



Montenegro
Agency for Prevention of Corruption

Number: 03-04-2181

Date: November 9, 2023

Pursuant to Articles 78 and 79 of the Law on Prevention of Corruption ("Official Gazette of Montenegro", no. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, acting ex officio, the Agency for Prevention of Corruption adopts:

OPINION ON THE DRAFT LAW ON THE GOVERNMENT OF MONTENEGRO

Appreciating the importance of the adoption of a systemic regulation that governs the area of work and organization of the Government, and prompted by the Opinion on the Draft Law on the Government of Montenegro¹, which was adopted by the Venice Commission at its 136th plenary session held on October 6-7, 2023, the Agency made a decision to once again, ex officio based on Article 78 and 79 of the Law on Prevention of Corruption, review the text of the Draft Law on the Government of Montenegro², this time the text that was submitted to the Venice Commission and detect possible anti-corruption risks in it.

In this regard, the subject of this Opinion were the following provisions of the Draft Law on the Government of Montenegro:

- Article 9 paragraph 5, which defines that a member of the Government must be a citizen of Montenegro and cannot have the citizenship of another country;
- Article 18, which provides for the adoption of the Code of Ethics for members of the Government;
- Article 22, which regulates the way of work of the Government the term of which has expired until the election of a new Government;
- Article 24, paragraph 2 and Article 45, paragraph 5, which prescribe the cases in which members of the Government, that is, the Secretary-General of the Government, cease to hold office;
- Article 26 which specifies the largest number of ministries and lists the key departments that the Government should have;
- Article 34, which regulates which issues cannot be decided at a phone session of the Government;
- Articles 35 and 36, which refer to the publicity of the work of the Government;

¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)036-e)

² [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)040-e)

- article 37, which refers to the acts adopted by the Government, but also the constitutional role of the Government in the procedure of proposing laws and
- articles 33 and 47 of the Draft Law on the Government, as well as the relevant provisions of the Law on State Administration and the Law on Civil Servants and State Employees, in the context of the implementation of GRECO's recommendations, which envisage the introduction of rules that require an integrity check of the (Deputy) Chief of the Cabinet of the Prime Minister, as well as appointed special advisers to the Prime Minister and Deputy Prime Minister, as part of their employment, in order to avoid and resolve possible risks of conflicts of interest.

RATIONALE

I PROCEDURE

The Law on Prevention of Corruption regulates the competence of the Agency for Prevention of Corruption (hereinafter referred to as the Agency) which, in accordance with Article 78 paragraph 1 of the Law:

- "...shall take the initiative to amend laws, other regulations and general acts, in order to eliminate the possible risks of corruption or to bring them in line with international standards in the field of anti-corruption;
- shall give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption;"

Article 79 of the same Law establishes that the Agency can, on its own initiative or at the request of a government body, company, legal entity, entrepreneur or natural person, give an opinion for the purpose of improving the prevention of corruption, reducing the risk of corruption and strengthening of ethics and integrity in the authorities and other legal entities, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and prevent corruption.

In its Opinions, the Agency may refer to the provisions of the Constitution and relevant laws, but not in the sense of assessing constitutionality and legality, but in the sense of applying and achieving the purpose of Article 79 of the Law on Prevention of Corruption. Also, in order to strengthen the mechanisms of prevention of corruption, which are recognized by international conventions and documents, the Agency tries to point them out in its opinions and, acting through recommendations, introduce and strengthen the institutions of prevention of corruption in the Montenegrin legislation.

Article 6, paragraph 1, item 1 of the Law on Prevention of Corruption states that public interest is material and non-material interest for the good and prosperity of all citizens on equal terms.

On October 31, 2022, the Agency for Prevention of Corruption, in accordance with its legal powers, issued an Opinion on the Draft Law on the Government of Montenegro³ and recognized in it a number of provisions that leave room for further improvement, appealing to the proposer and adopter of the future Law on the Government of Montenegro to use the opportunity of passing such an important systemic regulation and regulate all important issues related to the work of the Government, but also to introduce mechanisms by which the integrity of the holders of the highest functions of the executive power will be raised to the level that an orderly society must satisfy.

In this regard, and prompted by the Opinion on the Draft Law on the Government of Montenegro⁴, which was adopted by the Venice Commission at its 136th plenary session held on October 6-7, 2023, the Agency made a decision to once again, ex officio based on Article 78 and 79 of the Law on Prevention of Corruption, review the text of the Draft Law on the Government of Montenegro⁵, this time the text that was submitted to the Venice Commission and detect possible anti-corruption risks in it.

The importance of the future Law on the Government of Montenegro is special if it is taken into account that in the past period we recognized the lack of systemic regulations regulating the way of working and decision-making of the government, i.e. its relationship with other state bodies, and especially the powers of the government whose term has ended, that is, "Government in a technical term", and if we look at the elaboration of legal procedures and detect norms that cause non-transparent and unclear procedures that leave room for various types of abuses, and thus create a suitable ground for the development of various types of corruption risks. Especially bearing in mind that the work of the Government is now regulated primarily by the Constitution, as the highest legal act of a state, and then by other regulations, such as the Regulation on the Government of Montenegro ("Official Gazette of Montenegro", No. 80/08, 14/17, 28/18 and 63/22), Decree on the Organization and Mode of Work of State Administration ("Official Gazette of Montenegro", no. 98/23) and Rules of Procedure of the Government of Montenegro ("Official Gazette of Montenegro", no. 3/12, 31/15, 48/17 and 62/18), and the systematic regulation of this area

³ chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Misljenje_na_Nacrt_zakona_o_Vladi_Crne_Gore.pdf

⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)036-e)

⁵ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)040-e)

should contribute to reducing the number of regulations regulating the main issues of government functioning, as well as other related issues.

In addition, the Agency approached the text of the Draft Law on the Government of Montenegro with close attention, with the aim of making recommendations for improving the prevention of corruption, reducing the risk of corruption and strengthening ethics and integrity, especially bearing in mind that the Draft Law in question includes the highest holders of executive power in state.

II CORRUPTION RISK ASSESSMENT AND ANALYSIS OF THE ARTICLES OF THE DRAFT LAW ON THE GOVERNMENT OF MONTENEGRO, ON WHICH THE VENICE COMMISSION GAVE OPINION

Although the Draft Law on the Government of Montenegro was put up for public discussion on September 21 of this year (<https://www.gov.me/clanak/program-javne-rasprave-o-tekstu-nacrta-zakona-o-vladi>), the Agency believes that the proponent will provide the necessary level of transparency and participation of the professional and interested public in the process of formulation of provisions of the future Proposal of the Law on the Government of Montenegro in order to create assumptions that the proposed solutions will be determined on the basis of public interest, which directly reduces the space for favoring individual interests.

In the Draft Law on the Government of Montenegro, which was submitted to the Venice Commission, Article 1 states that it regulates issues related to the composition of the Government of Montenegro, its term, organization, way of working, decision-making, relationship with other state bodies and other issues of importance for the work of the Government, while Article 7 of the Draft Law particularly emphasizes the principle of public work of the Government.

The composition of the Government is regulated (Articles 9 - 18), where Article 9, paragraph 5 of the Draft Law states that the members of the Government have to be citizens of Montenegro and cannot have the citizenship of another country. This provision carries significant novelties, and must be carefully considered, especially if it is taken into account that Article 18 paragraph 2 of the Law on Montenegrin Citizenship ("Official Gazette of Montenegro", no. 13/08, 40/10, 28 /11, 46/11, 20/14 - Decision of the CC of Montenegro, 54/16 and 73/19) defines that on the basis of ratified international treaties or agreements concluded by Montenegro, dual citizenship can be established, under the condition of reciprocity, and Article 24 paragraph 1 item 1 further states that an adult Montenegrin citizen, who also has the citizenship of another country, loses Montenegrin citizenship by force of law, if he/she voluntarily acquired the

citizenship of another country, except in the case provided for in Article 18 paragraph 2 of this law.

Bearing in mind that the question of Montenegrin citizenship is an issue that indisputably attracts a lot of attention from the international and domestic public, the Agency for Prevention of Corruption has, ex officio, analyzed the legal framework that governs this issue from the aspect of the elaboration of legal procedures, methods of application, application control and admission into Montenegrin citizenship, as well as the transparency of the procedures and decisions themselves with the aim of detecting norms that cause non-transparent and unclear procedures, and that leave room for various types of abuse and discrimination, thus creating a suitable ground for the development of various types of corruption risks. In this regard, the Agency issued an Opinion on the Law on Montenegrin Citizenship on May 26, 2022⁶, in which, in addition to this Law, we analyzed the Decision on the Criteria for Determining the Conditions for Acquiring Montenegrin Citizenship by Admission ("Official Gazette of Montenegro", No. 47 /08, 80/08, 30/10, 56/12 and 15/22), Decision on the Criteria for Determining the Scientific, Business, Economic, Cultural And Sports Interest of Montenegro for the Acquisition of Montenegrin Citizenship by Admission ("Official Gazette of Montenegro", no. 34/10, 40/16 and 62/18) and the Decision on the Criteria, Manner and Procedure for Selection of a Persons Who Can Acquire Montenegrin Citizenship by Admission for the Implementation a Special Investment Program of Special Importance for the Industry and Economic Interest of Montenegro ("Official Gazette of Montenegro", no. 79/18, 12/20 and 143/21).

On this occasion, it was established that "legal" and "continuous" residence, as a specific legal condition for acquiring Montenegrin citizenship by admission, must be defined through a legal norm, and not by a secondary legislation as stated in Article 17 of the Law, especially with the aim of greater legal certainty and reducing the space for various abuses during the preparation and adoption of this regulation.

The basic principles of legal security and the protection of the importance of the relationship between an individual and the state, which is also one of the issues that have found their place in the Constitution of Montenegro, assume that it should be clearly and precisely elaborated through the law itself so as not to leave room for possible doubts, and so that legal predictability was ensured and

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the space for possible abuses was reduced during the preparation and adoption of this regulation, which as a secondary legislation is subject to possible dynamic changes, and which is within the competence of the executive power, as opposed to the law adopted by the Parliament.

Due to the above, the Agency is in line with the recommendations given in the GRECO 5th Round Evaluation Report from 2022 for Montenegro, the aim of which was to evaluate the effectiveness of the measures adopted by the authorities in Montenegro in order to prevent corruption and improve integrity within the framework of central government bodies (at the highest executive positions) and law enforcement bodies. Specifically, the aforementioned Report identifies an issue that is directly related to Article 9 of the Draft Law on the Government of Montenegro, which refers to the integrity check of politically appointed Government officials, in the procedure before their appointment. As the aforementioned report states, “such preliminary checks could, for instance, be carried out by Prime Minister’s services based on financial declarations available and/or interviews.” This would contribute to the determination of possible conflicts of interest or such risks in relation to persons who are planned for the position of minister or state secretary, and to the resolution of such conflicts before their appointment, if necessary. GRECO therefore recommends establishing rules that require integrity checks to be carried out prior to the appointment of ministers and state secretaries in order to identify and manage potential risks of conflict of interest prior to their appointment.

Strengthening the ethics and integrity of high officials in the executive branch is particularly significant and has been repeatedly recognized as a deficiency through the work of the Agency for Prevention of Corruption, which is why the Agency recommended that the drafting of the Law on the Government be undertaken promptly, and a Code of Ethics for holders of the highest positions in the executive branch be adopted. Regulating this issue would contribute to the elimination of potential corruption risks, thereby safeguarding the public interest, a democratic society’s imperative.

In this regard, we remind you that in the second quarter of 2020, within the framework of the second phase of the Project to Combat Corruption, Economic, and Organized Crime - the “Horizontal Facility for the Western Balkans and Turkey”, the Agency for Prevention of Corruption, through joint efforts of experts and officials, prepared a Draft Code of Ethics for holders of the highest positions in the executive branch in Montenegro, with guidelines, proposing the text of the Code of Ethics for this category of individuals (https://www.antikorupcija.me/media/documents/Prijedlog_Etickog_kodeksa.pdf), which was submitted to the Government of Montenegro. Following the above mentioned, the Government of Montenegro, during its 40th session on September 23, 2021, adopted the Guidelines for strengthening the ethics and

integrity of high-ranking officials of the executive power. This document aims to support high officials in adhering to integrity standards, with the aim of strengthening the public's trust in the performance of their duties, affirming and improving dignity and reputation in order to achieve the common good and public interest, as well as strengthening citizens' trust in the work of state bodies. The Guidelines apply to the President, Vice President, and members of the Government, state secretaries in ministries, advisors to the President and Vice President of the Government, heads of administrative bodies, and individuals whose aforementioned positions have ceased within two years after leaving office.

In support of the Agency's opinion, there is also a recommendation from GRECO arising from the Fifth Evaluation Round Report for Montenegro in 2022. GRECO recommends that:

„(i) a code of ethics (Guidelines on ethics) aimed at persons with top executive functions (PTEFs) be established and published, covering relevant integrity matters (e.g. preventing and managing conflicts of interest, contacts with lobbyists and other third parties, handling of confidential information, postemployment restrictions, etc.), (ii) complemented with appropriate guidance and concrete examples and (iii) coupled with an appropriate mechanism of supervision and sanctions. (paragraph 50); “

In relation to the earlier opinion on the Draft Law on the Government, in which the Agency recognized the need to adopt a Code of Ethics that will contain ethical principles and standards of behavior that all members of the Government should adhere to in the performance of their duties, it must be commended that in the Draft Law on the Government of Montenegro, which was submitted to the Venice Commission, it was done in Article 18 of the Draft Law. Nevertheless, the Agency remains with the second part of this recommendation from the earlier Opinion, which stated that the Draft Law itself should in principle foresee who would supervise the application and monitoring of compliance with the Code of Ethics and the composition of the competent body with the mandatory principle of publicity and transparency that the body should inherit in its work.

The Code of Ethics should, pending adequate legal regulation, also encompass rules regarding gifts and other benefits, particularly by providing clarification on the definition of “protocol and appropriate gifts”, as mentioned in the GRECO Report on Montenegro for 2022, and address the activities of public officials during the pre-election period, which may be presented as their “regular work” but are essentially part of political promotion and free advertising at the expense of the citizens, which was the subject of attention in the GRECO Evaluation Report for Montenegro from 2010, as well as in the evaluation reports from 2012

and 2014⁷, and in the area of “Transparency of Party Funding” the GRECO evaluation team paid particular attention to the use of public resources, including those in state ownership and those owned by local self-government bodies (human resources, financial and technical means) during election campaigns.

In one of its earlier reports from 2015, within the Fourth Evaluation Round, GRECO, regarding immunity, noted as an observation that there is no established practice regarding the lifting of immunity for criminal prosecution for corruption offenses, and in order to ensure fair, objective, and equal treatment of requests to lift immunity, it was suggested to consider introducing guidelines that would contain clear and objective criteria to be applied when deciding on requests to lift immunity from criminal prosecution for MPs. This recommendation, albeit in the context of Government members, was addressed to Montenegro through the 2022 Report for the Fifth Evaluation Round, on which occasion it was suggested that the immunity granted to members of the Government should be revised to exclude criminal offenses explicitly linked to corruption from such protection. The Agency considers this matter significant for the formulation of guidelines that would ultimately lead to an objective and impartial approach regarding this issue, resulting in denying the protection when prosecuting those responsible for such criminal offenses.

Further, when it comes to the Government’s term (Articles 19 - 25), Article 22 paragraph 1 of the Draft Law on the Government of Montenegro regulates the issue of the work of the Government, the term of which has ended and which continues to work until the election of a new Government, the Agency welcomes the intention of the proponent of the Draft law, to limit the Government's actions in the “technical” term to the performance of regular financial and other obligations established by law, which do not create new financial obligations (without the consent of the Parliament).

However, the Agency believes that the existing article of the law needs to be expanded, so that it is regulated that the Government whose term has ended should be periodically, and in the period until the election of a new Government, the subject of a special audit by the State Audit Institution, as well as that it is necessary to ensure the highest possible level of transparency of the work of such a Government, so that the space for possible abuses would be reduced to a minimum due to the increased attention of both experts and other interested

⁷ In the aforementioned reports, it was pointed out that this area deserves further attention and closer monitoring by the authorities, in order to make an assessment of how to more effectively implement the existing/future rules limiting the use of public resources for party activities and election campaigns, and that there is a need to introduce clear rules and guidelines for the use of public resources for party activities and election campaigns.

public. In this regard, it is possible to further elaborate on such an amendment to Article 22 paragraph 1 of the Draft Law, in the section that regulates the interaction with other institutions, and in particular Article 56, which governs the interaction between the Government and the State Audit Institution.

It should also be commended that in the Draft Law sent to the Venice Commission, Article 22 paragraph 2, in addition to placements, stated that the Government whose term has ended cannot make appointments either, which was in line with the recommendations of the Agency, bearing in mind that appointments cannot be classified as ongoing work. The above, especially bearing in mind that this article of the Draft Law has already planned that the Government whose term has ended can appoint acting officials.

The Agency welcomes the specification of Article 24 paragraph 2 and Article 45 paragraph 5 of the Draft Law on the Government of Montenegro, which, compared to the earlier Draft Law, prescribe cases in which a member of the Government, or the Secretary General of the Government, ceases to hold function, in addition to its termination in the event of the termination of the term of the Government.

The Agency also welcomes the specification of the maximum number of ministries that the Government can have, as well as the tentative prediction of key departments that should be an integral part of the Government's organization in Article 26 of the Draft Law, which leaves enough space for the development of specifics and main development points of each future Government, preventing the possible "artificial enlargement of the Government, as a result of coalition agreements, which can harm the activities of the executive power and lead to mismanagement and cronyism", as stated in the Opinion of the Venice Commission.⁸

Furthermore, the current political developments have highlighted the need to define the working methods of the government in emergency situations, during telephone sessions, and it is commendable that Article 34 of the Draft Law specifically elaborates on the issues that cannot be decided in this manner.

⁸ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)036-e#](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)036-e#)

Opinion on the draft Law on the Government adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023) 47. In principle, the Commission finds the proposition to limit the number of ministries by the law as reasonable, since the number of ministries cannot be infinite or left at complete discretion of the ruling majorities. In a parliamentary system of governance, where the government is, as a rule, a coalition one, the unlimited number of ministries may lead to artificial enlargement of the Government, which may harm the activities of the executive and lead to mismanagement and cronyism.

Additionally, articles 35 and 36 of the Draft Law, which pertain to the publicity of the Government's work, are imperative for any society striving to achieve the highest democratic values, and it is a responsible move that indicates the intention of the legislator to provide the necessary level of transparency and participation for the interested public, which in this way can contribute to the quality of the Government's work, with the ultimate goal of ensuring that the policies resulting from the work of this institution reflect public interest and eliminate space for favoritism of individual interests.

Bearing in mind that Article 93, paragraph 1 of the Constitution of Montenegro ("Official Gazette of Montenegro", No. 1/07, Amendments I to XVI - 38/13-1) stipulates that the right to propose laws and other acts is granted to the Government and a Member of Parliament, and that Article 37 of the Draft Law on the Government of Montenegro specifies that the Government adopts regulations with legal force, decrees, resolutions, strategies, programs, declarations, decisions, conclusions and other acts, it is necessary to outline the materials that the proposer of the law, other regulations, or general act is obliged to submit to the Government for consideration. These may include evidence of compliance with legal-technical rules established by the Secretariat for Legislation, a conducted analysis of the regulatory impact assessment, and possibly a Form for assessing the compliance of regulations with relevant EU regulations (Acquis).

In this regard, it is essential to consider the need for the introduction of *Preliminary control* of Corruption Risks (with a list of 23 questions) which is attached to this Opinion, as mandatory in the procedure for drafting legislative proposals determined by the Government of Montenegro, which the Agency sent to the Government and competent ministries on July 19, 2022⁹ in the form of an Initiative. The need to introduce a corruption risk assessment as a mandatory part of the legislative process has been recognized within the project of "Strengthening Capacities for Faster Accession of Montenegro to the European Union", funded by the Ministry of Foreign Affairs of Norway and implemented by the United Nations Development Program (UNDP) in collaboration with the Office for European Integration and the Secretariat-General of the Government. Anti-corruption assessment of laws as a mandatory part of the legislative process would significantly strengthen the authority and role of the Agency in assessing corruption risks in the norm, serving as a strong preventive anti-corruption mechanism, especially bearing in mind that the norms that are the subject of the Agency's attention within this competence, have the potential to cause significant

⁹ chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Inicijativa_Vladi_CG_-_Preliminarna_kontrolna_lista.pdf

social harm by leaving normative space for individual abuses, but also the possibility for systemic corruption.

In this regard, the Agency has submitted an initiative to the Government of Montenegro for the introduction of *Preliminary Control of Corruption Risks* (with a list of 23 questions) as a mandatory in the procedure of drafting legislative proposals by the Government, as well as an initiative to the Parliament of Montenegro for the introduction of *Preliminary Control of Corruption Risks* (with a list of 23 questions) as a mandatory procedure in the legislative proposal process by members of parliament independently or on behalf of six thousand voters, in accordance with Article 93, paragraphs 1 and 2 of the Constitution of Montenegro (“Official Gazette of Montenegro”, No. 1/07 and 38/13 - Amendments I-XVI).

This issue is particularly significant because the fight against both “normative corruption” and corrupt behavior requires synergy among all societal components, as the only response that can yield results in building a society with zero tolerance for corruption and other forms of behavior that directly harm the interests of the citizens of Montenegro. For this reason, the *Preliminary Control of Corruption Risks* (with a list of 23 questions) is an integral part of this Opinion.

Regarding the working methods and decision-making in Chapter V of the Draft Law, Article 33 specifies that the state secretary, without the right to vote, may replace the minister in case of absence or inability to attend a Government session or a permanent working body of the Government. In this regard, in the Law on State Administration (“Official Gazette of Montenegro”, No. 78/18, 70/21, and 52/22), Article 30 stipulates that a ministry may have up to three state secretaries who are accountable to the minister and the Government. They are appointed and dismissed by the Government, upon the proposal of the minister, without a public competition, and their duties cease with the termination of the minister's term.

When it comes to the aforementioned state secretaries, who are partially defined in the Law on Public Administration, especially special advisors who are appointed to perform tasks within the scope of work of the Prime Minister and Deputy Prime Ministers, this issue needs to be further elaborated in the respective Draft Law.

Specifically, in the Law on Civil Servants and State Employees (“Official Gazette of Montenegro”, No. 2/18, 34/19, 8/21, and 37/22 - Decision of the Constitutional Court of Montenegro), Article 62 states that “the President of Montenegro, the President of the Parliament of Montenegro and the Prime Minister may, in order to carry out tasks within the scope of their work, have advisers, chiefs of the cabinet and deputy chiefs of the cabinet, in accordance with the regulations of

those bodies; that the Vice-Presidents of the Parliament of Montenegro and the Vice-Presidents of the Government may have advisers, in accordance with the regulations of those bodies, and that jobs in the office of the Prime Minister are filled without public advertising, in accordance with a special regulation".

Regarding this matter, in the aforementioned GRECO 5th Round Evaluation Report for 2022, it is stated that certain positions in the Prime Minister's Cabinet are filled without public announcement. The (Deputy) Chief of Cabinet and special advisors to the Prime Minister are appointed and dismissed by the Government upon the Prime Minister's proposal, on his/her sole discretion, without following the provisions of the Law on Civil Servants and State Employees on recruiting prescribed for civil servants. Special advisors to the Deputy Prime Ministers are appointed and dismissed in a similar manner, based on the proposal of the Deputy Prime Ministers. They must have passed a State exam enabling them to enter public service. However, no ex-ante integrity check is requested for them to be appointed. Their term of office ends when the (Deputy) Prime Minister's term of office ends, or with their resignation or dismissal. The names of all the members of the cabinet and of the special advisors are made public... GET¹⁰ notes that the chief of cabinet and the special advisors of the Prime Minister, as well as the special advisors of the Deputy Prime Ministers, are appointed at the discretion of the (Deputy) Prime Minister, and that no integrity checks are carried out prior to their appointments. Such integrity checks are important to avert any conflict of interest before appointment, especially as they often come from the private sector and return to it after the end of their employment in government. Considering their political role in the functioning of the state administration and their participation in the decision-making process, GET sees merit in providing appropriate integrity checks for these categories of appointed persons as well. GRECO recommends establishing rules that require integrity checks to be carried out in relation to the (deputy) chief of cabinet of the Prime Minister, as well as appointed special advisors to the Prime Minister and the Deputy Prime Minister, as part of their employment, in order to avoid and manage possible risks of conflict of interest.

Due to the above-mentioned observation, GRECO recommends in its report that rules be established that require an integrity check of the (deputy) chief of cabinet of the Prime Minister, as well as the appointed special advisors of the Prime Minister and the Deputy Prime Minister, as part of their employment, in order to avoid and resolve possible risks of conflicts of interest (paragraph 35). Therefore, the Agency's recommendation is that the aforementioned request be

¹⁰ GET - GRECO Evaluation team

translated into a legal norm, which is why we additionally recognize the need to adopt the Code of Ethics, and to foresee adequate legal models on the basis of which the integrity of these persons would be checked during their employment, all with the aim of regulating the issue of potential conflict of interest, which, if not treated in a way that leads to its elimination, could lead to abuse of position.

III FINAL ASSESSMENTS

Appreciating the importance of adopting a systemic regulation that regulates the field of work and organization of the Government, and prompted by the Opinion on the Draft Law on the Government of Montenegro¹¹, which was adopted by the Venice Commission at its 136th plenary session held on October 6-7, 2023, the Agency made a decision to once again, ex officio based on Article 78 and 79 of the Law on Prevention of Corruption, review the text of the Draft Law on the Government of Montenegro,¹² this time the text that was submitted to the Venice Commission and detect possible anti-corruption risks in it.

Although the Draft Law on the Government of Montenegro was put up for public discussion on September 21 of this year (<https://www.gov.me/clanak/program-javne-rasprave-o-tekstu-nacrta-zakona-o-vladi>), the Agency believes that the proponent will provide the necessary level of transparency and participation of the professional and interested public in the process of formulation of provisions of the future Proposal of the Law on the Government of Montenegro in order to create assumptions that the proposed solutions will be determined on the basis of public interest, which directly reduces the space for favoring individual interests.

At the very beginning, the Agency welcomes the proponent's efforts to edit and further elaborate the provisions:

- which envisage the adoption of the Code of Ethics for members of the Government;
- the way of work of the Government the term of which has expired until the election of a new Government;
- cases in which members of the Government, that is, the Secretary-General of the Government, cease to hold office;
- which specify the largest number of ministries and lists the key departments that the Government should have, which leaves enough space for the development specifics and main development points of each future Government, while preventing the possible "artificial enlargement of the Government, as a result of coalition agreements, which can harm the activities of the executive power and lead to mismanagement and cronyism", and as stated in the Opinion of the Venice Commission¹³;

¹¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)036-e)

¹² [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)040-e)

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- which regulate which issues cannot be decided at a phone session of the Government;
- provisions which define the publicity of the work of the Government;

Nevertheless, the Agency recognizes the room for further improvement of the provisions that systematically regulate issues of importance for the work of the Government.

In this regard, the Agency is of the opinion that the question from Article 9 paragraph 5 of the Draft Law on the Government of Montenegro, which states that the members of the Government have to be citizens of Montenegro and cannot have the citizenship of another country, which is a significant novelty, and must be carefully considered, especially if it is taken into account that Article 18 paragraph 2 of the Law on Montenegrin Citizenship ("Official Gazette of Montenegro", no. 13/08, 40/10, 28 /11, 46/11, 20/14 - Decision of the CC of Montenegro, 54/16 and 73/19) defines that on the basis of ratified international treaties or agreements concluded by Montenegro, dual citizenship can be established, under the condition of reciprocity.

Due to the above, and especially taking into account the findings from the Opinion on the Law on Citizenship, which are indicated in the rationale of this Opinion, the Agency is in line with the recommendations given in the GRECO 5th Round Evaluation Report from 2022 for Montenegro, that is directly related to Article 9 of the Draft Law on the Government of Montenegro, which refers to the integrity check of politically appointed Government officials, before their appointment, and which recommends establishing rules that require integrity checks to be carried out prior to the appointment of ministers and state secretaries in order to identify and manage potential risks of conflict of interest prior to their appointment.

Strengthening the ethics and integrity of high officials in the executive branch is particularly significant and has been repeatedly recognized as a deficiency through the work of the Agency for Prevention of Corruption, which is why the adopting of the Code of Ethics for the Government members is important. However, the Agency's recommendation remains that it is necessary to foresee who would supervise the application and monitoring of compliance with the Code of Ethics in the Draft Law and the composition of the competent body with the mandatory principle of publicity and transparency that the body should inherit in its work.

government is, as a rule, a coalition one, the unlimited number of ministries may lead to artificial enlargement of the Government, which may harm the activities of the executive and lead to mismanagement and cronyism.

Furthermore, although the Agency welcomes the intention of the proposer of the Draft Law to limit the activities of the Government in a “technical” term to the performance of regular financial and other obligations established by law, which do not create new financial obligations (without the consent of the Parliament), the Agency believes that the existing article of the law needs to be expanded, so that it is regulated that the Government whose term has ended should be periodically, and in the period until the election of a new Government, the subject of a special audit by the State Audit Institution, as well as that it is necessary to ensure the highest possible level of transparency of the work of such a Government, so that the space for possible abuses would be reduced to a minimum due to the increased attention of both experts and other interested public.

The Agency also welcomes the specification of the maximum number of ministries that the Government can have, as well as the tentative prediction of key departments that should be an integral part of the Government's organization in Article 26 of the Draft Law, which leaves enough space for the development of specifics and main development points of each future Government, preventing the possible “artificial enlargement of the Government, as a result of coalition agreements, which can harm the activities of the executive power and lead to mismanagement and cronyism”, as stated in the Opinion of the Venice Commission.¹⁴

When it comes to Article 37 of the Draft Law on the Government, and bearing in mind Article 93, paragraph 1 of the Constitution of Montenegro (“Official Gazette of Montenegro”, No. 1/07, Amendments I to XVI - 38/13-1) which stipulates that the right to propose laws and other acts is granted to the Government and a Member of Parliament, the Agency is of the opinion that it is necessary to outline the materials that the proposer of the law, other regulations, or general act is obliged to submit to the Government along with the mentioned acts for consideration. These may include evidence of compliance with legal-technical rules established by the Secretariat for Legislation, a conducted analysis of the regulatory impact assessment, and possibly a Form for assessing the compliance of regulations with relevant EU regulations (Acquis).

¹⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)036-e#](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)036-e#)

Opinion on the draft Law on the Government adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023 47. In principle, the Commission finds the proposition to limit the number of ministries by the law as reasonable, since the number of ministries cannot be infinite or left at complete discretion of the ruling majorities. In a parliamentary system of governance, where the government is, as a rule, a coalition one, the unlimited number of ministries may lead to artificial enlargement of the Government, which may harm the activities of the executive and lead to mismanagement and cronyism.

Furthermore, the Agency is of the opinion that in this regard, it is essential to consider the need for the introduction of *Preliminary control of Corruption Risks* (with a list of 23 questions) as mandatory in the procedure for drafting legislative proposals determined by the Government of Montenegro, bearing in mind that strengthening the anti-corruption assessment of laws as a strong preventive mechanism of the Agency would further contribute to reducing the normative space for individual abuses and the potential emergence of systemic corruption. By introducing Preliminary control of Corruption Risks in regulations, the possibility of abuses within the existing legal framework would be reduced. This would be a positive step towards institutionalizing the fight against corruption, demonstrating the genuine commitment of the Government of Montenegro to combat corruption by building an effective institutional and normative framework. This issue is particularly significant because the battle against both "normative corruption" and corrupt behavior requires the synergy of all social factors, as the only response that can yield results in building a society with zero tolerance for corruption and other forms of behavior that directly harm the interests of the citizens of Montenegro.

Finally, but not less importantly, the Agency is of the opinion that it is necessary to translate the GRECO recommendation concerning the establishment of a mechanism to verify the integrity of the (deputy) chief of the prime minister's cabinet, as well as appointed special advisors to the prime minister and deputy prime minister, into a legal norm through additional elaboration of Article 45 of the Draft Law on the Government. This would ensure, in addition to the Code of Ethics, an appropriate legal framework for conducting integrity checks on these individuals upon their employment, all in order to regulate the issue of potential conflicts of interest, which, if not addressed adequately, could lead to the abuse of their positions.

DIRECTOR
Jelena Perović sgd

Annex: Preliminary control of Corruption Risks (with a list of 23 questions)

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Submitted to:

- The Council of the Agency for Prevention of Corruption
- The Parliament of Montenegro
- The Government of Montenegro
- The Ministry of Public Administration
- a/a

Expedited on:

Administrative Officer: