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Ministry of Justice

COMMENT, PROPOSAL AND SUGGESTION

The draft Law on Prevention of Corruption

Comment/Proposal/Suggestion 1: Special Law on Whistleblowers (Article 1 of the Draft)

We propose that the protection of individuals who report threats to the public interest indicating the existence of corruption be the subject of a separate law, rather than this one.

Explanation of Comment/Proposal/Suggestion 1:

International experts have repeatedly pointed out that it is necessary to separate whistleblower protection into a separate law and regulate it adequately, and that it is not appropriate for it to be the subject of this law for a number of reasons:

> „The principle of whistleblower protection in international standards and practice is quite clear: the intention is to protect individuals who report all types of legal violations and/or public interest concerns, not just a narrow category of situations with indications of corruption. Emphasizing the public interest is important for covering a wide range of collective harms, such as pollution or unsafe food.
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> This error leads to confusion and awkward formulations such as "threats to the public interest indicating the existence of corruption," where the last phrase is obviously inserted afterwards to justify the inclusion of the regime in the current law (since the term "threats to the public interest" by definition unequivocally includes corruption). More importantly, the resulting reduction in scope represents a huge gap in the whistleblower protection regime in Montenegro and shows that this issue needs to be regulated by a separate law that provides a reporting mechanism and assistance outside of the Agency for cases that do NOT "indicate the existence of corruption". [1]„

Firstly, the protection of so-called whistleblowers also applies to individuals employed in the private sector, which in practice can create unnecessary confusion in the application and understanding of this law by business entities. It is considered that this law primarily relates to public officials and the prevention of corruption in the public sector. This will also create additional costs in promoting this law in the private sector, especially among small and medium-sized enterprises that have limited capacities to monitor changes in legal regulations.

Secondly, and more importantly, whistleblowers can point out numerous cases of legal violations that have nothing to do with corruption, but other regulations (e.g., non-compliance with health and sanitary regulations that can affect human health and similar issues). Therefore, it is illogical for the Agency for the Prevention of Corruption to be responsible for handling whistleblower reports in all areas, including those that have nothing to do with the potential existence of corruption, but relate to other forms of legal violations that can have consequences for the public interest.

[1] Trivunović, M., Analysis of the Montenegro Law on Prevention of Corruption, November 2023

Instead, this draft law unjustifiably reduces whistleblower reports exclusively to threats to the public interest that indicate the existence of corruption (Article 47, paragraph 2), while whistleblowers who point out other irregularities that can have devastating effects on the public interest, including human life and health, are not protected. Additionally, a whistleblower, especially those employed in the private sector, may not have knowledge of the existence of corruption, and thus cannot articulate it in their report, but they may have significant information about, for example, a manufacturing process that is not in compliance with standards and as such could endanger the lives and health of a large number of people.

Comment/Proposal/Suggestion 2: Definition of Public Official (Article 3 of the Draft)

We propose that a categorization of public officials be introduced, and accordingly, greater or lesser restrictions be prescribed in the performing of public functions.

Additionally, the obligations relating to public officials should also include members of commissions who conduct procedures for public procurement, privatizations, public-private partnerships, and concessions, whose estimated value exceeds 500,000 euros, as these individuals are exposed to a high risk of corruption.

Explanation of Comment/Proposal/Suggestion 2:

The term "public official," as defined in the Draft, is not sufficiently precise and is open to contradictory interpretations about which categories of actors from the public sector are subject to its provisions. The shortcomings of the definition of public official have been extensively discussed in a series of expert analyses of the Law on the Prevention of Corruption[2].

The draft implies a relatively limited scope of public sector actors under the term "public official," as all its provisions—including, notably, the obligation to submit asset declarations—apply to all "public officials" defined by the law.

From a review of international practices, it emerges that different categories of actors from the public sector typically are subject to varying anti-corruption obligations, proportionate to their level of influence and responsibility. International practice recognizes that "basic" or "fundamental" rules related to conflicts of interest—such as managing ad hoc conflicts of interest, restrictions on giving and receiving gifts, certain secondary activities, etc.—should apply to the broadest spectrum of actors in the public sector: from civil servants to special categories of public sector employees such as members of the judiciary, military personnel, police officers, teachers, doctors, etc., across all elected or appointed positions, whether paid or voluntary, as well as to most other actors who provide services or perform functions on behalf of the state (regardless of the level, central or local). Some jurisdictions extend some of these obligations to individuals and entities that receive income from the public budget.

[2]Council of Europe, September 2022. Technical document ECCD-HFII-AEC-MNE-TP9-2022 "Analysis of parts of the Law on the Prevention of Corruption that regulate conflicts of interest, restrictions in the exercise of public functions (incompatible office), declarations of assets, gifts, donations and sponsorships" [SE TD9] consulted several earlier analyses since the establishment of the Agency for Prevention of Corruption, including the Technical document of the Council of Europe from October 2018 (ECCD-HF-AEC-MNE-TP 11/ 2018) (p. 9), as well as the conclusions of the EU mission's assessment from April 2021 on the functioning of the Agency (p. 10).

Stricter requirements, particularly the obligation to declare assets and interests, are typically reserved for more selected public functions with higher levels of authority. The principle of differentiation is straightforward: the greater the level of power or influence, the higher the risk of corruption, and thus the greater the scope of preventive requirements and oversight.

Additionally, the same obligations apply to all categories of individuals classified as public officials according to the mentioned definition, which in practice leads to the congestion of the work of the ASK (Agency for Anti-Corruption), but also practically prevents the engagement of individuals in positions whose simultaneous performance does not pose a corruption risk. This leads to practical problems in performing certain public functions, especially at the local level (e.g., school boards).

The parliamentary working group that worked on the amendments to this law in the previous session of Parliament, therefore, considered implementing a categorization of public officials into those who are obligated to report conflicts of interest (the broadest category), those who must submit reports on income and assets (a somewhat narrower category), and officials for whom holding multiple positions is incompatible (the narrowest category).

Finally, while such a definition includes, for example, members of school boards of educational institutions, some of which have negligibly small budgets, it does not apply to individuals who are exposed to a high risk of corruption because they make decisions about multi-million dollar state deals. Therefore, it should also include members of commissions who conduct procedures for public procurements, privatizations, public-private partnerships, and concessions, whose estimated value exceeds 100,000 euros.

Comment/Proposal/Suggestion 3: Definition of Threat to the Public Interest Indicating the Existence of Corruption (Article 4 of the Draft)

The proposed article limits whistleblower protection, particularly due to the requirement that there must be an action intended to conceal violations, which will be almost impossible to prove in practice. Additionally, it stipulates that all regulatory breaches indicate the existence of corruption, which is not grounded in international practice.

Explanation of Comment/Proposal/Suggestion 3:

It is unclear why definitions are divided between Article 4 and Article 6, creating unnecessary confusion, which contradicts the recommendations of international experts who suggest that all definitions should be encompassed within a single article to make it comprehensible to the individuals it pertains to. This is particularly problematic when considering that this article applies to commercial entities, including those with very limited legal capacities.

It is evident that this article attempts to address the problem related to whistleblower protection by defining what constitutes a threat to the public interest that indicates the existence of corruption. However, in that definition, it is specified that the existence of corruption implies a violation of regulations and ethical rules, i.e., the undermining of integrity. However, that definition does not reflect all the situations where it is necessary to protect whistleblowers, especially in the private sector. For example, in the case of inadequate manufacturing processes that can endanger human health and life, which are not related to ethics or integrity, but rather aim to reduce production costs. In those cases, even if there is a violation of regulations, it does not necessarily relate to the existence of corruption. There is no definition of corruption in comparative law that implies that every form of regulatory breach necessarily represents corruption.

Additionally, the definition includes "an action intended to conceal such a violation," which will be an extremely limiting factor in practice that will prevent the protection of whistleblowers, as the existence of such an action will need to be proven. Therefore, whistleblower protection will not be possible in cases where there is no written trail or witnesses to confirm the existence of such an action, or in situations where, for example, all employees in a company are aware of problematic deficiencies in the production process, but have been orally warned not to point out these deficiencies to inspections.

Finally, in paragraph 3, item 1 of this article, the words "especially in the areas of" are followed by a list of some areas, making it unclear whether this can also apply to other areas not explicitly listed in this article.

Comment/Proposal/Suggestion 4: Jurisdiction of the Agency (Article 6 of the Draft)

It is necessary to stipulate that the Agency for Prevention of Corruption (ASK) decide in cases of conflict of interest and incompatible office that are prescribed by other laws in addition to this one, in order to have a centralized system, as recommended by the experts of the Council of Europe.

Explanation of Comment/Proposal/Suggestion 4:

Many other laws prescribe obligations for individuals related to the incompatible office and avoiding conflicts of interest. However, no institution's jurisdiction is clearly defined to ensure the adequate application of these regulations. In practice, it happens that the Agency for Agency for Prevention of Corruption interprets the provisions of these laws in some cases, while in others, it declares itself not competent.

For example, in the Spatial Planning and Development Law, Article 132 defines various situations where functions are incompatible (auditors, planners, etc., who are not allowed to work simultaneously), but it lacks penal provisions or procedures for dealing with conflicts of interest. Similarly, the Concessions Law defines the obligation of members of tender commissions to inform the Government about the existence of conflicts of interest, but it does not contain penal provisions, nor does it prescribe who oversees the implementation of provisions related to conflicts of interest.

Comment/Proposal/Suggestion 5: Definitions (Article 8 of the Draft)

The definitions of benefits, related parties, gifts, and assets are too narrow and need to be aligned with international practices and recommendations of the Council of Europe. Additionally, there is no definition provided for the change in the value of assets, which in practice has enabled officials to conceal significant financial transactions and business relationships with individuals whose interests they influence. There is also no definition of the lifestyle of a public official, which in practice has left room for arbitrary interpretations and resulted in a failure to identify officials whose lifestyle significantly deviates from their official income, which is one of the key indicators of potential corruption.

Explanation of Comment/Proposal/Suggestion 5:

The definition of benefits is rather narrow: the concept is limited to property, or to property and other material or immaterial rights. Such a definition is not in line with international practice, which, on the contrary, aims for the widest possible scope. As noted by the Council of Europe in its analysis of the Law,

this definition excludes "discounts exceeding the usual market practice and unavailable to other consumers, and exemptions from obligations" (page 62), as well as other types of material benefits such as loans or credit lines, or immaterial benefits such as sexual services or simply preferential treatment in accessing limited resources or desirable items. Therefore, the definition should be amended in line with international practice and Council of Europe recommendations.

The definition of a related party is limited to blood relatives and individuals with whom the public official has business relationships, but it does not include individuals with whom the official has personal or private relationships. Regarding the scope of inclusion for each group of related parties and associates, there is at least one additional crucial relationship that should be recognized within the broadest group defined in relation to ad hoc decisions: the institution of ritual kinship (godparenthood). Although it is commendable to note that the current definition now recognizes unmarried partners, it overlooks various other forms of closeness, such as close friends and other types of collaborators, including legal entities, as well as conversely - hostility (intense dislike), which could equally constitute a private interest that should be taken into account. Finally, the definition should take into account hierarchical relationships (power dynamics), which include dimensions of pressure and private interests that can equally impede impartiality.

As with the definition of a public official, different groups/categories of "related parties and associates" should be defined in direct relation to the legally established obligations, with clearly articulated reasoning for inclusion/exclusion.

The broadest group of related persons should include, at the very least, the categories of "family members and close associates" as defined in the FATF's Guidance on Politically Exposed Persons (Recommendations 12 and 22)[3]. In the FATF guidelines, it is stated:

> „For family members, this includes relevant factors such as the influence that certain types of family members generally have and how wide the circle of close family members and dependents tends to be. For example, in some cultures, the number of family members considered close or influential may be relatively small (e.g., parents, siblings, spouses/partners, and children). In other cultures, this may also include grandparents and grandchildren, while in third cultures, the circle of family members may be wider, extending to relatives or even godparents.
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> For close associates, examples include the following types of relationships: (known) (sexual) partners outside the family unit (e.g., girlfriends, boyfriends, lovers); prominent members of the same political party, civil organization, workers' union, or employees as the [relevant official]; business partners or collaborators, especially those who share (legally recognized) ownership of legal entities with the PEP, or who are otherwise connected (e.g., through joint membership on a company board). In the case of personal relationships, the social, economic, and cultural context can also play a role in determining the level of closeness of these relationships.“

The definition of gifts has essentially not been changed, still requiring proof that the gift was given in connection with the performance of public functions, which in practice is absolutely impossible to prove without the use of covert surveillance measures, witness cooperation, etc. This means that public officials can continue to accept gifts from individuals they make decisions about, but it is sufficient for them to state that the gift was not given in connection with the performance of public functions, but for other reasons. The definition of gifts should also include the forgiveness of loans, debts, and exemptions from obligations, as well as services and providing certain benefits. The current definition of gifts has been

[3] (Financial Action Task Force – FATF) 2013, FATF Guidance: Politically Exposed Persons (recommendations 12 and 22), https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-PEP-Rec12-22.pdf

incorrectly interpreted by the Anti-Corruption Agency (ASK), where, for example, the payment of luxurious trips and accommodations worth tens of thousands of euros was not considered a gift under the Law on Prevention of Corruption. The illustrative examples refer to the former President of Montenegro, Milo Đukanović[4], and his trip at the expense of businessman Duško Knežević, as well as the former Prime Minister, Dritan Abazović, who stayed in the United Arab Emirates at the expense of the Royal Family of that country[5].

While "private gifts" (i.e., gifts given/received in a personal capacity, not related to the performance of public functions) cannot reasonably be prohibited, they may be considered an indication of a meaningful personal relationship, hence a private interest. Givers of significant gifts (i.e., benefits in the broadest sense, including hotel and hospitality services) should at the very least be defined as related parties about whom decisions regarding the performance of public functions cannot be made without disclosing a private interest and receiving guidance from the competent authorities.

We also point out that this definition does not prohibit related parties from receiving gifts instead of the public official, which represents a significant flaw. Gifts to related parties instead of directly to officials are a well-known method of concealing bribery. Therefore, the restriction should encompass a wide range of individuals: at the very least, all first-degree relatives regardless of whether they live in the same household or not, but broader/stricter rules should also be considered. We point to the recommendations of the Council of Europe to prohibit all individuals connected to a public official from receiving gifts given in connection with the public official.

The definition of property is too narrow because it does not include, for example, the following cases:

- signing contracts/preliminary agreements for the sale/purchase or notarizing deeds attesting to the existence of a legal transaction,
- real estate not recorded in the cadastre due to, for example, illegal construction, which is an extremely common occurrence in Montenegro.

Additionally, the definition of property should explicitly state that it includes assets abroad, such as deposits in foreign banks, shares and stakes in companies, as well as any other form of ownership over registered and unregistered legal entities (for example, trusts, which are often used to conceal assets and are not required to be registered). The definition of property should also include movable assets held abroad and assets in actual ownership (for example, in cases where an official establishes an offshore company and leases fictitious owners, but is the actual owner of that legal entity or property - *the ultimate beneficial owner*).

The definition of changes in asset value is not provided, although its absence in practice has led to highly arbitrary interpretations. For example, according to the interpretation of the Anti-Corruption Agency, public officials were not required to report the sale of a property and the money received for it, as this constitutes a change in the "aggregate state" of that asset. Such an interpretation represents a significant corruption risk because a public official can sell property, such as real estate, at a significantly higher price than the market value or buy it at a much lower price, effectively constituting a hidden gift.

Additionally, due to the non-disclosure of such transactions, the public will not be informed about the identity of the individuals who have engaged in business relationships with that official (e.g., buying and selling relationships), whose interests the official may subsequently decide upon, even though those

[4] Decision of the Agency for Prevention of Corruption, October 2022, https://www.mans.co.me/wp-content/uploads/2024/04/Odluka-ASK-a_Milo-Djukanovic-Dubai.pdf

[5] Decision of the Agency for Prevention of Corruption, October 2022, https://www.mans.co.me/wp-content/uploads/2024/04/Odluka-ASK-a_Dritan-Abazovic-UAE.pdf

individuals should be considered related parties. Due to such interpretation by the Agency, which was supported by the Supreme Court in the case of Vesna Medenica, the former President of the Supreme Court, a public official can buy and sell a series of properties multiple times throughout the year without the obligation to submit a separate report on it (e.g., the case of Milivoje Katnić and the sale of an apartment at a significantly higher price than market value or the purchase of land from certain state authorities at a significantly lower price than market value, or the case of Ivan Brajović and the sale of land at non-market prices).

The draft also does not provide a definition of the lifestyle of officials, i.e., it does not specify what constitutes a lifestyle and how the Agency collects data on, for example, luxury travel, children studying abroad, etc., even though this is one of the indicators of possible corruption. In none of the draft articles is the Agency obliged to initiate any proceedings or provide information to the competent prosecutor's office in cases where the lifestyle of the official significantly deviates from their official income. It should be stipulated that monitoring of the lifestyle includes comparing declared income and assets with the consumption habits, living conditions, and property of the public official, their spouse (both marital and extramarital), and children.

Finally, as already mentioned, it is unclear why this article does not include the definition of public and private interest from Article 4 of the Draft, as well as the definition of conflict of interest from Article 9 of the Draft.

Comment/Proposal/Suggestion 6: Conflict of interest (Article 9 of the Draft)

The definition of conflict of interest should include the interests of related parties. Public officials should be allowed to challenge the Agency's opinion before the competent court, but it should also be prescribed for legal transactions concluded in the presence of a conflict of interest to be invalid.

Explanation of Comment/Proposal/Suggestion 6:

The definition of conflict of interest should include the interests of related parties. Conflict of interest arises when a public official makes decisions in cases where the private interest of a related party (such as a child, spouse, etc.) may influence their impartiality. For example, a conflict of interest for a public official exists when they make decisions about a company where their spouse is employed, a teacher who teaches their child, or a company owned by their business partner in another company.

This article also prescribes the obligation of the public official to act according to the opinion of the Agency, which is required to comply with it within five days, or else it is considered that they have violated the provisions of this law, which could lead to their dismissal. Due to the potential for abuse of the opinion institution, it is necessary to grant the public official the right to have that opinion reviewed in a judicial procedure. Otherwise, significant costs for the state may arise if the official is dismissed based on an opinion of the Agency that is not in line with the law or contains other deficiencies, as has been the case several times in the past.

A particular issue is the application of this institution because the Agency can only issue an opinion in cases where it becomes aware of possible conflicts of interest. However, even in those cases, when the Agency determines, and the court confirms, the existence of a conflict of interest, the Draft does not specify that legal transactions concluded in situations of conflict of interest are deemed void. Additionally, the Draft does not specify the actions of any body in situations where decisions made by a public official in the presence of a conflict of interest have already been executed.

Comment/Proposal/Suggestion 7: Statement of Conflict of Interest (Article 10 of the Draft)

It is necessary to prescribe how to act in cases where a decision adopted contrary to this article has already been implemented.

Explanation of Comment/Proposal/Suggestion 7:

In a significant number of cases, it is only after the execution of a particular decision (e.g., upon citizen complaint) that it is determined that it was made by a public official who was in a conflict of interest. In such situations, it is necessary to stipulate that the Agency or the authority within whose scope of work that decision was made informs the competent prosecutor's office so that it can verify whether the existence of a conflict of interest has resulted in harm to the public interest.

Comment/Proposal/Suggestion 8: Performance of Other Public Affairs (Article 11 of the Draft)

Officials should be required to inform the Agency about the performance of additional duties as stated in paragraph 1, and the Agency should determine whether this leads to a conflict of interest.

Text "in accordance with the Law on Administrative Procedure" should be removed from paragraph 2, because this restriction narrows down the scope compared to the solution provided by the existing law, even though decisions can be made in a form other than those provided for by the Law on Administrative Procedure.

Explanation of Comment/Proposal/Suggestion 8:

A public official engaged in any of the activities listed in paragraph 1 of this article should be required to inform the Agency in writing within eight working days from the commencement of the activity, and to provide the Agency with the contract under which they may perform the activity or profession.

The Agency should be obligated to initiate proceedings to assess the compatibility of the function and determine, within 15 working days from the date of receipt of that notification, whether it believes that the performance of the activity, considering the actual scope and nature of the function performed by the public official, would pose a disproportionate risk to the objective and impartial performance of the function or jeopardize its integrity and objectivity. For example, a public official may decide to engage in an additional activity precisely in the area related to their public function (for instance, a minister responsible for energy should not engage in analyses or write articles for a bulletin of a company operating in that field). In such a case, the Agency issues a decision prohibiting the public official from performing the additional activity or imposes conditions or restrictions that must be adhered to when carrying out the activity.

By adding the phrase "in accordance with the law governing administrative procedure" in paragraph 2 of the Draft, compared to the existing provision in the law, the restriction on public officials performing other public duties is significantly reduced to only those in which they decide on the rights, obligations, or legal interests of parties. Namely, the Law on Administrative Procedure stipulates that decisions regarding the rights, obligations, or legal interests of parties in administrative matters are made by an administrative body through a decision or another type of act, in accordance with special regulations. However, this won't cover decisions of bodies that do not decide on the rights and obligations of individuals but make decisions significant for the public interest, such as commissions on spatial plans or those determining the state of public institutions, for example.

Comment/Proposal/Suggestion 9 (Article 14 of the Draft):

To prevent exceptions from becoming the rule, it is necessary to specify the cases in which public officials may be part of the management structures of public enterprises or institutions.

Public officials should be prohibited from serving as chairpersons or members of the management and supervisory bodies of scientific, educational, cultural, artistic, humanitarian, and sports associations (paragraph 4) that are partially or fully funded by public funds or sponsorships from companies owned by the state or municipalities.

Explanation of Comment/Proposal/Suggestion 9:

The conditions for 'exceptional' appointments from paragraph 2 are not specified, leaving room for interpretation and potential misuse of this provision, turning it into a rule and a way of covert reward. It is necessary to specify what 'exceptional' circumstances are and to require officials to inform the agency about such engagement, which should determine whether there is a conflict of interest, for example, if the company falls within the purview of the public official (similarly to what is proposed in suggestion 8).

We believe that the participation of public officials in the governing bodies of the mentioned associations can influence decisions regarding their funding from public funds, especially when it comes to high-ranking public officials. This can jeopardize the public interest by redirecting larger amounts of public funds to these associations compared to other similar associations where public officials are not involved in the governing structures. Additionally, the actions of these associations can be exploited for political purposes, especially during the pre-election period. Finally, this can be particularly problematic if these associations operate in areas for which the public official involved in their governing bodies is responsible. If officials are allowed to hold these positions, they should be required to inform the Agency, which should determine whether this constitutes a conflict of interest, as in the case of performing additional duties (further details provided in comment 8).

Comment/Proposal/Suggestion 10: Obligation to Resign (Article 15 of the Draft)

It is necessary to prescribe that the public official's function automatically ceases if they do not submit their resignation within the prescribed deadline, as well as the obligation of the authority to appoint a new person to that position within a specified period so that the public official does not effectively continue to perform it while in resignation. It should also be stipulated that the public official cannot be re-elected to the position from which they resigned and within what timeframe.

Explanation of Comment/Proposal/Suggestion 10:

This article stipulates the obligation for the official to resign within 30 days from assuming another public function, but it does not specify what should be done if the official fails to submit the resignation within the prescribed period. We propose adding a new paragraph to this article specifying that in case of failure to submit the resignation within the prescribed period, the official is considered dismissed, and the Agency informs the official gazette, which publishes this information.

Additionally, it should be stipulated that the management bodies are obliged to appoint a new person to that public office within 15 days to prevent the situation where the official, after resigning or being dismissed, continues to perform an incompatible function because another person has not been selected.

Finally, it is necessary to stipulate that the official who has resigned from that position or has been dismissed from it cannot be reappointed to it until they perform another incompatible public function, or else the act of their appointment will be null and void.

Of course, it should be ensured that a public official has the right to initiate legal proceedings against the opinion of the Agency, as they need to be protected from unlawful interpretations of the law and prevent any damage that may be caused to the state or municipal budget in the case of unlawful dismissal (further details provided in comment 6). To enhance the efficiency of reviewing the legality of the Agency's decisions, it should be prescribed that the Council of that institution acts as the appellate body (further details provided in comment 28).

Comment/Proposal/Suggestion 11: Contract on Services and Business Cooperation (Article 16 of the Draft)

The phrase "unless the value of these contracts is less than €1,000 per year" should be removed, and it should be entirely prohibited for officials to provide such services in order to prevent it from serving as a scheme for concealing corruption.

Explanation of Comment/Proposal/Suggestion 11:

Such transactions should be entirely prohibited due to the risk of abuse: it could conceal a money-back scheme where multiple companies providing services to a public body are required to purchase fake services from officials as an informal condition in their contracts. Therefore, even the Council of Europe, in its analysis of the current Law, advocates for the complete abolition of this provision (page 59).

Comment/Proposal/Suggestion 12: Restrictions upon Termination of Public Office (Article 17)

It is necessary to introduce a permanent restriction for a public official to represent legal or natural persons before the authority in a matter in which they participated as a public official in decision-making (paragraph 1 point 3), as well as to prohibit, at any time after performing public office, the use of knowledge and information acquired during the exercise of public office for personal gain or to cause harm to others, unless such knowledge is publicly available (paragraph 2).

The restriction for other areas should be extended to at least two years, as there is no reason for it to be reduced to one year, as proposed in the Draft Law compared to the current Law.

Explanation of Comment/Proposal/Suggestion 12:

It is completely incomprehensible that a public official could ever be allowed to represent legal or natural persons in the same matter in which they previously decided on behalf of the state. This is a classic case of conflict of interest that cannot cease regardless of the passage of time after the public function has been performed. It is understandable that the official has the right to represent parties before the body they led after a certain period, but not in proceedings where they themselves made decisions. In this way, a huge space for corruption would be created, where a public official could, for example, make an unfavorable decision for a particular party and condition them to privately engage them after leaving office to exploit the embedded flaws in that decision to challenge its annulment.

A public official should never use information obtained during their public function to gain advantage for themselves or others, or to cause harm to anyone else, as this constitutes a direct invitation to corruption.

Specifically, a public official may illegally classify certain information as confidential and condition a legal or natural person to engage them so they can exploit that data in their interest or with the aim of causing harm to third parties. This can have a devastating impact on competition, for instance, when competitors lack access to vital information necessary for participating in a particular tender, and so on. Particularly problematic is the potential for enormous harm to the public interest, as the official uses information that, for legitimate reasons, is not accessible to the public. It is only acceptable for a public official to use information that is publicly available, but not information that is concealed, regardless of the passage of time.

Another issue is the extremely low penalties that, under no circumstances, can deter either officials or legal entities from gaining much larger, even multimillion-dollar benefits from using non-public information. We believe that in cases where a certain legal transaction is concluded under such circumstances, it should be considered void, rather than imposing penalties in trivial amounts compared to the benefit that both the official and the interested party can gain (€1000 to €2000 - Article 108 of the Draft). Furthermore, the penal provisions stipulate that in such cases, a penalty of a ban on conducting activities for a period of six months to one year may be imposed, but it is not clear on what basis the decision to apply this protective measure will be made (Article 108). We believe that it must be strengthened to a minimum period of five years, until the information held by the official loses its value, and thus the risk to public interest from their misuse diminishes. Additionally, it should be mandatory rather than optional as outlined in the Draft.

The same penalties should be applied in cases where a public official represents legal or natural persons in matters in which they previously made decisions.

The rationale behind shortening the duration of other restrictions to one year compared to the two years stipulated in the current law is not provided in the draft's rationale. We believe that this reduction is not justified, nor is it proposed by any analysis conducted by international experts. Such a reduction could directly contribute to an increase in corruption among public officials.

In conclusion, the biggest drawback of these provisions lies in the challenges associated with their implementation. Therefore, it is necessary to mandate that public officials inform the Agency of any new engagements within two years after leaving office. Additionally, the Agency should be required to provide an opinion on these engagements and determine whether they fall under the restrictions prescribed.

Comment/Proposal/Suggestion 13: Prohibition on Receiving Gifts (Article 18)

The obligation to determine whether a gift is related to the performance of public functions will gradually undermine this provision in practice, as has been the case so far. Therefore, we propose that all individuals found to have given a gift to a public official or a member of their household (including the new definition of family relationships) exceeding the amount of 1,000 euros should be treated as associated persons in terms of restrictions on decision-making regarding the interests of those individuals by the public official.

Additionally, we propose expanding the scope of individuals who are prohibited from receiving gifts related to the duties of a public official to include all related persons as defined in Article 8 of the Law.

Explanation of Comment/Proposal/Suggestion 13:

As mentioned earlier (remark 5), determining whether a gift is related to the performance of public duties or purely of a private nature is not feasible in practice. For this purpose, a statement from the public official is sought, who may claim that the gift has no connection to their performance of public duties, even when

it is given by an individual over whom they have directly decided, and even if it was done shortly before making the decision.

While "private gifts" (i.e., gifts given/received in a personal capacity, unrelated to the performance of public duties) cannot reasonably be prohibited, they can be considered an indicator of a meaningful personal relationship, hence a private interest. For this reason, providers of significant gifts (i.e., benefits in the broadest sense of the term, including hotel and hospitality services worth, for example, more than 1000 euros) should at the very least be defined as connected entities about which decisions regarding the performance of public duties cannot be made without disclosing private interests and guidance from competent authorities.

Additionally, there is a lack of prohibition against soliciting gifts for oneself or connected persons, and most problematically, the scope of connected persons prohibited from receiving gifts related to the duties of a public official is too narrow and narrower than the definition provided in Article 8 of the Draft.

Comment/Proposal/Suggestion 14: Submitting the Report on Income and Assets (Article 25 of the Draft)

Keep the provisions from the current law, instead of raising the threshold for reporting increases in assets that require a separate report from 5,000 to 10,000, and abolishing the obligation of a public official to submit a separate report on the day of the termination of public office.

It is necessary to prescribe the obligation for officials to report all changes related to property rights, i.e., the conclusion of contracts before the competent authority, notary, or court, for value exceeding 5,000 euros, including contracts concluded by members of their household or legal entities owned by them.

Explanation of Comment/Proposal/Suggestion 14:

There is no reason to double the threshold value for reporting the increase in assets. The amount of 10,000 euros is too high and exceeds the average annual net salary.

The abolition of the obligation for a public official to submit a separate report when their public function ends is an extremely poor solution because it eliminates the establishment of a reference point for the value of the official's assets at the time their function ends. This solution may only be acceptable if the official is appointed to a new public function when the previous one ends, and thus will submit a report as part of the obligations related to that function.

The obligation for officials to submit a report after the termination of their function is also reduced to a period of two years. While the existing law requires this report to be submitted two years from the assumption of the function, thus on the day when that function ceased, the Draft envisages that these reports will be submitted within the same period as other officials, i.e., in March of the current year for the previous year. For example, if the official's function ended in September 2024, according to the draft, they would only submit two reports – in March 2025 and March 2026 – and their assets would be known only for 2024 and 2025. On the other hand, according to the existing law, the official would have to submit reports in the month when their function ended, reflecting the assets as of the date of submission. In this case, the information about their assets would be available to the public for nine months longer than under the draft, until September 2026.

It is necessary to prescribe the obligation for officials to report all contracts related to any change in property rights exceeding 5,000 euros, not just those changes that are recorded in the cadastre. For example, a significant number of individuals purchase apartments under construction or apartments located in buildings without an occupancy permit, which are registered as owned by the developer. These properties may not be listed under the name of the public official in the cadastre, even though they are the actual owner according to the contract signed. Furthermore, some individuals do not transfer apartments to their own names; instead, they remain registered under the previous owners, even though there is a contract transferring property rights to the official. The current solution incentivizes such behavior as a form of concealing assets, which may indicate corrupt practices by the official.

Comment/Proposal/Suggestion 15: Data Reported (Article 26 of the Draft)

The value of movable property and cash to be reported to the Agency has been doubled unjustifiably from 5 to 10 thousand euros, and the provision to report only the property of members of the common household has been retained.

Officials should be obliged to report:

- **the assets of their children, regardless of whether they live in the same household;**
- **their own and the incomes of their spouses and children both in the country and abroad;**
- **trust funds abroad owned by an official, their spouse, and children, along with the assets they control;**
- **property owned by the official, their spouse, and children both in the country and abroad, regardless of whether they are listed as founders or formal owners;**
- **Ownership rights to immovable and movable property of a company, institution, or other legal entity whose owner or founder is the spouse or children of the public official, as well as companies owned by them,**
- **Signed contracts on public procurement, concession awards according to the Concession Law, Article 6, and concession awards for games of chance by companies whose owners and founders include public officials, spouses (married or unmarried), and children,**
- **Digital assets, such as cryptocurrencies and non-fungible tokens, owned by the official, spouse, and children, as well as any other forms of digital assets,**
- **Loans and receivables of the official, spouse, and children from natural and legal persons,**
- **All transactions exceeding 5,000 euros (including their purpose, value, and number) executed during the reporting period, even if they do not lead to an increase in asset value.**

Officials should be obliged to submit to the Agency along with their reports

- **contracts or other legal documents based on which the revenues of the functionary, spouse, and children were acquired;**
- **contracts or other legal documents based on which real estate was sold or purchased;**
- **contracts or other legal documents based on which movable property exceeding 5,000 euros was sold or purchased;**
- **notarial record/statement on the origin of cash/savings in the bank.**

Public officials should be obliged to grant consent for the Agency to access information on accounts held at credit institutions and other financial institutions for themselves, their spouses, and children, and should not be allowed to refuse to do so.

In line with the recommendations of the Council of Europe, spouses and adult children of public officials should be directly obligated to provide accurate and complete information for completing income and asset reports and verify the information by signature. Alternatively, spouses and adult children may even be required to independently complete and submit their own statements.

Explanation of Comment/Proposal/Suggestion 15:

A series of examples from practice show that children of many public officials are excluded from income and asset reports as soon as they turn 18 and immediately acquire significant assets that cannot be explained by their official income. For this reason, it is necessary for the children of officials to be included in the reports, even when they do not officially reside in the same household, as this is the only way to monitor whether there has been unexplained growth in their assets, which could indicate corruption among public officials.

It is necessary to emphasize the obligation to report all incomes of the official, spouse, and children both domestically and internationally.

It is necessary to prescribe the obligation to report trusts abroad that do not take the form of formally registered legal entities but rather contracts, which are commonly used to conceal valuable unexplained assets.

Reporting on beneficial ownership is important because not all ultimate ownership or control is based on formal ownership of shares and the like. An individual may exercise control and/or derive benefit from assets by authorizing another individual to hold formal ownership, such as by being named as a beneficiary of a trust or savings, through control via a chain of corporate vehicles, etc. Beneficial ownership is a key concept in anti-money laundering legislation, and the modalities of the concept have been developed and can be readily applied to the legal realm of asset disclosure.

In addition to reporting on ownership of real estate and movable property of companies, institutions, or other legal entities of which the official is an owner or founder, the same obligation should be prescribed for legal entities whose owners or founders are spouses or children of the official. Furthermore, there should be an obligation to report on assets owned by subsidiary companies of legal entities whose founders are officials, spouses, or children. Only in this way can a clear picture of changes in asset values be obtained and speculative establishment of subsidiary companies that acquire significant assets hidden from the public can be prevented.

Additionally, for these legal entities, there should be a requirement to submit signed contracts for public procurement, concession awards under the Concessions Act Article 6, and concession awards for games of chance to the Agency. This is to identify potential conflicts of interest of public officials in these procedures, or any preferential treatment of these legal entities.

Digital assets refer to any assets that exist in digital format and come with the right to use. Public officials should report all forms of digital assets that might represent a financial interest or potential conflict of interest in performing their official duties. This includes, but is not limited to, the following types of digital assets:

- Digital currencies and tokens: public officials should report the possession of any type of digital currency or token, considering the financial value that cryptocurrencies and various tokens can have,
- Websites and domains: If a public official owns websites or domains that generate income or have significant market value,

- Digital content: If a public official produces or owns digital content that generates income (e.g., photographs, videos, digital books, etc.),
- Digital accounts and profiles: If a public official has accounts or profiles on platforms that can generate income or represent a financial interest (e.g., influencer accounts, YouTube channels, etc.).

Public officials, their spouses, and children should report loans and claims from individuals and legal entities. This includes all financial arrangements where they have borrowed money or have a right to reimbursement from other persons or entities. Reporting this information ensures transparency in the financial relationships and obligations of public officials. This helps in identifying potential conflicts of interest, where an official might be in a position to favor certain individuals or entities based on existing financial ties. It also facilitates the recognition of so-called connected persons through business relationships that have arisen between the public official and an individual or legal entity. By reporting these arrangements, it allows for understanding and assessment of financial relationships that could impact the impartiality and objectivity of public officials in performing their official duties. Reporting this information should include details about the amount of the loan or claim, the identity of the person or entity who provided the loan or from whom the claim is due, the terms under which the loan was given or the claim arose, and any information about repayment.

Reporting large transactions, such as significant expenses/purchases even when they do not lead to an increase in asset value, is important, among other reasons, to identify the participants in the transaction for the purpose of monitoring conflicts of interest and verifying the financial integrity of the transactions. Sometimes, assets can be acquired and disposed of within the same year (and not be available to the filer at the end of the year), and such transactions may not appear in the report even though they are important for understanding how an individual's wealth has increased or decreased.

Along with their reports, officials should provide the Agency with contracts or other legal documents based on which income was earned, or real and movable property worth more than 5,000 euros was sold or purchased. Reporting this information ensures that the public has insight into the financial interests and transactions of public officials, which increases their accountability and reduces opportunities for corruption. By understanding the income of officials and their families, as well as their property transactions, potential conflicts of interest can be identified. For example, if an official makes decisions that directly benefit an entity with which he or his family members have financial contracts, this could affect the impartiality of his official decisions. By submitting contracts for the purchase or sale of property, one can track wealth accumulation that is inconsistent with the known incomes of the officials, and identify specific special conditions or benefits given to these contracts, as well as the names of other contracting parties, which can facilitate the identification of potential conflicts of interest. Ultimately, it is necessary to mandate that officials provide a notarized statement clarifying the origin of cash/savings within the report.

Comment/Proposal/Suggestion 16: Register of Income and Assets (Article 28 of the Draft)

Paragraph 2, which stipulates the deletion of reports on officials' income and assets after a period of 10 years, should be removed.

It is necessary to add a new paragraph requiring the Agency to publish reports on income and assets no later than 60 days from the date they are submitted by public officials.

Explanation of Comment/Proposal/Suggestion 16:

Preserving the reports on income and assets of public officials after the 10-year period has significant benefits for maintaining transparency, accountability, and integrity in public administration. This ensures that historical data about the financial status and assets of public officials remain available for public scrutiny. It promotes ongoing transparency and allows citizens to verify and analyze the financial interests and potential conflicts of interest of public officials even after they leave office.

In cases of suspected corruption or irregularities that emerge or are discovered after an official has left office, access to previously submitted reports can be crucial for conducting investigations. Removing these reports after 10 years could hinder or prevent such investigations.

Preserving the reports enables researchers to study trends in the assets and income of public officials over time. This can provide insights into the effects of various policies on corruption, transparency, and integrity in the public sector. Making information about the assets and income of public officials available over a longer period can act as a deterrent to potential corrupt activities. The public and oversight institutions can better monitor the accumulation of wealth by public officials and compare changes in their financial status over time.

It is necessary to prescribe a deadline within which the Agency is required to publish the reports that have been submitted to it, as this will prevent possible abuses that occurred in the past, where the public suspected that some officials had missed the deadline for submitting reports, yet the Agency published them claiming they were submitted on time but not posted on the website (for example, the case of Milo Đukanović after leaving one of the public offices).

Comment/Proposal/Suggestion 17: Providing opinions at the request of a public official (Article 30 of the Draft)

Officials should be allowed to protect themselves from potentially unlawful interpretations by the Agency by filing an appeal to the Council or a lawsuit to the Administrative Court.

Explanation of Comment/Proposal/Suggestion 17:

It is necessary to enable control over the Agency's work in this process to prevent its opinion, which public officials must adhere to, from being contrary to the law and yet binding on public officials. In this way, there may be violations of the rights of these individuals, as well as damage to the state in proceedings, for example, related to dismissal, which these officials would initiate. Therefore, it is necessary to prescribe the possibility for officials to lodge an appeal or lawsuit, and due to the nature of these proceedings, to obligate the Council or the Administrative Court to decide on these cases as a priority.

Comment/Proposal/Suggestion 18: Data verification (Article 33 of the Draft)

The Agency should be obligated to initiate proceedings ex officio if it becomes aware of or receives information indicating that the lifestyle of a public official, their spouse (both marital and extramarital), and children is significantly more lavish than their reported income and assets, or if the consumption habits, living conditions, and assets of the public official, their spouse (both marital and extramarital), and children are conspicuously greater than the income and assets reported to the Agency.

Explanation of Comment/Proposal/Suggestion 18:

It is exceptionally important that the amendments to this article include defining oversight over the lifestyle of public officials. This entails analysing and comparing reported income and assets with the consumption habits, place of residence, and assets of public officials, their marital and extramarital partners, as well as their children. The Council of Europe proposes introducing this obligation into the Law and providing more detailed regulation, which includes analysing actual conditions such as property, vehicles, and the like. Furthermore, clearly delineating the Agency's authority to monitor lifestyle would involve analyzing increases in assets based on publicly available information, such as media reports, social media information, and comparing this data with databases accessible to the Agency.

Comment/Proposal/Suggestion 19: Delivery of decision (Article 42 of the Draft)

It is necessary to prescribe a deadline within which the Agency publishes decisions on its website.

Explanation of Comment/Proposal/Suggestion 19:

We believe that the Agency should be obligated to publish decisions on its website within 15 days from the date of issuance, and there should be provisions for penalties in case the Agency fails to do so. In previous practice, decisions have often been published with significant delays, and it was not possible to determine whether certain decisions were intentionally omitted from the Agency's website. Therefore, it is necessary to prescribe a deadline within which the Agency is obliged to publish these acts on its website.

Comment/Proposal/Suggestion 20: Finality of decision (Article 43 of the Draft)

It is necessary to prescribe the Council's competence to decide on appeals against decisions of the Agency's Director and to establish that the Council's decisions are final, subject to administrative dispute.

Explanation of Comment/Proposal/Suggestion 20:

Introducing the Council's jurisdiction to decide on appeals against decisions of the Agency's director and determining that the Council's decisions are final, with the possibility of initiating administrative litigation against them, represents an important step towards strengthening legal certainty and transparency in the Agency's work. By allowing for the review of the director's decisions through an independent body like the Council, transparency and public trust in the decision-making processes within the Agency are increased. Public trust is crucial for the effectiveness of any regulatory agency, especially one dealing with corruption prevention.

By providing an additional layer of legal protection for individuals and entities who feel unfairly treated by the director's decisions, better protection of their rights is ensured. This could reduce the number of administrative disputes before the courts, thereby saving time and resources of both the judicial system and the parties involved in the dispute.

By granting the Council the authority to decide on appeals, it would enable a more efficient review of the legality of Agency decisions than the process before the Administrative Court. In the past, this has led to significant costs for the state due to compensation for unlawful dismissals from office resulting from the implementation of Agency's unlawful decisions.

Establishing a mechanism for reviewing decisions by the director through the Council introduces the principle of separation of powers within the Agency, which is a fundamental principle of democratic governance and the rule of law. This ensures an additional level of oversight over the director's work, thereby preventing potential abuses of power.

Additionally, initiators have not been able to review the legality of decisions made by the Agency's director, except in cases of procedural errors, which has led to the unjustified dismissal of numerous cases.

The possibility of reviewing the director's decisions can motivate the director to be more thorough and cautious in their work, ensuring decisions are based on solid and transparent criteria. This enhances the quality of decision-making within the Agency.

Finally, by granting such authority, the Council would have the ability to exercise real control over the director's work rather than merely formal control, thereby ensuring greater legality in the Agency's operations and avoiding legal violations and costs to the state. Implementing such a structure could be a step towards aligning the Agency's practices with international standards and recommendations in the field of combating corruption and public sector governance.

All of this together should lead to strengthening the integrity, efficiency, and transparency of the Agency's work, as well as increasing legal certainty for all participants in the processes overseen by the Agency.

Comment/Suggestion/Recommendation 21: Application of the Rules of Administrative Procedure (Article 44 of the Draft)

"This is the most problematic article of the Draft, as it introduces an unjustifiably short statute of limitations of only five years in cases of law violations by public officials who have previously concealed their assets or income. We emphasize that the current law does not provide for a statute of limitations, and adopting of such provision would be a significant step backwards and a sign of lack of political will to fight against corruption."

Explanation of Comment/Proposal/Suggestion 21:

The introduction of a five-year statute of limitations for law violations by public officials who concealed their assets or income represents a significant flaw in the Draft Law, which could have far-reaching negative consequences for the efficiency of the judicial system and the integrity of public administration for the following reasons:

- **Unjustifiably short limitation:** Such a short time limitation for the statute of limitations may be unjustified, especially considering the complexity of uncovering financial irregularities and asset concealment. Complex cases of corruption and asset concealment often require a long time to be detected, especially if they involve international transactions or intricate financial schemes.

- **Encouragement of unlawful behaviour:** By setting a short statute of limitations period, there is a risk of sending a message to public officials that if they can conceal their illegal actions long enough, they will avoid legal consequences. This may encourage corrupt behavior and reduce the effectiveness of the legislative framework in combating corruption. It also hinders the recovery of public funds that may have been unlawfully appropriated, thus harming the public budget.

- **Selective actions of previous Agency directors:** Extended statute of limitations periods, especially in the context of a history of selective actions by both Agency directors, would result in accountability not being established even after a change in the Agency's leadership. This would

enable individuals to rely on the statute of limitations to evade investigations or sanctions. A short statute of limitations period favors certain individuals or groups, **effectively absolving all officials who concealed their income or assets before 2019 and were not prosecuted by the Agency**. The practice of selective action highlights the necessity of strengthening control and oversight mechanisms within the Agency. Extended statute of limitations periods can provide enough time to establish and implement such mechanisms (for example, the second-instance jurisdiction of the Council, further detailed in comment number 28), ensuring that no case of corruption or unlawful behavior remains uninvestigated due to procedural limitations.

- **Decrease in public trust:** Extending the statute of limitations period will signal to the public that concrete measures to combat corruption are not being taken, and instead, **officials from the previous regime who concealed their assets and/or were in conflict of interest are being absolved**. Such a short statute of limitations demonstrates a lack of political will to combat corruption, further eroding citizens' trust in the rule of law and fairness**.**

- **Inconsistency with international standards:** International organizations and experts in the fight against corruption advocate for stricter measures concerning financial crime, including longer statute of limitations periods. Setting a five-year statute of limitations is contrary to these recommendations and best practices, potentially compromising the international image of the country regarding the fight against corruption**.**

Comment/Suggestion/Recommendation 22: Compensation of Damage (Article 46 of the Draft)

Public officials who violate this law and cause damage to the state should be obligated to compensate for that damage, as well as the authority of the institution to initiate proceedings for compensation of damages to the state.

Explanation of Comment/Proposal/Suggestion 22:

Proposing this provision in the law aims to further strengthen the legal framework for combating corruption and irresponsible behaviour by public officials. The basic idea behind this proposal is to hold public officials directly accountable for any financial damage their violation of the law may cause to the state. This accountability would have a dual effect: first, it would serve as a preventive measure to deter officials from breaking the law, knowing they could be financially liable for the consequences of their actions; and second, in cases where violations occur, it would provide a mechanism through which the state can effectively seek compensation for the damage caused.

A particular importance lies in situations where decisions made by officials who are in a conflict of interest are implemented before that conflict of interest is identified and terminated. In such circumstances, it is necessary to assess the damage incurred by the state and ensure that the official compensates the state for the amount of that damage.

Additionally, introducing the authority of a specific institution to initiate state compensation proceedings provides a clear procedural path for implementing these provisions. This not only allows the state to effectively manage these situations but also enhances transparency and accountability in the management of public resources. The institution responsible for this will therefore play a crucial role in ensuring that laws are respected and that public funds are protected from unlawful use.

This approach also sends a strong message of zero tolerance by the state towards corruption and abuse of position among public officials, fostering a culture of integrity and ethical behavior. This is particularly important in contexts where public trust in institutions may be low and where constant efforts are needed to strengthen the rule of law and respect for legal norms.

Comment/Suggestion/Recommendation 23: Protection of Whistleblowers (Articles 47 to 73 of the Draft)

We reiterate the necessity of introducing a separate law on whistleblower protection rather than addressing this issue within this legislation.

Explanation of Comment/Proposal/Suggestion 23:

A series of international experts have pointed out that the institution of whistleblowing should be the subject of a separate law, considering that not all whistleblower reports are necessarily related to the existence of corruption.

Comment/Suggestion/Recommendation 24: Responsibilities of the Agency (Article 81 of the Draft)

It is necessary to clearly prescribe the Agency's jurisdiction to verify the lifestyle of officials and compare it with the official incomes of officials.

Furthermore, it should prescribe the Agency's jurisdiction to act in cases where the prevention of conflicts of interest is provided for by other laws, but there is no designated body responsible for monitoring and overseeing their implementation, such as in the areas of spatial planning, urbanism, concessions, public procurement, and privatization.

Explanation of Comment/Proposal/Suggestion 24:

To ensure transparency and integrity in public office, it's crucial to precisely define the Agency's jurisdiction for verifying the lifestyle of officials. This involves analysing and comparing the official incomes of officials with their standard of living.

Specifically, as stated in comments number 5 and 18, the law should explicitly require the Agency to regularly conduct analyses of officials' lifestyles. These checks should encompass, but not be limited to, assessing income, assets, spending habits, and all other relevant financial indicators. The goal is to identify and address any discrepancies or unexplained differences that may indicate corrupt practices or conflicts of interest.

Detailed information regarding the expansion of the Agency's authority to identify and prevent conflicts of interest as stipulated by other laws is provided in Comment 4.

Comment/Suggestion/Recommendation 25: Opinions for the improvement and prevention of corruption (Article 82 of the Draft)

The method by which the Agency decides on the cases in which it will provide these opinions should be prescribed, along with how it will transparently determine priorities and act on requests, to prevent this provision from being selectively enforced and used as a means of political pressure by the Agency, as has been the case so far.

The obligation for the Agency to publish all requests for opinions and the decisions it has made based on them should be prescribed.

Explanation of Comment/Proposal/Suggestion 25:

In order to enhance the efficiency and transparency of the Agency's work and to protect against potential abuse of authority for political pressure, it is crucial to clearly define the criteria and procedures by which the Agency decides on providing opinions.

Specifying detailed guidelines on how and in which situations the Agency provides opinions will help increase the transparency of the Agency's work. Transparency in decision-making not only builds public trust in the Agency's operations but also reduces the potential for non-transparent actions or abuse of authority.

Clearly defined criteria for providing opinions limit the scope for selective action and potential abuse of authority for political pressure. This ensures that opinions are issued based on the merits of the case rather than external, non-objective, or political factors.

Defining priorities and procedures for handling requests helps the Agency manage its resources more efficiently, enabling quicker and more effective responses to high-risk corruption situations.

Comment/Suggestion/Recommendation 26: Requirements for the Election of Members of the Council (Article 86 of the Draft)

Although Council members are not public officials, there is a requirement to pass a state exam due to the general conditions for work in state authorities, while the lack of clarity of the conditions and qualifications for appointment can cause practical problems, as has been the case so far.

Explanation of Comment/Proposal/Suggestion 26:

Although members of the Council are not government officials or employed in public sector institutions, they are required to have passed a state exam because there is an obligation for them to meet the general conditions for working in state bodies. This requirement is unjustified, especially since Draft Article 99 changes the existing solution and states that the rights, obligations, and responsibilities of employees in the Agency are governed by general labour regulations, not regulations for government officials and employees (Article 96 of the current Law). Therefore, we believe that instead, the conditions that a Council member must meet should be clearly listed, excluding the requirement of passing a state exam, and include the following: being a citizen of Montenegro; being at least 18 years old; being medically fit for the duties of the position; not having been convicted of a criminal offense that renders them unfit for work in a state body; and not being subject to criminal proceedings for offenses prosecuted ex officio.

Additionally, there are different interpretations of the qualifications and length of work experience required for the appointment of Council members, which has caused practical problems in the appointment process. Regarding the length of work experience, it is unclear whether the experience must be acquired after obtaining qualifications (at the VII level of education) or whether experience gained before graduation can be considered. Considering the apparent different interpretations of qualifications in practice, we recommend amendments with clearer and more specific qualifications/conditions for the appointment of Council members to avoid different interpretations.

Comment/Suggestion/Recommendation 27: Dismissing a Member of the Council (Article 90 Draft)

The dismissal of a Council member lacks details regarding the procedure used to determine the grounds for dismissal. Additionally, the Draft does not provide the Council member with the opportunity to appeal against the Council's decision on dismissal.

Explanation of Comment/Proposal/Suggestion 27:

In the previous period, there have been cases of Council members being dismissed, which the Administrative Court found to be not in accordance with the law, resulting in damages for the state in the form of compensation. Those involved in these unlawful dismissals faced no consequences. This issue was also highlighted by the European Commission in its report on Montenegro, and experts from the Council of Europe recommended that this article be further specified to avoid arbitrary interpretations and politically motivated dismissals. Despite this, the identical provision from the existing law has been retained.

This is particularly indicative considering that Article 96 of the Draft introduces a new provision compared to the existing law, stating that the director of the Agency can initiate administrative proceedings against a decision to dismiss them, while such a provision is not envisaged for members of the Council.

Therefore, we recommend that the Draft be supplemented with details regarding the procedure used in dismissing a member of the Council and the possibility for a Council member to initiate proceedings before the court regarding the dismissal decision, and that they be considered dismissed only in the event of the finality of that decision.

Comment/Suggestion/Recommendation 28: Competences of the Council (Article 91 of the Draft)

We believe that the Council should act as an appellate body and decide on appeals against decisions made by the Director of the Agency, as this would make the process more efficient and prevent damage to the state budget in case of unlawful actions by the Director. Additionally, this would strengthen the supervisory role of the Council, as is the case in other similar institutions in Montenegro and abroad.

Explanation of Comment/Proposal/Suggestion 28:

The proposed role of the Council as a second-instance body for appeals against decisions made by the Agency's Director would represent a strategic step towards improving the efficiency, transparency, and accountability of the Agency's work, while also strengthening the institutional framework and legal certainty.

In this way, the decision-making procedure would be improved, allowing for quicker and more efficient review of decisions made by the Director. This reduces the timeframe required to resolve any disputes, directly impacting operational efficiency and reducing state costs. Indeed, the unlawful actions of the Director have previously led to damages to the state budget. The role of the Council as a second-instance body can help in identifying and correcting such decisions more quickly, thereby reducing potential costs and financial risks, as well as addressing potential arbitrariness, politicization, and unlawful actions by the director, which have been consistent since the establishment of this Agency.

By establishing the Council as the authority responsible for deciding on appeals, its supervisory and oversight role over the work of the Director and, generally, over the work of the Agency is strengthened. This not only contributes to transparency and accountability but also aligns the Agency's operations with the principles of good governance.

Placing the Council in the role of a second-instance body is in line with the organizational structure and practices in other similar institutions both in Montenegro and abroad. Such a model enables consistency in administrative law and processes, facilitating the exchange of best practices and experiences.

The role of the Council as a second-instance body further ensures an element of independence in the decision-making process, reducing the potential for conflicts of interest and promoting objectivity in assessing appeals against the decisions of the director.

Comment/Suggestion/Recommendation 29: The Procedure for the Election of the Agency Director (Article 94 of the Draft)

The draft adds a requirement for the Agency Director to have passed the bar exam, thus unnecessarily narrowing the pool of persons eligible to apply for the position, especially bearing in mind that the Agency has its own legal department.

Explanation of Comment/Proposal/Suggestion 29:

There is no justification in comparative practice or recommendations from experts who have analysed the current law to introduce an additional requirement for the appointment of the director. Interestingly, new conditions were not introduced that would presuppose previous work experience in the field of anti-corruption, to ensure that the director is a person with specific knowledge necessary for that position. Instead, a formal requirement of passing the bar exam is introduced, which essentially narrows down the number of potential candidates to individuals who have previously worked in the judiciary. This is particularly indicative considering that the current, highly compromised and biased director of the Agency comes precisely from that sector, which, according to public opinion research, is perceived as one of the most corrupt in the country.

We point out that introducing this requirement is not in line with the recommendations of the experts of the Council of Europe, who state that international standards require the selection process for the director of the Anti-Corruption Agency to be transparent and facilitate the appointment of a person of integrity.

Comment/Suggestion/Recommendation 30: Application of Other Regulations (Article 99 of the Draft)

Prescribing a universal 30% salary bonus to all employees in the Agency, regardless of the corruption risk in certain positions and the lack of clarity regarding the director's salary, makes this provision unjustified and potentially problematic.

Explanation of Comment/Proposal/Suggestion 30:

It is unclear why a monthly salary supplement of 30% is prescribed for all employees in the Agency. It might be more purposeful to stipulate that employees in specific positions with a high risk of corruption receive increased salaries. However, this solution implies that all employees, including drivers or janitors, receive increased salaries, which lacks justification.

Additionally, since this provision states that the Law on Salaries applies to employees, it is unclear which coefficients are used to determine these increased salaries.

It is particularly problematic that, unlike the current law, the salary of the director is not specified at all in the draft. Instead, it is arbitrarily determined by the Council, which could result in a salary that is significantly lower or higher than what is appropriate for that position and for an institution funded by the state budget. It is worth noting that this was not proposed by any recommendation from the numerous international experts who analysed the current law.

Comment/Suggestion/Recommendation 31: Fines for Misdemeanours by a Legal Person and the Responsible Person in the Legal Person or State Authority, State Administration Body, Local Government and Local Self-Government Body (Article 105 of the Draft)

The draft does not envisage an increase in fines for offenses committed by legal entities and responsible individuals within legal entities or government bodies, bodies of state administration, bodies of local administration, and local self-government bodies, despite the fact that since 2016 when the current Law came into force, the minimum and average wages, the value of the consumer basket have significantly increased, and inflation has been in double digits.

Furthermore, there was no consideration given to the potential exclusion of liability of the legal entity - it should be considered that only responsible individuals within these entities should be held accountable for their offenses. This would increase and specify personal responsibility and reduce potential damage to the state budget in the case of government bodies, bodies of state administration, bodies of local administration, and local self-government.

Explanation of Comment/Proposal/Suggestion 31:

The draft does not foresee any increase in the amount of fines, which currently range from 1,000 to 20,000 euros for legal entities, and from 500 to 2,000 euros for responsible individuals within them. Since 2016, when the current law came into force, the minimum and average wages have increased, as well as the value of the consumer basket. Additionally, inflation in Montenegro remains present, still in double-digit percentages. Leaving the identical amount provided for fines is inappropriate and undermines the accountability for (dis)compliance with the law.

On the other hand, in cases where legal entities funded by the budget of Montenegro violate the provisions of the law, responsibility should lie solely with the responsible individuals within those legal entities, including potentially the head of the entity, thereby individualizing accountability and preventing damage to the state budget. Sanctions should be introduced for non-compliance with the opinions and decisions of the Agency, both for relevant officials and for legal entities (as mentioned above) and/or responsible individuals within legal entities.

Comment/Suggestion/Recommendation 32: Fines for Misdemeanours by Public Officials (Article 106 of the Draft)

Just like in the previous article, it is necessary to increase the fines for violations by public officials, at least twofold - ranging from 1,000 to 4,000 euros.

Explanation of Comment/Proposal/Suggestion 32:

Just like in the case of the previous article, it's incredible that there is no provision for increasing fines for public officials, while there is, for example, an increase in the value of assets they are required to report, from 5,000 to 10,000 euros. In practice, these fines have been unacceptably low so far, and it has often been more profitable for officials to try to conceal their assets/income, and in cases where they failed to do so, to pay a ridiculously small fine relative to their circumstances. Therefore, fines ranging from 1,000 euros for minor offenses and violations, up to 4,000 euros for the most serious violations should be provided.

Ultimately, it's also necessary to consider initiating a separate procedure regarding the concealment of assets by a public official, where the Agency would be obliged to inform the prosecutor's office ex officio, and the prosecutor's office would seek to initiate a financial investigation and potentially seize the assets.

Comment/Suggestion/Recommendation 33: Fines for Misdemeanours by Persons Whose Public Function Expired (Article 108 of the Draft)

As with the previous two articles, it is necessary to double the range of fines for individuals whose public function has expired, especially in cases where they fail to report on the status of their income and assets. The most important amendment and expansion of the penalty provision should relate to public officials who, for their own benefit or for the benefit of others, or to the detriment of others, use knowledge and information acquired in the performance of their public function. In such cases, in accordance with suggestion 12, the legal transaction is declared invalid, and the penalty for the official must be draconian and certainly greater than the existing and proposed range.

Explanation of Comment/Proposal/Suggestion 33:

Taking into account the proposed changes discussed earlier in the comments, especially those related to reducing the obligations applicable to former officials, and considering the fact that the penalties are meager, it is necessary to provide for a range of fines from 1,000 to 4,000 euros for violations of the law, particularly for serious violations. A more serious offense is considered when "a person whose public function has ceased, within two years after the termination of the public function, uses, for personal gain or the gain of another, or to the detriment of another, knowledge and information acquired in the performance of the public function, unless such knowledge and information are publicly available." In such cases, it is necessary to prescribe a draconian penalty to deter officials from using knowledge gained in office and deliberately entering into conflicts of interest, considering that it is simply profitable for them to do so, as the penalty is minor if they are caught breaking the law. Additionally, in accordance with suggestion 12, any legal transaction concluded by a former public official in violation of these provisions should be declared void, in accordance with the Law on Obligations.