully depend on the will of the parliamentary majority;
4. **It is necessary to strengthen the coordination between the Commission and other bodies responsible for the implementation of this law.** Lack of coordination between the Commission and other relevant authorities is certainly one of the leading causes of inadequate implementation of the law. The problem is reflected both in the field of implementation of certain legal sanctions and in terms of checking the financial status of public officials. The Commission has, however, in the previous period signed cooperation agreements with several government bodies, but there is still no indication that these agreements will be consistently applied in practice;

2 PART 2. ECONOMIC CORRUPTION

The notion of economic corruption is too wide for this document to encompass it in a comprehensive manner. However, in this part of the study, we have selected areas to which least attention has been paid to during the preparation of the Innovated Action Plan for the Fight against Corruption and Organized Crime. The aim of this part of the study is to provide concrete and effective proposals in areas of fight against corruption in public finance, state property, public procurement and capital markets.

2.1 Public finance

One of the policy areas that requires constant strengthening of control mechanisms so that the possibility of fraud and corruptive actions can be reduced is the field of public finance. Systematic reform in this area began in 2001, and was continued with numerous changes to normative and institutional frameworks. However, despite the reforms, the established level of control and external and internal audit, as well as the manner of managing the taxpayer resources are all still far from fulfilling the prescribed international standards.

We will name just some of the most important weaknesses that are referred to in the analyses of the European Commission, relevant international organizations (SIGMA, GIZ and GRECO) and civil society:

1. The legal framework regulating the work of the State Audit Institution (hereinafter: SAI) does not ensure financial independence of this body.
2. The Constitution does not ensure the immunity for members of the SAI Senate.
3. The audit subjects are not legally obligated to report to SAI about the implementation of recommendations contained in its findings.
4. The audit subjects are not adequately sanctioned for violations of applicable regulations.
5. The Audit body in charge of an external audit of EU's IPA funds is not functionally independent.
6. There is no effective administrative and institutional cooperation with OLAF.
7. Number of established units for internal financial control is small and their staff insufficiently trained to carry out all forms of statutory audit.

With the aim of overcoming the observed deficiencies, the competent authorities

have during the past year, among other things, proposed a law on the Audit Authority, as well as proposed amendments to certain legal provisions, most of which were adopted in the first quarter of this year.

2.1.1 Legal framework

From a set of laws regulating the area of public finances, we will consider several legislative solutions directly affecting the prevention and combating the corruption. Legislative solutions that we will briefly examine and outline are related primarily to the work of the National Audit Office, the Audit Authority for audit of IPA funds - the unit for internal financial control and audit and the Tax Administration.

The Law on the State Audit Institution. The parliamentary Committee on Economy, Finance and Budget has at its session, held on September, 22nd, 2011, adopted the Draft Law on the Amendments to the Law on State Audit Institution. The proposed amendments seek to primarily strengthen:

- The financial independence of the SAI in relation to the executive power, so that the budget of the SAI is determined by the competent working body of the Parliament, based on the proposal of the SAI Senate. Such proceedings are not to be subject of the discussion on a governmental level, under which the determined SAI budget is automatically integral part of the Annual State Budget. Also, it is foreseen that the salaries and other employee benefits in this institution are to be regulated by special law;
- The political independence of the SAI, through the proposition to adopt a provision based on which members of the SAI Senate cannot be members of a political party[20];
- The effectiveness in the implementation of recommendations of the SAI, by stipulating that the audited entity is required to submit a report to the SAI on the realization of the DRI recommendations contained in its Report on the audit, within a deadline established by this institution;[21]
- The quality and reliability of commercial audit, by proposing a standard under which local governments, companies and other entities whose financial resources are public or made by using state assets, are required during the election of a commercial auditor to provide prior approval from the SAI[22].

The proposed law has not yet been adopted by the Montenegrin Parliament because it did not receive a positive opinion from the Committee for Constitutional Affairs and Legislation.[23] Namely, the majority of the members of the Committee believe that the first amendment, under which the Parliament (the Committee for Economy, Finance and the Budget) is provided with the authority to determine the proposed budget of the SAI (without the possibility for the government to make corrections), is in contravention to the Article 100 of the Constitution, which stipulates that the Government autonomously

20 The current law only foresees that employees cannot be members of bodies of political parties.
21 This provision has been proposed due to the lack of capacities of the SAI to conduct regular assessments of the degree of implementation of its recommendations among all controlled entities.
22 This norm has been proposed because the current practice has demonstrated that the election of commercial auditors of final financial statements and annual financial reports was not transparent and adequately controlled.
23 Board meeting, held on November, 14th, 2011

proposes the state budget, and therefore the amount of funds foreseen for the work of certain budget users, including the SAI.

The Law on the Audit of the European Union Funds. The Government of Montenegro proposed in the previous year, [24] and in the February of this year the Parliament adopted the Law on the Audit of the European Union Funds. [25]The newly adopted law provides for the establishment of the Audit Authority, as an independent institution or independent body responsible for the management of efficient and stable functioning of the system of utilization, management and control of EU funds. The Audit Authority was first established in 2010, as a separate body within the SAI,[26] but, according to the opinion of the European Commission, such a solution would endanger not only its independent functioning, but also the independence in the work of the SAI.

The Law on Public Internal Financial Control System. During the previous year and the first half of this year, this law has been amended twice.[27] First, in April, 2011, amendments to the law were adopted, under which a recommendation of the European Commission has been accepted and endorsed, related to the subtraction from the obligation of submitting an annual report on the financial management and control and the work, to the Ministry of Finance, following bodies: State Audit Institution, the Montenegrin Parliament, the Constitutional Court, the judicial authorities and the public prosecution, the Protector of Human Rights and Freedoms, independent regulatory bodies, joint stock companies and other entities in which the state or local governments have a controlling stake.[28]

The aim of this amendment was actually to enhance the independence of these institutions in relation to the executive powers. New amendments were adopted in May this year, by introducing the quarterly reporting obligations (in addition to the existing annual) on the progress in the field of Financial Management and Control (FMC) and the Internal Audit (IA). Authorities and institutions that do not report to the Ministry of Finance or the Central Harmonization Unit (CHU), are exempt from the quarterly reporting obligation, but are required to submit two reports to the Parliament of Montenegro (and the relevant committees): a) an annual report on the work of internal audit and b) annual report on the implementation of activities related to the establishment and development of the financial management and control. During the reporting period, a series of by-laws and other acts were endorsed.

The Law on Tax Administration. The Parliament of Montenegro, in June previous year, approved the Law on Amendments to the Law on Tax Administration. [29] The adopted amendments provided new authorities to the Tax Administration, in the sense that this body, beside the registration of taxpayers and maintenance of the Tax Registry, now performs registration of businesses and maintains a separate registry for them. Also, the Tax Office is entrusted with a control over the delivery and publication of financial reports of companies, as well as the inspection of the accuracy of financial reporting, while the scope of penalties has been expanded and aligned with the new Law on Misdemeanors.

24 Government Session, held on December 22, 2011.

25 The law was adopted on February, 27th, (Official Gazette of Montenegro, no. 14/12) and came into force on March, 15th, 2012.

26 Agreement between the Government and the SAI on forming of the Audit Authority was signed on January, 13th, 2010.

27 Amendments of the law were published on April, 15th, 2011, in the Official Gazette of Montenegro, no. 20/11.

28 The mentioned entities are, naturally, obligated to respect and implement all other principles of financial management and control and conduct internal revisions, as prescribed by the law. The only subtraction of the obligation is related to the submission of reports to the Ministry of Finance.

29 The amendments to the law were published on July, 1st, 2011, in the Official Gazette of Montenegro, no. 32/11.

2.1.2 Implementation

In this section, we will analyze activities that were conducted in 2011 and the first half of 2012, by the agencies and institutions that are, according to the current legal framework, responsible for the control and management of public finances, in the areas of: state audit, external audit of IPA funds, internal financial management and control and internal audit, the cooperation with OLAF, tax collection and combating the grey economy. [30]

a) The State Audit

According to the annual report on the work of the SAI, this institution has, in addition to the audit of the Annual Account of the state budget for 2010 (which included 22 consumer units), in the last year conducted 14 individual audits: ten general audits, two audits of regularity, efficiency and effectiveness and two control audits. Among the individually controlled subjects of the audit, the SAI included two units of local government (Municipality of Kotor and Municipality of Tivat) and two state-owned enterprises (Pharmaceutical Institute of Montenegro and Public Broadcasting Center – RTM). The number of individual audits was increased compared to the previous reporting period (in 2010, 13 individual audits were conducted).

The SAI in its Reports on the audit pointed to numerous violations and irregularities in the management of public funds and property and issued one negative opinion (Public Broadcasting Service – RTM), nine conditionally positive opinions of which two are for financial reporting, two conditionally negative in the area of audit of effectiveness (Property Administration and Minority Fund) and two positive reviews (Electronic Media Agency and Audit of funds donated by the Kingdom of Denmark – the project "Program of development of organic agriculture in Montenegro".) Conditional positive opinion was issued in the audit of the Final Statement of the State Budget.

The SAI did not file criminal charges after the completed audits, nor have the other competent authorities initiated the determination of criminal/misdemeanor/disciplinary responsibility of any public official or employee of the audited entities for discovered violations and irregularities.

All of the aforementioned audit reports contain specific measures (recommendations) that SAI in order to eliminate irregularities and ensure lawful and efficient operation of controlled subjects. Thus, the SAI, within the audit of the Final Budget Statement, prepared 20 recommendations, while in specific reports on audit, produced a total of 121 recommendations.

The SAI, as we have pointed out, executed two control audits with the aim of checking the degree of implementation of recommendations provided during the previous audit period. It was found that the controlled entities (The Ministry of Tourism and the National Tourism Organization) of the 11 recommendations, entirely implemented 4 measures, partially – 4, while 2 recommendations were not implemented.

DRI, as we have pointed out, executed and two control audits in order to check the degree of implementation of recommendations from the previous audit period. It was found that the controlled entities (Ministry of Tourism and the National Tourism Organisation) of

30 The data presented is obtained through interviews with representatives of competent institutions, annual reports, requests for free access to information and press clipping.

the 11 recommendations, the recommendations fully implemented 4, 5 in part 2 and the recommendations were not implemented.

b) External audit of IPA funds

The Audit body for the audit of IPA funds that has, until the mid-March of this year, functioned as a separate unit within the SAI, did not conduct audits, but instead conducted educational programs and trainings for an independent audit of IPA funds. In this sense, the SAI has in 2011, organized and conducted numerous trainings and study visits, at which employees of the Audit Authority gained experience in the area of audit approach, audit methodology and specificities related to the audit of IPA funds.

The Audit Authority currently employs 6 persons. Over the last year, this body produced a Work load analysis and a recruitment plan, based on the necessity of the Audit Authority for specific staff, depending on the number of projects and resources in the ensuing period. Based on the conducted analysis, this body should, by the end of 2012, employ 16 persons.

c) Financial management and control and internal audit

In the area of financial management and control, so far a total of 71 persons were designated with a responsibility for the establishment, implementation and development of the Financial Management and Control (FMC persons), 64 at a central and 7 on local level. In addition, 5 pilot institutions adopted action plans for the establishment of the FMC, while 45 institutions are to adopt relevant action plans or implement activities foreseen by the adopted action plans.

As for the development of internal audit in the public sector, 29 beneficiaries have, at the central level, organizationally established units for internal revision (through amendments of Rulebooks on Internal Organization and Job Classification), while 26 beneficiaries established units for internal audit on an institutional level. Of these 26 users, however, only in 2 cases [31]the legal provision on the mandatory number of 3 internal auditors has been fulfilled (in all other cases, internal audit units employ one or two persons). In four cases,[32] the mere systematization of the internal audit unit was conducted contrary to the law, because less than three jobs were systematized initially.

In the mentioned internal audit units, a total of 39 internal auditors are deployed. The largest number of auditors were assigned in the second half of 2011 and early 2012.

Other beneficiaries of the budget at central and local levels, which have fewer than 200 employees and annual costs less than 5.000.000 euros, may, according to the law, transfer the conduction of internal audit to the internal audit unit of another entity, based on the reached agreement. There are currently 23 such agreements in force, while additional four received the approval of the Central Harmonization Unit of the Ministry of Finance (hereinafter: CHU). Of these 23 agreements, various subjects have in 10 cases transferred the internal audit to the internal audit unit of the Ministry of Finance, which in practice may represent a problem, given the scarce capacity of this unit, under which only two internal auditors have been deployed.

All in all, a total of 56 beneficiaries have, at the central and local levels, ensured the con-

31 The Bureau for Employment of Montenegro and Capital Podgorica

32 The Ministry of Sustainable Development and Tourism, the Health Insurance Fund, the Ministry of Science and the Ministry of Foreign Affairs and European Integration

duction of internal revision in one of the two mentioned ways. Given that the law foresees the obligation for beneficiaries to establish a system of internal revision, figures demonstrate that the penetration of the internal audit into the public sector of Montenegro is still very modest.

d) Cooperation with OLAF

The Ministry of Finance has, in December 2009, formed a Department for Combating Irregularities and Fraud, which employed 2 persons. The primary task of this department is the coordination of legislative, administrative and operational activities between bodies and institutions that, according to their responsibilities, should be included in the system for combating frauds (AFCOS system), with the aim of protecting financial interests of the European Union, thereby implying a direct cooperation with the European Commission Anti-Fraud Office (OLAF). Since its establishment, the Department did not conduct any significant activities, because basic conditions for the implementation of its authority have not been provided. The Montenegrin government has not yet adopted an act that would precisely define bodies and institutions that would constitute the AFCOS network, appoint representatives of these bodies and identify tasks of the AFCOS network.

e) Tax collection and the fight against "gray economy"

According to the annual report on the work of the Tax Administration, this body has in 2011 registered 6.285 new taxpayers, which lead to an increase of registered taxpayers by 7.22% when compared to the 2010. Particular increase has been achieved for VAT taxpayers: in 2011, 2.238 VAT taxpayers have been registered, while in 2010, this number was 1.875. The Tax Administration has, in 2012, initiated the establishment of the Registry for companies and the control of the delivery of financial reports, in accordance with new provisions of the Law on Tax Administration and the Law on Accounting and Revision. There is no data related to the initiation of infringement procedures against companies that may have not submitted their financial statements, even though the deadline for the submission of these reports expired on March, 31 of the current year.

Total gross collection of taxes, social security contributions and other budgetary revenues for 2011 was 831.250.600 euros, marking a 94% of the planned amount received. The collection, however, was lower in comparison to 2010, particularly in the area of social security contributions by almost 30 million euros.

The Tax Administration has undertaken, during previous year, measures against non-compliant taxpayers – collected delinquent debt. Realized collection of delinquent accounts in 2011 amounted to 71.667.945 euros, or 81.7% of the planned amount. In comparison to 2010, higher collection on the implementation of collection measures was achieved: income taxes by 71.5%, VAT by 19% and the sales tax by 136.6%. However, significantly less amounts were charged on excise products (-84.4%), personal income tax (-70.2%), income from property tax (56.7%) and the contributions to social insurance (-67.8%).

The Tax Administration conducted in 2011 regular inspections and checks, with special attention given to combating the gray economy (emphasis has been placed upon the prevention of illegal sale of cigarettes). Of the total number of controls and checks (11.619), in 83.3% of cases irregularities were detected, so the overall financial impact arising after the correction of detected irregularities amounted to 27.323.699 euros.

In order to increase the efficiency in combating the gray economy in this year, the Government of Montenegro on April, 12th, 2012, on proposal by the Ministry of Finance, adopted the **Information on measures aimed at combating gray economy** in 2012 (hereinafter: Information). This document foresees intensification of all types of inspections in four risk areas: control of excisable products, record keeping of retail sales, labor and non-registered legal entities and individuals. In order to improve coordination and cooperation between authorities in the implementation of measures to combat the gray economy, the Ministry of finance has, in accordance with the Information, formed a Coordination Team for monitoring of the implementation of measures in combating the gray economy. The Director of the Tax Administration is a member of the Coordination Team.

In accordance with the above mentioned, so far six meetings of the Coordination Team have been organized. At the meetings, the analysis of measures was conducted after which the Operational Plan for Combating the Gray Economy for 2012 was prepared. The Operational Plan was adopted by the Government of Montenegro on May, 24th, 2012.[33]

As we learned from representatives of the Ministry of Finance and the Tax Administration of Montenegro, these activities have already produced some results. Namely, better cooperation and coordination between competent authorities has been achieved and all forms of inspections intensified, so that in the period April – May, 2012, an increase in revenues to the Budget of Montenegro has been registered, for about 10% in April and 4.7% in May, compared to the same period in the last year. Particular increase in revenue was recorded in the collection of taxes on income, on VAT, etc. However, it remains to be seen whether this trend will continue in the ensuing period.

As we learned from representatives of the Ministry of Finance and the Tax Administration of Montenegro, these activities have already given some results. Namely, was better coordination and cooperation between the competent authorities intensified all kinds of inspections, so that in the period April-May 2012. year saw an increase in revenues of the Budget of Montenegro for about 10% in April and about 4, 7% in May compared to the same period last year. Especially the increase in revenue was recorded in the collection of taxes on income, taxes and contributions, based on VAT, etc.. However, it remains to be seen whether the trend will continue in the future.

2.1.3 Conclusions and recommendations

Based on the provided data, it is not difficult to ascertain that, despite certain progress that was achieved in the reporting period, significant deficiencies of the system of control and management of public finance still remain. We would like to point to following specific issues:

1. **The Draft of the Law on Amendments to the Law on the State Audit Institution has not been adopted, and this issue has been further problematized.** Although, as we have seen, the proposed provisions would strengthen financial and political independence of the SAI, and contribute to overcoming certain problems that have interfered with the efficiency and quality of the external audit, the draft law is still pending due to the negative reviews of the Parliamentary Committee for Constitutional Affairs and Legislation.

33 For the realization of each measure stipulated the Operational Plan, competent authorities and persons have been established, and deadlines for the initiation and completion of activities.

2. **A legal solution that would provide for functional immunity to members of the Senate of the SAI, has not been established and proposed.** Immunity for any current or past action that stems from adherence to prescribed functions is provided by the Mexico Declaration on the Independence of Supreme Audit Institutions. [34] The absence of a defined functional immunity could represent a problem in the upcoming negotiations on accession to the European Union, during the opening of Chapter 32 (Financial Control), which was the subject of attention by the European Commission itself.
3. **The newly adopted Law on the Audit of Funds from the European Union does not precisely define the transparency of the Audit Authority.** The Article 34 of the law only states that the Audit Authority has a website where information and data on the work of this body are published, while the Rules of Procedure of the Audit Authority specifies the manner of informing the general public.
4. **Penalties are not carried out for improper or illegal use of budget funds.** We have seen that reports from the SAI point to numerous violations and irregularities in the management of public funds and property. However, no public officials have been a subject of criminal/penal/disciplinary liability due to the conducted illegal acts or irregularities.
5. **Internal financial control and audit units have not been established for all budget beneficiaries.** The number of units, as is clear from the above mentioned, is significantly increased, but is still far from legally prescribed. Particularly problematic is the fact that persons who are employed by the internal audit departments have not yet gained official certification for the position of internal auditor.
6. **No progress has been made in cooperation with OLAF.** Although the EU persistently insists that Montenegro should intensify cooperation with OLAF and establish AFCOS network, we have seen that no results have been achieved in this area.
7. **Tax revenues and contributions collection for the fight against informal economy is not efficient enough.** From the presented data on the work of the Tax Administration, It is clear that the amount of the collection of certain types of taxes and contributions varies from year to year, and that there is still a large number of those who operate illegally and thereat, evade taxes.

In order to overcome these shortcomings, we believe that in the coming period the following actions and measures should be pursued and implemented:

1. **It is necessary to adopt proposed amendments to the Law on the State Audit Institution,** which would certainly contribute to comprehensiveness and betterment of the external audit of public finances. In order to solve the problem, indicated by the Committee for Constitutional Affairs and Legislation, it is necessary to amend the Constitution and introduce a provision that would enable bodies and institutions, such as the SAI, to independently create and manage their own budgetary resources.
2. **It is necessary to define and prescribe**, in the Constitution, **the functional immunity to the Senate members of the SAI**. This would address one of the most important provisions of the Mexico Declaration and simultaneously fulfill one of the requirements of the European Union in the area of financial control.

34 Second principle of the Mexico Declaration (www.intosai.org).

3. It is necessary to amend the Article 34 of the new Law on the Audit of funds from the European Union, in a way that would prescribe firm commitment from the auditors of the Audit Authority, to publish all their annual reports and reviews on the website. Given that the funds for the work of this body are provided from the budget of Montenegro, we believe that citizens should have access to information related to activities of the Audit Authority.
4. It is necessary to implement the sanctions and strengthen the penal policy in relation to illegal and unauthorized spending of budgetary funds. The previous practice of impunity, certainly contributes to the development of irresponsibility by the competent authorities and civil servants.
5. It is necessary to intensify the process of establishing a system of internal control and financial management in the public sector and initiate the process of certification of persons employed in internal audit units. The purpose of establishing this system is not only to meet the requirements of the EU, but also to create a good financial management that would improve the overall economic policy in Montenegro.
6. It is necessary to intensify the cooperation with OLAF and form the AFCOS network, which represents one of the essential conditions that must be met by each candidate country in the EU accession process.
7. It is necessary to strictly implement measures envisaged by the new governmental Operational Plan for Combating the Gray Economy. This means we need to strengthen the efficiency of collection of tax claims, enlarge the number of inspections, stimulate regular tax payers and rigorously penalize those who operate irregularly, in order to reduce the space for informal economy and provide stable budget revenues.

2.2. State property

For countries in transition, such as Montenegro, where a socialist model of social property has been in place for a long time ("everybody's – nobody's"), it is of great importance to clearly define the executor of property rights, establish a comprehensive public register and records of movable and immovable assets that belong to the state, i.e. to local governments, as well as strictly regulate the manner of disposal, exploitation and management of these assets, in order to reduce the possibility of usurpation, abuse and corruptive practices in this important area. Montenegro has, in 1999, adopted the Law on Property of the Republic of Montenegro (Official Gazette of Montenegro, no. 44/99), which was supposed to remove all doubts regarding the former system and social forms of ownership of the property. However, this law was flawed because, according to the representative of the competent Ministry of Finance, "issues that were inherently the matter of law, this act regulated in a general and imprecise manner, which caused confusion and dilemma about the manner of its implementation". [35] Despite the obvious inconsistencies and inaccuracies, this legal framework was in place for ten years (just at the time when numerous privatizations of state enterprises and property were conducted). Only in 2009, after persistent insistence by the EU, the opposition and civil society, a new legal solution has been adopted and new bodies formed in order to ensure its implementation.

35 *Newsletter IV of the Ministry of Finance* (April-June 2006), p. 11.

2.2.1 Legal framework

The Law on State Property, which entered into force on March, 28th, 2009 (Official Gazette of Montenegro, no. 21/09 and 40/11), regulates the status, rights and obligations of state authorities, bodies of local self-governments and organizations that perform public services in terms of allocation, use and management of property in Montenegro. [36] The law stipulates that the Montenegrin government, i.e. the competent bodies of local governments exercise property rights on state property and decide on the disposal of state assets. The law enabled the separation of state property used for the execution of functions of the governments and its bodies and public services, on the one hand, and local self-governments, its bodies and public services, on the other. The law also defined state property that represents public good (goods of public interest, etc.). The law also stipulated a procedure for recording the state property and the establishments the registry, and prescribed punitive measures to state agencies, bodies of local governments and public agencies (as well as the responsible persons in them) for the non-compliance or violation of provisions laid down in the law.

It is important to emphasize that this law regulated the status of assets of former sociopolitical organizations, which have been governed by the ruling political parties (DPS and SDP). Namely, the law introduced provisions according to which it was necessary to prepare an inventory of assets and record it in the cadaster of immovable property as a property of the state. In turn, this caused the termination of the longstanding practice of using state property for political parties' purposes.

The law constituted two bodies that are directly responsible for the management and protection of state assets: Property Administration and the Protector of Property and Legal Interests of Montenegro. One of the main tasks of the Property Administration (hereinafter: PA) is to compile, run and daily update a unified database and register of all state property, including property that is owned by local governments. The PA is also required to ensure rational use of state property, to take care of the temporary and permanently expropriated assets, in accordance with provisions of the Law on Temporary and Permanently Expropriated Assets (Official Gazette, no. 49/08 and 31/12). On the other hand, primary obligation of the Protector of Property and Legal Interests of Montenegro (hereinafter: the Protector) is to represent and protect economic and legal interests of the state and local governments in a variety of proceedings before courts and administrative bodies, as well as to, at a request of the body whose property rights and interests it represents, give legal opinions in relation to the conclusion of the contract on the acquisition and disposal of state assets, as well as with other legal property matters.

The oversight of the correctness and suitability in the work of the PA and the Protector is conducted by the Ministry of Finance, which also supervises the implementation of the law as a whole (Article 62 of the Law).

During the reporting period there were no significant changes to the Law on State Property, although the OSCE in their recently presented Risk Analysis of Corruption in Montenegro, suggested that it is necessary to further refine and harmonize specific articles of the law, as well as to adopt by-laws, particularly those which would regulate the procedure for allocation of property rights and authorization of the property between the Republic and

36 During the beginning of 2009, two important laws were implemented: The law on Property and Legal Relations (Official Gazette of Montenegro, no. 19/09) and the Law on Concessions (Official Gazette of Montenegro, no. 08/09)

local governments, the process of evaluating and recording the value of state assets and the sale and leasing of items and other goods in state property, in order to avoid possible arbitrary interpretation of the existing legal framework and narrow the space for the emergence of various forms of corruption.[37]

2.2.2 Implementation

We have already pointed out that one of the main tasks of the PA is to establish and maintain a unified database and register of all movable and immovable assets, as well as other property owned by the state and local governments. This obligations, however, is not adequately fulfilled by the PA, despite the fact that, in accordance with legal provisions, [38] the whole system of state property records should have been established as of March, 2010. The primary reason for the inadequate implementation of the law is the lack of appropriate application of electronic data processing (software), for purposes of keeping separate records, register and unified database of state assets. This software should have been provided by the Ministry of Finance, in cooperation with the competent governmental body in charge of informatics. [39] Since this prescribed obligation has not yet been fulfilled, then even the basic preconditions for the establishment of state property records have not met, in accordance with the applicable legal framework.

The PA has, in early 2011, established a program for state property records, which is in use until the establishment of a program for the unified database by the relevant ministries, as stipulated by the law. However, as determined by the SAI during its last audit of the PA, [40] this temporary solution is incomplete and inadequate because: it does not include all entry fields on state property, as stipulated by the law; the program is not adequately electronically secured; procedures of the input and usage of data have not been established, as well as the access to the program, etc. [41]

Beside the inadequate and unprotected data entry program, an additional problem in keeping the state property records is the fact that many of its beneficiaries do not provide or are late with the delivery of the annual reports of listed movable and immovable property to the PA, thereat violating the statutory obligations and deadlines. Thus, according to the data processed on April, 17th, 2012, PA received inventory lists from only: 81 state bodies, 14 public institutions and 9 local governments, according to which the total value of state assets is 265.370.661 euro. Most of the inventory lists have not been submitted by the end of February this year, as stipulated by the Article 50 of the Law on State Property. Also, two local governments have not submitted the tabulation of movable and immovable property, so the value of these assets is not included in the above total value of state assets.

Furthermore, the effectiveness of maintenance of state assets records is unsatisfactory also due to an insufficient number of employees in the PA who are in charge of this activity. Specifically, the relevant department employs only 4 persons, despite the fact that the Rulebook on Internal Organization and Job Classification of the PA foresees 15 perpetrators in this sector.

37 For more details, consult OSCE analysis, p. 45-51
38 Articles 66, 67 and 70 of the Law on State Property
39 In accordance with the Article 17 of the Regulation on Maintenance of Movable and Immovable Assets
40 The SAI conducted terrain audit of the PA's work in March, previous year.
41 Follow and compare assertions from the SAI Report on the Revision of Annual Financial Report of the Property Administration, and the revision of effectiveness of state property records in 2010, p. 86 (www.dri.co.me).
52 Pravilnik je usvojen Zaključkom Vlade CG, na sjednici održanoj 20. jula 2010. godine.

One of the important responsibilities of the PA is to manage assets that, through the application of the law, become state owned. During the reporting period, there were three cases of property expropriation. The Higher Court in Bijelo Polje has, on July, 27th, 2011, issued a decision on temporary seizure of assets in the case of Šarić and on August, 4th, 2011, a decision to seize assets in the case Kalić. In these two cases, where the PA has finished the overtaking procedure, the total estimated value of the seized property is: 41.141.739 euros.

Article 10 on the Law on Temporary and Permanently Expropriated Assets stipulates that the property which is temporarily seized is to be managed in a way that guarantees the highest degree of conservation of its value, at lowest expenses. However, in the first stage of management of seized properties in the mentioned cases, significant budgetary funds were spent (56. 000 euros).[42] Further preservation of confiscated property may cause new significant expenses, unless managed effectively. As we learned from a document published on the website of the Government, [43] representatives of the European Commission in Montenegro have, at the meeting held in November, 2011, with representatives of the Ministry of Finance and representatives of the PA, proposed a revision of the Law on Temporarily and Permanently Expropriated Assets. Specifically, they suggested that court solutions should contain a provision under which a person would, on behalf of the state, govern and manage the temporarily seized company (economic entity) and who would be responsible for its efficient and economic management. They also suggested that the PA should sign a protocol on cooperation with the Police Department in order to organize the management of seized property in a more effective and qualitative manner, as well as that the officials who work on these jobs go through specific trainings (through twinning project for 2012).

Recently, amendments to the Law on Temporarily and Permanently Expropriated Assets[44] were adopted which, among other things, provided that the Government of Montenegro, upon the proposal of the PA, shall appoint persons responsible for the management of temporarily suspended shares and equities in companies. The law also provides the possibility of selling the seized property if the costs of managing, safekeeping and maintaining are significantly higher than its value and if the property is in decay. On the other hand, the PA has not yet signed the protocol on cooperation with the Police Department, nor have the proposed trainings been initiated this year, as we have found out.

Another important body for the adequate implementation of policies that regulate the state property is the Protector of Property and Legal Interests. The Protector has been undertaking the operations of representing the state, its bodies and public services in property claims since April, 30th, 2010. Through Requests for Free Access to Information, we intended to obtain information on the work of this institution, as well as to consider the method of implementation of the Law on State Property, for a standpoint of this insti-

42 Funds were spent on:
- the realization of noting the management of temporarily seized immovable property – 1.000 euros;
- estimation of market value of temporarily seized property – 20.000 euros;
- Insurance costs for the temporarily seized property – 20. 000 euros;
- executive procedure expenses – 6.000 euros;
- legal aid services – 4.000 euros;
- realization expenses – 5.000 euros;

43 Information on the proposal of a model of managing the PA in relation to the temporarily seized assets in criminal or misdemeanor procedures, (www.gov.me), p. 4.

44 Amendments to this law were adopted on June, 6th, 2012, by the Parliament of Montenegro

tutional framework. However, in spite of honest communication and provided answers to all our requests, we did not receive the requested information. Namely, the main problem was that in the time of submission of our requests (March – April, 2012), the Protector did not complete its Annual report on the work of the administration that, according to the law, was to be submitted at by March, 31st of this year. Because we did not require information on specific cases, but data based on which we would be able to provide a general overview of the success of the work of Protector in the previous and first months of this year, we were told that the Protector was unable to process and classify required information, due to current engagement and scope of work. An additional problem was the fact that the Protector does not have its own web-presentation, Guideline to Free Access to Information, or any person responsible to act on such requests, which hampers the availability of data, but also puts into question the transparency of the work of this institution.

2.2.3 Conclusions and recommendations

Based on the above mentioned, it is not difficult to claim that the legislative framework that regulates the area of state property, is still not adequately implemented. We will single out only a few of most important deficiencies:

1. A credible database and register of all state assets has not been established, including the assets of local governments;
2. State property records are maintained by the Property Administration in an incomplete and inadequate manner, without the registration of all legally foreseen information;
3. A number of beneficiaries of state property have not delivered to the PA inventory lists of movable and immovable property that they use, thereat violating legally prescribed obligations and deadlines;
4. The competent Ministry of Finance has not been initiating misdemeanor proceedings for mentioned violations of statutory provisions;
5. Necessary trainings have not been organized for PA employees who are in entrusted with the management of seized assets.

All of these shortcomings hamper the implementation and effectiveness of anti-corruption policies in this important area. In order to eliminate the deficiencies, we believe that following measures should be undertaken:

1. It is necessary to establish, publish and update daily unified records and register of all movable and immovable property and other assets which are owned by state and local governments. In this regard, the relevant ministries should address and approve the realization of a project of the PA (v.f.n.8) which offers a software solution for electronic data processing for conducting special records, register and unified state assets record. [45]
2. Until the establishment of the state property records, as foreseen by the law, it is essential that the PA, prior to any further use of its temporary software solution,

45 At a round table, where this study was presented, held on July, 10th, 2012, representatives of the Ministry of Finance have notified that the realization of this project is costly – 250.000 euros, and that the current situation restricts the realization of this project..

complies with recommendations provided during previous year by the State Audit Institution. It is also necessary to fully staff the Sector for managing the state assets records, which would in turn facilitate an effective implementation of this core competence of the PA.

3. It is necessary to ensure that all beneficiaries of state property regularly submit to the PA credibly completed inventory lists. Ministry of Finance, as the body responsible for the implementation of the law, should initiate misdemeanors proceedings against entities that do not submit the necessary data to the PA. Also, it is necessary to carry out inspections of state property beneficiaries, in order to determine the manner in which they prepare inventory lists, assessment and recording.
4. The PA should sign a protocol on cooperation with the Police Department in order to ensure more efficient organization of management of seized assets. It is essential to ensure that the employees of the PA, involved in such activities, are properly trained;
5. The Protector should, in cooperation with the competent government authority for the informatics, develop and establish a web-presentation, and regularly update and proactively make available all data related to the exercise of its authority, which would facilitate greater transparency in the work of this institution.

2.3 Public Procurement[46]

Public procurement represents one of the most vulnerable areas to corruption, in all countries. Consequently, in developed countries, this area is under the constant supervision of the public and is characterized by rapid development and continuous regulation of anti-corruption measures. This area is rarely covered in the Montenegrin public arena, and the public is poorly informed about the legal regulation, control mechanisms and the efforts that are undertaken in order to combat corruption in this field.

When reforming the public procurement system, it is of fundamental importance to make a differentiation between avoiding the corruption and providing flexibility to decision-making officials, based on their knowledge. Discretion increases the incentive for corruption, but the excessive rigidity of these laws can lead to slowdowns and adversely affect the entire procedure. [47]

In any phase of public procurement, it is possible to single out specific risks of corruption. In the planning phase, the risks are: preparation of tender documentation in a discriminatory manner; the marking of the type of goods, which places the specific bidder in a favored status; technical specifications, designed to meet specific requirements of a bidder, etc. In the implementation phase, the riskiest procedures are related to concluding a price agreement, delivery and bidder, which are susceptible to misuses by bidders through the so-called cartel agreements principle, which creates an illusion of more bidders when in fact there is only one. Also, in this state there may be a failure to fulfill the contract, amendments to key provisions may be introduced, changes to the subject of

46 This chapter has been prepared in cooperation with the NGO Institute Alternative, who provided most of the utilized data.

47 Susan Rouse-Ackerman "Corruption and Government – causes and effects of reforms " Official Gazette, 2007, Belgrade, p.70

public procurement and ordering of additional purchases from the same bidder without the initiation of a tender. [48]

2.3.1 Legal framework

In July, 2011, a new Law on Public Procurement has been adopted. This law represents one of the most important regulations that governs the system of public expenditure of budget beneficiaries and represents one of the systematic anti-corruption laws.

This law regulates the conditions, manners and procedure for the procurement of goods and services, the protection of rights in public procurement procedures and other matters relevant to public procurement. This law is still not in full compliance with EU regulations, while the associated legislation poses a particular problem, which was pointed out in the Progress Report from 2011. [49]

Main improvements brought by the new law are:

- Opportunities for amendments in the planning of procurements have been enhanced and the mandatory approval of supervisory authorities in the procurement plan prescribed. Also, according to the new law, all commissioners, who perform procurements higher than 100.000 euros, need to adopt and publish the procurement plan, regardless whether the procurement procedure involves public bodies or not. [50]
- Articles 15, 16 and 17 of the Law on Public Procurement, introduce anti-corruption clauses that provide for the nullity of the contract in case of conflict of interest and foresee misdemeanor or even criminal liability of the entity that violates this provision. In this way, the possibility of conflict of interest is regulated, regarding either the contractor or the bidder.
- The obligation to publish all public procurement contracts has been introduced.
- The State Commission for the Supervision of Public Procurement Procedures controls the entire process of procurements worth more than 500.000 euros.

2.3.2 Institutional framework

The Public Procurement Directorate was established by the Regulation on Changes and Amendments to the Regulation on Organization and Manner of Work of the Public Administration. The body functioned under that name until 2011, when the Law on Public Procurement renamed it to the Public Procurement Administration. The Government of Montenegro, adopted on November, 17th, 2011, a Regulation on Internal Organization and Job Classification of the Public Procurement Administration (hereinafter: PPA). [51] The new regulation increases the number of civil servants and state employees, from 15 to 18, including the director of the PPA. In addition, the regulation confirms the following composition of the Directorate: the Department for Monitoring Procurement Procedures and Management of Electronic Procurements, the Department of Vocational Training and

48 Institute Alternative's study: „Corruption Risks in Public Procurement Procedures in Montenegro", Podgorica 2012.
49 Montenegro 2011 Progress Report, the European Commission
50 The Law on Public Procurements, Article 38
51 The Form of the report on the implementation of the Action Plan, competent authority: Public Procurement Directorate, reporting period: July, 01st, 2011 – December, 31st, 2011.

International Cooperation and the General Affairs and Finance Office. The PPA, on the other hand, represents an administrative body in charge of public procurement and provides economic, efficient and transparent use of public funds and contributes to the creation of competitive and fair conditions for all bidders.

The fact that the primary role of the PPA is to provide conditions for economic, efficient and transparent use of public funds and provide for competitive and fair conditions for all bidders in Montenegro, points to its decisive influence in the creation of a healthy, sustainable economy and the reform of the public finance planning.

The PPA, in accordance with the Article 19 of the Law on Public Procurement, has the authority to: (1) monitor implementation of the public procurement system, (2) monitor the compliance of the legislation regulating the public procurement system with EU legislation, to prepare technical basis, to initiate and participate in preparation of the public procurement regulations, (3) give approval to contracting authorities on fulfillment of conditions for conducting certain public procurement procedure in the cases envisaged by this Law, (4) provide advisory assistance upon contracting authority's request, (5) organize and conduct professional development and advanced training of the human resources in charge of performing public procurement tasks, (6) organize professional exam for performing tasks in the area of public procurement, (7) establish and maintain the Public Procurement Portal for the purpose of ensuring transparency of public procurement, (8) publish public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favorable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, as well as of other acts in accordance with this Law, (9) prepare and publish a List of contracting authorities on the Public Procurement Portal, (10) encourage the conducting of public procurement in electronic form, (11) pursue cooperation with international organizations, institutions and specialists in the field of public procurement, (12) prepare and submit to the Government annual reports on the public procurement, carried out in the previous year, (13) prepare and publish a list of bidders on the basis of decisions on selection of the most favorable bid, (14) prepare and publish a common public procurement vocabulary on the Public Procurement Portal, (15) perform inspection control, (16) perform other tasks, in accordance with the Law. The Ministry of Finance monitors the legality and effectiveness of the work of PPA.

The Commission for the Control of Public Procurement Procedures was established in 2001, while its jurisdictions were overtaken by the State Commission for the Control of Public Procurement Procedures in February, 2012.[52] The Commission represents an independent and autonomous body, responsible for the protection of bidders' rights and the public interest in the public procurement procedure. The new law stipulates that the Commission shall consist of a chairman and four members, who execute their functions in a professional manner. It represents an appellate body that reviews and acts upon appeals. Besides that, the State Commission has jurisdiction to: consider complaints submitted by bidders with regard to the public procurement procedures and decide on them; to examine whether the Law on Public Procurement has been correctly applied and propose and undertake corrective measures in order to provide competitive behavior among bidders

52 The Commission for the Control of Public Procurement Procedures, draft Strategy for the Development of Public Procurement System in Montenegro for the period 2011 – 2015.

and transparency of the procurement process; lay down principles and policies aimed at uniform law application; control public procurement procedures valued over 500.000 euros; establish cooperation and information exchange in the area of public procurement with competent bodies of other states; and perform other duties as defined in the Law on Public Procurement. Commission's decisions are final, binding and executive.

2.3.3 Implementation

Following the adoption of the Law on Public Procurement in 2006, a very small number of criminal charges have been submitted, while no legally binding judgments have been made in this area. Also, no misdemeanor charges have been initiated, nor has the disciplinary liability of officials in charge of procurement, ever been determined and acted upon.

Provisions pertaining to conditions for the implementation of public procurements through a shopping method have not been clearly defined and provide space for improvisation. Since its inception, the previous Commission has adopted 1.053 decisions, of which 330 were published in 2010 and 140 in the first few months of 2011. In 2010, the Administrative Court overturned the vast majority of Commission's decisions (60 of 76), which represents a particular cause for concern. Half of overturning judgments brought by the Administrative court were made due to formal procedural issues and were not related to the quality of procurement process.

The Government, at its session held on December, 22nd, 2011, adopted the Strategy of Development of Public Procedure System for the period 2011 – 2015 and the Action Plan for the Implementation of the Strategy. While the review of the Draft Strategy has been organized through a public hearing, which enabled the participation of wider array of stakeholders, the Draft Action Plan was not publicly available.

The Draft Strategy for the Development of the Public Procurement System for the period 2011 – 2015 needs to be further enhanced. The Institute Alternative noted that both the Strategy and the Action Plan have serious flaws, such as the measures of the Action Plan, which are defined in a broad and imprecise manner. Also, some parts of the Strategy are treated unequally by the Action Plan. In this regard, it is unclear how certain goals, outlined by the Strategy, will be achieved, particularly those related to fighting corruption in public procurement. [53] Also, of a total of 14 measures foreseen by the Action Plan, only two are fully dedicated to fighting corruption, while twelve are aimed at enhancing the professional capacity and the development of the institutional framework.[54]

The OSCE Mission to Montenegro has, bearing in mind its objectives: fight against corruption, implementation of anti-corruption measures and the adaptation and fulfillment of EU standards, prepared the Analysis of Risks of Corruption in Montenegro in the Field of Public Procurement. [55] This analysis identified numerous deficiencies of the existing public procurement system in Montenegro, as follows:

53 Institut Alternative "Public Procurements – strategically until 2015?", Stevo Muk- President of the Board of Directors, Vijesti, 09/02/2012.

54 Muk, Stevo: „Comment on the Strategy of the Development of the Public Procurement System for the period 2011 – 2015" and the „Comment on the Action Plan for the Implementation of the Strategy", available at: http://www.institut-alternativa.org/archives/2185

55 *OSCE „Analysis of Risks of Corruption in Montenegro in the fields of Public Procurement, Urban Development Planning, Spatial Planning, Land Register, Real Estate Registration and Turnover", November 2011.*

1. Legislative inconsistency in the area of public procurement, in relation to the EU directives;
2. The vagueness and lack of major institutes in the field of public procurement;
3. Undefined jurisdictions of competent authorities in the public procurement procedures;
4. The lack of precise criteria for the selection of bidders, insufficiently defined process contract award procedure for all types of public procurement;
5. The lack of a unified database on public procurement;
6. The lack of implementation of penalties for offenses in the field of public procurement against all stakeholders (commissioners and bidders);
7. The lack of expertize of both contractors and bidders (providers).

A good portion of these objections has been addressed by the new Law. However, some deficiencies have remained unresolved: a special risk for the occurrence of corruptive actions represents the lack of criteria for the selection of bidders – which enables numerous abuses, such as cartel agreements and adapted tenders. Penalties have not been addressed, in spite the fact that this problem has been partially regulated by the Criminal Code. However, the integration of misdemeanor penalties and sanctions into the Law on Public Procurement is yet to be implemented.

2.3.4 Conclusions and recommendations

A new law on public procurement represents a step forwards towards the fulfillment of European standards in the area of public procurement, but a large part of this area remained unaddressed by adequate provisions that would prevent the occurrence of corruption. In cooperation with the Institute Alternative and through the analysis of relevant documents, we came to the following conclusions:

1. The Legal framework is not yet in full compliance with European directives. Although significantly more harmonized, the new law has not yet fully included all legal mechanisms foreseen by directives, which aim to reduce the scope of corruption.
2. A very small number of criminal charges were filed by the Police Department, while no final decisions have been made in this area by competent bodies. This is a worrisome indicator, bearing in mind the citizens' perception of corruption in this area. It should be noted that no sanctions were enforced in the previous decade, which points to shortcomings of the legislative framework and the lack of political will for its comprehensive and adequate implementation.
3. Anti-corruption and conflict of interest provisions have not been formulated in a way that would ensure their effective implementation. In fact, there is no institutional mechanism in place for monitoring of the implementation of a provision on the employment of officials, involved in the procurement process of bidders with whom the procurement contract has been made.
4. Capacities of the PPA and the Commission for Public Procurements are inadequate, particularly in relation to the provision of the Law on Financing of Political Parties, which prohibits the reception of contributions from legal entities or related

persons who are working in the public interest. Namely, capacities have not been expanded in line with new responsibilities and competencies of the PPA.

5. The State Commission for the Supervision of Public Procurement Procedures has been appointed by the government, which adversely affects its full independence and may hamper impartial control of public procurement. Also, the conditions for the election of Commission's members are imprecise and are not based on professional and ethical principles, required for the work in this body.

Based on the analysis, we have formulated the following recommendations, which should serve as a basis for further improvement of the public procurement procedures control:

1. Legal framework needs to be comprehensively harmonized with EU directives, especially in relation to the conduction of public procurement procedures through shopping method
2. Capacities of the Commission for the Control of Public Procurement Procedures and the PPA need to be improved, as well as their budgets
3. Irregularities identified in the procurement processes and the enforced procedures and their consequences, need to be reported about semi-annually, so that causes of the lack of final judgments and imposed sanctions in this area can be determined.
4. Expand the scope of the Law on the Prevention of Conflict of Interest to include persons involved in the procurement process.
5. Amend the employment criteria and the appointment of the Commission for the Control of the Public Procurement Procedures, in a way that would provide substantial independence and professionalisms of the body.

2.4 The Capital Market

Citizens of a country (Montenegro) that has only recently entered the phase of capitalism are highly unfamiliar with the concept of the capital market. During the period of vouchерisation and privatization, very few citizens had the right idea on what to do with their securities, the legislation was in the process of consolidation, while a number of investment funds have appeared and two stock exchanges have been established. Inadequate Law on the Prevention of Conflict of Interest has, from 2004 until its recent amendments in 2011, allowed for ample opportunities in abuses, influence trading and irregularities in the procurement procedures.

The legal and institutional frameworks, which placed privatization outside the competencies of institutions that control the capital market, provided for numerous non-transparent transactions and corruption at all levels, the effects of which can be felt today. With the acceleration of the integration process, however, it became necessary to harmonize the legislation with European standards, which would lead to a reduction in the corruption risks. The Stabilization and Association Agreement entered into force in 2010. With the entry into force of this agreement, Montenegro became formally committed to harmonize its legislation with the EU legislation. Recommendations of the European Commission are directed towards amendments of these laws and their harmonization with the Acquis communautaire.[56] So far, some changes have been introduced and some are yet to follow.

56 Report on Montenegro's Progress in the Implementation of Reforms, the European Commission

2.4.1 Legal framework

Today normative framework in the field of capital markets is composed by the Law on Securities, the Law on Investment Funds, the Law on Takeover of Joint Stock Companies, the Law on Voluntary Pension Funds and the Law on Insurance.

The Law on Securities has not been renewed. It prescribes competencies of the Securities Commission (hereinafter: the Commission), determines its composition and the method of appointment of members, funding, reporting and activities conducted by this body. The law also prescribes rules related to the issuance of securities, the Registration Statements, rules on merger and division of shares, rules of conduct, supervision and cancellation of public offering process. Furthermore, the law establishes rules on functioning of capital markets and participants in this market, as well as the functioning of the Central Depository Agency (hereinafter: CDA). Within the framework of the twinning program with Bulgaria, working material has been prepared, related to specific chapters of the new Law on Securities, i.e. the future Law on Capital Markets, fully harmonized with the EU directives, which consist of three parts and contain special sections on the transparency and market abuses. However, the discussion on the adoption of this law is planned by the Government for the fourth quarter.

The Law on Takeover of Joint Stock Companies (hereinafter: the Law on Takeover) was passed in 2011 and according to reports of the Parliament, is fully compliant with EU directives. The law will allow for a bigger and more comprehensive protection of minority shareholders in cases where a person has achieved a majority stake in the joint stock company, which is reflected through higher clarity and transparency in all stages of the takeover, better information provision to small shareholders, the fair prices, the possibility of providing opinions on the takeover by the management bodies and employees, the wider scope of the law implementation (banks, insurance companies and closed investment funds have been included in the implementation process), a broader definition of related parties and the like; the protection of acquirer rights in the takeover process, primarily in preventing actions that would lead to the obstruction of the takeover, the rights regarding the short-term convocation of shareholders, the right to purchase additional shares and the like.

The Law on Investment funds was adopted in November, 2011. This law provides for the opening of closed existing funds and better protection of minority shareholders' funds. Companies for Investment Funds are provided with the possibility to conduct businesses in all EU countries, through the acquirement of the so-called European Passport. The law also regulates the operation of foreign investment funds in Montenegro and allows these funds to be operated from their host countries or to establish branches, obtain licenses and conduct registration in Montenegro.

The Law on Voluntary Pension funds has not yet been renewed. The law was passed in 2007 and is not fully compliant with EU directives in the area of supervision of institutions for occupational insurance.

The Law on Insurance has not been amended. According to the Insurance Supervision Agency, amendments to the Law on Insurance have been finalized, based on EU legislation, as well as the amendments to the Law on Compulsory Traffic Insurance. These texts were sent to the Ministry of Finance, at the end of third quarter of 2011, for further procedure.

In March, 2011, a "Decision on the Compulsory Elements of the Transfer of Funds", was adopted. In accordance with the decision, transfer of funds must contain all the necessary information that are in compliance with the relevant EU legislation, which will contribute not only to a greater transparency in the capital market, but also in reducing the risk of money laundering through transactions in this market.

2.4.2 Institutional framework

The Commission for Securities is a body appointed by the Parliament and responsible for: the adoption of rules of the implementation of the Law on Securities, licensing of stock exchanges and participants in the capital markets, supervision over the implementation of the Law on Securities, etc. The Commission consists of five members: the chairman, deputy chairman and three members. The Commission is appointed by the Parliament, at the Government's proposal. A member of the Commission may be a person with a university diploma, at least five years working experience in the areas of law, monetary, economic or financial system and a person worthy of being a member of the Commission.[57] The Law on Securities foresees exemption of Commission members from the decision-making process in cases of a conflict of interest.

Central Depository Agency performs registrations of dematerialized securities, clearings and settlements of transactions with such securities, as well as other activities related to dematerialized securities. The CDA is a joint-stock company established by the Government, licensees, stock exchanges, banks and other legal entities. CDA has a Board of Directors, comprised by at least five members. A member of the Board of Directors of the CDA can be any person with a university degree, at least three years of working experience, under the precondition that a person has not been convicted of a crime that renders him unfit to hold serve as a member of this organizational unit of the CDA. For the activities conducted by the CDA, a provision is foreseen, as well as other charges, as determined by the CDA, with the prior approval of the Commission. Annual Report on the Central Deposit Agency is submitted to the Commission and to all shareholders of this agency. [58]

Insurance Supervision Agency issues licenses for the conduct of insurance, re-insurance and co-insurance, brokerage and advocacy, as well as other activities directly related to insurance; approves acts and conducts other activities foreseen by the law; supervises insurance activities; adopts regulations stipulated by the Law on Insurance; maintains registers in accordance with the law, considers complaints and appeals from the insured persons and other beneficiaries of the insurance, cooperates with other authorities in the country and abroad, initiates the regulation of various issues in the area of insurance and conducts other activities foreseen by the law.

2.4.3 Implementation

Innovated Action Plan does not foresee indicators related to the number of initiated or processed cases in this area; therefore this analysis was conducted in accordance with requirements of this document.

57 The Law on Securities („Official Gazette of Montenegro", no. 59/00, 43/05, 28/06 from May, 03, 2006, 53/09, 73/10 and 40/11 from August, 08, 2011), Articles 7 – 23

58 Ibid. Articles, 89-101

National Integration Plan foresees the adoption of the Law on Capital Markets in 2012, which would replace parts of the Law on Securities. The compliance and harmonization of the Law on Securities with European directives has been done for the following areas: prospects, transparency and market abuse. In collaboration with experts from Bulgaria, within the twinning project, three parts of the draft Law on Capital Market have been prepared: the Securities offered to the public or transferred for trading; Transparency and the Market Abuse. During the reporting period, in collaboration with Bulgarian experts, the chapter "Market Abuse" of the Draft Law on Securities has been fully harmonized with the Market Abuse Directive and directives related to fair presentation of investment recommendations and the disclosure of conflict of interest. Also, the MS experts have included provisions of the Market Abuse Directive, Transparency Directive and Prospectus Directive in the draft law, in relation to the following matters: the right to initiate proceedings before the court, the obligation and the institute of business secrets and general principles of information exchange and cooperation with other authorities of member states. However, this law has not yet been adopted. The deadline for its adoption is the fourth quarter of 2012.

The access to data on the ownership of securities still represents a cause for concern. The CDA has the access to data on ownership structures of businesses; however, this type of access does not provide proactive insight into the changes of the ownership structure. This data is then submitted to the Commission for the Prevention of Conflict of Interest, upon requests, while the data on the ownership structure of a specific company is known and available only to shareholders of that company. In turn, this significantly reduces the transparency of public companies and processes within them. Although the Innovated Action Plan for the Fight against Corruption and Organized Crime recognizes the necessity to improve access to information on ownership securities, [59] rules of the CDA on confidentiality of data allows access to information on only 10 largest shareholders.

The public often perceives that the control of the privatization of public companies, through the purchase of majority shares, is partially under the Commission for the Securities. However, such a process is entirely under the responsibility of the Privatization Council and is regulated by the Law on Privatization. The Company Law and the Law on Securities overlap in regard to some issues that, in the opinion of experts, cause uncertainties in regard to the jurisdiction of the Commission for the Securities.[60]

2.4.4. Conclusions and recommendations

Measures defined by the innovated Action Plan for the Fight against Corruption and Organized crime, in the section related to economic corruption and capital markets are too broad and generalized. Specifically, the definition of precise measures that address risks in the capital markets, within these highly specialized areas should have been prepared by experts. Broad, generalized measures, which are mostly limited to the harmonization of laws in this area with EU directives, are not adequate to combat corruption in this area.

1. It is necessary to conduct corruption risk assessment analysis in the area of capital markets, insurance and foreign investments.
2. It is necessary to develop sectorial action plan, based on the risk assessment analysis, which would consist of targeted measures that would curb corruption in these areas.

59 Innovated Action Plan for the Fight against Corruption and Organized Crime (2011 – 2013), measure 119
60 Interview with professor Petar Ivanović.

3. Adopt the current draft version of the Law on ecurities, which is compliant with EU directives.
4. CDA should make available information about the structure of ownership to both supervisory authorities and the public. The list that currently includes only ten largest shareholders should be expanded to include at least 15.
5. It is necessary to expand the jurisdiction of the Commission for the Securities to control the privatization procedures, which are carried out by the acquisition of a majority stake. A competent and politically independent body should exercise control over these proceedings.
6. The Law on Companies needs to be harmonized with the Law on the Securities or with the future Law on Capital Markets.

PART 3. PREVENTIVE MECHANISMS – INTEGRITY AND TRANSPARENCY

3

The fight against corruption involves repressive and preventive activities. "State institutions should prevent corruption through a timely adoption of laws, institution-building (police, courts, bodies for the prevention of money laundering, tax services, etc…) and strengthen community and media awareness of this issue".[61] However, the fight against corruption is not based solely on repression; instead, current trends in the fight against corruption are oriented more towards prevention. Preventive activities are very important for disabling situations and circumstances that can lead to crime. Some authors make a distinction between primary, secondary and tertiary prevention. Primary prevention involves acts for avoiding the causes for the emergence and development of criminality, secondary prevention focuses on activities aimed at early detection of potential factors and situations that may lead to criminal activity, while tertiary prevention is geared towards people who have already committed a crime of corruption. [62]

In defining mechanisms in the fight against corruption, the government primarily prepares *national prevention and repression policies*. Within such a framework of anti-corruption policies, all bodies have their role and responsibility in the fight against corruption. It is important to note that anti-corruption policy is not just a matter of investigative efforts, prosecution and trial, but instead involves the entire social policy of a society, as well as the causes of corruption (social, economic, political, etc.). Thereat, it is very important to examine all governmental departments, especially those that are not directly confronted with corruption.

In this part of the study, special attention will be given to implemented measures for the prevention of corruption, the process of establishing a system of integrity, free access to information and the protection of whistleblowers.

3.1 Prevention of corruption

In the previous ten years, Montenegrin government undertook a variety of activities, preventive and repressive, in the fight against corruption. Considering the design and implementation of anti-corruption policies in Montenegro, we can distinguish two periods. The first period was characterized by the establishment of appropriate institutions, creation and adoption of a legislative framework, under which rules, procedures and standards

61 Dobovšek, Bojan: *„Corruption Issues in the Public Administration", in* V Dobovšek, B. (ur.), Corruption in Public Administration, Ljubljana: MNZ., 2003.

62 Meško, G. (2002). Foundations of crime prevention. Ljubljana. 2002

that regulate the issue of corruption were adopted. Thus, the following institutions were established, responsible for the fight against corruption in Montenegro: **National Commission for monitoring of implementation of Action Plan for implementation of the Program of fight against corruption and organized crime** (this body was established in 2007, composed by the representatives of the executive, judicial and legislative branches and by the representatives of civil society, therefore rendering the Commission as the only institution charged with the fight against corruption in Montenegro, whose members were representatives of non-governmental sector); **Directorate for Anti-Corruption Initiative** (established in January, 2001), the **Commission for Prevention of Conflict of Interest**, (formed as an independent body through a Decision issued by the Parliament of Montenegro, in 2004), **The State Election Commission, the Commission for the Control of Public Procurement** (established in 2001) and **the Administration for Preventing of Money Laundering and Terrorism Financing**. This period began when Montenegro signed the Agreement and the Action Plan of the Regional Stability Pact Anti-Corruption Initiative (hereinafter: SPAI), in 2000, until the adoption of the Action Plan for the implementation of the Program for the Fight against Corruption and Organized Crime.

During the second period, more attention was paid to the implementation of the existing legislation, which in the previous period underwent numerous amendments, in accordance with the need to fulfill a number of obligations, especially those that were requested by the international community and in relation to fighting corruption. Specifically, with the aim of establishing a strategic framework for combating corruption and organized crime in Montenegro, the Government, on July, 28th, 2005, adopted the Program of the Fight against Corruption and Organized Crime, and a year later the Action plan for its implementation (for the period 2006 – 2008), which defines basic goals of prevention and effective prosecution of perpetrators of corruption acts, concrete measure and activities, competent institutions and bodies, deadlines and prescribes performance indicators. In order to monitor the implementation of the relevant action plan, the government has, on February, 15th, 2007, established a National Commission, composed of representatives of the executive, judicial and legislative branches, as well as representatives of civil society. As mentioned earlier, this Commission is the only body in Montenegro, whose members are representatives of the civil sector.

3.1.1 Legal Framework

Given the fact that the international community does not see corruption as a problem of individual countries, but instead a global threat to prosperity and well-being of the world, there are a number of documents and international regulations that govern the prevention and fight against corruption. We will list only the key regulations that stipulate obligations of states in their prevention and fight against corruption:

- *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which also addresses criminal offenses of money laundering, as well as other violations related to accounting and bookkeeping;*
- *Criminal Law Convention on Corruption of the Council of Europe*[63] *(ETS 173) with an additional protocol (ETS 191),* incriminates all active and passive corruption in

63 Council of Europe, Human Rights and Rule of Law, Programme of Action against Corruption http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/default_en.asp

public and private sectors, including the money laundering and violations related to bookkeeping and accounting, establishes the liability of legal persons for criminal acts and proposes establishment of specialized bodies and independent authorities in the fight against corruption and effective international cooperation;

- *Civil Law Convention on Corruption of the Council of Europe*[64] (ETS 174), establishes civil liability for corruption of responsible persons and the state, in cases when corruptive act was carried out by public officials, thereby establishing certain criteria that facilitates the determination of such liability;
- *The UN Convention against Transnational Organized Crime, demands the criminalization of bribery and the introduction of legal, administrative or other measures for promoting integrity and the introduction of measures essential for the prevention, detection and punishment of bribery of public officials, as well as the achievement of exemplary independence of competent authorities;*
- *The Convention on the Protection of the European Communities' financial interests*[65] *and protocols thereto,* criminalizes financial frauds at the detriment of financial interests of the European Union, regarding both the income and expenses, criminalizes active and passive corruption of domestic, foreign and international public officials, establishes the liability of legal persons for such acts and prescribes obligations for the establishment of mechanisms for seizing assets acquired through fraud and corruption;
- *Convention on the Fight against corruption involving officials of the European Communities or officials of Member States of the European Union* criminalizes active and passive corruption of public officials of the European Union and its Member States. The convention prescribes a very important task of establishing central national anti-corruption bodies tasked with coordination of the work of various competent bodies;
- *United Nations Convention against Corruption,* demands the introduction of repressive measures, the establishment of a specialized body tasked with the detection and investigation of corruption, as well as a similar body tasked with prevention of money-laundering; [66]

Montenegro has ratified most of the mentioned international conventions. As part of the negotiations with the European Union, Montenegro will have to fulfill all obligations prescribed by the European Union, including those related to the prevention of corruption. The importance of conventions lies in the expression of full agreement that corruption, as a global threat, can be confronted effectively only through coordinated use of all resources available to a democratic society. Among these resources, beside criminal authorities and independent bodies tasked with the prevention of corruption, is the adoption of adequate legal regulations, national political agendas and relevant action plans, an effective system of disclosure of criminal acts with elements of corruption and criminal prosecution of perpetrators of such acts, the strengthening of social ethics, anti-corruption culture and integrity in a society. If we observe results of comparative analysis of the countries of our region and Member States of the European Union in general, we can conclude that money

64 *Ibid*
65 Convention on the protection of the European Communities' financial interests,
66 ***United Nations Convention against Corruption, http://www.unodc.org/unodc/en/treaties/CAC/***

states have incorporated international anti-corruption standards into national law, through the adoption of anti-corruption laws and the establishment of independent, specialized bodies tasked with the prevention and the fight against corruption. These institutions vary from state to state, in terms of their position, duties, competencies and the framework under which they operate. [67]

3.1.2 Implementation

In accordance with the obligations that stem from the ratification of international conventions and the adoption of European and international standards in the field of fight against corruption, Montenegro is required, in addition to the establishment of penal and independent bodies tasked with the prevention of corruption, to adopt adequate legal regulations, national political programs and action plans in the field of fight against corruption. In accordance with recommendations of international organizations, Montenegrin government needs to define and establish an effective system of detection of criminal act with elements of corruption and prosecute the perpetrators, as well as to enhance social ethics, integrity and anti-corruption culture in the society.

The question is raised as to what was achieved so far by Montenegro.

As mentioned above, with the aim of establishing a strategic framework for combating corruption and organized crime, the government of Montenegro, on July 28th, 2005, adopted a Program for the Fight against Corruption and Organized Crime, and a year late the Action Plan for its implementation (2006 – 2008), which defines basic goals related to prevention and effective prosecution of perpetrators of acts of corruption, proposes concrete measure and activities, competent bodies and institutions, deadlines and prescribes performance indicators. With the aim of monitoring the implementation of this action plan, the government has established, in 2007, the National Commission, which was discussed above. Then, in 2010, government adopted the Strategy for the Fight against Corruption and Organized Crime for the period 2010 – 2014 (hereinafter: the Strategy), thereby laying out strategic direction, principles and objectives in the fight against corruption and organized crime, priority measures in the establishment of an effective system for the fight against corruption and organized crime in public, private and civil sectors. In order to ensure successful and comprehensive implementation of the Strategy, the Government adopted the Action Plan, a document projected for the period of two years (2010 – 2012).

In relation to measures stipulated and foreseen by the Strategy, corruption prevention measures are conducted in law enforcement bodies, i.e. the police and judicial authorities. In accordance with conclusions of the latest report of National Commission, the most important results, achieved in the field of prevention of corruption, is the preparation of the draft Law on Internal Affairs. In the field of the internal control, the reports points to the increase of conducted internal control procedures of the police, as well as the number of criminal proceedings related to the performance of official duties. [68] The reform process of the police force particularly focused on the prevention of all forms of crime, with an

67 See more in the Chapter 4: Regional perspective, public policy study: "Reform of the anti-corruption institutions in Montenegro: How to make the system more efficient?" The Monitoring Center, Podgorica, 2010, p. 27 – 40.

68 With the aim of increasing independence as well as the responsibility of internal control, the amendments to the Law on Police, from December 2009, included the transfer of the Internal Control Department from the Police Department to Ministry of Internal Affairs and Public Administration, which know conducts control and oversight of the work of police.

emphasis on proactive actions. However, attention was not given to further strengthening of administrative capacities of the Criminal Police Sector, especially departments that deal with the fight against corruption and organized crime, and particularly those that implement secret surveillance measures. Regarding the preventive mechanisms for combating corruption in the judiciary, the control, conducted by the Prosecutorial and Judicial Council over all judicial functions, was strengthened.

The Ministry of Justice, the Ministry of Internal Affairs and Public Administration, the State Prosecutor, the Supreme Court, the Human Resources Administration and the Directorate for Anti-Corruption Initiative have, in the past few years, conducted various training programs for persons involved in the implementation of anti-corruption measures. These programs included the training of civil servants and employees, as part of a professional development program that includes trainings and seminars on anti-corruption, integrity issues and access to information, public financial management, public procurement procedures, transparency in public administration, fulfillment of the standards of ethical behavior, preventive and repressive mechanisms, and the like.

At the same time, the work on prevention was strengthened through a number of raising awareness campaigns and public opinion polls, conducted by the Directorate for Anti-Corruption Initiative. In the area of prevention of corruption, the government has, in 2011, adopted the so called Risk assessment in areas vulnerable to corruption, where six such areas were identified: local government, spatial planning, public procurement, privatization, education and health. The assessment acknowledged the need for more precise mechanisms for implementation and monitoring of anti-corruption initiatives.

The conclusions of the European Commission laid out in the Progress Report, note that significant steps were undertaken in the aim of achieving good results in proactive investigations, indictments and convictions in cases of corruption at all levels, thereby fulfilling a part of key priorities laid out by the Opinion in the area of fight against corruption. However, the report states that it is necessary to undertake further steps, because the number of judicial convictions in cases of corruption remains low, while the use of special investigative measures is still hampered by the lack of adequate equipment and trained personnel. The report also stipulates that it is necessary to further strengthen inter-sectorial coordination, especially cooperation between the prosecutor and the police. The Progress Report also concludes that the implementation of the legislative framework remains patchy and uneven, as the corruption is still prevalent in various areas.

Similar remarks can be found in the conclusions of GRECO Compliance Report from 2010, which states that, although important measures in the prevention of corruption have been adopted, it is still necessary to guarantee that their implementation will be properly monitored and ensured.

The SIGMA report from 2011, [69] highlights the need for establishing a new, strong institution that would be responsible for the prevention of corruption, and strengthening of its analytical function, especially regarding the creation and the analysis of the implementation of anti-corruption laws, with simultaneous improvement of technical and administrative capacities, as stipulated by the Article 6 of the UN Convention Against Corruption (UNCAC). This article points to the need for establishing repressive and preventive measures, and the establishment of an independent body for the prevention of corruption, a specialized

69 Support for Improvement in Governance and Management, A joint initiative of the OECD and the EU, principally financed by the EU, Assessment, Montenegro, 2011.. http://www.oecd.org/dataoecd/40/28/48970665.pdf

body for the disclosure and investigation of corruption and a similar body for the prevention of laundering of proceeds of corruption.

The need to strengthen strategic capacities of the existing Directorate for Anti-Corruption Initiative is also stipulated by Progress Reports of the European Commission: "The current institutional framework for preventing and repressing corruption needs to be streamlined and properly coordinated. Funding needs to be ensured. There is no single authority with clear legal powers and the capacity to monitor and enforce commitments and obligations of government bodies or to follow up complaints on corruption from the public. There is no clear division of competences between the different agencies. The National Commission monitors implementation of the strategy papers. The Directorate for Anti-Corruption Initiatives (DACI), to which 54 other institutions report on corruption, has mainly a consultative role focusing on soft prevention measures such as education and awareness-raising."

3.1.3 Conclusions and recommendations

In the last decade, Montenegrin government undertook a variety of activities, both preventive and repressive, in the fight against corruption. Considering the design and implementation of anti-corruption policies in Montenegro, we can conclude the following:

Montenegro has established appropriate institutions and established and adopted a legislative framework that to some extent fulfills and achieves standards and rules that treat the issue of corruption. After the establishment of institutional framework, the attention is paid to the implementation of the existing legislature, which has in the past period undertaken numerous amendments, in accordance with the need to fulfill a number of obligations, especially those requested by the international community. Specifically, with the aim of establishing a strategic framework for the prevention of corruption and organized crime in Montenegro, the Government has, on July, 28th, 2005 adopted the Program of the Fight against Corruption and Organized Crime, and a year later the Action Plan for its implementation (for the period 2006 – 2008). Also, in 2010, the Government adopted a Strategy for the Fight against Corruption and Organized Crime for the period 2010 – 2014, as well as the Action Plan for its implementation for the period 2010 – 2012.

The mentioned strategy introduced measures of corruption prevention that were enforced in law enforcement bodies, i.e. the police and judicial authorities.

Competent institutions have conducted various training programs for persons involved in the implementation of anti-corruption measures. These programs included the training of civil servants and employees, as part of a professional development program that includes trainings and seminars on anti-corruption, integrity issues and access to information, public financial management, public procurement procedures, transparency in public administration, fulfillment of the standards of ethical behavior, preventive and repressive mechanisms, and the like.

The work on prevention has been strengthened through a number of awareness raising campaigns and public opinion polls, conducted by the Directorate for Anti-Corruption Initiative. However, it is necessary to define more precise mechanisms for implementation and monitoring of anti-corruption initiatives.

Although some measure were implemented, in the aim of achieving good results in proactive investigations, indictments and convictions in cases of corruption at all levels, it is still

necessary to further improve them, because the number of judicial convictions in cases of corruption is low, while the use of special investigative measures is still hampered by the lack of adequate equipment and trained personnel.

Montenegro needs to dedicate a lot of efforts towards further fulfillment of GRECO recommendations, which are based on the notion that, although important measures for the prevention of corruption have been endorsed, it is necessary to guarantee that their implementation is properly monitored.

At the same time, competent authorities need to continue working on the fulfillment of obligations provided in the UN Convention against Corruption, which points to the need of establishing, beside repressive and preventive measures, an independent body for the prevention of corruption, a specialized body for the disclosure and investigation of corruption and a similar body for the prevention of laundering of proceeds of corruption. This approach has been emphasized in the SIGMA's reports, which highlight the need for establishing a new, strong institution that would be responsible for the prevention of corruption, and strengthening of its analytical function, especially regarding the creation and the analysis of the implementation of anti-corruption laws, with simultaneous improvement of technical and administrative capacities.

Corruption represents a social evil that requires a systematic effort and absolute commitment of all social forces in its suppression. Given the fact that the Montenegrin public has not yet developed an awareness of the damage caused by the corruption, authorities need to invest a lot more efforts in fields of prevention and repressive action of corruption.

1. In this regard, it is necessary to depoliticize the work of all state institutions, which need to cooperate more closely in the fight against corruption;
2. Prevention is one of the most important tools in the fight against corruption. However, in order to achieve adequate efficiency of preventive actions, such activities should be supplemented with repressive anti-corruption measures. Consequently, competencies need to be strengthened, and a smooth and unobstructed work of institutions responsible for the conduction of repressive measures in the fight against corruption needs to be ensured, such as the army, intelligence and security services and police;
3. At the same time, it is necessary to ensure independent work of institutions tasked with public control, among which most important is an institution of Ombudsman, as well as state institutions specialized in the prevention of corruption in all segments of society. This will undoubtedly lead to greater efficiency and effectiveness in the prevention of corruption;
4. It is necessary to focus more attention on educating civil servants, as well as citizens about the various forms of corruption, and their obligation to report it. Citizens can provide a significant contribution to the prevention and control of corruption, by filing complaints and petitions or by submitting reports on the acts of corruption, which is why it is very important to promote anti-corruption behavior. In this way, the attention is paid to raising public awareness about the harmful effects of corruption and establishing a zero tolerance to all forms of corruption;
5. Civil society organizations and the media represent the most effective controllers of the governments and its institutions, which need to adequately prosecute and

punish perpetrators of corruption, as stipulated by the existing legislation. Therefore, it is very important to ensure unobstructed operation of NGOs and the media, particularly of those engaged in investigative journalism;

6. Adequate strategy of the fight against corruption involves the implementation of systematic and strategic measures aimed at removing the causes of corruption, such as the economic stagnation, low standards, the elements of political culture and tradition, mass social insecurity, unemployment, government inefficiency and the like;
7. It is necessary to define precise mechanisms for the implementation and monitoring of anti-corruption initiatives, as well as to ensure the fulfillment of GRECO's and SIGMA's recommendations and the standards and requirements stipulated by international conventions in this field. Among these, particularly important are GRECO recommendations, which are based on the notion that, although important measures in the prevention of corruption have been adopted, it is still necessary to guarantee that their implementation is properly monitored and ensured. Also, commitments arising from the UN Convention Against Corruption need to be fulfilled, such as the establishment of an independent body for the prevention of corruption, a specialized body for the disclosure and investigation of corruption and a similar body for the prevention of laundering of proceeds of corruption. This recommendation has been stipulated in the SIGMA's reports, highlighting the need for establishing a new, strong institution that would be responsible for the prevention of corruption, and strengthening of its analytical function, especially regarding the creation and the analysis of the implementation of anti-corruption laws, with simultaneous improvement of technical and administrative capacities.

3.2 Integrity and the prevention of corruption

We have already noted that in the field of fight against corruption, preventive actions produce more successful results in comparison with the implementation of repressive means. Namely, repression represents a set of activities that address acts of corruption, while the elimination of causes and circumstances leading to the emergence and development of corruption is a much more effective manner of reducing the scope of corruption in a society. Therefore, the establishment of an anti-corruption system based on integrity, involves dismissal of a repressive model in the fight against corruption, and the introduction of "integrity system" that is based on ethics.

The Integrity Plans represents one of the most modern preventive methods that purport legal and moral work of governmental and other institutions of a society, thereby preventing and suppressing opportunities for the development of corruption in a specific institution. The Integrity Plan is a program of preventive mechanism of the institution, in relation to the corruption; it reinforces preventive activities and encourages awareness, thereby narrowing the scope for the emergence of corruption. This, in turn, increases efficiency and quality of the work of institution, as well as boosts respect and confidence of the general public.

Integrity plans can be defined as a set of legal and factual measures that are planned and undertaken with the aim of eliminating causes of corruption, thereby preventing its emergence within the organization as a whole or within specific organizational units.

The integrity plans can be developed indefinitely, in either governmental or non-governmental organizations, public or private sectors, in a mandatory or optional manner. However, in order to ensure an effective fight against corruption, integrity plans should be mandatory and their development and use professionally supported, particularly by the state administration and the judiciary. They are usually defined according to the needs and the structure of institution. However, essential elements of integrity plan are:

- The assessment of exposure to corruption in a specific institution
- The establishment of a person responsible for the definition and implementation of integrity plans;
- Detailed description of work and decision-making processes of the institution;
- Establishment of preventive measures for the prevention of corruption.

Adoption of integrity plan is very important for the reputation of the institution, which loses on integrity through the appearance of nepotism, bribery, conflict of interest and other forms of corruption. In this way, integrity plans help strengthen the conscience and awareness of harmful effects of corruption. The key objective is to prevent the occurrence of acts of corruption, while such situations that are contrary to the prescribed rules are punishable. In this regard, integrity drafts will be successful to the extent to which employees share common opinions on moral values and practices that bring good to society as a whole, and which are defined by integrity drafts. Adequate regulations represent an important element of integrity drafts and enable the institution to adequately tackle various forms of corruption.

We can conclude that the key purpose of the adoption and implementation of integrity plans is to establish and improve the integrity of institutions. Integrity plans aim to increase the capacity of the organization in its fight against corruption, especially its prevention.

3.2.1. Implementation

Pursuant to the obligation prescribed by the Innovated Action Plan for the implementation of the Program of fight against corruption and organized crime, all state bodies had to adopt, during 2011, their own integrity plans. This obligation has been fulfilled by the following institutions: the Customs Administration (in 2010), which is also conducting a Project on the development of integrity in the Customs Service of Montenegro; the Tax Administration (in 2008), the Directorate for Anti-Corruption Initiative, which adopted its integrity plan in May, 2010 and the Commission of Securities (2011).

The new Law on Civil Servants and State Employees,[70] which will enter into force as of January, 2013, foresees the obligation of state bodies to develop integrity plans. Furthermore, this law obliges the administrative authority responsible for anti-corruption activities, to adopt Guidelines for the establishment of integrity plans in state bodies.

Approval of integrity plans is a very important step towards the establishment of anti-corruption system based on integrity, which demonstrates the abandonment of a model of the fight against corruption that is dominantly based on repressive activities. In that sense, integrity plans represent a very important set of anti-corruption measures, which

70 The Law on Civil Servants and State Employees, Official Gazette of Montenegro, no. 39/2011, adopted on August, 4th, 2011.
http://www.usscg.me/docs/Zakon%20o%20drzavnim%20sluzbenicima%20i%20namjestenicima.pdf

are based on the assessment of exposure to a particular risk for the development of corruption in an institution, as well as its commitment to organize its work in an ethical and professional manner.

The principle of integrity in Montenegro has not yet been regulated by law, which is essential for achieving progress in this area. The adoption of integrity principles enhances the integrity of the institution, its professionalism, ethics, and structural comprehensiveness and ensures compliance with moral values within that institution. Consequently, the risk of abusing of public powers is significantly reduced, which leads to the improvement in the work of the institution, as integrity plans aim to raise awareness of officials and employees on the damaging effects of corruption.

It is true that integrity plans, as a preventive method for ensuring legal and moral work of governmental and other institutions, are not sufficient in combating the occurrence and spread of corruption. However, integrity plans, combined with comprehensive implementation of regulation and adequate institutional framework, can give good results. A good example is the integrity based anti-corruption system of the Republic of Slovenia. [71]

3.2.2 Conclusions and recommendations

If Montenegro is to achieve progress in establishing an effective anti-corruption system based on integrity, a comprehensive law on integrity needs to be adopted. Based on that observation, we propose the following:

1. The approval of integrity plans is a very important step towards the establishment of an anti-corruption system based on integrity. Specifically, the law needs to establish the obligation of all public authorities to develop integrity plans, which is very important in the context of the risk assessment for the emergence of corruption.
2. Integrity plans should be developed indefinitely, by governmental and non-governmental organizations, public and private sector. The effective fight against corruption includes the preparation and application of integrity plans, which are supported institutionally and professionally, tailored to the needs of each institutions, thereby taking into account that plans should contain the following elements:
   - The assessment of exposure to corruption in a specific institution
   - The establishment of a person responsible for the definition and implementation of integrity plans;
   - Detailed description of work and decision-making processes of the institution;
   - Establishment of preventive measures for the prevention of corruption.

3.3. Protection of whistleblowers

Persons who report corruption, or the so called "whistleblowers are very important in the investigation and prosecution of various criminal acts of corruption, particularly when bearing in mind that such acts are very difficult to uncover, and even harder to prove. Modern democratic states, because of the important role that these people have for the

71 See more on official site of the Commission for the Prevention of Corruption of the Republic of Slovenia: http://www.kpk-rs.si/

detection and suppression of acts of corruption, legally guarantee protection to these persons, especially against work dismissal or possible abuse by employers.

According to the current regulation, in Montenegro a person who has the knowledge or suspects that a criminal offense of corruption has been conducted, or a person who can provide information of interest in uncovering corruption offenses and their perpetrators, may file a charge, in accordance with the law, and provide details to authorities in charge of receiving complaints/reports on corruption. In Montenegro, corruption can be reported to a number of institutions, including: the Directorate for Anti-Corruption Initiative[72] and the Police Department (via telephone, fax, mail, email, web-site or directly at the premises of these institutions), while other institutions have open telephone lines, through which citizens can report corruption cases. Among these are: the Ministry of Health, Ministry of Education and Sports, the Judicial Council, the Supreme Public Prosecutor's Office, Customs Administration, Tax Administration, the Games of Chance Administration, Public Procurement Directorate, Investment and Development Fund of Montenegro and the National Commission for the implementation of the Strategy for the fight against corruption and organized crime.

3.3.1 Legal framework

Systematic protection of whistleblowers has not been established in Montenegro. Of the applicable regulations, the protection of whistleblowers is regulated by the following acts:

The Labor Law, as well as amendments to the Labor Law, [73] foresees the protection of all persons who are employed. The law, however, does not explicitly define mechanisms and manners of protection in cases when corruption has been reported.

The Law on Civil Servants and State Employees[74] guarantees the protection of all persons who report criminal acts of corruption. This protection includes identity disclosure to unauthorized persons, as well as the protection from abuse, deprivation or restriction of the labor rights, as stipulated by relevant laws. The law also provides protection, in accordance with special regulations on the protection of witnesses, in cases when person is exposed to severe danger to life, health, physical integrity, freedom or property.

The Strategy for the Fight against Corruption and Organized Crime, for the period 2010 – 2014, as well as the Action Plan for its implementation, foresee the improvement of mechanisms and measures related to the protection of whistleblowers. On the basis of the Innovated Action Plan for the implementation of the Program of Fight against Corruption and Organized Crime, the Police Department has, in 2008, adopted a Directive on procedures for reporting criminal acts of corruption and protection of persons who report these crimes to the Police. This Directive prescribes procedures of reporting crimi-

72 The Directorate for Anti-Corruption Initiative does not have executive jurisdictions, but its employees are trained to receive reports on corruption and further process them to competent bodies. In accordance with the offical data, during 2011, of a total of 132 reports, 120 were forwarded to other competent bodies: Police Department – 52, State Prosecutors Office – 17, Judicial Council – 10, Ministry of Health – 8, Ministry of Labor and Social Care – 7, Market Inspection – 6, municipalities – 6, Real Estate Agency – 3, Customs Administration – 3, Tax Administration – 2 and to the Ministry of Agriculture and Rural Development – 1. Relevant services guarantee the confidentiality of the entire process. In the mentioned 120 reports, 75 persons did not require secrecy, while 35 wanted to remain anonymous.

73 The law on amendments to the Labor Law (Official Gazette of Montenegro, no.59/11), November, 24th. 2011.

74 The Law on Civil Servants and State Employees, Official Gazette of Montenegro, no. 50/08, from August, 19th, 2008)

nal acts of corruption to the Police, jurisdictions of authorized police officer, protection of citizens who report corruption, and means of promoting the procedure and protection. A person, who wants to reports corruption to the Police, can do so in several ways: orally or in writing, by mail, phone, fax, electronically or in any other manner. Pursuant to the provisions of this document, the authorized officer is also required to protect the identity of the whistleblower, as well as the contents of the report and is obliged to undertake all necessary measures to protect such persons. In addition, the authorized officer must adhere to the following principles:

- Respect of human rights and dignity of persons;
- Legality;
- Encouraging persons to report corruption;
- Confidentiality and secrecy;
- Prohibition of the use of data, contrary to the purpose for which it was collected, and
- Efficiency and rationality in the work.

The authorized officer, in relation to the protection of a whistleblower, is obliged to:

- Protect the identity of the whistleblower;
- Protect the contents of the report, i.e. the information about criminal acts of corruption;
- Undertake immediate security threat assessment, for the sake of ensuring the well-being of whistleblower;
- Ensure protection of whistleblowers from intrusion and undignified influences;
- Undertake measures for the protection of a person, in accordance with the law, if he/she determines that the threat is eminent and real;
- Undertake measures for the protection of witnesses, in accordance with a special law.

Directorate for Anti-Corruption Initiative and other institutions in Montenegro conducted, over the past two years, several anti-corruption campaigns with the aim of encouraging citizens to participate in the fight against corruption, introducing them with the ways in which they can report corruption to authorities.

However, in Montenegro, as in many other countries, people are very reluctant to notify the competent institutions on acts of corruption of which they are aware of. It is therefore very important for national regulation to be very clear and harmonized with international regulations in relation to the protection of whistleblowers.

When it comes to international regulations in this field, we should bear in mind the Article 33 of the UN Convention against Corruption, which defines the protection of persons who report act of corruption, [75] as well as Article 22 of the Council of Europe Criminal Law Convention on Corruption, which provides for the protection of witnesses and collaborators.[76] Of particular importance is the Legislative Guide for the Implementation of the UN Convention against Corruption, which states that "Unless people feel free to testify and communicate their expertise, experience or knowledge to the authorities, all objectives of the Convention could be undermined." [77] Accordingly, states have an obligation to conduct the necessary measures and prevent potential retaliation or intimidation of witnesses, victims or experts. States are also encouraged to adopt policies that would strengthen the

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

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

77 Legislative Guide for the Implementation of the UN Convention against Corruption, UNODC, New York, United Nations, 2006, Article 141.

protection of whistleblowers. Thereat, mechanisms that ensure protection of witnesses, experts and other persons who report corruption, including civil servants, state employees and other citizens, need to be incorporated in the law governing the protection of whistleblowers and witnesses.

The Ministry of Justice of the Republic of Croatia has developed an "Analysis of Whistleblower Protection in the Members States of the European Union", which provides a comparative analysis of the protection of these persons in 11 European countries. This study can facilitate the search for the best model of defining the rules and mechanisms for the protection of whistleblowers in Montenegro. [78]

3.3.2 Implementation

In Montenegro, corruption can be reported to a number of institutions, including: the Directorate for Anti-Corruption Initiative[79] and the Police Department (via telephone, fax, mail, email, web-site or directly at the premises of these institutions), while other institutions have open telephone lines, through which citizens can report corruption cases. Among these are: the Ministry of Health, Ministry of Education and Sports, the Judicial Council, the Supreme Public Prosecutor's Office, Customs Administration, Tax Administration, the Games of Chance Administration, Public Procurement Directorate, Investment and Development Fund of Montenegro and the National Commission for the implementation of the Strategy for the fight against corruption and organized crime. According to the current regulation, a person who has the knowledge or suspects that a criminal offense of corruption has been conducted, or a person who can provide information of interest in uncovering corruption offenses and their perpetrators, may file a charge and provide details to authorities tasked with receiving complaints/reports on corruption.

With the aim of encouraging citizens to report cases of corruption, the Police Department, in cooperation with the Directorate for Anti-Corruption Initiative, is conducting a campaign which promotes the importance of citizen participation in the investigation of criminal acts of corruption. At the same time, other state authorities have conducted six campaigns aimed at promoting a channel for reporting of corruption and mechanisms of protection of whistleblowers.

Although the Directorate for Anti-Corruption Initiative and other institutions in Montenegro have conducted, over the past two years, several anti-corruption campaigns with the aim of encouraging citizens to participate in the fight against corruption, introducing them with the ways in which they can report corruption to authorities, Montenegrin citizens are very reluctant to notify the competent institutions on acts of corruption of which they are aware of. The reason to such state of affairs can be found in the vague definition of

78 "Analysis of Whistleblower Protection in the Members States of the European Union" http://www.antikorupcija.hr/Default.aspx?sec=503

79 The Directorate for Anti-Corruption Initiative does not have executive jurisdictions, but its employees are trained to receive reports on corruption and further process them to competent bodies. In accordance with the offical data, during 2011, of a total of 132 reports, 120 were forwarded to other competent bodies: Police Department – 52, State Prosecutors Office – 17, Judicial Council – 10, Ministry of Health – 8, Ministry of Labor and Social Care – 7, Market Inspection – 6, municipalities – 6, Real Estate Agency – 3, Customs Administration – 3, Tax Administration – 2 and to the Ministry of Agriculture and Rural Development – 1. Relevant services guarantee the confidentiality of the entire process. In the mentioned 120 reports, 75 persons did not require secrecy, while 35 wanted to remain anonymous.

national regulation regarding the protection of whistleblowers, the lack of compliance of national legislation with international regulations, as well as in the fear of Montenegrin citizens to report acts of corruption.

Montenegro needs to further advance and improve the implementation of legislation, in order to ensure to the greatest possible extent, in accordance with GRECO recommendations, the provision of information about crimes of corruption and other illegal and improper activities by government officials and whistleblowers, as well as to ensure their protection.

3.3.3 Conclusions and recommendations

In Montenegro, corruption can be reported to a number of institutions, including: the Directorate for Anti-Corruption Initiative[80] and the Police Department (via telephone, fax, mail, email, web-site or directly at the premises of these institutions), while other institutions have open telephone lines, through which citizens can report corruption cases. Among these are: the Ministry of Health, Ministry of Education and Sports, the Judicial Council, the Supreme Public Prosecutor's Office, Customs Administration, Tax Administration, the Games of Chance Administration, Public Procurement Directorate, Investment and Development Fund of Montenegro and the National Commission for the implementation of the Strategy for the fight against corruption and organized crime.

Systematic protection of whistleblowers has not been established in Montenegro, given the fact that a comprehensive law regulating this area has not been adopted. Although the Directorate for Anti-Corruption Initiative and other institutions in Montenegro have conducted, over the past two years, several anti-corruption campaigns with the aim of encouraging citizens to participate in the fight against corruption, introducing them with the ways in which they can report corruption to authorities, Montenegrin citizens are very reluctant to notify the competent institutions on acts of corruption of which they are aware of. The reason to such state of affairs can be found in the vague definition of national regulation regarding the protection of whistleblowers as well as in the lack of compliance of national legislation with international regulations. In this regard:

1. It is necessary to adopt a comprehensive law on the protection of whistleblowers, in order to facilitate protection of such persons, define clear procedures for reporting corruption and its ensure further processing to other relevant institutions, as well as prescribe detailed measures of protection and sanctions in cases of restriction of rights or punishment of such persons.
2. The protection of whistleblowers, regulated by the existing legislation, should be expanded and strengthened. Specifically, the Labor Law and the Law on Civil Servants and State Employees should regulate more closely the manners and mechanisms of the protection of such persons, especially in domains of identity protection and harassment in the workplace.

80 The Directorate for Anti-Corruption Initiative does not have executive jurisdictions, but its employees are trained to receive reports on corruption and further process them to competent bodies. In accordance with the offical data, during 2011, of a total of 132 reports, 120 were forwarded to other competent bodies: Police Department – 52, State Prosecutors Office – 17, Judicial Council – 10, Ministry of Health – 8, Ministry of Labor and Social Care – 7, Market Inspection – 6, municipalities – 6, Real Estate Agency – 3, Customs Administration – 3, Tax Administration – 2 and to the Ministry of Agriculture and Rural Development – 1. Relevant services guarantee the confidentiality of the entire process. In the mentioned 120 reports, 75 persons did not require secrecy, while 35 wanted to remain anonymous.

3. When defining the rules and mechanisms for the protection of witnesses within the current legal regulation of Montenegro and ensuring its implementation, it is important to consider the following European and international standards related to the establishment of clear rules, instruments of ethical standards and conditions under which individuals are given the opportunity to report acts of corruption:
   - Reporting of acts of corruption needs to be conducted in good faith and in the public interest;
   - The procedures of reporting, investigating and proving need to be clearly and precisely defined, thereat guaranteeing the conduction of legal acts in the aim of eliminating harmful effects of corruption;
   - Discrimination on any basis in these procedures must be prohibited;
   - The competent authorities must do their utmost in order to stimulate reporting of corruption and thus strengthen the order in society.
4. Following the establishment of an adequate legal framework, concerning the protection of whistleblowers, it is necessary to ensure its smooth and comprehensive implementation.
5. It is essential for the competent authorities to stimulate to a greater extent the reporting of corruption, especially when bearing in mind that the existing legislation and practice does not sufficiently stimulate the reporting of acts of corruption in both the public and private sectors. Sanctions against competent managers, in institutions where whistleblowers are employed, need to be implemented in cases of intimidation, restriction or punishment of such persons.

3.4 Free Access to Information

Access to information is an essential part of civilian oversight of governance. In Montenegro, the Law on Free Access to Information is in force since 2005 and is primarily used by civil society organizations and the media as an important tool for research and control of the implementation of laws and policies. Some of the most common objections, emphasized by the European Commission, are related to the lack of appellate body for the implementation of this law, as well as the lack of harmonization and balance between the Law on Free Access to Information and the Law on Personal Data Protection. [81]

3.4.1 Legal framework

The Law on Free Access to Information, adopted in 2005, determined the definition of authority, prescribed the manner and procedure of the access to information as well as its restriction. Further, the law established the supervisory authority for the implementation of this law, the then ministry in charge of the media, currently the Ministry of Culture.

The adoption of the new Law on Free Access to Information is still in procedure. The draft law provides recommendations in a more detailed manner in comparison to the previous law, and treats a number of potential situations. A significant number of new solutions have been introduced, including the extension of the institutional response to the request for

81 Montenegro 2011 Progress Report, the European Commission, p. 61.

free access to information; introduction of access to electronic databases; the number of restrictions on access to information has been increased considerably, while the amounts of misdemeanor sanctions for violations of this law have been specified.

A key innovation of the draft law is the transfer of jurisdiction of control over the implementation of this law, from the Ministry of Culture to the Data Protection Agency.

As previously mentioned, the control over the implementation of this law is under the jurisdiction of the Ministry of Culture, while the Administrative Court as a body of first instance of appeal, demonstrated remarkable efficiency in regard to this area. On the contrary, except for the adoption of guidelines for access to information, the Ministry of Culture did not demonstrate the implementation of any significant activities in this area.

The anticipated transfer of jurisdictions should contribute to a more adequate implementation of the law and provide a more systematic approach in the fulfillment of standards in this area.

It should be noted, however, that the draft law contains some ambiguous solutions:

- A public authority may refuse access to information if it determines that such action is in line with the broader public interest. It is unclear based on what criteria such decisions are made, and such situation can contribute to the arbitrariness in decision making of authorities.
- The appeal is possible in the event of a negative response of authorities; however, it is unclear what happens when the authority fails to respond to the request entirely, which is most often the case in Montenegro.
- Access to information may be restricted in order to protect security, defense, monetary and foreign policies of Montenegro. While the defense and security are already covered by the Law on Confidentiality of Data, thereby rendering this provision superfluous, the protection of economic and monetary interests of Montenegro is not prescribed in a clear manner, which can lead to abuses by authorities.

Although the new law on free access to information represents a significant improvement in comparison to the previous version of the law, it fails to regulate numerous issues that should be addressed if this law is to be harmonized with international standards and practices and provide comprehensive access to information.

3.4.2 Implementation

Implementation of the Law on Free Access to Information has been improved significantly in the past year. However, the maintenance of the register on the implementation of the law is foreseen only by the draft version of the new law. Therefore, there are no reliable data on the implementation of this law, except of internal CSOs statistics, which show that the percentage of the answered requests has increased.[82]

However, in the early years of law enforcement in this area, numerous problems arose. The trial appeals ended with the decision of the Administrative Court. Although the court in many cases endorsed decisions beneficial to information claimant, the authorities often refused to implement court's decisions and provide access to the requested information.

82 Internal statistics of the CEMI, on answered requests during 2009, 2010 and 2011.

The deadlines stipulated by the law are rarely respected. The definition of the authority is too narrow, because it does not encompass some important categories of persons dealing with matters of public interest. This is especially true for institutions that provide public services, such as the University of Montenegro and its organizational units, as well as institutions that work with public goods.

A proactive approach to information sharing is still not entirely achieved, while the documents that have been declassified have not yet been published.

3.4.3 Conclusions and recommendations

Since the Law on Free Access to Information entered into force, it became obvious that the political will is a key element for the effectiveness of its implementation. Since the establishment of priorities by the Government and the obtainment of the candidate status, the achievement of the principle of free access to information has been significantly improved.

However, there are problems in the transparency of certain processes, for which it is very difficult to obtain information from responsible institutions. Most often, we are talking about processes of public procurement, concessions, extra-budgetary revenues of institutions and the like. A number of institutions continue with the practice of denying information to the requests for free access to information, despite the decisions endorsed by the Administrative Court.

The Draft version of the new Law on Free Access to Information will improve this area. However, it is necessary to clarity some concerns prior to its adoption.

1. The criteria, based on which decisions are made for the approval or denial of information, under the pretext of the public interest, need to be established in a clear and a comprehensive manner.
2. It is necessary to determine sanctions for bodies that do not provide responses to requests for free access to information.
3. It is necessary to determine the precise exceptions to the exemption from the principle of transparency. We believe that the criterion of "foreign and economic policy" is not sufficiently clear and leaves room for arbitrary decisions of the authorities.

Used abbreviations

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

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EUR BLOK

Jačanje kapaciteta civilnog društva za doprinos EU integracijama i procesu pristupanja

Strengthening the civil society capacity to contribute to EU integration and the accession process

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