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New information on implementation of chapter II of UNCAC
in terms of competences of the Agency for Prevention of Corruption of Montenegro

Article 5 UNCAC – Preventive anti-corruption policies and practices

In January 2016, with the commencement of work of the newly established Agency for Prevention of Corruption (hereinafter: the Agency), the implementation of the set of new and revised anticorruption laws has began, for which implementation the Agency is charged with. These laws are: **Law on Prevention of Corruption, Law on Financing of Political Parties and Electoral Campaigns and Law on Lobbying.**

The Law on Prevention of Corruption regulates areas concerning the prevention of conflict of public and private interest, protection of whistleblowers, implementation of integrity plans, lobbying and other issues of importance to the prevention of corruption. This Law also established the Agency.

Prevention of Conflict of Interest in the Exercise of Public Functions

According to the Law on Prevention of Corruption, **public officials shall perform their functions in such a manner that the public interest is not subordinated to private, and without causing a conflict of interest in the exercise of public function.** The conflict of interest in the exercise of public function shall exist when a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function. The Agency establishes the existence of a conflict of interest and implements measures for prevention of conflict of interest. **Opinions on the existence of conflicts of interest** in the exercise of public function and restrictions in the exercise of public functions and the decisions on the violation of the provisions of this Law relating to the prevention of conflicts of interest in the exercise of public functions, restrictions in the exercise of public functions, gifts, sponsorships and donations and reports on income and property by public officials, which are given or adopted by the Agency in accordance with this Law, are binding for public officials. It is deemed that a public official has violated the provisions of this Law when he or she fails to act in accordance with the Opinion of the Agency and with the obligations laid down in this Law or when he or she acts in a manner that violates the prohibitions and rules prescribed by this Law and other regulations regulating the conflict of interest in areas that are regulated by these regulations.

If a public official, in the authority in which he or she exercises public function, participates in the discussion and decision-making in a matter in which he or she or a person related to the public official has a private interest, then the public official must inform other participants in the discussion and decision-making thereof, by making a **statement on the existence of private**

interest, prior to participating in the discussion, and no later than before the beginning of the decision-making.

The authority in which the public official exercises public function must include such statement made by the public official in the minutes and request the opinion of the Agency on that matter. The public official shall not participate in the discussion and decision-making until the Agency adopts an opinion on the existence of conflict of interest. If the Agency establishes that the existence of conflict of interest and informs the public official and the authority about it, the public official may not participate in the discussion and decision-making, and the authority is obliged to adopt a decision of his or her exclusion.

The Law on Prevention of Corruption further provides for **restrictions in the exercise of public function, discharge of other public affairs**, transfer of management rights in companies performance of managerial and other functions in companies, exercise of public functions in public companies and public institutions, obligation to resign, and contracts on services and business cooperation.

This Law also prescribes restrictions upon termination of public function (see under article 12 UNCAC below), as well as prohibition and restrictions concerning receiving gifts, sponsorships and donations to authorities, disposal of gifts, records of gifts, and other.

Reporting on income and assets of public official

A 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 situation on the day of his or her election, appointment, or assignment.

A public official shall provide the accurate and complete information in the Report. During **the exercise of a public function**, a public official shall submit the Report: - once a year, by the end of March of the current year for the previous year; - in case of changes from 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 case of initiation of proceedings prescribed by this Law, within 30 days from the day he or she received the request, or initiation of proceedings *ex officio*. **Upon termination of public function**, a public official shall, within 30 days from termination of the function, notify the Agency thereof and submit the Report.

A public official whose function has terminated shall annually, over the following two years after termination of the function, submit the Reports to the Agency, according to the situation on the day of the Report submission. 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 notify the Agency within 30 days from the day such change took place. This obligation to submit Report and the procedure of verification of the data from the Report **also applies to civil servants** who are obliged to submit the Report in accordance with a special law.

The Agency keeps the **Register of Income and Assets of Public Officials**, which is a part of a unique information system of the Agency. The data from the Register shall be deleted *ex officio* 10 years after the termination of the function of a public official. The Data from the Register shall be **published on the website of the Agency**, except for the information relating to clearly defined personal data, addresses, minor children, etc.

The Law and related by-laws establish in detail the procedure for providing opinions at the request of a public official, in cases of suspected conflict of interest, concerning restrictions in the exercise of public functions, rules of confidentiality, and more.

Acting upon reports on endangering the public interest indicating corruption, and protection of persons who submit such reports (whistleblowers)

Part III of the Law on Prevention of Corruption provides a comprehensive framework for the protection of whistleblowers (articles 44-70). Those provisions, inter alia, stipulate the following, in detail: filing corruption reports by a whistleblower to a public authority, company, other legal person or entrepreneur (hereinafter: authority/company); the contents of the report; data confidentiality; actions or proceedings of the authority/company: designation of persons for receiving and acting upon reports in those authorities/companies: notifications on measures taken; reporting corruption to the Agency for the Prevention of Corruption; acting of the Agency upon the report and ex officio; opinion and recommendations of the Agency; protection of whistleblowers' identity and rights; filing criminal charges and assignment of proceedings to competent authorities for protection of whistleblowers; obligations of the Agency with respect to the whistleblower's right to protection; the burden of proof; third parties involvement; assistance by the Agency; termination of damage, and award for whistleblowers.

A whistleblower, for the purpose of this Law, is the natural or legal person who submitted a report on threats to the public interest, which indicate existence of corruption. The whistleblower, who has reasonable grounds to believe that there is a threat to the public interest that indicates the existence of corruption, may submit a report in accordance with this Law. For the purpose of this Law, a threat to the public interest means a violation of regulations, ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or a legal or natural person, as well as an action that is aimed at preventing such a violation from being discovered.

Strengthening integrity in the public sector

According to the Law on Prevention of Corruption, integrity means a legitimate, independent, impartial, accountable and transparent performance of duties based on which the public officials and other employees of an authority protect their reputation and the reputation of the authority, provide citizens' trust in the performance of public functions and the operation of the authority and eliminate doubts about the possibility of emergence and development of corruption.

The Law stipulates that authority, based on assessments of the susceptibility of certain jobs and work processes to the emergence and development of corruption and other forms of biased conduct of public officials and employees of an authority, shall adopt an Integrity Plan, containing measures to prevent and eliminate opportunities for the emergence and development of corruption, and provide for citizens' trust in their work.

Integrity Plan is adopted in accordance with the rules for development and implementation of Integrity Plan, adopted by the Agency. An authority shall submit its Integrity Plan to the Agency within 15 days from its adoption, and publish the document on its website or in other appropriate manner. An authority shall submit the Report on the implementation of Integrity Plan to the Agency by 15 April of the current year for the previous year. Based on the submitted Integrity Plans and Reports on their implementation, the Agency may give the authorities recommendations for improving their Integrity Plans.

The Agency monitors the adoption and implementation of Integrity Plans, makes recommendations for their improvement and assesses the efficiency and effectiveness of Integrity Plans in accordance with the provisions of the Law on Prevention of Corruption.

The Law on Prevention of Corruption establishes fines for violations of its provisions for legal persons and responsible persons in legal persons or state authorities, state administration bodies, local government and local self-government bodies, as well as fines for violations for public official and persons whose public functions have terminated.

The Law on Financing of Political Entities and Election Campaigns regulates the manner of obtaining and providing funds for regular work and election campaigns of political entities, restrictions and limitations concerning the use of state property, funds and public authorities in the course of the campaign, and the control, supervision and audit of financing and financial operations of political entities, in order to provide for the legality and transparency of their operations.

Political entities, in terms of this Law, are: political parties, coalitions, groups of voters, and candidates for the President of Montenegro. According to the Law, the control over the financing of political parties and election campaigns is exercised by the Agency for Prevention of Corruption. The Law provides for clear definitions of the terms of public and private funds, cash and in-kind contributions, voluntary work, different types of income of political entities, and other.

The Law establishes in detail prohibitions and restrictions concerning the funding of political entities, prohibition of exerting pressure, prohibition of the use of state resources and distribution of promotional materials, restrictions concerning the use of state resources, transparency of social benefits, transparency of budget expenditure, prohibition of debt write-off, use of official vehicles, employment and engagement of employees.

The Law also regulates the submission of financial reports and their publishing on the website of the Agency. A political party is obliged to keep accounting records of income, assets and expenses as per their origin (especially for funds from public and private sources), the amount and structure of income, assets and expenses, in accordance with regulations. A political party submits balance sheet and annual consolidated financial statement to the administrative authority keeping a unique register of taxpayers, the State Audit Institution and the Agency, no later than 31 March of the current year for previous year. The Agency publishes those documents on its website, within seven days following that of their receipt.

A political party is obliged to prepare the report on the origin, amount and structure of collected and spent funds from public and private sources for the election campaign, and submit it to the Agency, with accompanying documentation, within 30 days from the election day, and the Agency is obliged to publish the report on its website, within seven days following that of its receipt. Furthermore, during election campaign, a political entity is obliged to submit reports to the Agency on 15-day basis on the contributions made by natural and legal entities, which the Agency publishes on its website within seven days following that of their receipt.

The Agency exercises supervision over the implementation of this Law, within competence under this Law. The State Audit Institution audits annual consolidated financial statements of the political entities, of which the total income exceeds EUR 10,000.00.

The procedure for establishing potential violations of this Law and imposing measures in accordance with this Law, is initiated by the Agency ex officio, based on own knowledge or report

made by a natural or legal person. The Agency has prescribed manner and procedure for reporting and resolving complaints filed during the election campaign for suspected violations of this Law.

The Law also contains penal provisions, and provides for fines from EUR 5,000.00 to 20,000.00 for violations by a legal person, and from EUR 500.00 to 2,000.00 for violations by a responsible person in the legal entity.

The Law on Lobbying regulates the manner and conditions for conducting lobbying activities, the rules on lobbying and other issues of importance for lobbying. Pursuant to the Law, lobbying is an activity in which influence is made on the bodies of legislative and executive power at state and/or local level, state administration bodies, independent bodies, regulatory bodies, public institutions, public enterprises and other legal entities exercising public powers, and/or activity of public interest or have the majority of state ownership, in the process of adopting the regulations and other general acts, within the jurisdiction of those authorities, in order to achieve the interests of a lobbying client, in accordance with the law.

Lobbying activities may be conducted by a natural entity owning the authorization for conducting the lobbying activities, issued in accordance with this Law, and a company and non-governmental organization that meets the criteria prescribed by this Law (a legal entity conducting the lobbying activities)

The Law primarily promotes the principle of publicity and protection of public interest, the principle of integrity and prevention of conflict of interest, as the basic principles of action.

In accordance with the Law, the Agency keeps the Register of lobbyists, records all changes concerning the status of a lobbyist and legal entities conducting lobbying activities, issues authorization for conducting lobbying activities, adopts decision on entering of a legal entity in the Register of lobbyists, decisions on removal from the Register, etc. The Register of lobbyists is public and published on the Agency's website, and contains data on lobbyists, legal entities carrying out lobbying activities and lobbying clients. This way, full transparency is provided, so that the public is informed of lobbying activities, but also that potential lobbying clients have necessary information when choosing lobbyists.

One of the mandatory requirements for carrying out lobbying activities for natural entities is obtaining the certificate for lobbying activities, issued by the Agency for Prevention of Corruption.

Law on Lobbying specifically emphasizes transparency in the lobbying process, by requiring a lobbied person to file an official note on lobbying contact to the Agency within five days from the date he or she was contacted by a lobbyist. In addition, an authority is also obliged to publish information on lobbying contact (lobbied person, lobbyist, and lobbying matter) on its website, thus increasing the transparency of the process itself. Lobbied person must also notify the Agency and provide information on any natural and legal persons engaged in illegal lobbying. Lobbyists or legal person carrying out lobbying activities also submit to the Agency written activity reports, no later than 31 January of the current year for previous year, which contain detailed information about lobbying activities.

The Law also contains penal provisions prescribing fines from EUR 500.00 to 20,000.00.

Cooperation

Montenegro is a signatory to a number of bilateral, regional and international agreements against corruption, and a member of relevant international and regional organizations, with which it cooperates on promotion and development of measures under this article of the Convention, but also in the evaluation of their effectiveness in practice (GRECO, UNCAC, OECD ACN, EPAC, RAI, SEECP).

In June 2015, on its plenary session, GRECO adopted **Evaluation Report for Montenegro under the IV Evaluation Round**, which deals with the prevention of corruption in relation to the MPs, judges and public prosecutors. The Report contains a detailed analysis of the subject areas, and 11 recommendations for improvement of practice. Montenegro will submit report on the implementation of those recommendations by 31 December 2016.

In addition to participating in international activities organized by the aforementioned UNODC, OECD ACN, EPAC, RAI, and other, the Agency cooperates with similar institutions in the region and EU, and under smaller and larger projects, developed and implemented with partners and donors. One of such projects is the IPA 2014 Twinning project "Support to the implementation of integrity measures", which will be launched in autumn 2016. The project will last 18 months, and is intended to support the public sector in the implementation of new regulations relating to the prevention of corruption, with special focus on integrity measures, lobbying, protection of whistleblowers and cooperation with other institutions, in terms of restoring public trust in state institutions in the fight against corruption. IPA 2014 is in line with the activities of national authorities on the effective implementation of the Law on Prevention of Corruption. This will require an additional upgrade of the Agency's IT system, in order to provide better and faster data processing (direct access to databases of relevant institutions, etc.). Also, it is important to improve internal capacities of the Agency and support internal management processes, in order to establish a smooth work flow, i.e. vertical and horizontal management, especially in the area of exchange of information between organizational units. Lastly, but not least important, professional trainings for staff will be crucial for proper implementation of the provisions of the Law. This will require exchange of knowledge and experience with various national and international organizations, participation in various seminars and workshops, conferences, study visits, technical assistance and other forms of strengthening administrative capacity.

Article 6 - Preventive anti-corruption body or bodies

When the Law on Prevention of Corruption entered into force on January 1, 2016, the Agency for Prevention of Corruption became operational, and the Commission for Prevention of Conflicts of Interest and Directorate for Anti-Corruption Initiative ceased to operate as separate bodies. The Agency assumed their tasks, employees, as well as the rights, obligations, cases, equipment, means of work, documentation, registers and records of those administration bodies. Such change in the institutional anti-corruption framework, i.e. the streamlining of the activities, has already been praised as a good example of improvement of coordination in the fight against corruption.

The Agency is an independent state institution, of which the work is governed by the above mentioned three laws: the Law on Prevention of Corruption, the Law on Financing Political Parties and the Law on Lobbying.

More specifically, the competences of the Agency include:

- determining the existence of conflicts of interest in the exercise of public functions and implementing measures for its prevention;

- controlling implementation restrictions in the exercise of public functions;
- controlling receipts of gifts, sponsorships and donations;
- verifying data from the reports on income and assets of public officials;
- giving opinions on the existence of threats to the public interest, which indicate the existence of corruption, and recommendations to prevent threats to the public interest, and the protection of whistleblowers;
- controlling financing of political entities and election campaigns,
- monitoring adoption and implementation of integrity plans, making recommendations for their improvement and evaluating the efficiency and effectiveness of integrity plans in accordance with the Law;
- initiating amendments to laws, regulations and by-laws, in order to eliminate potential corruption risks or harmonise them with international standards in the field of anti-corruption;
- giving opinions on draft laws and other regulations and by-laws to comply with international standards in the field of anti-corruption;
- initiating and implementing procedures for determining violations of the laws stipulating the competences of the Agency;
- cooperating with competent authorities, higher education institutions and scientific organizations and other entities, in order to implement the activities in the field of prevention of corruption;
- keeping records and registers in accordance with the law;
- issuing misdemeanour orders and initiating misdemeanour and other proceedings;
- educational, research and other preventive anti-corruption activities;
- regional and international cooperation in prevention of corruption;
- supervising the implementation of regulations governing lobbying.

By the end of March 2016, the Agency developed and adopted all necessary by-laws necessary for implementation of its competences, and prepared draft of its internal procedures.

The work of the Agency is organized in: Division for prevention of conflicts of interest and control of financing of political entities and election campaigns, Division for prevention of corruption, integrity, lobbying and implementation of international standards, Department of International Cooperation and Standards, Department of Information Technology and the Office for General Affairs and Finance. As concerns human resources, the Rules on internal organization and job descriptions, the Agency will have 55 employees. 23 positions have been filled by the employees of the former Commission and Directorate, by the end of March 2016, another 17 positions have been filled, and 10 more advertised.

The Agency moved to new premises on February 1, 2016. The information system of the Agency is being constantly improved. The system became operational in March 2016; it is networked with databases of the Ministry of Interior, Customs Administration, Commission for Securities, Real Estate Administration and Tax Administration. The modules for electronic submission of Forms on the assets and income of public officials are in operation. The modules for electronic case management are also in operation, which allows for faster and more efficient work of the Agency's staff. The Agency's information system will also enable electronic submission of data on compliance with the restrictions on the exercise of public functions and control of received gifts, donations and sponsorships, and will also contain the modules for reporting and controlling financing of political entities and election campaigns, and Integrity plans. The Agency works toward developing a unique website in Montenegro, which will provide an automatic publication of data from the internal information system, thus, making the Agency work more transparent.

The Agency's budget for 2016 amounts to EUR 1,539,107.89, i.e. not less than 0.2% of the current budget of Montenegro (article 95 of the Law). The Agency's employees have a monthly supplement to the salary in the amount of 30%, and the Agency is independent in disposing of its funds.

The Council of the Agency is, besides the Director, the body of the Agency. It has five members, elected by the competent committee of the Parliament. According the Law on Prevention of Corruption, the Council announces competition for the selection of director of the Agency, appoints and dismisses the director of the Agency; on the proposal of the director, it adopts: the Statute and Act on internal organization and job descriptions of the Agency, annual work plan of the Agency, proposal for the budget and statement of accounts, rules governing the work of the Agency and the rules for the preparation and implementation of Integrity Plans, Rules of Procedure of the Council; Annual activity report of the Agency; verifies data from reports on income and assets of the director of the Agency; and performs other duties prescribed by the Statute of the Agency. The Council decides on its sessions, held at least twice a month. Since its establishment on 25 June 2015 to the end of April 2016, the Council has held 21 sessions.

Article 7 - Public sector

With reference to paragraph 3 of this article, see information on the Law on financing of political entities and election campaigns, as well as related by-laws provided under article 5 of UNCAC above.

With reference to paragraph 4 of this article, see information on the Law on Prevention of Corruption concerning prevention of conflict of interest, provided under article 5 of UNCAC above.

Article 8 - Codes of conduct for public officials

With reference to paragraph 4 of this article, see information on the Law on Prevention of Corruption concerning the reports and protection of whistleblowers, and related by-laws, provided under article 5 of UNCAC above.

With reference to paragraph 5 of this article, see information on the Law on Prevention of Corruption concerning the conflicts of interest of public officials, provided under article 5 of UNCAC above.

Article 10 - Public reporting

Agency for Prevention of Corruption acts in accordance with the Law on Free Access to Information in Montenegro, and continuously improves its information system, in order to ensure efficient and transparent work with both those obliged by the laws regulating Agency's competences, as well as the general public. The Agency also regularly updates and develops its website.

Article 12 - Private sector

With regards to paragraph 2, item e) of this UNCAC article, the Law on Prevention of Corruption, in the part concerning conflicts of interest of public officials, inter alia, prescribes:

“Restrictions upon Termination of Public Function

Article 15

For a period of two years following the termination of public function, a public official shall not:

- 1) Act, before the authority in which he/she exercised a public function, as a representative or attorney of a legal person, entrepreneur or international or other organization having or establishing a contractual or business relationship with this authority;
- 2) Establish a working relationship or business cooperation with the legal person, entrepreneur or international or other organization that, based on the decisions of the authority in which a public official has exercised function, acquires gain;
- 3) Represent a natural or legal person before the authority in which he/she exercised a public function in a case in which he participated, as a public official, in the decision-making process;
- 4) Perform management or audit activities in the legal person in which, at least one year prior to the termination of public function, his/her duties were related to supervisory or control activities;
- 5) Enter into a contract or other form of business cooperation with the authority in which he/she exercised a public function;
- 6) Use, for the purpose of obtaining a benefit for himself/herself or another person, or to harm another person, the knowledge and information acquired in the performance of public function, unless the knowledge and information are available to the public."

Article 13 - Participation of society

The measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption, are provided, among others, in the following regulations: **Law on State Administration, Decree on detailed manner and procedure for cooperation between state authorities and non-governmental organizations, Decree on the procedure and manner of conducting public discussion in the preparation of legislation, Law on Free access to information, Law on NGOs.**

In terms of measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention, see information in relation to article 5 UNCAC.

Finally, the Agency for Prevention of Corruption regularly carries out anti-corruption campaigns aimed at raising public awareness on corruption and promoting channels for reporting corruption for citizens. The Agency usually includes other state bodies and non-governmental organizations in the implementation of its campaigns.