

[Coat of arms of Montenegro]
Montenegro
Agency for Prevention of Corruption

No. UPI 02-01-24/5

Podgorica, 5 April 2018

AGENCY FOR PREVENTION OF CORRUPTION, on the basis of the Article 38 of the Law on Prevention of Corruption („Official Gazette of Montenegro“ no. 53/14), acting ex officio and upon requests submitted by Stevo Muk, President of the Managing Board of Institute Alternative, request numbers UPI 02-01-24-2018 as of 13 March 2018 and UPI 02-01-24/2-2018 as of 19 March 2018, against Zoran Jelić, Member of the Senate of the State Audit Institution, that acting as a public official he violated the provisions of the Law on Prevention of Corruption, and following the procedure conducted on 3 April 2018, issued a

DECISION

IT IS DETERMINED that Zoran Jelić, Member of the Senate of the State Audit Institution, acting as a public official did not violate Articles 7, 11, 12, and 24 of the Law on Prevention of Corruption which refer to the data and the membership in the business organization “ET COM” LLC Podgorica because the founders of the aforementioned business organization issued the Decision to initiate the procedure of voluntary liquidation of the business organization “ET COM” LLC Podgorica as of 1 June 2003 in accordance with the legal regulations which were then in force.

Pursuant to the Article 9 of the Law on Prevention of Corruption, Zoran Jelić may be engaged in scientific, educational, cultural, artistic and sports activities and acquire income and disclose to the Agency accurate and complete data on the income acquired through the exercise of such activities or tasks, because this is not prohibited by the Law on the State Audit Institution.

This decision is final in the proceedings before the Agency for Prevention of Corruption.

Statement of Reasons

In exercising rights and duties stipulated under the Law on Prevention of Corruption, acting ex officio, and upon requests submitted by Stevo Muk, President of the Managing Board of Institute Alternative, request numbers UPI 02-01-24-2018 as of 13 March 2018 and UPI 02-01-24/2-2018 as of 19 March 2018, the Agency for Prevention of Corruption initiated the procedure to determine whether Zoran Jelić, Member of the Senate of the State Audit Institution, acting as a public official, violated the Articles 7 and 11 of the Law on Prevention of Corruption by simultaneously exercising public function and the function of the founder of the business organization “ET COM” Podgorica, registered in 2002, and, as a public official, in this manner violated the provisions of the Law on Prevention of Corruption related to the disclosure of complete and accurate data and infringed provisions related to the restrictions in the exercise of public functions. In the addendum to the request no. UPI 02-01-24/2-2018 as of 19 March 2018, it is stated that Zoran Jelić was, simultaneously with performing the public function of the Member of the SAI’s Senate, engaged by the commercial bank The First Bank of Montenegro as the Member of the Audit Committee for a period longer than nine months (from 17 March to 28

December 2017). On this basis, he received a fee in the monthly amount of EUR 650.00 or EUR 5,850.00 in total, i.e. realized financial gain and thus violated the Articles 35 and 41 of the Law on the State Audit Institution, as well as the Article 7 of the Law on Prevention of Corruption.

Zoran Jelić, Member of the Senate of the State Audit Institution, is a public official pursuant to the provision from the Article 3 of the Law on Prevention of Corruption and is obliged to exercise this function in accordance with this Law, as well as in accordance with other regulations that stipulate the conflict of interest in the areas governed by these regulations.

Acting ex officio, in order to establish the facts and circumstances necessary for issuing the Decision, the Agency conducted the procedure in terms of the provisions of the Law on Prevention of Corruption and on 3 April 2018 adduced the evidence by examining the following:

- Request submitted by Stevo Muk, President of the Managing Board of Institute Alternative, no. UPI 02-01-24-2018 as of 13 March 2018;
- Addendum to the Request submitted by Stevo Muk, President of the Managing Board of Institute Alternative, no. UPI 02-01-24/2-2018 as of 19 March 2018;
- Excerpt from the official records of the public officials of the Agency;
- Response of The First Bank of Montenegro no. 02-01-4-1152/3 as of 3 June 2016;
- Excerpt from the Central Registry of Commercial Entities for the business organization "ET COM" LLC Podgorica as of 3 April 2018;
- Zoran Jelić's Income and Assets Report for 2017, no. 02-04-84-18 as of 19 March 2018;
- Request of the Agency addressed to Zoran Jelić no. UPI 02-01-24/3-2018 as of 21 March 2018;
- Zoran Jelić's written response no. UPI-02-01-24-4 as of 3 April 2018;
- Decision to initiate the procedure of voluntary liquidation as of 1 June 2003 and the Request addressed to the Department of Public Revenues Podgorica no. 1/15930 as of 27 August 2003.

Pursuant to the Article 34 of the Law, the Agency requested from Zoran Jelić, under the request no. UPI 02-01-24/3-2018 as of 21 March 2018, to declare regarding the circumstances from the request submitted in the procedure before the Agency thus informing him that, pursuant to the Article 36 of the same Law, he can participate in the oral hearing in his capacity as the party to the procedure in order to protect his rights and legal interests.

Zoran Jelić did not participate in the hearing scheduled for 30 March 2018, but following the initiation of the procedure before the Agency, he submitted a written response no. UPI 02-01-24/4 as of 3 April 2018, where he stated that he disclosed complete and accurate data on his assets and income in the Income and Assets Report for 2016 and that inaccurate data on assets and income cannot and must not be submitted in the Report since that would make such Report inaccurate. He further claims that the business organization "ET COM" LLC Podgorica was founded on 18 November 2002 by four founders including himself, and that the founders of the business organization issued the decision to initiate the procedure of voluntary liquidation on 1 June 2003 which was filed under seal of the court, and that the liquidator was assigned and in charge of enforcing this decision in accordance with the Law. In support of his claims, he provided the following evidence: the Decision to initiate the procedure of voluntary liquidation as of 1 June 2003 and the Request addressed to the Department of Public Revenues Podgorica no. 1/15930 as of 27 August 2003 that this business organization does not have any obligations towards the Department of Public Revenues (court-certified copies issued by the Basic Court in Podgorica no. 3478/18 as of 14 March 2018). He indicates that, in accordance with the Law on

Business Organizations (“Official Gazette of Montenegro” no. 6/02) which was in force on 1 June 2003 when the Decision to initiate the procedure of voluntary liquidation was issued, the Article 24, Paragraph 8, Item 2 imperatively stipulated that from the day when the liquidator was assigned the business organization ceases to exist, and that the Paragraph 11 of the same article stipulated that the liquidator shall submit the final report to the Central Registry of Commercial Entities together with the request for the removal of the company from the Registry. Based on the above and the failure to fulfill the legal obligations by the liquidator, the business organization “ET COM” LLC Podgorica continues to be registered in the Central Registry of Commercial Entities until 22 March 2018 when the amendment was made pursuant to the Decision no. 5-0147510/002 and having in mind that the company does not conduct any activity, nor that it had any turnover in its business account, any employees or any capital, all of which is recorded.

Regarding the statements from the request on the membership in the Audit Committee of The First Bank of Montenegro, he declared that the said was true during the period from 17 March to 28 December 2017 when he was removed from this function by the Decision of this Bank no. 04/30800 and which he reported in his assets declaration. He further emphasized that, in accordance with the Law on Banks and the Law on Business Organizations, the bank’s audit committee is not the managing body or supervisory body of the bank, but that in accordance with the Article 39 of the Law on Banks which stipulates its powers and competencies, the Committee does not issue any decisions but gives proposals, opinions and standpoints. In the written response, it is stated that the State Audit Institution as an authority where he performs a public function does not control the operations and the legality of work of the banks in Montenegro since this falls into competencies of the Central Bank of Montenegro. Finally, it was stated that he did not violate the provisions of the Law related to prevention of conflict of interest in the exercise of public functions.

By examining the adduced evidence, the Agency determined the following facts:

- By examining the Requests submitted by Stevo Muk, President of the Managing Board of Institute Alternative, request numbers UPI 02-01-24-2018 as of 13 March 2018 and UPI 02-01-24/2-2018 as of 19 March 2018, it was determined that the requestor raised doubt that the public official Zoran Jelić acts contrary to the provisions of the Law on Prevention of Corruption and the Law on the State Audit Intuition.

- By examining the official records of the public officials of the Agency, it was determined that Zoran Jelić performed the function of the Member of the Parliament in the Parliament of Montenegro during 2017 and that after that, starting from 6 March 2017, he performed the function of the Member of the Senate of the State Audit Intuition.

During 2016, in the framework of the implementation of the Annual Plan of Verification, control and check of income of all MPs in the Parliament of Montenegro was conducted, and among them control and check of the income which Zoran Jelić acquired as the member of the Audit Committee of The First Bank of Montenegro. In the response of The First Bank of Montenegro dated 3 June 2016 and issued per Agency’s request, **it is stated that Zoran Jelić as the Member of the Audit Committee of The First Bank does not hold the function of a member of the managing body or supervisory body of The First Bank, in accordance with the Law on Banks and the Bank’s Statute, but of a member of a permanent expert body which through**

analysis and monitoring of reports and information draws up proposals, opinions and standpoints for the Board of Directors.

- By examining the excerpt from the Central Registry of Commercial Entities for the business organization "ET COM" LLC Podgorica as of 3 April 2018, it was determined that the business organization was registered on 18 November 2002, and that on 22 March 2018 the business organization "ET COM" LLC Podgorica was liquidated in the Central Registry of Commercial Entities.

By examining Zoran Jelić's Income and Assets Report for 2017, no. 02-04-84-18 as of 19 March 2018, it was determined that the said public official Zoran Jelić disclosed data regarding his membership in the Audit Committee of The First Bank.

- By examining Zoran Jelić's written response no. UPI-02-01-24-4 as of 3 April 2018, it was determined that the public official Zoran Jelić, in support of his claims related to the business organization "ET COM" LLC Podgorica, presented evidence on submitting the Request for voluntary liquidation from 2003 when this business organization stopped operating in accordance with the legal provisions regulating business organizations.

- By examining the Excerpt from the Central Registry of Commercial Entities for the business organization "ET COM" LLC Podgorica as of 3 April 2018, it was determined that the amendment has been made in the Central Registry of Commercial Entities on 22 March 2018 and that the aforementioned business organization's status was registered as liquidation.

- By examining the Decision to initiate the procedure of voluntary liquidation as of 1 June 2003 and the Request addressed to the Department of Public Revenues Podgorica no. 1/15930 as of 27 August 2003, it was determined that the founders issued a decision on initiating the procedure of voluntary liquidation on 1 June 2003 and appointed Rade Šćekić from Podgorica as the liquidator, in accordance with the Articles 24 and 79 of the Law on Business Organizations which was then in force.

On the basis of the conducted evidentiary procedure and the evidence adduced, each individually and all together, the Agency determined the following:

Pursuant to the Article 7, Paragraphs 1-3 of the Law on Prevention of Corruption it is stipulated that:

A public official shall perform his/her function in such a manner that the public interest is not subordinated to private, and without causing a conflict of interest in the exercise of public function. The conflict of interest in the exercise of public function shall be deemed to exist when a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function. The Agency shall establish the existence of a conflict of interest and implement measures for prevention of conflict of interest.

Pursuant to the Article 9 of the Law on Prevention of Corruption it is stipulated that a public official may be engaged in scientific, educational, cultural, artistic and sports activities and acquire income from copyrights, patent rights and other similar rights, intellectual and industrial property, unless otherwise specified by law.

Membership of a public official appointed or elected in the permanent or temporary working bodies established by an authority shall not be deemed a performance of two or more public functions in terms of this Law, except for those who make decisions or participate in decision-making process.

A public official shall report to the Agency accurate and complete data on income acquired through the exercise of activities or tasks referred to in the Paragraphs 1 and 2 of this Article. In

the case of membership in several working bodies referred to in Paragraph 2 of this Article, a public official may acquire income only from one working body a month.

The Law on Prevention of Corruption in the Article 11 stipulates that a public official cannot be president, authorized representative or member of a managing body or supervisory board, or the executive director or member of management in a company.

A person who is elected, appointed, or assigned to public office in terms of this Law shall, within 30 days from the election, appointment, or assignment, resign from office or function referred to in Paragraph 1 of this Article.

The same Law, in the Article 13 stipulates that a public official who, while performing a public function, accepts to perform other duties or functions referred to in the Article 11, Paragraph 1 or Article 12, Paragraphs 1 and 3 of this Law, shall resign from the public function within 30 days from the beginning of the exercise of other functions or duties.

The Law on the State Audit Institution (“Official Gazette of the Republic of Montenegro”, numbers 28/2004, 27/2006, 78/2006, and “Official Gazette of Montenegro”, numbers 17/2007, 40/2011 - other law, 31/2014, 70/2017 - other law) **in the Article 35 stipulates that a Member of the Senate cannot perform the function of a Member of the Parliament or any other public function, nor can be engaged in any other professional activity**, while the Article 41 which relates to prohibition of membership in managing bodies and disqualification stipulates that:

A Member of the Senate cannot be a member of a managing body of a business organization or any other legal entity.

A Member of the Senate cannot participate in the operation and decision-making nor can he/she perform activities provided in this Law in cases where he/she or his/her family members were directly involved in the decision-making about the matter therein.

In the event of reasons which question or could question the objectivity or impartiality of a Member of the Senate, the Senate shall make a decision on disqualification.

A Member of the Senate shall inform the President of the Senate of circumstances described in Paragraphs 2 and 3 of this Article.

The Law on Banks (“Official Gazette of Montenegro”, numbers 17/2008, 40/2011 - other law, 44/2010, 73/2017) in the Article 39 states that the Audit Committee shall consist of at least three members, the majority of which are not connected to the bank and have experience on the positions in the area of finance.

Bank executive directors shall not be elected as members of the Audit Committee.

The Audit Committee shall:

- 1) **analyze and monitor** the functioning of the system for managing risks the bank is exposed to in its operations and propose the improvement of risk management strategies, policies and procedures;
- 2) **analyze and monitor** the functioning of internal control systems;
- 3) **discuss** internal audit programs and reports and **give opinion** on internal audit findings;
- 4) **monitor** the implementation of internal audit recommendations;
- 5) **analyze** financial reports of the bank prior to its submission to the Board of Directors;
- 6) **evaluate** the quality of reports and information before they are submitted to the Board of Directors, including but not limited to:
 - application of accounting policies and procedures;
 - decisions requiring a high level of evaluation;

- impact of the unusual transactions on financial reports;
- quality of policies of data gathering;
- changes occurred as a consequence of completed audits;
- assumptions on the permanency of operations;
- compliance with the International Financial Reporting Standards and regulations;

7) **give opinion** on the selection of external auditor and propose an audit fee.

The Audit Committee shall draw up proposals, opinions, and standpoints on the issues within their scope of work that are to be decided by the Board of Directors.

The Audit Committee shall submit annual reports on its work to the Board of Directors.

The Law on Business Organizations (“Official Gazette of Montenegro”, no. 6/2002 as of 8 February 2002) which was in force on 1 June 2003 when the Decision to initiate the procedure of voluntary liquidation of the business organization “ET COM” LLC Podgorica was issued, in the Article 24 regulates the voluntary liquidation procedure. Obligation to submit and publish data and documents is stipulated under the Article 71 which, among other, states that limited liability company shall be obliged to submit to the Central Registry the data on the appointment of a liquidator, while Article 85 prescribes submission of data and documentation and in the Item 6 states that **Liquidators of joint-stock companies, limited liability companies, limited partnerships, and general partnerships shall be authorized to make submissions for registration in accordance with this Law. The application of the provisions of this Law to limited liability companies is stipulated under the Article 79 of this Law.** The Article 86 of the same Law states that by the registration of the notice on the voluntary liquidation a relevant decision is issued by the competent authorities and that the entity which is being liquidized received all the necessary authorizations by the tax administration and other bodies in charge of public revenues to liquidate.

On the basis of the aforementioned provisions of the law, the Agency determined that Zoran Jelić, Member of the Senate of the State Audit Institution, did not violate provisions of the Law on Prevention of Corruption when he simultaneously exercised public function and the function of the founder of the business organization “ET COM” Podgorica, the data related to which he did not disclose to the Agency because he submitted evidence - court-certified Decision to initiate the procedure of voluntary liquidation as of 1 June 2003 and the Request addressed to the Department of Public Revenues Podgorica no. 1/15930 as of 27 August 2003, which were the documents necessary for conclusion of the voluntary liquidation procedure, **and all further actions in registering the amendments was the responsibility of the liquidator in accordance the Law on Business Organizations which was then in force.**

Based on the above, the aforementioned public official did not infringe legal provisions related to the restrictions in the exercise of public functions.

Pursuant to the Article 9 of the Law on Prevention of Corruption, Zoran Jelić may be engaged in scientific, educational, cultural, artistic and sports activities and acquire income from copyrights, patent rights and other similar rights, intellectual and industrial property, and is obliged to report to the Agency accurate and complete data on the income acquired through the exercise of these activities and tasks, as well as be a member of multiple working bodies.

In the case of membership in several working bodies referred to in Paragraph 2 of this Article (working bodies established by a public authority), a public official may acquire income only from one working body a month.

Considering that the aforementioned working body the Audit Committee of The First Bank was not established by a public authority, but by The First Bank which is not considered as a public authority, legal limitations for a public official to acquire income on this basis did not exist, since this is allowed pursuant to the Article 9 of the Law on Prevention of Corruption. The Agency examined the statements of the requestor that the aforementioned public official violated the Article 7 of the Law on Prevention of Corruption which regulates conflict of interest in the exercise of public functions and with regard to the procedure conducted before the Agency the violation of the abovementioned article by Zoran Jelić, Member of the Senate of the State Audit Institution, was not determined, because pursuant to the Law on Banks, the Central Bank decides on granting, denying and revoking of the approvals in accordance with this Law, and such resolution is final, while the Article 34 prescribes responsibilities of the Board of Directors for:

- 1) establishing and maintaining a risk management system for the risks to which the bank has been exposed in its operations;
- 2) ensuring that any operation of the bank is in accordance with the law, the Central Bank's regulations and the bank's internal policies and procedures, as well as that any measures imposed by the Central Bank have been complied with;
- 3) operational safety and financial stability of the bank;
- 4) accuracy of all bank operating reports that are published and submitted to the Shareholders' Assembly, the Central Bank and competent authorities.

On the basis of the listed legal provisions and since during the procedure it was not determined that the aforementioned public official during exercising public function in the public authority the State Audit Institution conducted oversight over The First Bank - legal entity, to which he provided expert services in accordance with the Article 9 of the Law on Prevention of Corruption, he, therefore, did not violate the legal provisions related to conflict of interest in the exercise of public functions.

Based on the above, it was decided as in the disposition of this Decision.

AGENCY FOR PREVENTION OF CORRUPTION

Instruction on legal remedy: This Decision is final. Against this Decision, an administrative dispute may be instituted within 20 days from the date of delivery of the Decision.

Authorized civil servant:
Dušica Rečević
[Signature]

Head of the Section
Maja Karas Bošković
[Signature]

[Stamp of the Agency for Prevention of Corruption]