

HAPPY NEW AGENCY!

ESTABLISHMENT OF THE AGENCY FOR PREVENTION OF CORRUPTION IN MONTENEGRO

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On 1st January 2016, when it was supposed to be fully operational, the Agency for Prevention of Corruption employs less than 50% of estimated number of its employees. Its premises are not adapted and other numerous preconditions for unhindered performance of its complex competences remain unfulfilled. During its establishment, several laws were violated, including the Law on State Audit Institution, the Law on Prevention of Corruption, the Law on Prevention of Conflict of Interest, with the potential violation of several others. Additionally, even before it had started to work, controversies over appointments of director and one member of the Agency's Council shed doubt on capacities of this institution to be independent and impartial anti-corruption body.

Other steps in the establishment of the Agency have also sparked many controversies. Its budget proposal is established in a minimum amount defined by the Law on Prevention of Corruption. The Director of the Agency has circumvented the Law, by excluding the Council and the Parliament from the preparation of the Agency's budget. The budget categories are, to a large extent, determined "arbitrarily", since the budget proposal was determined by the Government before the Council has adopted the Rulebook on internal organisation and systematisation of Agency's job positions. Rulebook on internal organisation and systematisation significantly deviates from the suggestions of experts from the European Commission.

The interested parties have neither been consulted during the process of drafting bylaws from the jurisdiction of the Ministry of Justice nor these bylaws have been presented to the public. All the required documents that the Council of the Agency was obliged to approve have yet to be adopted. The serious endeavour of developing automated system for data exchange between state authorities is still ahead the Agency.

Since his appointment, the director of the Agency has been constantly restricting the transparency of the Council's work. Other obstructions are in place as well. Circumvention of the law, weak capacities, delays in execution of its administrative duties, as well as the established patterns of behaviour of the managerial staff do not give much hope that the new Agency can fulfil its task.

In accordance with the Law on Prevention of Corruption, on 1st January 2016, the Directorate for Anti-Corruption Initiative and the Commission for Prevention of Conflict of Interest have ceased to operate. The new Agency has completely taken over their jurisdiction, employees, rights and duties, cases and equipment.¹ The Law has defined additional competences for the Agency, such as control of the financing of political parties and election campaigns, protection of whistleblowers and lobbying.

The Law on Prevention of Corruption entered into force in December 2014, setting a one-year deadline for completion of all necessary preconditions for the full operability and functionality of the Agency. These preconditions enta-

iled human and spatial resources, additional equipment, preparation of bylaws and the budget. The dynamics of Agency's establishment is determined by the Action Plan for Chapter 23, Judiciary and Fundamental Rights.² How these conditions have been fulfilled in practice - we have monitored on the basis of three principles: legality, efficiency and transparency.

Legality

The emergence of the key institution for corruption prevention was marked by the flagrant Law violations. A state auditor became a member of the Council of the Agency for Prevention of Corruption³, even though the Law on State Audit Institution explicitly forbids the state auditors from becoming members of the management body of a legal entity. Since particular interests proved to be above the law, the auditor with personal ties to the leadership of Democratic Party of Socialists (DPS) was better option than independent candidates, despite the public reactions and urge for respect of Law provisions.⁴

The same particular interest has led the director to propose that the Council member is exempted from being in any conflict of interest, in his comments to the draft of the Rules of Procedure of the Council of the Agency.⁵ However, the Commission for Prevention of Conflict of Interest confirmed that the state auditor Radule Zuric is in conflict of interest and that the functions of state auditor and a member of the Council of the Agency for Prevention of Corruption are incompatible. Namely, the Commission stated that Zuric, as a public official, is violating the Article 4 paragraph 3 of the Law on Prevention of Conflict of Interest. Simultaneously with being a public official, he works as a state auditor, "thus subordinating the public interest to the private one and causing a conflict of interest".⁶

The work of the Agency's Council, which has been formed in this manner, is regularly being additionally obstructed. For example, the budget proposal for the Agency has been discussed in reverse way from what the laws stipulate. In other words, Agency has discussed its budget proposal after it was determined by the Government, although the Law on Prevention of Corruption envisages for the Agency to make the first move and propose a draft of its budget to the Government.⁷

The sum of three laws violated in 2015 is not necessary final. Namely, the Draft Law on Wages of Public Sector Employees⁸ does not stipulate the same wage coefficient for the director of the Agency and the Ombudsman, even though the Law on Prevention of Corruption prescribes so.⁹

Efficiency

Budget

The success of the Agency largely depends on the resources allocated for its work. For this purpose, the Government allocated funds which amount to exactly 0.2 per cent of the current budget for 2016.¹⁰ Thus, the least possible amount is assigned, not a single cent more

2 Adapted Action Plan for Chapter 23, February 2015.

3 The Council is the managing body of the Agency, along with the director.

4 Articles 41 and 45 of the Law on State Audit Institution, "Official Gazette of Montenegro", No. 28/04, 29. 04. 2004, 27/06, 27. 04. 2006, 78/06, 22. 12. 2006, "Official Gazette of Montenegro", No. 17/07, 31.12. 2007, 73/10, 10. 12. 2010, 40/11, 08. 08. 2011, 31/14, 24. 07. 2014.

5 Comments of the director of the Agency for Prevention of Corruption and the Directorate for Anti – corruption Initiative on the Draft of the Rules of Procedure of the Council delivered to Institute alternative on November 3, 2015.

6 The Decision of the Commission for Prevention of Conflict of Interest from December 18, 2015, available at: http://www.konfliktinteresa.me/new/index.php?option=com_content&view=article&id=556:10-sjednica-komisije-odluke-zbog-konflikta-interesa&catid=67&Itemid=101&lang=me

7 The Council of the Agency discussed the budget proposal on the session on 20 November, after the Government has already adopted it on November 14, 2015.

8 The Draft Law on Wages of Public Sector Employees discussed on the Government session on November 5, 2015.

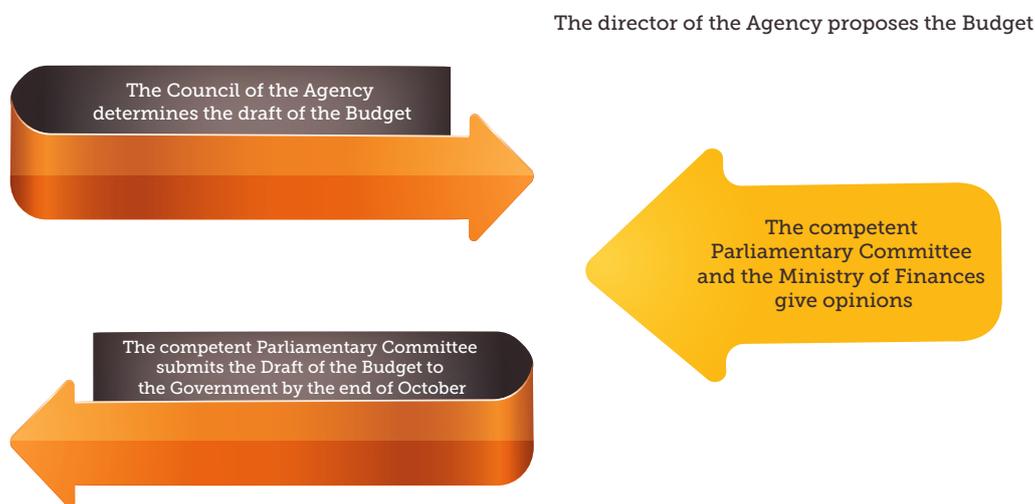
9 "The director of the Agency shall be entitled with the same wage as the Protector of Human Rights and Freedoms of Montenegro." Article 96 of the Law on Prevention of Corruption

10 "Allocated funds for the functioning and operating of the Agency cannot amount less than 0,2% of the current budget of Montenegro", Article 95 of the Law on Prevention of Corruption

than what was envisaged by the Law on Prevention of Corruption. It is additionally problematic that the budget proposal was discussed and determined before adopting the Rulebook on internal organization and systematization of the Agency. Hence, it is unclear how the number of 55 employees (or 50 in the first budget proposal) who will be on the Agency payroll in 2016 was derived. In this manner, expenditures for employment contracts for “scarce expert knowledge”, training and consultancy services were planned, without prior analysis of the profiles of civil servants this institution requires.

As stated before, the Agency’s Council discussed its budget proposal only after the Government formally adopted it. Therefore, it had no possibility to influence the final budget, even though both the Law and the Agency Statute stipulate that the Council is the body competent for formulating the draft of the budget of the Agency. Namely, the Law on Prevention of Corruption prescribes that the Council approves the budget proposal and submits it to the competent Parliamentary Committee, and subsequently to the Government.¹¹ During the procedure of preparing the Agency’s budget, another legal requirement was breached since the Council and the Committee for the Economy, Finances and the Budget were not consulted.

The procedure of preparing the budget of the Agency for Prevention of Corruption¹²



Human resources

The director is a central figure of the Agency. In accordance with the Law, he represents the Agency, makes decisions, gives opinions, and proposes the budget and other acts of the Agency on its behalf. For these serious competences, minimum of five years of work experience in the field of the fight against corruption is required. However, the newly appointed director cannot recall any officials being convicted of corruption while he was the head of the police.¹³ The director appointment has been marked by allegations of of his counter-candidate, lawyer Zeljko Tomovic, about the existence of political corruption.¹⁴ Tomovic claims that Sreten Radonjic has kinship ties with the Vice – president of the Democratic Party of Socialists (DPS). Moreover, a lawsuit to the Administrative Court has been submitted, due to the “substantial violations of procedural rules, erroneous and incomplete facts and misapplication of substantive law”, meaning due to the allegations that Radonjic does non fulfil the key legal requirement - work experience in the fight against corruption.¹⁵

11 Article 95 of the Law on Prevention of Corruption

12 “The Council of the Agency, on the proposal of the director, shall prepare the draft of the budget for the next fiscal year, and submits it to the competent Parliamentary Committee and the Ministry of Finances for discussion. The final version of the draft of the budget shall determine the competent Parliamentary Committee by the end of October, and submits it to the Government.”, Article 33 of the Statute of the Agency for Prevention of Corruption

13 Audio track from the Fifth session of the Council of the Agency for Prevention of Corruption, obtained through free access to information, held on December 10, 2015.

14 “Tomovic: The appointment of Radonjic is a political corruption”, Portal Vijesti, available at: <http://www.vijesti.me/vijesti/tomovic-izbor-radonjica-je-politicka-korupcija-854454>

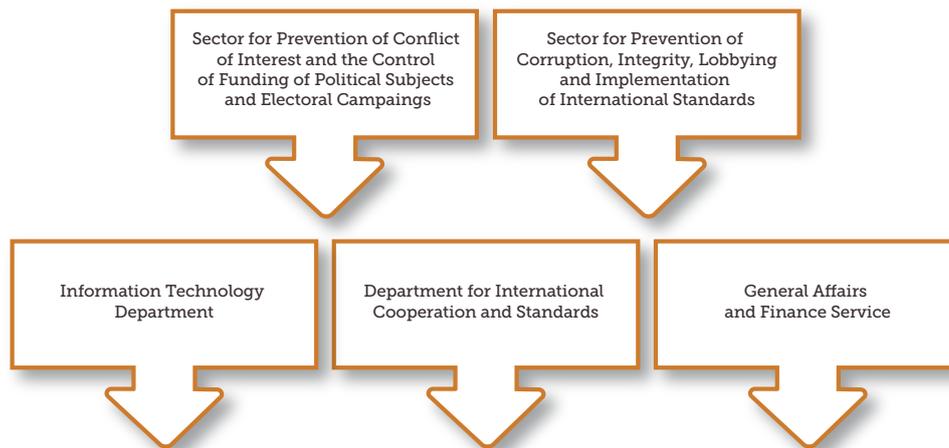
15 “Appoint Tomovic for director instead of Radonjic”, Daily Dan, December 2015, available at: <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&datum=2015-12-17&clanak=524408&naslov=Umjesto%20Radonji%20za%20direktora%20imenovati%20Tomovi%20>

It was found later on that the director did not fulfil all the prescribed requirements for work in state institutions in a transparent manner. The Law on Civil Servants and State Employees¹⁶ prescribes that a civil servant has to pass professional examination for work in state authorities, which was not the case with Radonjic at the time when he applied for the position of Director of the Agency.

Namely, Sreten Radonjic, allegedly, has passed the professional examination on August 28,¹⁷ but his name is not on the list of the candidates for the professional examination published by the Human Resources Management Authority. Hence, the question arises whether the professional examination for this candidate was even organised, and why the Human Resources Management Authority arbitrarily decides on legal obligations and publishing data for individual candidates, thus compromising the principles of transparency and equality.¹⁸

Only less than a half of systematised job positions have been filled so far, i.e. 32 positions are still vacant, as the Agency took over 11 officers from the Commission for Prevention of Conflict of Interest and 12 officers from the Directorate for Anti-Corruption Initiative. First job openings were advertised on December 26. The total amount of 12 vacancy announcements were published, including vacancies for the director assistant for the sector for prevention of conflict of interest and the control of funding of political subjects and electoral campaigns and the director assistant for the sector for prevention of corruption, integrity, lobbying and implementation of international standards.

The structure of the Agency for Prevention of Corruption



The Rulebook adopted by the Council does not correspond with the version that was agreed with experts from the European Commission. The adopted Rulebook sets significantly different functional - organisational structure with almost three times larger number of head positions than it was stipulated by the Draft of the Rulebook communicated with the European Commission's experts.¹⁹

Equipment

The budget provides significant funds for equipping the Agency offices, which further implies the necessity of conducting public procurement procedures. However, by the end of November, a single public call for bidders has not been published and proposals often went into

16 Article 33 stipulates that „Civil servant and state employee for performing tasks and acquisition of titles must have the professional examination for working in state authorities passed, except for state employees having elementary school diploma.“ The Law on Civil Servants and State Employees, "Official Gazette of Montenegro", No. 39/11, 50/11, 66/12, 34/14

17 "Worked for years without passing the professional examination", Daily Dan, December 2015, available at: <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&datum=2015-12-03&clanak=522127>

18 Regarding such conduct of Human Resources Management Authority, we have filed the complaint to the Administrative Inspection, but it has not been decided on it yet. "Press release: Director's exam and transparency of our administration", Institute alternative, December 2015, available at: <http://institut-alternativa.org/saopstenje-direktorov-strucni-ispit-i-javnost-nase-uprave/?lang=en>

19 The Draft of the Rulebook on Internal Organisation and Systematisation submitted to the EC and commented by its experts, envisaged the Director, Deputy Director, Advisor to the Director and four heads of the departments, and the adopted Rulebook envisages the Director, two Assistant Directors, Advisor to the Director, two heads of offices (for finances and general and personnel issues) and nine heads of sectors and departments.

direction of purchase without tender, which would in turn lead to the violation of the Law on Public Procurement. There is still no reliable information on how the necessary office equipment is going to be purchased. The Public Procurement Portal does not provide this information either.

The Agency's functionality to a large extent depends on networking and exchange of information with other institutions within the anti-corruption framework. Hence, one of the activities envisaged by the Action Plan for Chapter 23, whose deadline for implementation was November 2015, is the production of interface allowing the exchange and access to databases of the Ministry of Interior, the Public Procurement Administration, Real Estate Administration, Tax Administration, Ministry of Finance, Ministry of Transport and Maritime Affairs and the Security Commission of Montenegro.²⁰

However, the interface concept has not been fully prepared yet.²¹ The Commission for the Prevention of Conflict of Interest is "networked" with four state institutions²² with regards to asset declaration and public officials' income. The Agency has yet to develop a new automated system.

Transparency

The Council closed for public the session on which the interviews with the candidates for director were conducted. Grounds for such decision was the opinion of the member of the Council and former director of the Agency for Protection of Personal Data and Free Access to Information. Therefore, all candidates for director, except a lawyer Zeljko Tomovic, did not want to publicly expose their programs and thereby contribute to increase of public trust in this emerging institution. Following his appointment, in his comments to the Draft of the Rules of Procedure of the Council of the Agency, Radonjic has additionally tried to close the Council's sessions.²³

For closing the Council's sessions for the public, he offered the following explanation:

"I am against the kind of transparency which is requested at this moment. Transparency is not prevalent if the Council member discloses to the public ... what I, as the director, discuss with members of the Council about measures, projects, plans ... Informing the public through the website and issuing press releases - yes ... but ensuring transparency through direct presence - no. You need to understand that in this kind of agencies which deal with combating corruption and organized crime ... for us to record our session and for certain members to reveal it somewhere, that is impossible. We cannot work like that, we cannot achieve results like that."²⁴

Until the adoption of the Rules of Procedure of the Council, members of this body of the Agency have voted whether to open its work for interested parties at the beginning of each session. Despite the "declarative" commitment to open its work to the public and interested parties who want to attend or participate in the work of the Council, under the provisions of the Rules of Procedure, the Council continues to decide on every request separately. The legal basis for this is an Article of the Rules of Procedure of the Council, which prescribes that representatives of non-governmental organizations and other experts can attend or participate in the work solely at the discretion of the Council.²⁵ However, the practice on this matter is not harmonised. On the presence of IA representative on 11th session of the Council, the members voted before the session, while for the 12th session of the Council members

20 Activity 2.1.2.5., Adapted Action Plan for Chapter 23, February 2015, p. 82.

21 The Decision of the Commission for Prevention of Conflict of Interest, from December 23, 2015, on the Request for free access to information of the Institute alternative.

22 Real Estate Administration, Ministry of Interior, Tax Administration and the Security Commission of Montenegro.

23 Comments of the Director of the Agency for Prevention of Corruption and the officers of the Directorate for Anti - Corruption Initiative on the Draft of the Rules of Procedure of the Council of the Agency, delivered to the Institute alternative on November 3, 2015.

24 Comment of the Director of the Agency for Prevention of Corruption in the TV Show „Otvoreno“, broadcasted on Public Service RTCG on November 16, 2015.

25 Article 3, Paragraph 3 of the Rules of Procedure of the Council of the Agency for Prevention of Corruption, „Official Gazette of Montenegro“, No. 66/2015, November 26, 2015.

voted at the beginning of the session.²⁶ During this entire period, the materials for the sessions were not available at the website of the Parliament before the sessions of the Council. Interested parties could gain insight in the materials only if they received them via e-mail from the Council President, which was not always the case, regardless of the allowed presence for the sessions.

Process of preparation and adoption of necessary bylaws has also demonstrated the lack of transparency. Namely, for the enforcement of the Law on Prevention of Corruption a total of 55 by-laws need to be brought. One part should have been adopted by the Council, and the other is under jurisdiction of the Ministry of Justice.²⁷

The general public was not informed about the preparation of acts from the jurisdiction of the Ministry of Justice and interested parties were not consulted during their preparation.

Until 31st December 2015, the Council has not adopted the rules on the Agency's work, which should streamline the way it will handle corruption reports and other cases. The Law on Prevention of Corruption prescribes a period of 60 days since the day of the appointment of the director for adoption of these rules.²⁸ Also, six instructions and rules²⁹ regarding financing of political parties was not discussed, although this was on the agenda for the 12th session of the Council.

Summa summarum

Montenegro should pay particular attention to:

- establishing a fully operational Anti-Corruption Agency by 1 January 2016.³⁰

The steps in establishing the Agency and the framework for its work looked like this so far:

6. Law violation
5. Conflict of interest
4. Arbitrary budget planning
3. Weak capacities
2. Lack of necessary equipment
1. Lack of transparency

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²⁶ The IA representatives attended all the sessions of the Council of the Agency that have been opened to public. In 2015, the Council held 13 sessions, and the first one, the third (the procedure of appointing the director) and the fifth session on which the interviews with the candidates for director were conducted, were closed to the public.

²⁷ For a detailed overview, see appendix of the Adapted Action Plan for Chapter 23.

²⁸ The Director of the Agency is appointed on October 1, 2015.

²⁹ Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources for the electoral campaign for the election of the President of Montenegro; Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources for the electoral campaign for the election of MPs and councillors; Instructions on the content of the report on the contributions of legal entities and individuals to political entities during the election campaign; Instructions on the manner and procedure for reporting and resolving complaints filed during the electoral campaign; Rules on the calculation and reporting of non - money contributions to political entities; Rulebook on the manner of controlling political subjects and the control and oversight during the electoral campaign.

³⁰ Montenegro 2015 Report, European Commission, November 2015, p. 16, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_montenegro.pdf

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