



Montenegro
Agency for Prevention of Corruption

Number: 03-04-2195

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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 the Prevention of Corruption, acting ex officio, the Agency for the Prevention of Corruption adopts:

OPINION ON THE DRAFT LAW ON THE GOVERNMENT OF MONTENEGRO

The Agency takes the opportunity to emphasize the importance of adopting a systemic regulation that regulates the field of work and organization of the Government, and urges both the proposer and the legislator to take advantage of the opportunity to address, through this regulation, all significant issues related to the work of the Government, and to the introduction of a mechanism that will elevate the integrity of holders of the highest functions of the executive branch to a level that an orderly society must satisfy.

In terms of the significance of the Government's role in the process of proposing regulations, the Agency believes that it is necessary to specify the materials that the proposer of a law, other regulation, or general act is obligated to submit to the Government for their consideration. These materials 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). 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.

The complete Chapter VI of the Draft Law, which pertains to the transparency of the Government's work, is imperative for any society striving to achieve the highest democratic values. 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. Additionally, it is particularly correct to give importance to defining the Government's working methods in emergency situations, during telephone sessions, and specifying what cannot be the subject of these sessions.

On the other hand, what has been repeatedly identified as a deficiency in regulations governing the way the Government works, and formulated as a recommendation from relevant international addresses, is the need for adopting a Code of Ethics. This code should encompass ethical principles and standards of behavior that all members of the Government should adhere to in the performance of their duties. In this regard, the Draft Law should provisionally anticipate the adoption of the Code of Ethics, as well as the establishment and composition of a body tasked with overseeing its implementation and adherence, with the mandatory principle of publicity and transparency that the said body should inherit in its work.

The Code of Ethics itself should cover issues that are recognized as risky in terms of the actions of public officials, which may call into question their integrity and responsibility in the performance of their duties, and especially those related to defining: guidelines on gifts and other benefits with clarification of the definition of "protocol gifts and appropriate gifts", clear rules and guidelines for the use of public resources for party activities and election campaigns, and the guidelines related to the revision of the immunity granted to members of the Government in order to "deny" such protection for criminal acts that are explicitly related to corruption.

When it comes to Article 20 of the Draft Law on the Government, although this article specifies that the Government's activities during a "technical" term are limited to performing technical tasks that should not create new financial obligations, and that these tasks relate to the execution of regular legally established financial and other obligations, the Agency is of the opinion that a Government whose term has ended should be subject to periodic special audits

by the State Audit Institution during the period until the new Government is elected. It is also necessary to ensure the highest possible level of transparency in the work of such a Government, with the aim of minimizing the potential for abuse, given the increased attention from both the professional community and other interested members of the public.

Additionally, the Agency is of the opinion that it is necessary to exert additional efforts to regulate the space left by the Constitution of Montenegro for the functioning of a Government whose term has ended, and until the election of a new one, and specify “at the very least”, the actions that a Government whose term has ended cannot perform, aiming not only for formal but also practical regulation of the interim period between the two governments. Additionally, considering Article 20, paragraph 3, which states that a Government whose term has ended “cannot make nominations, or appointments, or give approval to appointments, unless they are conducted in accordance with regular procedures and ongoing processes”, the Agency believes it is necessary to include appointments and dismissals as actions that a Government whose term has ended cannot perform, since managing the Government's personnel policy in this capacity cannot be considered part of current business. This is particularly relevant, given that this article of the Draft Law already plans for a Government whose term has ended to appoint acting officials under this article.

In conclusion, 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.

RATIONALE

I PROCEDURE

The Law on Prevention of Corruption regulates the competence of the Agency for Prevention of Corruption (hereinafter referred to as the APC/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 can refer to the provisions of the Constitution and relevant laws, not for the purpose of assessing constitutionality and legality, but rather for the application and fulfillment of the purpose of Article 79 of the Law on the Prevention of Corruption. Additionally, aiming to strengthen mechanisms for preventing corruption, which are recognized in international conventions and documents, the Agency seeks to emphasize these in its opinions and, through recommendations, introduce and enhance corruption prevention institutes in Montenegro's legislation.

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

Regarding the Draft Law on the Government of Montenegro, the Agency has recognized the interest in initiating ex officio proceedings based on Articles 78 and 79 of the Law on Prevention of Corruption, bearing in mind the acknowledged deficiency in systemic regulations governing the functioning and decision-making of the government, i.e., its relationship with other state bodies, and especially the powers of a government whose term has ended, i.e., a "technical term government", as well as in reviewing the elaboration of legal procedures and identifying norms that lead to non-transparent and unclear procedures, leaving room for various types of abuses. Consequently, this creates a conducive environment for the development of various forms of corruptive risks. The above mentioned is particularly important, given that the functioning of the Government is currently regulated primarily by the Constitution as the highest legal act of the 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), the Decree on the Organization and Manner of Work

of State Administration (“Official Gazette of Montenegro”, No. 49/22, 52/22, 56/22, 82/22, and 110/22), and the Rules of Procedure of the Government of Montenegro (“Official Gazette of Montenegro”, No. 3/12, 31/15, 48/17, and 62/18). Systematically organizing this area should contribute to reducing the number of regulations addressing key issues related to the functioning of the Government and other associated matters.

Additionally, the Agency approached the text of the Draft Law on the Government of Montenegro with vigilant attention, aiming to provide recommendations for enhancing corruption prevention, reducing corruption risks, and strengthening ethics and integrity, especially bearing in mind that the Draft Law encompasses the highest authorities of the executive branch in the state.

II CORRUPTION RISK ASSESSMENT AND ANALYSIS OF THE ARTICLES OF THE DRAFT LAW ON THE GOVERNMENT OF MONTENEGRO

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>). It is stated in Article 1 that it regulates issues related to the composition of the Government of Montenegro, its term of office, organization, method of operation, decision-making, interaction with other public authorities and other matters relevant to the operation of the Government.

The composition of the Government was regulated (Article 9 to Article 17), where Article 9 of the Draft Law states that the Government consists of the Prime Minister, one or more Deputy Prime Ministers and Ministers.

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);”

Considering all of the above, the Agency is of the opinion that in this chapter of the Draft Law, it is necessary to envisage the obligation to adopt a Code of Ethics containing ethical principles and standards of behavior that all members of the Government should adhere to in the performance of their duties. In this regard, the Draft Law should generally outline who would oversee the implementation and monitoring of compliance with the Code of Ethics and the composition of the competent body, along with the mandatory principle of publicity and transparency that the said 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.

Additionally, in the GRECO Evaluation Report for Montenegro from 2010, as well as in the evaluation reports from 2012 and 2014, 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 the mentioned reports, it is emphasized that this area deserves further attention and closer monitoring by the authorities, in order to assess how to more effectively implement existing/future rules that restrict the use of public resources for party activities and election campaigns, and that there is a need to establish clear rules and guidelines for the use of public resources in party activities and election campaigns. In this context, the Ethical Code should 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.

In one of its earlier reports from 2015, within the context of 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.

Furthermore, when it comes to Article 20 of the Draft Law, which regulates the functioning of the Government after the expiration of its term and until the new Government is elected, the Agency welcomes the proposer's intention to limit the activities of the Government in a “technical” term to the performance of technical tasks within its competence and defining them. However, even though the article of the Draft Law itself states that these tasks should not create new financial obligations and that they relate to the execution of regular legally established financial and other obligations, the Agency is of the opinion that a Government whose term has ended should be subject to periodic special audits by the State

Audit Institution during the period until the new government is elected. It is also necessary to ensure the highest possible level of transparency in the work of such a government, with the aim of minimizing the potential for abuse, given the increased attention from both the professional community and other interested members of the public. In this regard, it is possible to further elaborate on such an amendment to Article 20 of the Draft Law, in the section that regulates the interaction with other institutions, and in particular, within the framework of Article 54, which governs the interaction between the Government and the State Audit Institution.

Additionally, the Agency is of the opinion that it is necessary to exert additional efforts to regulate the space left by the Constitution of Montenegro for the functioning of a government whose term has ended, and until the election of a new one, and specify “at the very least”, the actions that a government with an expired term cannot perform, aiming not only for formal but also practical regulation of the interim period between the two governments. Additionally, considering Article 20, paragraph 3, which states that a government whose term has ended “cannot make nominations, or appointments, or give approval to appointments, unless they are conducted in accordance with regular procedures and ongoing processes”, the Agency believes it is necessary to include appointments and dismissals as actions that a government whose term has ended cannot perform, since managing the government's personnel policy in this capacity cannot be considered part of current business. This is particularly relevant, given that this article of the Draft Law already plans for a government whose term has ended to appoint acting officials under this article.

The current political developments have highlighted the need to define the working methods of the government in emergency situations, particularly during telephone sessions. It is commendable that Article 32 of the Draft Law specifically elaborates on the issues that cannot be decided in this manner. Additionally, the entire Chapter VI of the Draft Law, which pertains to the publicity of the Government's work, is 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 the Member of Parliament, and that Article 35 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) 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, 2022 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 robust 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 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.

Furthermore, in Article 40 of the mentioned Draft Law, it is stated that the Annual Work Program of the Government is adopted by the end of the current year for the next year. It is necessary to add that the said annual plan for the next year should be adopted no later than the last session of the Government held in the current year.

Regarding the working methods and decision-making in Chapter V of the Draft Law, Article 31 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.

Additionally, Article 45 of the Draft Law on the Government of Montenegro states that the Cabinet of the Prime Minister is assembled to carry out advisory, analytical, professional and other tasks for the needs of the Prime Minister, and that the scope of work, organization of work and other issues important for the work of the Cabinet of the Prime Minister are regulated in more detail by a Government regulation.

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, heads of the cabinet and deputy heads 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 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... GET¹ 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 advisers 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 advisers 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 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,

¹ GET - GRECO evaluation team

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

The Agency takes the opportunity to emphasize the importance of adopting a systemic regulation that regulates the field of work and organization of the Government, and urges both the proposer and the legislator to take advantage of the opportunity to address, through this regulation, all significant issues related to the work of the Government, and to the introduction of a mechanism that will elevate the integrity of holders of the highest functions of the executive branch to a level that an orderly society must satisfy.

In terms of the significance of the Government's role in the process of proposing regulations, the Agency believes that it is necessary to specify the materials that the proposer of a law, other regulation, or general act is obligated to submit to the Government for their consideration. These materials 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). 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.

The complete Chapter VI of the Draft Law, which pertains to the transparency of the Government's work, is imperative for any society striving to achieve the highest democratic values. 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. Additionally, it is particularly correct to give importance to defining the Government's working methods in emergency situations, during telephone sessions, and specifying what cannot be the subject of these sessions.

On the other hand, what has been repeatedly identified as a deficiency in regulations governing the way the Government works, and formulated as a recommendation from relevant international addresses, is the need for adopting a Code of Ethics. This code should encompass ethical principles and standards of behavior that all members of the Government should adhere to in the performance of their duties. In this regard, the draft law should provisionally anticipate the adoption of the Code of Ethics, as well as the establishment and composition of a body tasked with overseeing its implementation and adherence, with the mandatory principle of publicity and transparency that the said body should inherit in its work.

The Code of Ethics itself should cover issues that are recognized as risky in terms of the actions of public officials, which may call into question their integrity and responsibility in the performance of their duties, and especially those related to defining: guidelines on gifts and other benefits with clarification of the definition of "protocol gifts and appropriate gifts", clear rules and guidelines for the use of public resources for party activities and election campaigns, and the guidelines related to the revision of the immunity granted to members of the Government in order to "deny" such protection for criminal acts that are explicitly related to corruption.

When it comes to Article 20 of the Draft Law on the Government, although this article specifies that the government's activities during a "technical" term are limited to performing technical tasks that should not create new financial obligations, and that these tasks relate to the execution of regular legally established financial and other obligations, the Agency is of the opinion that a government whose term has ended should be subject to periodic special audits by the State Audit Institution during the period until the new government is elected. It is also necessary to ensure the highest possible level of transparency in the work of such a government, with the aim of minimizing the potential for abuse, given the increased attention from both the professional community and other interested members of the public.

Additionally, the Agency is of the opinion that it is necessary to exert additional efforts to regulate the space left by the Constitution of Montenegro for the

functioning of a government whose term has ended, and until the election of a new one, and specify “at the very least”, the actions that a government with an expired term cannot perform, aiming not only for formal but also practical regulation of the interim period between the two governments. Additionally, considering Article 20, paragraph 3, which states that a government whose term has ended “cannot make nominations, or appointments, or give approval to appointments, unless they are conducted in accordance with regular procedures and ongoing processes”, the Agency believes it is necessary to include appointments and dismissals as actions that a government whose term has ended cannot perform, since managing the government's personnel policy in this capacity cannot be considered part of current business. This is particularly relevant, given that this article of the Draft Law already plans for a government whose term has ended to appoint acting officials under this article.

In conclusion, 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

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

HEAD
Milica Popović

ACTING DEPUTY DIRECTOR
Boris Vukašinović

Submitted to:

- The Council of the Agency for Prevention of Corruption
- The Parliament of Montenegro
- The Government of Montenegro
- The Ministry of Public Administration - To the working body for the preparation of the Draft Law on the Government
- a/a

Expedited on:
Administrative Officer: