

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE  
PREVENTION OF CORRUPTION  
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED  
BY Montenegro  
Article 8, Paragraph 5  
Asset and Interest Disclosure Systems  
Montenegro (ninth session)**

receive information on the newly appointed or elected public officials in real time, other institutions need to be at the similar level of IT developments and interconnected with APC's IT system (e.g. The Official Gazette of Montenegro);

b) Asset and interest disclosure system

**The goal** of the provisions of the LPC regulating the area of declaration and verification of assets and incomes of public officials in Montenegro is to provide for **transparency**, by publishing all the Reports on assets and income on Agency's website, to **prevent and sanction conflict of interests** in the exercise of public functions, as well as to **monitor wealth variations of public officials**.

Public officials in Montenegro declare their assets, incomes, and other interests, as well as assets, incomes, and interests of members of their households, **via a single form - the Report on assets and income of public official (Articles 23 -24 LPC)**. Article 23 paragraph 1 of LPC prescribes that "public official shall, within 30 days from assuming the function, submit to the Agency the Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household, according to the state of play on the day of election, appointment, or assignment".

The interests declared through this report form, among other, include: memberships and income in working bodies, other public functions in managing and supervisory bodies in exceptional cases, memberships in associations, foundations, sports, science and education and humanitarian organizations. Interests also include income derived from copyright, patent and similar intellectual and industrial property rights (Articles 8-15 LPC).

The personal scope of APC's disclosure system

The obligation to report assets and income apply to all categories of public officials, including: elected officials, appointed officials, senior public officials, specific categories of public officials/civil servants, and persons related to the above. Article 3 (cited above) of the LPC provides for the definition of public official to which the obligation to submit reports on assets and income applies. According to the definition, the disclosure system in Montenegro is **consolidated for all branches of government, legislative, executive and judicial**. Furthermore, since the LPC entered into force (1<sup>st</sup> January 2016), the obligation to submit Report on income and assets, as well as the verification of the reported data, also refers to the specific group of civil servants, the ones from the Inspection Directorate, Customs Administration, Ministry of Interior, Police Administration, and Tax Administration.

In 2017, the number of public officials in Montenegro, who were obliged to declare their assets, income and interests **was 4.450**. In the same year, **1.208 civil servants** also had this obligation. However, the number of public officials may vary from year to year. Namely,

during a year, public officials can be newly elected, or appointed, and also may resign or be removed from public functions they hold.

### Periodicity

The LPC provides for the periodicity of such declarations in the provision cited below:

#### **Article 23**

The public official shall, within 30 days from assuming the function, submit to the Agency a Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household (hereinafter: the Report), according to the state of play on the day of election, appointment, or assignment.

The public official shall provide accurate and complete information in the Report.

During the exercise of public function, the public official shall submit the Report:

- Once a year, by the end of March of the current year for the previous year;
- In the case of changes in the Report that relate to an increase in assets of more than € 5,000, within 30 days from the date of change;
- At the request of the Agency in the case of initiation of proceedings referred to in Article 31, paragraph 1 and 2 of this Law, within 30 days from the receipt of the request, or initiation of proceedings ex officio.

In the case of termination of public function, a public official shall, notify the Agency thereon and submit the Report within 30 days from termination of the function.

Public official whose office has terminated shall submit annual Report to the Agency, according to the state of play on the day of submitting the Report, for the period of two years following the termination of office.

When moving to another public function, as well as in the case of election, appointment, or assignment to another public function, the public official shall, pursuant to Article 12, paragraph 2 and 4 of this Law, notify the Agency thereon within 30 days from the date of change.

The obligation to submit Report and the procedure of verification of the data from the Report shall also apply to civil servants who are obliged to submit the Report in accordance with the special law.

### Transparency

According to the Law (Articles 24, 25, 27) all the Reports on income and assets are being sent **both electronically and in paper** (cumulative condition) and are being **published on the Agency's website**, excluding the data referring to the: personal information referred to in Article 24, paragraph 1, item 1 of the LPC, except names and surnames, address of immovable assets, children of public officials under the age of 16 and alimony and other income or payments on the basis of social and child welfare.

### Oversight

The APC carries out verification of data from the reports on income and assets of public officials by comparing the reported data with the data on income and assets of public official collected from other authorities and legal entities keeping such data (Article 30 LPC). In its data verification procedure, the APC has direct access (in real time) to the databases of the **Tax Administration** (taxable income), **Commission for Securities** (shares, vouchers, bonds and other securities), **Ministry of Interior** (registered movable assets, vehicles and weapons), **Real Estate Administration** (immovable assets), and **Central Register of Business Entities** (ownership shares in business entities). The APC also sends requests to the business banks in Montenegro, for obtaining data on cash inflows and outflows, as well as credit and foreign currency debts for a specific period of time, **based on the previously provided permission by the public official to the APC to access the data on bank accounts and accounts of other financial institutions (In 2017, 75% of public officials gave consent for the access to their bank accounts)**. The APC's contemporary information system enables direct access to the above databases and data verification in real time. Access to databases is carried out in accordance with the signed agreements on cooperation between the APC and the above listed authorities. The consent is referring to the period in which the obligations of the public official are valid in accordance with the Law.

#### Types of verification

**Administrative control** is a sort of a technical check in which the identity of a public official has been verified. It consists of comparing the electronic and signed version of the Report on assets and property, and, if the versions are identical, the data from the reports is published on the APC's website. This kind of checks applies to all Reports submitted to the Agency (>5000).

**Verification of completeness and accuracy of data (Plausibility check)** in the submitted reports is undertaken according to the order established in the Annual plan for control of the Reports by comparing the data stated in the Report of the public officials with the data of the authorities whose databases the Agency has access to through the Information System of the Agency. If irregularities were found, the authorized officer of the Agency notifies the supervisor of the irregularities and submits the request for initiation of misdemeanour proceedings, in accordance with the provisions of the Law on Misdemeanour.

**Full verification** includes processing, analysis, control and verification of all data on assets and income of public officials and members of shared households, as well as data **on the manner in which such property was acquired and the sources of funds** used for acquisition of movable and immovable property.

A precondition for the initiation of the procedure shall be the existence of indications based on facts that the person to whom the data relate has submitted inaccurate, incomplete data or that there **has been a disproportionate increase in property**.

If, in the verification process, the APC determines that assets and income of a public official and persons related to the public official exceed the actual income, at the request of the Agency, the public official will be requested to provide, within 30 days, detailed information **on the grounds of acquiring such assets and income**. If the public official fails to comply with the APC's request, according to the LPC, the public official may be imposed a fine in the range of EUR 500,00 to EUR 2,000.00.

Furthermore, according to the Article 37 of the LPC, the Agency may **assign the proceeding to the competent public prosecutor's office**, in case of reasonable suspicion that a criminal offence has been committed that is prosecuted ex officio.

#### Annual Verification Plan

The annual plan of checks and verifications is carried out in accordance with the **Methodology for risk assessment**, and adopted by the APC once a year, by the end of the current year for the following year, and published on the APC's website. The annual plan contains the following methodology, based on which the verification is carried out:

1. All public officials who belong to a particular category (judges, prosecutors, members of the Government and MPs);
2. A particular number of random samples of public officials by groups, as follows:
  - A particular percentage of public officials at the local level, every tenth public official following the alphabetical order of surnames in the list of local public officials;
  - A particular percentage of public officials at the state level, every tenth public official following the alphabetical order of surnames in the list of state public officials.

Currently, **the revised Methodology for risk assessment has been developed**, with the assistance of the expert of Council of Europe, provided through the *Action against Economic Crime in Montenegro* within EU's and CoE's Horizontal facility for Western Balkans and Turkey, which further **elaborates criteria with risk assessment** for selection of officials to be checked and verified under each type of verification, as well as, provides for the extended methods of verification.

### Track record

The **compliance rate** for the submission of Reports on income and assets is quite high, bearing in mind that in 2017 **96% of all registered public officials submitted their asset and income declarations in due time**. This indicates that public officials are more responsible towards their obligations stipulated by law, which is a result of imposed sanctions that contributed to the greater compliance with the legal obligations in this field, as well as educational activities and proactive role of the Agency in the previous (2016) year.

In 2017 the Agency submitted **312 request for initiation of the misdemeanour proceedings** for the violation of the LPC related to the non-submission of asset and income declarations (272 in 2016), for which fines were imposed in amount of 42,000€ (In 2016: 38,270€).

Note: The LPC doesn't allow the possibility of checks and verifications of assets and income declarations of public officials before its entering into force - 1<sup>st</sup> January 2016, which means it cannot be applied retroactively, in accordance with the Constitution of Montenegro.

### Challenges

1) The challenge remains the same as for the previous topic, which is the possibility of the Agency to have evidence of the number of the overall public officials at the national and local level who are appointed, elected to the public function **in real time**. The Agency keeps and updates its own Register of public officials, within its own information system, however, in order to receive information on the newly appointed, elected public officials as well as the ones that resign in real time, other institutions need to be at the similar level of IT developments and interconnected with APC's IT system (e.g. The Official Gazette of Montenegro);

2) There is an initiative of the Regional Anticorruption Initiative to endorse among its member countries (Montenegro, Serbia, Macedonia, Bosnia and Herzegovina, Moldova, Romania, Croatia, Albania and Bulgaria) the adoption of the **International Treaty on Asset Disclosure and Conflict of Interest**, which would allow for the administrative exchange of information on asset declarations and conflict of interest of public officials among these countries. The process is still in the initial phase.

#### a) b) Technical assistance

In order to increase the efficiency in the implementation of the respective provisions and compliance rate of the subjects to the law, further capacity building is needed in terms of trainings and team-building activities for the staff of the Agency, as well as trainings for the subjects to the Law.

Additional expert assistance is required for improving the research and analytical capabilities of the Agency as it possesses a wide range of information which after being processed and analysed could produce qualitative results which could ultimately direct the APC's and country's strategic planning in this field.