



Conference of the State Parties to the United Nations Convention against Corruption: **Open-ended Intergovernmental Working Group on the Prevention of Corruption**

Thematic discussion on preventing and managing conflict of interest (art.7, para. 4, of UNCAC)

Vienna, 5-7 September 2018

International standards shaping the national strategic and legal framework of Montenegro

- ▶ UNODC-UNCAC
- ▶ GRECO - Civil and Criminal Law Convention against Corruption
- ▶ OECD - ACN
- ▶ EPAC
- ▶ RAI

LEGISLATIVE FRAMEWORK establishing and directing the work Agency for Prevention of Corruption

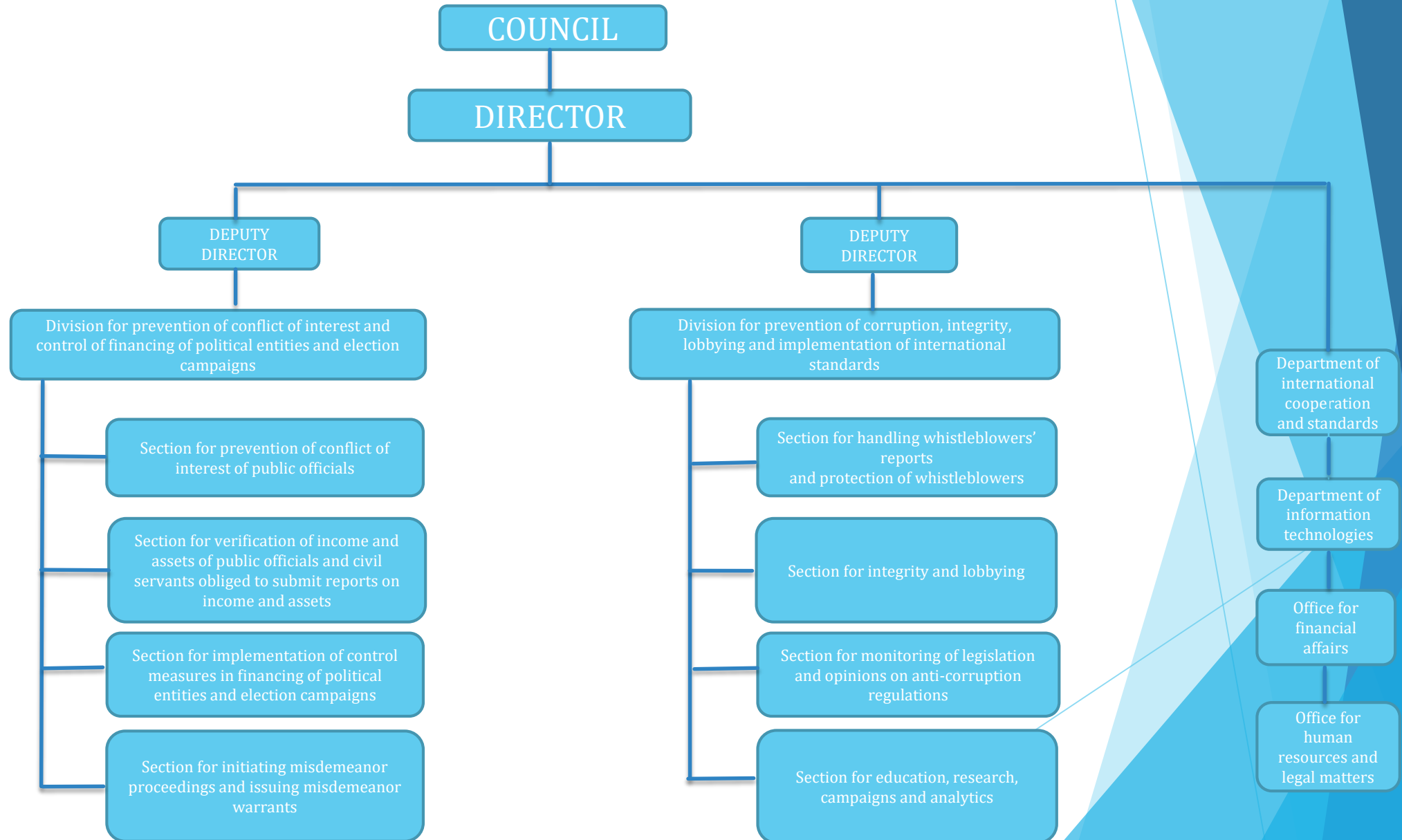
- ▶ LAW ON PREVENTION OF CORRUPTION (Official Gazette MNE no. 53/14)
- ▶ LAW ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS (Official Gazette MNE no. 52/14)
- ▶ LAW ON LOBBYING (Official Gazette MNE no. 52/14)
- ▶ More than 20 pieces of secondary legislation for full implementation of laws

ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK IN MONTENEGRO

- Agency for Prevention of Corruption was established on 1 January 2016, as an autonomous and independent body, established by the parliament of Montenegro, in accordance with the Law on prevention of corruption

ANTI-CORRUPTION BODIES IN MONTENEGRO	
PREVENTION	LAW ENFORCEMENT BODIES
Agency for Prevention of Corruption (APC)	Police Directorate
State Electoral Commission	
State Audit Institution	
The Institution of the Protector of Human Rights and Freedoms of Montenegro - Ombudsman	Special State Prosecutor's Office
Tax Administration	
Customs	
Public Procurement Directorate	
Anti-Money Laundering and Financing Terrorism Administration	Judiciary
Commission for the control of Public Procurement Procedures	

APC: ORGANIZATIONAL SCHEME 2017



Main Responsibilities of the Agency (Art. 78 of the Law)

- ▶ **prevention of conflict of public and private interest,**
- ▶ **restrictions in the exercise of public functions,**
- ▶ **verification of the reports on income and assets by public officials,**
- ▶ acting upon whistleblower applications and whistleblower protection,
- ▶ monitor the adoption and implementation of Integrity Plans,
- ▶ **take the initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption,**
- ▶ **issue misdemeanor reports and initiate misdemeanor and other proceedings,**
- ▶ conduct educational, research and other preventive anti-corruption activities,
- ▶ exercise regional and international cooperation in prevention of corruption,
- ▶ supervision over the implementation of regulations governing lobbying,
- ▶ implement measures of control of financing of political entities and election campaigns.

PREVENTIVE ANTI-CORRUPTION MEASURES AND INSTRUMENTS

Preventing and managing the conflict of Interest

- ▶ 1) Prevention of Conflict of Interest in the Exercise of Public Functions (Articles 7 and 8, LPC);
- ▶ 2) Restrictions in the exercise of public functions (Articles 9, 10, 11, 12, 13, 14 i 15, LPC);
- ▶ 3) Reports on Income and Assets by Public Officials (Articles 23, 24, 25, 26 i 27, LPC)

Definition of a public official and conflict of interest

- ▶ **Public officials** - Persons elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local government body, independent body, regulatory body, public institution, public company or other business or legal person exercising public authority, i.e. activities of a public interest or state-owned, as well as the person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the duration of the office and remuneration (Article 3 of LPC)
- ▶ **Conflict of interest** - The conflict of interest in the exercise of public function shall be deemed to 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 shall establish the existence of a conflict of interest and implement measures for the prevention of conflict of interest.
- ▶ **Opinions about the existence of a conflict 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 the present 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 assets by public officials, which are given or adopted by the Agency in accordance with the present Law, shall be binding for a public official** (Article 7 of LPC)

Novelties in the Law

- ▶ The obligation for public official to make a statement of the existence of conflict of interest (**ad hoc conflict of interest**)
- ▶ The obligation of the authorities to **request the Opinion of the APC** on the existence of conflict of interest, and prevent the execution of decisions rendered in conflict of interests, i.e. to nullify such decisions.
- ▶ A public official may be appointed or elected to a permanent or occasional working bodies established by an authority, and in that case not be considered to be performing two public functions, however, in this case, the novelty is that in one month a public official can obtain remuneration for membership in only one body or commission.
- ▶ A public official cannot make any income or other remuneration for supervisory bodies of a public enterprise, public institution or other legal person, as well as scientific, humanitarian, sporting and similar associations.
- ▶ Article 15 of the LPC prescribes the restriction for public official upon the termination of public function defining circumstances under which the public official is prohibited to establish a working relationship ***for a period of two years (previously one) following the termination of public function.***

Overseeing the compliance

- ▶ **Overseeing the compliance with the provisions on the prevention of conflict of interest and restrictions in the exercise of public functions is performed by the Agency for Prevention of Corruption.**
- ▶ The procedure for determining the violation of the Law include:
 - administrative procedure, which is completed by adoption of a Decision,
 - procedure for giving an Opinion,
 - initiation of misdemeanour proceedings,
 - initiation of proceedings before the authorities to impose administrative sanctions.
- ▶ There is an obligation for a public official to resign from the public function, if he/she, while performing a public function, accepts to perform other duties or functions defined by the respective Law, within 30 days of the beginning of the exercise of other functions or duties (Article 13).
- ▶ The case of a dismissal of a public official as a result of the abovementioned procedure, he/she is prohibited to exercise a public function or duties of a civil servant for a period of four years from the date of dismissal.

2016 and 2017 TRACK RECORD - Prevention of conflict of interest and restrictions in the exercise of public functions

- ▶ In 2016 the Agency adopted **58 Decisions** out of which in 33 cases established violation of the Law related to non-transferring of management rights in companies and membership in governing boards, whilst, in the rest 25 cases the APC didn't establish violation of the Law.
- ▶ In 2017 the Agency adopted **64 Decisions**, out of which in 31 cases established violation of the Law related to non-transferring of management rights in companies and membership in governing boards, in 11 cases established conflict of interest, whilst, in the rest 22 cases the APC didn't establish violation of the Law.
- ▶ Based on the Opinions (over 300) and Decisions of the Agency:
 - 144 public officials resigned from public functions or were dismissed from the public office.
- ▶ In 2017, APC submitted 37 requests for initiation of misdemeanor proceedings, out of which 25 were terminated with the imposed fines of 5140 €.

The structure of the public officials who resigned or were dismissed from the office:

- ▶ (2016) Advisor to the Prime Minister - 2, Councilors - 22, Secretary of the Secretariat of the Municipality - 1, Directors of the public companies (national and local level), institutions, directorates, and agencies and schools - 5, presidents and members of the governing bodies of the state-owned companies and institutions - 53, etc.
- ▶ (2017) Director of the Directorate of the Ministry - 1, Councilors - 18, Secretary of the Secretariat of the Municipality: 1, Advisor to the Mayor - 1, Directors of the state-owned and local companies, institutions, directorates and agencies - 6, members of the state fund's governing body - 2, presidents and members of the governing bodies of the state-owned companies and institutions - 10, etc.
- ▶ At the beginning of 2018, the Minister of European Affairs resigned based on the Agency's Decision establishing conflict of interest.

Transparency

- ▶ All Decisions of the Agency, establishing the violation of the violation of the Law concerning the existence of conflict of interest, incompatibility of functions and other restrictions in the exercise of public functions, are published on the Agency's website, www.antikorupcija.me .
- ▶ The list of the public officials (with names, surnames, public function, date of the resignation/dismissal) who have resigned or have been dismissed from the public office, whose Decision on the appointment/election has been nullified, and against which disciplinary measures have been imposed is published on the Agency's website, at the following link:
http://www.antikorupcija.me/media/documents/Tabela_2_Ostavke_i_razrije%C5%A1enja_javnih_funkcionera_na_osnovu_Mi%C5%A1ljenja_i_Odluka.pdf.



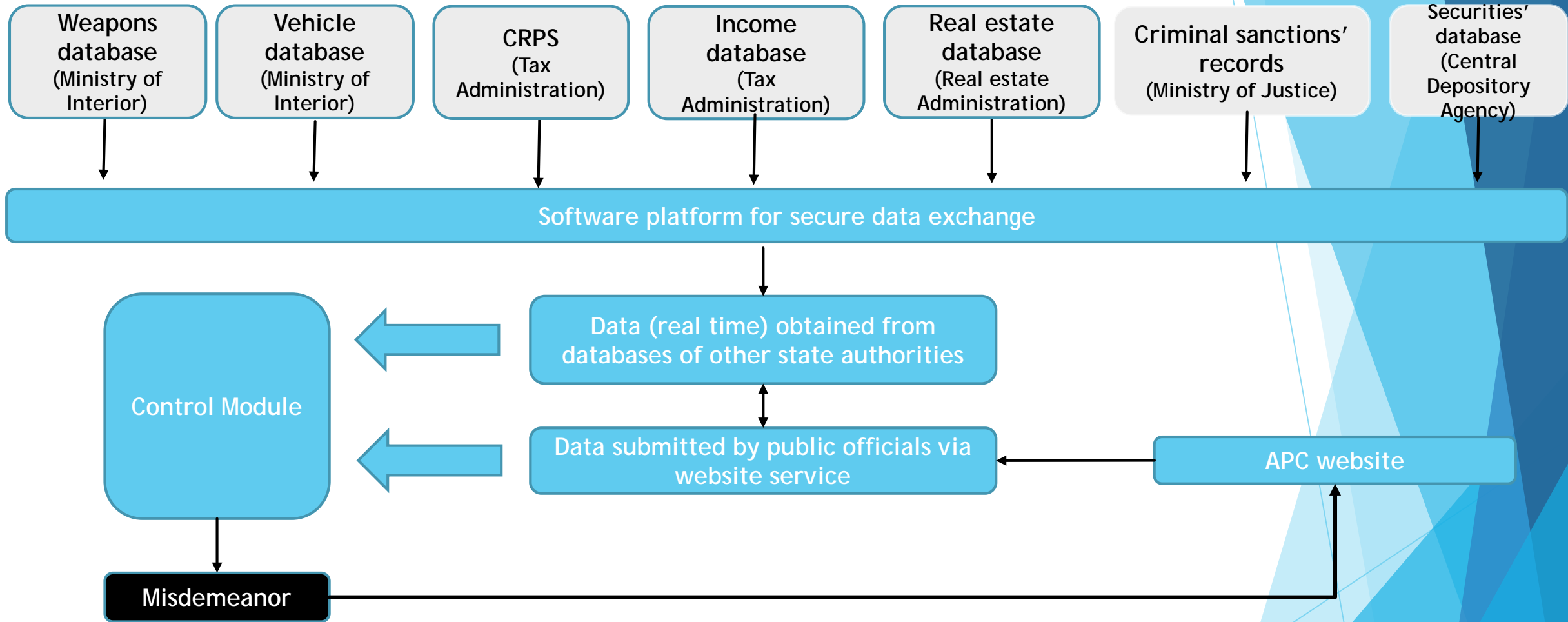
Challenges

- ▶ 1) The high number of requests of public officials for Opinions, especially in 2016 which is the year of the set-up of the Agency, on the potential conflict of interest and restrictions in the exercise of public function represents an indicator that more should be done in the area of **raising awareness on the additional requirements that the new Law imposes**, their purpose, and, ultimately the increased level of integrity and accountability which is required from public office holders;
- ▶ 2) The challenge remains in **detecting conflict of interest *ex officio***, as in this regard the Agency is mostly relying on the reports and initiatives of other parties (citizens, CSOs, etc.).
- ▶ 3) The challenge still remains regarding 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 or assigned 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 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);

Asset and interest disclosure system - in the service of preventing and sanctioning conflict of interest through inter-sectoral approach

- ▶ 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.

SOFTWARE CONTROL OF ASSETS VIA ACCESS TO DATABASES OF STATE AUTHORITIES



THANK YOU FOR YOUR ATTENTION!

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