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Introduction

External audit of the public sector is one of the main instruments used to strengthen the accountability of the public authorities and raise general public trust in the public sector. Its primary goal is to give full and exact report on regularity of use of the public funds, but also to show whether the users of public funds have managed to meet the goals they had been given funds for.

State Audit Institution (SAI) is the independent and supreme authority of the state audit established by the Law on State Audit Institution in April 2004. It represents institutional, external, independent, professional and impartial control of the budget expenditures and state property management in Montenegro. So far, SAI produced 46 audit reports: six reports on the Final Account of the Budget of Montenegro and the rest on individual audits. With enlargement of the SAI's capacities and implementation of demanding new audits, the total number of audits steadily grows with every year.

Members of the Parliament, representatives of the executive branch and international organizations often publicly compliment the SAI and its work. There has not been any significant contribution to the work of SAI by the NGOs in Montenegro so far.

Taking all stated facts into account, it is our opinion that the time has come for a more objective review of the SAI's hitherto work, its position in the institutional framework, ways other authorities use the findings of this institution and the results of its work so far. Institute Alternative (IA), with the support of the European Fund for the Balkans, conducted the project "**Towards the best EU practice: Strengthening the Influence of the External Financial Control in Montenegro**". Project included analysis of the legal framework of the financial control, capacities of the SAI and the quality of the inter-institutional cooperation. The goal of the project and this publication as its direct product, is to provide recommendations for enhancing the SAI's work and thus its influence on the system of public finance.

The materials used for this research report are the conclusions from the interviews conducted with representatives of the audited entities, SAI, Ministry of Finance, the State Prosecutor's Office, Public Procurement Directorate, District Authority for Offenses Podgorica and Members of Parliamentary Committee on Economy, Finance and Budget. We also used press clipping materials and articles on SAI from the print media IA have been collecting over the past years. We have taken into account the comparison of the practice and the legal framework of the state audit institutions in selected countries in the region (Croatia, Bosnia and Herzegovina and Macedonia). During the research, we established constructive cooperation with the SAI itself, addressed them with a basic questionnaire consisting of thirty questions, numerous requests for gaining access to the information, and interviewed Heads of the Sectors.

This analysis contains the recommendations mainly addressed to the SAI, but also to the other members of the process of public expenditures control in Montenegro. Beside its main goal to influence the responsible decision makers to implement new solutions into the legal framework and practice, this analysis aims to contribute to the research and available material on external audit in Montenegro.

It is a good opportunity to solve certain issues that are a burden to the SAI's work before the upcoming amendments to the Law on State Audit Institution planned for 2011. The importance of further efforts on strengthening the capacities of SAI was also highlighted by the European Commission in the *Opinion on the Application of Montenegro for Membership of the European Union* as one of the seven key priorities to be fulfilled if Montenegro is to start accession negotiations.

Legal Framework

State Audit Institution

Article 144

The State Audit Institution of Montenegro shall be an independent and supreme authority of the national audit.

The State Audit Institution shall audit the legality of and success in the management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created through the use of state property.

The State Audit Institution shall submit an annual report to the Parliament.

The Senate shall manage the State Audit Institution.

(from the Constitution of Montenegro)

Constitution of Montenegro defines State Audit Institution as an independent and supreme authority of the state audit which audits the legality of and success in management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created through the use of state property

Intention of the writers of the Constitution was to outline basic definitions of the State Audit Institution and leave all other elements to be determined by laws. In April 2007, the international meeting on “Role and position of the State Audit Institution in the parliamentary system and Constitution of Montenegro” was held as a part of a public debate on draft of the Constitution of Montenegro. Presidents and representatives of Supreme Audit Courts and Institutions of Slovenia, Hungary, Bulgaria, Serbia, Croatia, Macedonia and Montenegro as well as members of the Montenegrin Parliament Committee on Economics, Finance and Budget, agreed that the issue of constitutional definition of SAI’s financial

independence should be further discussed. The same applies to the independence of the members of the Senate¹ as well as the relationship between the Parliament and the Institution itself. Among the recommendations from the conference is the need for additional constitutional definition of the principle of **independence**, especially considering the constitutional declaration of the Senate managing the Institution as the collegiate authority.

State audit was introduced in Montenegro by the establishment of the Main State Control through a special Law of the Principality of Montenegro in 1901. Constitution from 1905 established the Main State Control as separate accounting-judicial authority that controls the public finance with a main goal to “review all state accounts”.

The first audit of the financial operations and budget of Montenegro was performed by the Main State Control and it encompassed the period between 1890 and 1902. Many state servants and officers were fired, fined or retired as a consequence of discovered misuses.

1 “In the paragraph 3 of the suggested article, after the statement “The Senate shall manage the National Audit Institution.” there should be continuation “and its members shall have judicial independence.”... Independent judicial authorities and independence are the foundation of today’s audit institutions (courts) as indicated in paragraph 72. and 73. of the INTOSAI standards and constitutional definitions of the modern democracies - Recommendations from the International Conference taken from webpage: http://www.dri.co.me/index.php?option=com_content&task=view&id=122&Itemid=279

30/08/2010

On the session held on 29th of April 2004, The Parliament of Montenegro passed the Law on State Audit Institution² which established the State Audit Institution of Montenegro as institutional, external, independent, professional and impartial control of the budget expenditures and state property management in Montenegro. The proposal of the Law was submitted on the initiative of the members of the former existing Parliamentary Committee on Economy, Finance and Environment.

Part of the Law that describes conditions for appointment and number of members of the Senate³ was amended in 2006.

According to the Action Plan of the Strategy for Fight against Corruption and Organized Crime for the period 2010-2014, SAI in cooperation with the Parliamentary Committee on Economy, Finance and Budget, should prepare the Law on Amendments to the Law on State Audit Institution or a completely new Law on State Audit Institution if necessary. This will signify the end of the adjustments between the Constitution and the Law. The Law should be passed by the end of 2011 in cooperation with the Parliament.

Besides planned audit of the Law on SAI, further development of the legal framework should bring the adoption of methodological and other audit manuals. These documents should describe precise steps in the procedure, including the methods to document and evaluate systems of the audit entities, as well as determine the auditing risks and collect the samples.

So far the Senate of the SAI adopted the following bylaws:

- Rules of Procedure of the State Audit Institution ⁴
- Instruction on the Methodology of the work of the State Audit Institution ⁵
- Code of Ethics of the Civil Servants and State Employees in the State Audit Institution
- Act on Internal Organization and Systematization of the State Audit Institution.

2 "Official Gazette of the Republic of Montenegro" No. 28/04, 27/06, 78/06 i 17/07

3 Article 31 and 32 of the Law on SAI, "Official Gazette of the Republic of Montenegro" No. 78/06

4 "Official Gazette of the Republic of Montenegro" No. 50/07

5 "Official Gazette of the Republic of Montenegro" No. 02/05

Appointment and Structure of the SAI Senate

Initially the Law on SAI prescribed that the Senate should consist of only three members. The amendments from 2006 extended the number of the Senate members to five. The requirements for the appointment of a member of the Senate were to “have passed the bar exam and have at least 10 years of work experience in the legal profession or at least 10 years of work experience in conducting responsible legal works” and/or “have passed the professional exam for auditors or accountants and have at least 10 years of work experience”.

Part of the 2006 amendments was change of requirements for the appointment of a member of the Senate. New requirements for the appointment defined that a member of the Senate could be a person that has “at least 10 years of work experience in conducting responsible works in public finance” and “at least 10 years of work experience in conducting responsible legal works in civil service”. Adoption of amendments also defined that “at least two Members of the Senate shall be lawyers”.⁶

Appointed members of the Senate were Miroslav Ivanišević (former Minister of Finance and Deputy Prime Minister), Milan Dabović (former assistant to the Minister of Finance), Dragiša Pešić (former Prime Minister of the Federal Republic of Yugoslavia), Branislav Radulović (former Chief of Cabinet of the President of the Parliament of Montenegro) and Dušan Mrdović (former Secretary General of the Parliament of Montenegro). In April 2010, Mrdović was appointed as the Ambassador of Montenegro and thus ceased to be the member of the SAI Senate.

Members of the Senate are appointed and dismissed from duties by the Parliament following the recommendation of its competent working body (Administrative Committee)⁷. The conclusion adopted at the 19th session of the Administrative Committee⁸ invited all the clubs of the Members of the Parliament to submit their suggestions for a new member of the SAI Senate. They also contained the obligation to continue the procedure of appointment after the agreed 15 days term. Meanwhile, the new member of the Senate was not appointed and the seat remains empty for nine months now.

When considering the appointment of the new member of the Senate, attention must be paid whether one is lawyer⁹, as required by the Law on SAI¹⁰. Gender equality and a need to increase the number of female employees at the higher-ranking positions in the SAI must be taken into account as well.

6 Article 32 of the Law on SAI

7 Article 33 of the Law on SAI

8 The session was held on the 10th of Jun 2010

9 Importance of having lawyer personnel in the SAI is elaborated in the chapter “Criminal Responsibility” of this paper.

10 Only Mr. Branislav Radulović had graduated in Laws while Miroslav Ivanišević, dr Milan Dabović and Dragiša Pešić have graduated in Economics.

Personal Independence

The independence of the persons who occupy key positions in the SAI includes the immunity from prosecution for any act that results from the normal discharge of their duties. Although the permanency of their function is secured by the solution that members of the Senate shall be chosen for life¹¹ and that the President of the Senate shall be appointed for a period of nine years without the possibility of reappointment¹², the constitutional framework must also provide the immunity for the members of the Senate. The immunity for every present or past act that results from the normal discharge of their duties is provided by the Mexico Declaration on the independence of supreme audit institutions¹³. The absence of the defined functional immunity could represent a problem in the future EU accession negotiations during the opening of the Chapter 32 - Financial Control. This was pointed out by the European Commission as well, in the Analytical Report that followed the *Commission Opinion on Montenegro's application for membership of the European Union*¹⁴.

Audit Planning

According to the Law on SAI, the Institution shall decide independently regarding the entities to be audited, subject matter, scope and type of audit with the obligation to audit the Financial Account of the national budget¹⁵. The **audit entities** are the institutions and organizations managing the budget and the property of the State and the local self-government units, the funds, the Central Bank of Montenegro and other legal entities in which the State holds a share. The Institution shall audit these entities which execute parts of the budget, manage state property, receive subsidies, grants or guarantees from the State or do business with an audited entity.¹⁶

The annual audit plan is adopted by the 10th January of the current year by the SAI Senate after the hierarchical decision and suggestion making process (from the State Auditors to the Heads of Sectors who proceed to the authorized Collegiate and at the end to the SAI Senate). The annual audit plan remains SAI's enclosed confidential document until all the planned audit entities receive notice about the beginning of the audit¹⁷.

Senate can adopt long term (orientational) audit plans, development plans, education plans, while

During the debate in the Committee on Economy, Finance and Budget on the Proposal of the Law on the Budget Final Account in 2007, MP Zarija Perović asked the officials of the SAI to consider including the audit of a state-owned company in the next Annual Plan (2009). Although, the formal acceptance of this proposal was not confirmed, the SAI actually did perform the audit of the financial statements of the Railway Transport of Montenegro for the year 2007 and in 2009 published the audit of the Public Enterprise for Managing Coastal Area of Montenegro. *Although the SAI did as opposition MP suggested, the members of the Committee did not continue the practice of proposing the audit entities for the Annual Plan of the SAI.*

11 Article 34 of the Law on SAI

12 Article 33 of the Law on SAI

13 The second principle of the declaration of Mexico on Independence of SAI <http://www.intosai.org/blueline/upload/issai10mexikodekle.pdf> (15/11/2010)

14 http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_rapport_2010_en.pdf

15 ¹⁵ Article 9 of the Law on SAI

16 Article 4 of the Law on SAI

17 ¹⁹ Article 33 of the Rules of Procedure of the SAI ("Official Gazette of the Republic of Montenegro", No. 50/07 17.08.2007)

sectors can adopt specific plans¹⁸, depending on their competencies. Such plans have not been made so far.

It is not forbidden for the Government and the Parliament to suggest ideas on the selection of audit entities. However, they “must be aware that the Institution has already planned the engagements for its auditors by its the annual audit plan, and that good reasons should be provided in order for it to change plans”¹⁹.

The Law on SAI does not deal with the role of the subjects outside of SAI (*The Government, The Parliament, any institutions dealing with public finance in any way - Commission for the Control of Public Procurement Procedures, State Prosecutor’s Office, Police Directorate, as well as the civil society organizations*) in the process of drafting the annual audit plan. All such attempts until now have been deemed as impairing SAI’s constitutional independence.

Although the independence of the SAI must not be obstructed in any way by legislative or executive branch, the Law has to be precise regarding the way in which subjects outside SAI could give their suggestions for the annual audit plan. It is important to provide the possibility for the MPs, members of the Committee on Economy, Finance and Budget, to suggest audit entities for the annual audit plan as a part of the formal procedure that **would not be binding for the SAI but would define the procedure of considering such proposals and deciding upon them.**

The Budget of the SAI

Financial autonomy and securing of adequate human, material and financial resources is one of the key principles of independence of the State Audit Institutions included in the INTOSAI Mexico Declaration on the independence of SAIs²⁰. This means that the influence of the executive branch in the control and access to the funds necessary for the work of the SAI has to be minimal. Usually the Parliament plays the main role in this segment. Montenegrin SAI is often represented as financially independent from the Government. It is of great importance to show that the SAI does not actually enjoy the complete independence from the Government.

The Law on SAI defines the general way of the financing of the SAI:

“The funds for the activities of the Institution shall be provided in the budget of the Republic.

The request for allocation of budget funds to the Institution shall be submitted by the working body of the Parliament in charge of financial activities, upon request of the Institution.”²¹

The SAI is one of the spending units in the system of budgetary consumption.²² The SAI Senate makes the proposal of the request necessary funds with a detailed rationale and submits it to the Parliament Committee on Economy, Finance and Budget. After the review of the proposal in the

18 ²⁰ Article 34 of the Rules of Procedure of the SAI (“Official Gazette of the Republic of Montenegro”, No. 50/07 17.08.2007)

19 The SAI’s answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

20 The financial independence is the 8th key priority in this INTOSAI document. English version available at <http://www.intosai.org/blueline/upload/issai10mexikodekle.pdf> (30/11/2010)

21 ²⁵ Article 51 of the Law on SAI

22 Data about the budget funds approved to the SAI and spent is available in the Graph No. 2 “*The SAI budget for the period 2005-2009*”

Committee, with the members of the SAI Senate and the Ministry of Finance present, it is submitted to the Ministry of Finance where it inevitably “shares the same destiny” of the budget proposals submitted by other budgetary units. During this phase, the Ministry can make changes to the SAI’s budget proposal and thus directly influence its independence.

Experience from Bosnia and Herzegovina:

Audit Office (AO) prepares the draft of its annual budget and delivers it to the Parliamentary Commission for approval. Afterwards, the draft is delivered to the Ministry of Finance and Treasury of the BIH in order to be included in the overall Budget. The Ministry is able to give its opinion on the draft of the AO’s budget proposal, but does not have the authority to make changes after it has been approved by the Parliamentary Commission.

AO has an obligation to prepare financial reports about its work every three months and deliver them to the Parliamentary Commission. Among other information about its work, Annual Report contains the AO’s annual financial report. Parliamentary Commission appoints an independent audit company or audit commission with five members that are specialized in auditing and accounting, to audit the AO’s final account. This commission delivers audit findings together with its comment to the Parliamentary Commission before it approves the AO’s budget.

(Articles 5 and 6 of the Law on Audit Institution of BIH)

Strengthening the financial independence of the SAI, decreasing influence of the executive branch on its work and granting it a special status in comparison to other users of the budgetary funds, brings greater responsibility in terms of the expected respect for the budgetary discipline. The budget of the SAI contains the positions necessary for the continuation of work, personal expenses and material expenses. The Annual Report of the SAI is controlled by the representatives of the Parliamentary Committee on Economy, Finance and Budget. The audit of the Final Account of the SAI’s Budget SAI has not been performed so far.²³

It is necessary to implement the existing legal competencies and introduce the elements of parliamentary control, mainly through the regular engagement of the external audit agencies to audit the budget of the SAI on behalf of the Parliamentary Committee. In order to rationalize the expenditures and avoid unnecessary burdening of SAI’s work, it is necessary for the Committee to organize the audit of the Final Account of the SAI’s Budget in regular intervals of several years.

One of the solutions that INTOSAI recommends as a good practice is the so called one-line budget. This is a solution that enables the SAI to demand a lump sum from the budget together with the authorization to allocate the funds to the different expense categories according to its own judgment.²⁴

The justification for such a solution could be found in the hitherto experiences regarding in the SAI’s work. During the debate on the Proposal on the Law on Budget for 2010 in the Committee on Economy, Finance and Budget, SAI had an initiative to redirect the funds among its budget lines in order to provide funds for solving housing issues. The Members of the Committee all voted in favor of the request, with the representative of the Ministry of Finance rejecting it.²⁵

During the Committee session and debate on the Proposal on the Amendments to the Law on Budget for 2009 (the rebalance of the budget in July), representative of SAI requested reallocation of the budget in order to secure the missing funds for the salaries of the employees. This was accepted by both the Committee and the Ministry of Finance.²⁶

23 ²⁷ The SAI’s answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

24 INTOSAI Guidelines and good practice related to SAI Independence, document available at: [http://www.issai.org/media\(428,1033\)/ISSAI_11_E.pdf](http://www.issai.org/media(428,1033)/ISSAI_11_E.pdf)

25 ²⁹ http://www.skupstina.me/cms/site_data/25122009/Zapisnik%20-12_sjednica%20EKONOMIJA.pdf (25/08/2010)

26 ³⁰ http://www.skupstina.me/cms/site_data/IZVJESTAJ/IZVJESTAJ10/ZAPISNIK%20SA%20DRUGE%20SJED-NICE%20ODBORA%20ZA%20EKONOMIJU,%20FINANSIJE%20I%20BUDŽET.pdf (25/08/2010)

Liability

Lawful, effective, efficient and economical use of the public funds and assets is obligatory for the audit entities. They are liable for any misuse or violation of the regulations. Violations and misuses can be of different levels of importance. While the inefficient management of state funds requires indemnification, both misdemeanor and disciplinary, there is also a possibility of criminal prosecution for acts defined by the Criminal Code and other laws. So far, SAI's findings did not provide base for initiation of criminal/misdemeanor/disciplinary liability of the competent authorities and civil servants at the audit entities. SAI has often been criticized because of this. However, its representatives claim that the role of the SAI is "mainly to inform the citizens and the authorities on how the budget funds are being used (...) with a goal to increase the efficiency and regularity²⁷". SAI's representatives often emphasize that other authorized institutions and bodies should initiate the process of determining liability in case they find legal basis for it in the audit reports.

Criminal Liability

All state authorities, local self-government, public enterprises and institutions are bound to report criminal offenses according to the Criminal Code. They all have an obligation "to report criminal offenses that are prosecuted *ex officio* of which they have knowledge or have learned about in some other way."²⁸

The SAI has an important role in prevention of corruption. Its findings should identify the situations with the risk of corruption occurrence. Nevertheless, in cases there is a reasonable suspicion that the criminal act had been committed, SAI has a legal obligation to file criminal charges. This obligation is restated in the Law on SAI: "The Institution shall, without delay, file criminal charges, if during the audit procedure it determines that there is reason to suspect that a criminal act has been committed."²⁹ Additionally, SAI is due to file charges to the State Prosecutor if it finds out that the audited entity "has caused damage to state property".³⁰

SAI's officials stated that, in their hitherto work, they "did not find grounds to initiate the process of compensation of damage, to inform the State Prosecutor about the damage caused to the state property or to file criminal charges."³¹

In the Evaluation Report on Montenegro³² published by the Group of States against Corruption (GRECO) in 2006, it is recommended "to establish guidelines and provide training for State Auditors so that they can effectively fulfill their obligation to report suspected criminal offenses, including corruption, to the State Prosecutor" (recommendation 24)

27 The opening words of the President of the Senate of the SAI Mr Miroslav Ivanjišević on the press conference on publishing of the Annual report on performed audits and activities of the State Audit Institution of Montenegro for period October 2009 - October 2010

http://www.dri.co.me/index.php?option=com_content&task=view&id=207&Itemid=327

28 Article 227 of the Criminal Procedure Code (Official Gazette of Montenegro No. 71/03)

29 Article 23 of the Law on SAI

30 Article 22 of the Law on SAI

31 The SAI's answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

32 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2005\)4_Montenegro_ME.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)4_Montenegro_ME.pdf) (28/08/2010)

In GRECO's 2008 Compliance Report on Montenegro³³, this recommendation is marked as "partially fulfilled". Although the obligation to report criminal offenses to the Prosecutor's Office was included in the regular training program of the state auditors, only a small number of seminars has been conducted and the guidelines for legal obligation of the state auditors to file criminal charges have not been produced.³⁴

In the Annual Report on performed audits and activities of the SAI in October 2008 – October 2009, it is specified that the SAI and the State Prosecutor's Office, in cooperation with OSCE Mission to Montenegro and the Directorate for Anti-Corruption Initiative, did prepare a draft of the guidelines for issuing criminal charges in connection with auditing process.

State Prosecutor has made an inquiry for additional information on certain audit entities based on the SAI's reports and they were provided to him. However, the given information have not resulted in State Prosecutor bringing criminal charge against those entities.

Need for increasing the interest of competent institutions and general public in SAI's findings was also pointed by the member of the SAI's Senate Branislav Radulović:

"Greater parliamentary control of the budget, deeper examination of our findings and reports and better public perception of their importance is something that we from SAI would like to see in the future. Equally important is the State Prosecutor's Office assessment of criminal offense suspicions in certain cases and performance of duties it has been authorized for."³⁵

This statement is in connection with the practice of delivering the audit reports to the State Prosecutor's Office. Although it is obligatory for Prosecution to follow the work of the SAI and use its audit reports, delegating the responsibility for filing criminal charges upon Prosecution seems worrying. Particularly since the SAI's obligation in this regard has been determined by both the Criminal Code and the Law on SAI.

During the presentation of the Annual Report on the activities of the SAI for period 2009 – 2010, while commenting the fact that no criminal charges had been filed, Radulović pointed out that SAI is not the prosecution authority and that only a few of SAI employees are actually lawyers.

"The Prosecutor should bring the charges. SAI's task is to establish the facts, inform the public and deliver reports to the Parliament who approves the Final Account and conducts political control of the budget." - explained Radulović.³⁶

This statement indicates possible lack of capacities inside the SAI for identifying and filing criminal charges, as well as the need to perform a more intense examination of the audit reports by the State Prosecutor's Office.

The President of the Committee on Economy, Finance and Budget, Aleksandar Damjanović also emphasizes the importance of determining criminal liability in this area:

Through the SAI's reports... many unlawful acts and irregularities in the work of different ministries and state authorities have been registered. Other authorities were expected to take part in investigating all these things as well

33 ³⁷ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)5_Montenegro_ME.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)5_Montenegro_ME.pdf) (28/08/2010)

34 ³⁸ According to the data IA received from the SAI this was fulfilled in a meantime

35 ³⁹ Taken from http://www.slobodnaevropa.org/content/regija_afere/1902637.html (31/08/2010) "Would the open affairs ever be cleared", Radio Free Europe

36 "Auditing to strengthen the fight against corruption", Daily News Pobjeda, 09/11/2010, <http://www.pobjeda.co.me/citanje.php?datum=2010-11-09&id=194660> (22/11/2010)

as to bear consequences. There are still no actions of such kind and thus a problem definitely exists... It seems that, as a society, we still are not ready to personalize the guilt and responsibility and disperse the benefit and profits among the whole society... What we have is a dispersion of responsibility and concentration of profits and benefits.³⁷

Although bringing criminal charges is not the main task of the SAI, the Law on SAI unambiguously determines such obligation under the aegis of this institution. This obligation was mentioned in the Criminal Code and since it is also included in the Law on SAI we can conclude it is thus clearly emphasized. Statements of the SAI's representatives about the lack of capacities for execution of these functions should be taken as a signal for a need to increase SAI's budget in order to hire new personnel experienced in criminal law and train already employed lawyers.

Cooperation with the State Prosecutor's Office has to be significantly increased in terms of regular exchange of auditing reports and training of the state auditors, instead of conferring the responsibility of bringing criminal charges from the SAI to the Prosecutor's Office.

Offense Liability

Offense liability in the area of managing public finance in Montenegro is not adequately determined by the Law and thus cannot be enforced. It is evident that the budgetary units very often use state funds inappropriately and that these misuses are not sanctioned in a proper manner.

In many audited entities SAI noticed irregularities during the budget planning, keeping of official records and use of cash, as well as uneconomical use of the funds.³⁸ Many spending units had irregularities regarding unreported incomes, expenditures, deposits, donations, money withholds on commercial bank accounts without evidence in the Treasury General Ledger, public procurement, etc. The main problem is the fact that the perpetrators of all these irregularities remain unsanctioned.

Taking everything stated above into account, the question at hand is the legal regulation of these offenses in different Laws on Budget of Montenegro as well as some other countries in the region. What makes Montenegro an exception in comparison to other countries in the region is the fact that in the Organic Budget Law³⁹, Annual Laws on Budget⁴⁰ as well as Offence Law entail no offense liability for the budgetary units or executives responsible for use of these funds. Regarding this issue, follows a comparison of the offense responsibility in the Laws on Budget of three countries from the region: Bosnia and Herzegovina, Croatia and Macedonia.

37 ⁴¹ Interview of the representatives of Institute Alternative with the President of the Committee on Economics, Finance and Budget Aleksandar Damjanović, 23/ 11/ 2009

38 Annual Report of the Audits and Activities of the Supreme Audit Institution for the period October 2008 to October 2009

39 The Law on Budget (Official Gazette of Montenegro", No. 40/01,44/1, 28/04, 71/05, Official Gazette of Montenegro , No. 12/07 from 14.12.2007, 73/08 from 02.12.2008, 53/09 from 07.08.2009),

40 The Law on Budget of Montenegro for 2010

Experiences from the Region (Bosnia and Herzegovina, Croatia, Macedonia)

Organic Budget Law of Bosnia and Herzegovina, Croatia and Macedonia⁴¹ provide sanctions for the responsible representatives of the budgetary units and the persons in charge of preparation, adoption and execution of the budget.

Bosnia and Herzegovina

In the Law on Budget of Federation of Bosnia⁴² and Herzegovina, the fine that varies from 511 to 2,556 euros⁴³ is provided for the spending unit executive managers, executives of the extra budgetary funds and the executives of the canton, town or the municipality if they disrespect the legal obligation: to submit the request for detachment from the budget, to make a draft and adopt a budget, to file accounting information and to submit the report every three months. Also there is a fine that varies from 2,556 to 10,225 euros⁴⁴ for the same authorities in case of disrespect of the legal obligations to perform expenditures of the spending units, failure to provide authorized inner auditors who shall perform audits as required by law and illegal management of cash and borrowings.

Macedonia

The Law on Budget of Macedonia is more specific about the offense responsibility in this area of interest. In the Law on Budget of Macedonia⁴⁵ it is specifically said that the disrespect of this law shall lead to adequate disciplinary and criminal liability. Fine between 246,57 and 821,92⁴⁶ is intended for every executive of the Republic budget spending unit, local self-government unit and fund, should it submit an inadequate report on the revenues and fail to make deposits to the budget of the Republic of Macedonia, disregard obligations connected to the payment of the budget revenues or do not conduct the audit of the spending units, use its status to delay or completely ignore the assortment of the budget funds, illegally withdraw fund from the budget, refuse to inform the Ministry of Finance about revenues and expenditures, fail to submit the report on final statement of its account to the Ministry of Finance in provided term, disrespect the terms for preparing, proposing and submitting the budget, fail to submit the plan of activities for the next year, open an account without permission from the Minister of Finance etc.

Experience from Serbia:

“On the 18th of February 2010 the SAI submitted the claim for initiation of the offense procedure against 19 state representatives among whom were six present and five former ministers. They are suspected of breaking the Law on Budget System and could receive the fine up to 50.000 dinars.

Also submitted are the charges against four State Secretaries from the Ministry of Finance and Ministry of Labor and Social Policy of Serbia. SAI submitted the reports against former Head of Treasury Administration Ivan Maričić, former and present Head of the Administration for the Joint Services of the Republic Bodies Mirjana Nikolić and Novica Antić and former Head of the Property Directorate Milan Tomić.”

“First hearing for Slobodan Milosavljević on SAI’s reports”, from “Glas Javnosti” 14/05/2010

41 *Law on Budget of Federation of Bosnia and Herzegovina, Republic Croatia State Budget and Law on Budget of Macedonia*

42 *Law on Budget of Federation of Bosnia and Herzegovina* (Official Gazette, No. 01-02-264/06), Article 78.

43 Fines vary from 1.000 KM up to 5.000 KM

44 Fines vary from 5.000 KM up to 20.000 KM

45 *The Law on Budget of Republic of Macedonia* (Official Gazette of the Republic of Macedonia, No.35/01), Article 71

46 Fines vary from 15 000 up to 50 000 denars

Croatia

The Republic of Croatia Law on State Budget⁴⁷ surpasses all others for its extensive regulations and detailed definition of offense liability. All accountable entities as well as great number of offense acts are precisely determined by this law.

The fines are provided for many spending units of the budget: legal entities, accountable entities of the budget and spending units, accountable entities of the units of extra budgetary funds, person accountable for budget supervision, financial supervisors of the budget spending units, accountants of the spending units. The fines vary from 2,905 to 138,333 euros (from 69,166 to 138,333 euros for legal entities; from 2,905 to 138,333 euros for responsible entities of the budget and spending units; from 2,905 to 138,333 euros for responsible entities of the units of extra budgetary funds; from 2,905 to 138,333 euros for person responsible for budget supervision; from 2,905 to 6,916 euros for financial supervisors of the budget spending units; from 2,905 to 6,916 euros for accountants of the spending units).⁴⁸

Great number of offenses had been identified so far: 40 offenses by the legal entities, 76 by accountable entities of the budget and spending units, 4 by accountable entities of the units of extra budgetary funds, one by the person accountable for budget supervision, one by financial supervisors of the budget spending units and 2 by the accountants of the spending units. Some of these offenses are treated in the Law on Budget of Serbia and Macedonia and are related to state authorities's inadequate use of the budget funds, spending unit's take over of the dues on the expense of the budget, inadequate way of performance of financial business.

Certain offenses are related to the public procurements. Law applicable to this area and guidelines proclaimed by the Minister of Finance provide fines for the budgetary units who do not sign contracts for procurements of goods, services and subcontractors they have been given financial funds in the annual procurement plan.

Organic Budget Law of Montenegro does not provide legal solutions for regulation of offense liability. This is an exception comparing to the other countries in the region whose laws describe action that shall be considered as offense and provide fines for responsible entities. During the next period, the great deal of work should be done to include the offense provisions in the Organic Budget Law of Montenegro in order to increase discipline and regularity of use of the budget funds.

47 The Law on State Budget of Republic of Croatia, Articles 139-146.

48 Fines vary from 21.000,00 to 50.000,00 kunas

The Fight Against Corruption

“Improve the anti-corruption legal framework and implement the government’s anti-corruption strategy and action plan; establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels.”

One of the seven key priorities from the Commission Opinion on Montenegro’s application for membership in the European Union

Action Plan for implementation of the Program for the Fight against Corruption and Organized Crime⁴⁹ and its renewed version for 2008-2009 period, provide series of measures to be implemented by the SAI.

Besides the obligation to adopt innovated methodology manual, the other measures provided in the section *External Audit and Prevention of abuses in budgetary execution* of the Action Plan are:

- Adopting the training plan and training of persons in charge of budget management and allocation;
- Raising public awareness regarding the supervision of the budget through development and dissemination of an appropriate guide and conducting a media campaign;
- Preparation of Public Relations Strategy with the aim of timely information provided to the public on budgetary spending and the implementation of planned audits pursuant to the Law on State Audit Institution⁵⁰.

The achievement of cited measures was of great importance due to the fact that NGOs and media were supposed to be included in the process. Nevertheless, the epilogue was as following:

Electronic connection with the Ministry of Finance and all budgetary units, audit entities was not realized, innovated methodological manual for public sector auditing was not produced. The plan was made and many trainings were conducted.

Raising public awareness regarding the supervision of budgetary spending has not been done, foreseen guide was not produced, no media campaign conducted. Preparation of Public Relations Strategy has not been adopted even though the work on it started in September 2008.⁵¹

Unfulfilled obligations were not transferred into the next Strategy⁵² or the Action Plan⁵³. Therefore one can conclude that the idea of putting effort to educate the general public about the importance of the budgetary spending supervision is abandoned, in spite of frequent calling upon the idea that the public is the strongest weapon of the SAI.⁵⁴

49 On the session held on 24th of August 2006, the Government of Montenegro adopted the Action plan for implementation of the Strategy for Fight against Corruption and Organized Crime - 13 months after the adoption of the Program itself. Afterwards, on the 29th of May 2008 the amendment of the Action Plan were adopted.

50 http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=7:p&download=50:p-p-p-2008&Itemid=91 (17/11/2010)

51 MANS’s Twelfth Report on Realization of Measures from Innovated Action Plan for implementation of the Program for the Fight against Corruption and Organized Crime, available at <http://www.mans.co.me/wp-content/uploads/2009/03/XII-lzvjestaj-o-realizaciji-AP-Final.pdf> (17/11/2010)

52 Strategy for Fight against Corruption and Organized Crime for the period 2010-2014

53 Action plan for implementation of the Strategy for Fight against Corruption and Organized Crime for the period 2010-2012

54 For more information on planned activities in the Action Plan see Table 2 in the Annex : “SAI’s obligation provided by the Action plan for implementation of the Strategy for period 2010-2012”

Inter-Institutional Relations

In this section we will deal with relations between SAI, Ministry of Finance, Parliament (Committee on Budget, Economy and Finance), State Prosecutor's Office, Police Directorate, etc., and the audit entities.

The Annual Report of SAI's Audits and Activities for the period October 2006 to October 2007 announces the enhancement and institutional defining of the cooperation with state bodies authorized to supervise regularity of the budgetary spending. These bodies are State Prosecutor, Ministry of Finance, Directorate for Anti-corruption Initiative, Administration for the Prevention of Money Laundering, Commission for the Control of Public Procurement Procedures, Human Resources Management Authority, Department of Public Revenues, etc.

Institutional cooperation established through agreements would define the exchange of information, data and findings from the institution's jurisdiction and thus overcome technical and formal obstacles to improvement of the efficiency in prevention and suppression of this form of misuse of the financial system.

The SAI and the Administration for Prevention of Money Laundering and Financing of Terrorism signed an Agreement on Cooperation⁵⁵. The agreement provides the SAI with an obligation to submit information from performed audits to the Administration if it registers the suspicion of money laundering or financing of terrorism. On the other hand, the Administration for the Prevention of Money Laundering and Financing of Terrorism will gather and analyze data, information and documentation that are of interest to SAI, as well as take adequate measures and actions should the analysis provide indication of money laundering or financing of terrorism or any other criminal act in connection to these.⁵⁶ The Cooperation Agreement was signed with the Commission for the Control of Public Procurement Procedures as well.⁵⁷

The SAI is not receiving feedback from the Ministry of Finance on individual audit reports.⁵⁸ Among other things, department for the public internal financial control at the Ministry of Finance is also responsible for cooperation with the SAI and control of the implementation of its recommendations.⁵⁹

55 Agreement was signed on the 12th of March 2009

56 ⁶⁰ Information from the SAI the website: http://www.dri.co.me/index.php?option=com_content&task=view&id=108&Itemid=327 (30/08/2010)

57 "The goal of the Agreement is to secure the public interest through the transparency and right use of the Law on Public Procurements and submitting of the specific legal means during the public procurements; improvement and development of inter-institutional cooperation and activities in prevention of corruption and other illegal behavior; acquiring high level of awareness about prevention and timely detection of possible misuses through incorrect and partial implementation of the Law on Public Procurements; planning of counseling and education for state officers and other employees and writing professional publications; development of the capacities of SAI and State Commission as well as greater support of the implementation of the Law on Public Procurement in order to achieve better results in terms of control and audit of the public procurements but also timely informing about performed audits of entities from the area of public procurement and decisions on the claims from the public procurement in connection with the Law on SAI and the Law on Public Procurements."

http://www.kontrola-nabavki.org/index.php?vijesti_id=90

58 ⁶² Discussion with Branislav Radulović, member of the Senate of the SAI

59 Ministry of Finance Rulebook on Internal Organization and Systematization, Article 12

Relations With the Audited Entities

The audited entities must be given an opportunity to present their opinion before the adoption of the final audit report. This obligation is highlighted in the Lima Declaration: “The Supreme Audit Institution shall give due consideration to the points of view of the audited entities on its findings.”⁶⁰ According to the Law on SAI, the audited entity has the right to express its opinion about the audit report, within the time frame set by the Institution.⁶¹ After the preparation of the final report on performed audit, the SAI Collegiate analyzes it and sends it to the audited entity together with a request for remarks and suggestions to be submitted in specified period of time - no longer than 15 days. The Collegiate reserves a right to prolong this period if it estimates that it is necessary to further consult the audited entity before publishing the final report. If the audited entity does not proceed as required, the Collegiate can publish the final report without its statement. After the audited entity issues its statement on the audited report, the Collegiate evaluates it and makes conclusions about the facts that the entity has provided. After the Collegiate had made its conclusion, the Head Officer works out the Proposal of the final audit report.⁶² Bylaws regulate the possibility to discuss the audit report with the audited entity before the release of the final version in order to limit the amount of correspondence and come to a mutual stance regarding the facts.

Data, which Institute Alternative came across during interviews with the representatives of the audited entities, indicate problems in this part of cooperation with the SAI. Focus of this part of the research was to shed some light the communication practice with the SAI before and after the performed audit.

So far, the SAI has not begun an audit before issuing prior notice to the audit entity first.⁶³ Also, it has not yet happened that an audited entity refused to submit the necessary documentation, information and clarifications or provided what has proven to be false data.⁶⁴

Certain representatives of the audited entities expressed discontent with the field work of the state auditors, mainly pointing out the impoliteness and “atmosphere resembling police interrogation”.

Interviews with the audited entities also revealed that the SAI did not provide answers, explanations or reaction on the submitted comments and suggestions from the audit entities on the draft audit report. The draft of the audit report becomes final version after a strictly formal evaluation of submitted comments and suggestions. Differences in audited entities experiences with the calls for clarification of SAI’s findings indicate the need to pay more attention to the segment of cooperation with the SAI.

In the case of audit of the Ombudsman, comments and suggestions submitted after the delivery of the draft audit report did not have any impact since the SAI simply made draft version into a Final Audit Report. The case is also significant because the head of the institution asked for discussion or oral examination of the facts in the report that were unclear to the audited entity after the draft was delivered. The SAI did not meet this request (in spite of bylaws that clearly determine the basis for this kind of cooperation with the audited entity⁶⁵) and instead it sent a written response with an explanation that was as uncertain as the report itself according to the representative of the audited entity.⁶⁶

60 Lima Declaration, Section 17, Paragraph 1.

61 Article 15 of the Law on SAI

62 Articles 48 - 49 of the Rules of procedure of the State Audit Institution

63 The SAI’s answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

64 The SAI’s answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

65 Instruction on the Methodology

66 Interview of the representatives of Institute Alternative with secretary of the professional and administrative department of the Protector of the Human and Minority Rights Zdenka Perović 07/06/2010

If SAI aims to spur improvement of audit entities in terms of legality, and make their spending and overall operations more economical and efficient, it needs to pay special attention on audit entity's request for explanations of the suggested recommendations and provide comprehensive answers.

Cooperation with the audited entities, after the conducted field work and delivery of the draft audit report should be followed by reaching of a common view on the current factual situation. If the mutual agreement could not be reached, the SAI should mention disagreements with the audited entity representatives in the audit report together with its opinion on these arguments and explanations. This would signify that the SAI does not give up its audit decisions or makes compromises that would damage the truthful presentation of the business activities of entities, but avoids arguments about the correctness of the audit report in media and parliamentary debates.

The audited entities question if certain recommendations of the SAI have basis in the legislation of Montenegro. Some institutions suggest that SAI's recommendations should be clearly based on legal provisions and claim that there are cases when there were not. The representatives of the audited entities claim that they find it easier to accept and implement the recommendations when the legal or sub legal regulation is provided as part of the rationale. Although the goal of the SAI is to increase the efficiency and regularity of the use of the budget funds, it is not exactly clear whether SAI is able to recommend the audit entities to perform certain acts that are not obligatory to them by the Law or sub legal acts. Also, it is not clear who is accountable in the case a recommendation is not implemented.

The conclusions and recommendation of the audit reports must be unquestionable, based on examined and documented facts and, most importantly - accepted and understood by the audited entity. One of the ways to achieve this goal is by providing the audit entity with sufficient number of opportunities to present its own opinion about the facts that are the subject of the audit procedure.

Reports of the Audited Entities

Ways in which the SAI controls the implementation of its recommendations is the issue of great significance. Besides the checkup through control audits, which is the safest and the best way for the auditors to inspect the status of their recommendations and the work of the audited entities on correction of irregularities, very important mechanism is the reporting after the final audit report has been published.

Because of its limited capacities, SAI is not capable of conducting regular control audits. Thus it uses the method of random sampling. Since it would be unrealistic to say that the SAI will be able to perform regular audit of its entities soon (in regular periodic intervals) as well as regular control audit in order to the compliance with provided recommendations, it is necessary to strengthen the mechanisms of audit entities reporting to the SAI.

The Law on SAI is not providing the obligation for the audited entities to inform the SAI about the realization of the recommendations from the audit report. In its work so far, the SAI did provide the deadline for delivery of the reports on measures taken upon the given recommendations in certain reports: in control audits of the Municipality of Danilovgrad, Kolašin, Rožaje, Ulcinj and Nikšić, as well as Ministry of Culture, Sport and Media; in the reports on general audits of the Ministry of Sustainable Development and Tourism, Ministry of Culture, Sport and Media, Ministry of Defense, Montenegrin National Theatre, University of Montenegro, Institute for Execution of Criminal Sanctions, National Tourism Organization. Thing that all of these have in common is that they are signed by the Head of Collegiate and member of the Senate Branislav Radulović.

Besides further insisting on a need to adopt detailed methodological manual in order to advance the uniformity and harmonization of the structure of all audit reports (taking the special type of audits into an account), this fact draws attention to the issue of the destiny of the reports on realization of implementation in other audit entities. Through conversation with the SAI's representative we concluded that the deadline for entities to report is one year from the day of publishing the audit report. In the attempt to find documents that would provide information about audited entities reports on realizations of recommendations, in November the IA contacted all the audit entities and the SAI, through requests the Law on Free Access to the Information.

By the time of releasing this publication, IA had not received answers on the requests, except from the Municipality of Rožaje, Nikšić, Danilovgrad, the Constitutional Court, Ombudsman and the Employment Agency of Montenegro. SAI's answers referred to the Annual Report on its activities and reminded of the procedure of controlling the realization of the recommendations through the control audits.

This indicates the need to specifically define obligations, deadlines, structure and transparency of the entities reports on implemented recommendations in the Amendments to the Law on SAI that is to be proposed soon.

General public has the right to be informed about the way the public funds are being spent and thus has access to the SAI's reports. In the same manner it should be provided with the right to know what the audited entities did to overcome and correct the irregularities. On the other hand, being under the public eye would influence the audited entities to work on implementing the recommendation in a more accurate and dedicated way.

Setting the deadlines for submitting these reports and their public availability would provide media and NGOs with a powerful argument and a tool for applying pressure on the audited entities.

Law on the Auditing of the Financial Operations of the Institutions of Bosnia and Herzegovina, Article 16 (Reporting on Audits), paragraph 3:

“According to paragraph (2) of this article within 60 days upon receiving the audit report each audited institution shall deliver a response to the Audit Office, with a copy to the Ministry of Finance. The report sets forth the actions that the institution is undertaking to address all weaknesses, irregularities and violations identified in the audit report.”

Cooperation with the Parliamentary Committee on Economy, Finance and Budget

Parliamentary (political) control of the budget, as an additional way of controlling the public finances, relies heavily on the work of the SAI. The Parliament of Montenegro can perform meticulous and effective political control of the budget only by relying on the findings provided in the SAI's reports. However, the hitherto practice of its competent working body shows a worrying tendency of superficial relation towards the findings of the SAI and a failure to seize the opportunity to exert parliamentary pressure, based on objective and hard evidences about the work of budgetary and other spending units.

Debate on the Proposal of the Law on Budget for 2010 was a step forward comparing to the hitherto practice, because the interested working bodies and committees used an opportunity⁶⁷ to analyze this act in the areas of their competence for the first time. Six working bodies analyzed the budget proposal and submitted their opinions to the Committee for Economy, Finance and Budget. Besides the conclusion that the time provided to analyze this act was too short, the role of the SAI's work in this process and whether committees used its reports during the analysis of the proposed 2010 budget is not clear. For example, the Committee for Security and Defense should have used the report on general audit of the Ministry of Defense. By doing so, it could have gathered more information about the conditions in this budgetary unit and the realization of SAI's recommendations. Based on the resulting opinion⁶⁸ submitted to the Committee for Economy, Finance and Budget, it can be concluded that the debate had not taken this course. The members of the Committee on Human Rights and Freedoms did not use the report on audit of the Ombudsman during the debate on the 2010 budget either. This happened in spite of the fact that one of the topics of the debate and the consequent voting was the refusal of the Ministry of Finance to grant the Ombudsman the requested amount budget funds.⁶⁹

An Example of Poor usage of SAI's Reports

The main subject of discussion during the session of the Parliamentary Committee on Economy, Budget and Finance⁷⁰ was the plan and the agenda of the Agency for Electronic Communications and Postal Services for 2010. None of the findings from the general audit report the SAI had performed in 2008 were used during the debate. The debate was revolving around the amount of the monthly incomes of the employees, especially directors and members of the Council of this independent body. The conclusion was that there is a great disproportion when comparing these incomes with the incomes of other civil servants and employees.

Many important issues (payments based on Temporary Service Contract, nonexistence of the system of internal control, 4% of the Agency's budget being spent on "sponsorship", refusal to transfer the revenues over the expenditures of almost 6 millions euros to the state budget account; failure to adopt the public procurement plan for 2007) highlighted in SAI's report on audit of this Agency were not mentioned during the debate in the Committee. *During the whole debate on rationalizing*

67 Rules of Procedure of the Parliament of Montenegro, Article 137

68 http://www.skupstina.me/cms/site_data/novo/Misljenje%20Odbora%20za%20bezbjednost%20i%20odbranu%20o%20budzetu%20za%202010_.pdf (25/08/2010)

69 http://www.skupstina.me/cms/site_data/25122009/zapisnik%20sa%207_%20sjednice%20ljudska%20prava.pdf (25/08/2010)

70 ⁷⁴ 11th Session, 10/12/2009

and saving in the independent regulatory bodies established by the Parliament, the Committee failed to use the work SAI had performed and thus failed to influence the SAI during the making of its Annual Auditing Plan so that it can provide precise details about the functioning of these bodies.

During the debate on the Proposal of the Law on Budget for 2008, MPs of the ruling coalition concluded that the mistakes registered by the SAI were not of systemic nature. The opposition MPs focused on the budgetary units that, according to the SAI, did have irregularities in use of the public funds. They concluded that the number of irregularities and violations of legal regulations had increased and suggested implementation of the Article 23 of the Law on SAI⁷¹, as well as the involvement of the State Prosecutor.⁷²

Although such stance of the opposition is generally acceptable, these messages are insubstantial and purely symbolic. The question that arises is why the opposition waited until the end of the year (the debate on the annual budget), to issue such messages if they concluded that SAI's reports provide a basis to bring criminal charges. If the MPs noticed irregularities that require criminal charges in some of the SAI's audit reports during the year, it is unclear why they did not draw attention to it, initiated a control hearing/parliamentary investigation or called upon the prosecution.

In the *Public Expenditure and Financial Accountability Assessment* (PEFA) report from the July 2009 the parliamentary supervision of the audit reports earned the mark *D+*:

The Parliamentary Committee on Economy, Budget and Finance routinely endorses the recommendations made in the SAI's audit reports(...) coupled together with the absence of additional recommendations, in part reflects the lack of capacity of the committee and that its secretariat. The debates in the Committee are not in-depth(...), short and not include discussions of key findings with the responsible officers of the audited entities. The Committee appeared instead to rely heavily on the opinion and presentations of both the Ministry of Finance and the SAI. In addition, given both the amount of work expected of the committee and that its secretariat comprises only two full-time staff, it is clear that there is not enough capacity within the legislature to perform a detailed analysis of the external audit reports..⁷³

In the report submitted to the Parliament after the Committee's session, it is stated that the Committee did analyze the realization of the SAI's recommendations adopted in the Parliament's conclusions on the Proposal of the Law on Budget for 2007. The conclusion was that "the activities on fulfillment of the Parliament's conclusions have been undertaken" except for two of them in connection with the structure of the expenditures and the consistency of the income policy in the public sector. The Committee concludes that these recommendations/conclusions of the SAI were not fulfilled and transfers them as an obligation for the next year. This part of the report poses couple of questions: How can the Committee precisely determine the level of realization of SAI's recommendation? What are the outcomes of unfulfilled recommendations? If a failure to fulfill them caused loss or damage to the public finances, should the process to determine the liability be initiated?

During the debate on the Proposal of the Law on Budget for 2007, the Committee reviewed the fulfillment of SAI's recommendations adopted by the Parliament in the conclusions on the

71 ⁷⁵ Article 23 of the Law on SAI: "The Institution shall, without delay, bring criminal charges, if during the audit procedure it determines that there is reason to suspect that criminal offense has been committed."

72 ⁷⁶ http://www.skupstina.me/cms/site_data/25122009/Zapisnik%20sa%208_sjednice%20EKONOMIJA.pdf (25/08/2010)

73 ⁷⁷ Montenegro Public Expenditure and Financial Accountability Assessment, Public Financial Management Performance Report, July 2009.

Proposal of the Law on Budget for 2006. “The Committee has agreed with the State Audit Institution’s statements that the activities on fulfillment of the parliamentary conclusions were mostly executed.”⁷⁴ The degree of opposition’s confidence in SAI’s conclusions is rather worrying. It is so high that they never even filed requests for additional information in a form of report. It can hardly prove that an efficient parliamentary oversight of spending tax payers’ money is being conducted. The situation of “controlled chaos” within the public sector⁷⁵ that becomes evident in SAI’s reports demands more commitment from the MPs in the Committee on Economy, Budget and Finance.

Modalities of Cooperation Between the Parliament and the SAI

SAI is the supreme state audit body of Montenegro, defined as such by the Constitution. After the SAI Senate has adopted a report on audit, it becomes “indisputable” - it cannot be discussed in terms of accuracy, cannot be objected to nor amended afterwards. Reports can only be used to draw conclusions from, analyze recommendations and think of the way to fulfill them as fast and as thoroughly as possible.

It is necessary to pay additional attention to the communication with the audit entities especially in terms of getting to know their view on the draft audit report. Unconditional support from those who are responsible for implementing SAI’s recommendations is extremely important.

Given the reasons above, the debates in the Committee and plenum of the Parliament can not revolve around the findings from the SAI’s reports in terms of questioning their accuracy or justification, nor become the place to further address the credibility of the facts from the reports.

Because of the fact that the position of the MPs is not professionalized, MPs who are also occupying important positions in the audited entities have so far been allowed to turn the debate on the Law on the Final Statement of the Budget and Annual Report of the SAI into an opportunity to “explain” their points of view and point out to new observations of the audit reports from the perspective of the audit entities. During the debate about the Proposal of the Law on Final Statement of the Budget of Montenegro for 2008 and the Annual Report of the SAI in Plenum, Zoran Jelić, MP and director of the Employment Agency, Radoje Žugić, MP and director of the Pension Fund at the time and Zarija Franović, MP and the chairman of the Railway Infrastructure of Montenegro, found

Example of misunderstanding of the process of adopting the audit report and role of the audit entity:

During the debate on the Proposal of the Law on Final Statement of the Budget of Montenegro for 2008 in the Parliament, Deputy Prime Minister Igor Lukšić criticized the way the members of the Parliament debate on individual audit reports and suggested to provide the representatives of the audit entities with an opportunity to state their opinion during the debate so that the public can have an opportunity to hear their opinion as well. This was followed by the explanation of the Chairman Željko Šturanović who suggested that such solution should be taken into consideration in order to implement it during the next year debate on the final statement of the budget.

Aleksandar Damjanović’s (SNP) answer to the Deputy Prime Minister Lukšić was the following: “You have asked for the presence of the heads of the state bodies on the Committee? What will they be doing in the Committee? Debate with the state auditors and question the facts in all 12 audits?”

⁷⁴ ⁷⁸ Record from the 30th session of the Committee on Economy, Finance and Budget of the Parliament held on the 17th of November 2008.

⁷⁵ ⁷⁹ Aleksandar Damjanović, 30th session of the Committee on Economy, Finance and Budget of the Parliament held on the 17th of November 2008.

themselves representing the audited entities and thus used the debate to state their view of the audit report. These MPs used the possibility to further explain the findings of the SAI and question irregularities thus turning the debate on the final report on budget into an argument to defend the company/institution that they represent. Such examples would certainly occur in the future during the debates on reports of the SAI in the Parliament. The possibility for the MPs to question their own involvement in the entities instead of using the audit reports to control the government and the representatives of the budgetary units, is a great drawback to the quality of the debate on the auditing reports.

If the Committee on Economy, Finance and Budget had decided to invite the responsible representative of the Employment Agency in 2009 because of the negative opinion SAI issued to this audit entity, the members of the Committee would be posing questions to their colleague MP Zoran Jelić, its director. Such situations limit and degrade the parliamentary control of the budget execution.

- Significant limitation to an efficient and extensive debate on the work of SAI and management of the budget in the Parliament is posed by the short time provided for the session of the Committee and Plenum for this subject. Time provided for the debate on the final report on budget and the annual report on SAI in the Plenum amounts to just one day. Besides more time for debates in the Committee and Plenum and sessions on specific audit reports and annual reports, the quality of the parliamentary debate could be further improved by the introduction of the Government's semiannual report as well as semiannual reports on audited entities' activities done to correct irregularities and mistakes provided by the SAI recommendations. Such reports would be further discussed during the Committee on Economy, Finance and Budget sessions, possibly with the presence of the representatives of the SAI, and could serve as a basis for political influence on the audit entities and the Government, presentation of the data to the public as well as a motive for initiating control and consultative hearings.
- During the previous debates on SAI's Annual Reports, it was suggested to establish sub-committee on budget and audit. Such solution is already established in the practice of certain European counties and, together with further utilization of the work of the SAI, it would contribute to the strengthening of the parliamentary control of the Government in terms of planning and management of the budget. Rules of procedure of Parliament of Montenegro allow such possibility.⁷⁶ Nevertheless, the idea of creating a sub-committee on budget and auditing could be problematic from the aspect of the status of that body. There are uncertainties in the elaboration of the norm that defines the status of sub-committees which may be interpreted in the way that they can only be established as temporary bodies.
- The members of the Parliament need to intensify the use of the authority provided by the Law on SAI⁷⁷ in part that proclaims that the Parliament may request additional clarification of specific facts and circumstances from the Institution. The Parliament does so by adopting a special decision or a conclusion, while the Committee can only make suggestion to the Parliament to file such a request to the SAI, providing it is supported by the majority of votes. This could be of great use during the debates on SAI's reports and issues most often quoted as problematic (in recent years most common were the issues of energy consumption and display of this entry in the final statement of the budget, questions related to the public procurements, irregularities registered in certain audit entities entailing significant amount of funds etc.)
- The SAI has not been submitting special reports to the Parliament and the Government. The planning, execution and evaluation of audits done this way does not differ from the other "questions of great significance" or "facts that require urgent determination in order to be up-to-date".

⁷⁶ Article 33, paragraph 5 of the Rules of Procedure of the Parliament of Montenegro: "Permanent Committees can establish sub-committees in order to perform certain task from their scope."

⁷⁷ Article 26 of the Law on SAI

- The SAI has not been using the possibility to inform the President of Montenegro, the President of the Parliament and the Prime Minister about the confidential circumstances that could cause financial and other damage of a greater scale. The explanation for this fact given to the Institute Alternative is that so far there was no need to take such actions.

Annual Report on Performed Audits and Other Activities of the SAI

The practice to base the SAI's Annual Reports on the Audit of the Final Statement of the Budget is rather problematic.⁷⁸ Conclusions from the reports on individual audits are taking up a large part of the annual report. Since these individual reports are available on the SAI's webpage we do not see the point of repeating them. The report on the work of SAI should have different purpose than individual reports on performed audits. It should provide detailed presentation of SAI's activities in every field of its jurisdiction.

An important indicator is the absence of the SAI's Development Strategy which could provide the needed structure for the annual audit and activity report. In the Annual Report of the Audits and Activities of the Supreme Audit Institution for the period October 2008 to October 2009 over 83% of the text are the conclusions from the auditing reports - facts already available to the public. There is no obligation to formally submit the individual audit reports to the MPs, which is not the case with the report of Financial Statement of the Budget and the Annual audit Report. This explains the fear that in this way, SAI could be getting MPs used to a digested version of the individual audit reports. If mentioned solution to separate the debate on the Final Statement of the Budget and the audit report on it on one side, and the debate on the Annual Report on SAI and individual debates on other audit reports, becomes accepted in the practice of the Parliament, maintaining the present form of the annual report would be mostly unnecessary.

Such practice could become unproductive due to the raising number of the audits every year and could draw attention away from the questions that should be in SAI's annual reports, such as:

- Basic information on the number and the type of the planned and performed audits - fulfillment of the adopted plan;
- Problems that hamper its work;
- Work on the internal acts;
- Strengthening of the capacities;
- Advisory role;
- The most important recommendations;

⁷⁸ Issue is defined by the Law on the SAI, article 19:

The annual report shall contain in particular:

- 1) an appraisal on whether the amounts in the financial statements of the budget correspond to the amounts quoted in the records, and whether the controlled revenues, expenditures and properties are correctly documented according to the regulations and general standards;
- 2) an appraisal regarding important cases where the rules and regulations on the budget and economic activities of the State are not complied with;
- 3) important comments regarding the found shortcomings of the audited entity;
- 4) recommended measures.

The Annual Report may present conclusions on previous findings and recommendations for the upcoming fiscal years. The Annual Report shall be submitted to the Parliament and the Government by the end of October.

The President of the Republic, the President of the Parliament and the Prime Minister shall be informed about circumstances of confidential nature, which have caused or may cause financial or other damage of larger extent.

- Report on the fulfillment of the last year's recommendations;
- Activities done as a part of the Strategy for the Fight against the Corruption;
- Inter-institutional cooperation;
- Work on defining the criminal, offense and disciplinary responsibility;
- International Cooperation.

Although the SAI does not have the obligation to formally deliver the individual audit reports to the Parliament, except for the delivery of the Annual Report in October every year, they are available online, on the SAI's website, straight after the Senate's adoption. The Members of the Parliament can analyze and if needed debate on the individual reports, independent from the final report that is formally submitted together with the Proposal on the Financial Statement of the Budget. The SAI provides the most important findings from every individual audit report in the Annual Report. It is necessary to change the Law on SAI and establish the obligation to formally deliver every individual report to the authorized Committee in the Parliament. Such solution could result in turning the MPs attention to the work of the SAI, greater significance of the recommendations given to the audited entities, strengthening of the Parliament's supervision function which would lead to control hearings of the representatives of the audit entities or the auditors to provide detailed information and to the issue of additional recommendations from the Committee.

Various Aspects of SAI's Work

Strategical Documents

The SAI still does not have a medium-term or long-term development strategy. Based on the answers to the Questionnaire, Institute Alternative learned that SAI's Development Strategy is in draft phase together with the Public Relations Sub-strategy and that it should be adopted by the middle of the year.⁷⁹ Further investigation through the interviews with the Head of the Sectors showed that the working body tasked to work on strategic documents has been formed, that it has three members and that is chaired by the Member of the Senate of the SAI Dragiša Pešić.

National Program for Integration of Montenegro in the EU mentions as its medium term priorities the adoption of the SAI's Development Strategy - Strategy on Development for the period 2009-2014 that would be adopted by the end of 2008⁸⁰, as well as a Public Relations Strategy.

Reviews of the annual reports of SAI's activities show that the work on these documents has gone on for a long period of time. SAI's Annual Report of the Audits and Activities for the period October 2007 to October 2008 states the following:

In order to provide further development of the Institution, it is necessary to continue the activities on preparing the Institution's development strategy in the forthcoming period, where the future development activities and Institution's priorities would be set out. The Senate of the Institution will establish the guidelines for drafting the Institution's development strategy, change the Guidelines for Methodology of the Work and adapt existing or adopt new acts necessary for this important document.

Next Annual Report of the Audits and Activities for the period October 2008 to October 2009 does not bring many changes to the previous conclusions:

In order to provide for further development of the Institution, it is necessary to continue the activities on preparing the Institution's development strategy in the forthcoming period, where the future development activities and Institution's priorities would be set out. The Institution's Senate has established guidelines for drafting the Institution's development strategy with support of foreign experts. The integral part of the above mentioned strategy is a public relations strategy.

Annual Report of the State Audit Institution for period October 2009 – October 2010 finally brings news on improvements in this field in a form of preliminary draft:

79 The SAI's answers to the questionnaire submitted by Institute Alternative (10/06/2010)

80 National Program for Integration on the Strategy of SAI development: "the strategy will include improvement and development of the legislative framework, development of the methodology and improvement of practice in accordance with auditing standards, strengthening of resources, management and administrative capacities of SAI, advanced professional training of staff and development of information technology capacities."

In accordance with the plan of activities, the Institution has developed the Draft of the methodological guidelines for the audit and the Pre-Draft of the Development Strategy by 2015. The work on these acts is continued with the assistance of the EU Delegation to Montenegro, that is, GTZ's experts. Namely, the implementation of sub projects started within the project "Strengthening of external audit in Montenegro", implemented by GTZ.

The sub projects refer to the drafting of the strategic plan for the development of the institution, methodological guidelines for the financial audit (regularity audit), and beginning of the development of methodological guidelines for the audit of economy, efficiency and effectiveness.

Besides other things, the adoption of SAI's Development Strategy is important due to the fact that other long-term documents, plans of audits, development, education etc. all depend on this paper. Strategical strengthening of the institutional and professional capacities can occur only after the adoption of the carefully planned development strategy.

Performance Audits

So far only two performance audits have been published by the SAI: **Audit of public procurements of ICT for 2008** and **Collection and Allocation of Residence Taxes**. The later was actually published in a form of the *preliminary draft*, which is a special type of audit⁸¹ according to the bylaws of SAI and thus the classification used in this case is unclear.

Another performance audit - **Crediting of the Entrepreneurship** is being done for two years now. It was not completed by the end of the reporting period for the Annual report on performed audits and activities October 2009 - October 2010 and in the report previous to this one its status was defined as "in progress".

The performance audit called **Borrowing and capital investments in municipalities during 2008** is marked as ongoing in the Annual report for period 2008 - 2009 while the present report contains no data on its status. Since it is still unpublished, it is unclear what has happened to this audit and whether it was abandoned.

Performance audit (economy, efficiency and effectiveness) is not defined nor provided by the Law on SAI or its bylaws. Although the INTOSAI standards that are the basis of SAI's work define performance audit it is unclear why this method was excluded from SAI's methodology and all the others accepted.

There is a disagreement about the terminology used in SAI's bylaws when referring to the type of audits⁸² as well as terminology used by the auditors in the audit reports: "The Institution shall carry out the following types of audit: general audit, selective audit, cross section audit, preliminary

81 "A **cross section audit** shall examine a representative selection of appropriate control subjects, with the aim to obtain audit findings in a certain area of state management.

A **preliminary audit** (audit review) is used by the Institution in order to get an insight in certain areas, procedures or events. This audit is not directed towards the making of final conclusions on certain administrative activities and transactions, and it is used for the preparation of future audits. (Instruction on the Methodology of work of the State Audit Institution, Article 7)

82 Instruction on the Methodology of Work of the State Audit Institution ("Official Gazette of Montenegro", No. 02/05 from 18.01.2005)

audit and subsequent audit.”⁸³ Further in this article the word control is used instead of the word subsequent and this term is widely accepted in the audit reports.

System Recommendations

Besides submitting annual and special reports to the Parliament and the Government, the Institution has an advisory role, with an opportunity to advise them upon on the findings acquired during performing the audit.⁸⁴

Based on competencies given in the Law on SAI⁸⁵, Institution is able to initiate and give recommendations for amendment of laws. This can happen in case the SAI learns that the existing legal solutions produce or may produce negative consequences, or that they do not lead to expected results. SAI’s recommendations can contain suggestions to amend laws and bylaws while the process of changing the legislation from the accounting and auditing area, including the budget law demands SAI’s participation.

The audit report represent the documentation basis for giving expert opinions and suggestions.⁸⁶

SAI has the right to take initiative during the consultations between the Parliament and the Government in case it determines that planned results were not achieved during implementation of a law. SAI initiated amendments to the Law on SAI and the Law on Budget through the Committee on Economy, Finance and Budget.⁸⁷

The Law on SAI provides an opportunity to include the information from existing reports of the Institution as an integral part of the documentation in the procedure of adoption of the laws, other regulations and general acts which are related to the management and use of budget funds and state property.⁸⁸ This means that other budgetary units should be prevented to repeat the mistakes that were discovered by the SAI, for the goal of the audits, besides the evaluation of the individual cases, is to deduct general conclusions from the work done on field.

During the debate on the Proposal on the Law on Budget for 2010, the member of the Senate M.

Recommendation repeated three years in a row:

“It is especially important to consider the possibilities for determining the Institution’s role in approving the commercial audit of municipal activities, activities of the commercial companies and other entities whose financing sources are either public one or derived from use of the state property.. The State Audit Institution is unable to perform annual audits of all these entities. The international practice of many countries is to influence the choice of commercial auditors for the listed entities in a form of giving proper consent. The amendments of legal norms would determine the right of an institution to participate in the selection of commercial audit agencies, undertaking audits of municipalities, public enterprises, regulatory agencies, funds and funds from donations.. We believe that such legal changes would improve the quality of audits of all these entities..” SAI’s Annual Activity Report for 2007-2008

“It is especially important to consider the possibilities for determining the Institution’s role in approving the commercial audit of municipal activities, activities of the commercial companies and other entities whose financing sources are either public one or derived from use of the state property”. SAI’s Annual Activity Report for 2008-2009

“If it is only accessed to amendments to the Law on State Audit Institution, these amendments would relate specifically to the issue of involvement of commercial audit agencies to carry out audit of operations in municipalities and public enterprises, as well as to ensure their full financial independence.” SAI’s Annual Activity Report for 2009-2010

83 Instruction on the Methodology of work of the State Audit Institution Article 7

84 ⁸⁸ Article 18 of the Law on SAI

85 ⁸⁹ Article 21 of the Law on SAI

86 Article 21 of the Law on SAI

87 The SAI’s answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

88 Article 27 of the Law on SAI

Dabović presented the remark related to the structure of the contributions that should be presented differently and announced the submission of the remark in a form of a written document.

In the Audit Report of the Final Statement of the Budget of Montenegro for 2007, the SAI pointed its reserves towards the methodology used to calculate the surplus/deficiency. The Parliament sustained the recommendation the SAI has made about the amendment on the Article 16 of the Law on Budget and in 2009 it completely adopted the suggested amendments.⁸⁹

In its report on the Final Statement of the Budget of Montenegro for 2007, State Audit Institution warned about the need to establish quality supervision of the repayment of the loans given as a part of solution to the housing issues, but apparently these recommendations were not achieved even in the 2009 budget year.⁹⁰

Using its authorities under the Law, SAI initiated independently, or in cooperation with the Committee on Economy, Finance and Budget and the Ministry of Finance, amendments to the legal regulations on budget spending and gave recommendations on the amendments to the laws and bylaws based on the audit findings. It suggested amendments to the system Law on Budget, Law on Investment Development Fund of Montenegro, initiated amendments and adoption of bylaws dealing with budget spending (use of the motor pool; payments for the work in the working groups; use of the budget reserve) etc.⁹¹

One such attempt of the SAI to influence the adoption of new regulations did not meet the Government's understanding. In the Annual Report on performed audits and activities of the State Audit Institution of Montenegro for period 2008 – 2009, among other things *"It is recommended that the Government adopts a document which would regulate legal rights and obligations of budget beneficiaries when using official cars, with the obligation to apply the same in all authorities of the state administration, with necessary transparency of procurements."* According to Institute Alternative's findings, the Government did not act upon this recommendation.

89 Reviewed article 16:

"The difference between the receipts and expenditures is the cash surplus or deficit, where the inflows are reduced by the borrowings, received transfers, donations and receipts from sale of assets, and expenditures are reduced by repayment of principal of domestic and foreign debt incurred by borrowings or securities issuance and change in net liabilities from the previous year that do not have the character of borrowings. The change in net liabilities from the previous years shall be reported as the difference of liabilities at the beginning and end of the fiscal period."

90 Annual report on performed audits and activities of the State Audit Institution of Montenegro for period October 2009 - October 2010

91 Article "No one is deposed for breaking the Law, *Dan*, 24/10/2010, available at: <http://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=252640&datum=2010-10-24> (30/11/2010)

Entities Outside of the State Administration⁹²

SAI has not performed audit of the issued state loans, guaranties and other insurances provided from the budget funds and the level of protection of the state interest by the approval of such measures. The Law on SAI allows it to perform control of the entities/enterprises/ subsidized by the State for any reason. This can happen either by conducting the audit of the business activities performed in the year the State provided the subvention or by the audit of the business activities of the certain operating branch. The aim of all these activities is to verify the security of such engagement by the state.

Audit of the business activities of the legal entities that are the users of mentioned funds is conducted by the Law. Although the Law on SAI provides such possibility, it is crucial to pay attention to include it in the agreement on subvention, guaranties and other insurances and that SAI's right to conduct audit is provided by any means.⁹³

Among the others, the situation with the Aluminum Plant Podgorica (KAP), the problems that this company faces and its significant impact on the whole Montenegrin economy, gives the opposition MPs a motive to demand that SAI uses its authority to check the safety of the state interest in this situation.⁹⁴

“Member of the Parliament Raško Konjević (...) is disappointed by the fact that he had made suggestion to the auditors to deal with Aluminum Plant Podgorica (KAP) three times without success. “They seem uninterested in a company that received 130 millions of euros of state guaranties”, said Konjević.

During the previously held session of the Committee, the President of the Senate Miroslav Ivanišević confirmed that the auditors have a legal basis necessary to “enter” the KAP. Without any doubts, they would have it ever more after the signing of the Contract Settlement Agreement with Russian owner.²

No one is deposed for breaking the Law,
Dan 24/10/2010

Privatization audit

The Law on the SAI does not provide the possibility for the state audit to be conducted over the transformation and privatization process of legal entities.

After the debate on interpellation in the work of the Government in field of privatization, the members of the Parliament adopted decision to form special working body - Commission for Monitoring

⁹² Article 8 of the Law on the SAI mentioned in this subchapter:

“In regards to audited entities which have been given credits, guarantees, or other sureties by the State, the Institution may examine whether appropriate measures were taken in order to avoid any detrimental consequence to the State. Business operations of legal entities using funds referred to in paragraph 1 of this Article shall be audited according to the law of the Republic.”

⁹³ Commentary on the Law on SAI, Publisher: SAI, Podgorica, 2007. Page 40.

⁹⁴ This issue was initiated by the MP of the Movement for Changes Nebojša Medojević during the debate on the Proposal of the Final Statement of the Budget of Montenegro for 2008, 11/11/2009

and Control of the Privatization Procedure⁹⁵ consisting of the same number of the MPs from the opposition and the ruling majority, being chaired by an MP from the opposition.

The review of the privatization processes is the question that is often misused in Montenegrin public sphere and used for daily political purposes. It is unrealistic to expect that the process that started two decades ago can be reversed back to its starting point and its results set aside. But it is of great significance to expand the jurisdiction and the scope of audit entities SAI can control, in a way that allows a review of privatization agreements (at least in certain period of time, say past five years) as well as public-private partnerships and the control of whether the state interest has been secured. The importance of regulating this issue is emphasized by the forming of a special working group⁹⁶ within INTOSAI in 1993. This body is responsible for identification and examination of problems that audit institutions face during the privatization audit, exchange of experiences about the ways to overcome such problems and the adoption of guidelines for auditing in this field. The documents of this working group⁹⁷ could serve as starting basis in expanding the jurisdiction of SAI in the field of privatization audits.

Privatization audit in Republic of Croatia

Similar to other post-socialist countries, Republic of Croatia started the process of privatization in the beginning of 1990-ties. The goal of privatization was to make a shift from planned to market economy and thus the state ownership was transformed into private in case of 2,850 companies.

The State Audit Office (SAO), based on the authority provided by the Law on State Audit and the Law on Audit of the Procedures of Transformation and Privatization⁹⁸, conducted the audit of the privatization process in the period from May 2001 to September 2004. After that, SAO began regular controls of the Croatian Fund for Privatization (CFP)⁹⁹. SAO had a possibility to bring criminal and offense charges against persons liable for irregularities in the privatization process.

95 "The Committee follows and supervises the process of privatization by monitoring the annual plans of privatization made by the Government of Montenegro; by monitoring the work of the Privatization Council; by informing the public about the process and procedures of privatization as well as other legal acts which insure the legality, transparency and control of the privatization. (...) It initiates the debate on legality, transparency and supervision of the privatization in the Parliament, provides recommendations for the state authorities, key actors of the privatization process by insuring the legality and transparency of the privatization process, draws attention to the breach of legality and principle of transparency of the privatization process. It also initiates the initiation of investigating the responsibility of the institutions as well as individuals for breaching legality and principles of transparency of the privatization process, analyzes the suggestions for interpretation of the laws on privatization and performs other work necessary to insure monitoring and control of the process of privatization.": http://www.skupstina.me/index.php?strana=radna_tijela&part=nadleznosti&tijelo_id=12&menu_id=7.11.1

96 One of the biggest (most numerous) INTOSAI working groups/committees which performs regular meetings, with special engagement of the representatives of the audit institutions from the former socialistic states. Original name: **Working Group on the Audit of Privatization, Economic Regulation and Public Private Partnerships**, <http://www.nao.org.uk/nao/intosai/wgap/home.htm>

97 Best Practice for the Audit of Privatisations, Best Practice for the Audit of Public/Private Finance and Concessions, Best Practice for the Audit of Risk in Public/Private Partnerships (...), available at <http://www.nao.org.uk/nao/intosai/wgap/menugu.htm> (30.11.2010)

98 Article 2, Law on State Audit (The People's Newspaper 70/93, 48/95, 105/99, 36/01, 44/01, 177/04); Law on audit of the procedures of transformation and privatisation, 8th of May 2001 (The People's Newspaper 44/01 and 143/02).

99 In order to perform the audit of the procedures of transformation and privatization two departments were formed inside the SAO : Department for procedures of transformation and privatization and Department for legal affairs and relations with other subjects.

From the beginning of the audit in 2001, the SAO received over 600 audit requests from the shareholders, their associations and trade unions, 56 request from the Croatian State Prosecutor's Office, 6 from the financial police and only one from all 19 ministries.

In the period between 2001 and 2004, the SAO conducted the audits of 1,556 enterprises; the audits of the so-called "coupon privatization" were conducted in 472 companies. The findings from these audits showed that the capital of the enterprises fell 16,1% from the period of "trasformation" up to the time when the audit was conducted¹⁰⁰, the number of employees was cut to 386,675; 22,17% of the companies went through or already were in the insolvency proceedings in the time of the audit; 64,01% of the companies did not meet the obligations from the development programme. The audits pointed out to 1,936 irregularities that were legally defined as offenses.¹⁰¹

SAO files a number of criminal and offense charges related to the irregularities, mostly for the abuse of the position or agreements harmful for the Croatian economy. The State Prosecution "processed" 1,556 SAO reports since the year 2001. In this period, 33 indictments were filed and 39 judicial investigations conducted.

The process of privatization audit in Croatia was conducted due to the great public pressure and great damage this unplanned and hasty process inflicted upon Croatian economy. Nevertheless, besides the assertive determination of both the Government and the opposition to investigate the irregularities and other facts that followed the process, the whole audit process was complex and challenging. The fact that the adoption of the Law on Audit of the Procedures of Transformation and Privatization was delayed for a year and a half, caused a great number of "problematic" cases to become outdated, too old to be processed.

However, even with all the problems that followed the conduct of audits in Croatia, the advantages of this process were numerous: during the procedure the SAO had access to the database of the Croatian Privatization Fund; large number of charges were filed against the employees of the Fund and thus the personal liability for irregularities during the privatization process was established; the audit of the privatization in Croatia influenced the Court to make decisions to abolish certain privatizations¹⁰²; general public acquired an access to the realistic results of the processes of privatization.

100 Cases in which the value of 237 companies decreased due to the war damage.

101 Act on the transformation of Socially-Owned Enterprises; Law on Transformation and Privatization and Social Capital Act.

102 E.g. "Pivovara" in Osijek

Publicity of SAI's work

The SAI does not have its own executive rights toward the audited entities and therefore its position in the system of public finance control depends not only on the quality, objectivity and persuasiveness of its conclusions and recommendations, but also the will of the government authorities to actually use and follow them. Publicity of its work is the best weapon SAI has and, together with the parliamentary control of the budget, the basis for achieving of changes in audited entities functioning. Media and organizations of civil society are SAI's allies with a mission to apply addition pressure on the audited entities by using the findings of the SAI's work.

According to the Law on SAI, the Institution has an obligation to produce annual reports and make them available to the public¹⁰³. The manner of further informing of the public is defined by the Rules of Procedure of the Institution¹⁰⁴. The ways of informing the public are:

- Publishing the Annual Report of the SAI in the "Official Gazette of Montenegro";
- Presenting SAI's reports on its website and other written and electronic media.
- Issuing press statements, holding press conferences, giving interviews, etc.

Among the medium term priorities of the SAI, National Program for Integration of Montenegro into the EU points out the drafting of the **Public Relations Strategy**. However, this paper shares the destiny of other SAI's strategical documents and has not been adopted yet.

Accessibility of Audit Reports

The audit report is delivered to the audit entity and, if SAI finds it necessary, to other addresses. If the audit report contains findings of great significance or significant financial effect it has to be submitted to the Ministry of Finance¹⁰⁵.

If the audit entity is a subject to control of the supervision bodies or the superior body of the government, than the copy of the audit report is delivered to such body together with the task to oversee the implementation of SAI's recommendations¹⁰⁶.

In its practice so far, beside submitting report to the audited entities, SAI also submitted them to the Government and the Ministry of Finance¹⁰⁷, as well as the country's President.

Reporting on the audits to the legislative branch was commended in PEFA report and scored with a B mark¹⁰⁸:

103 Article 50 of the Law on SAI

104 Article 65 of the Law on SA

105 Article 13 of the Law on SA

106 The SAI's answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

107 The SAI's answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

108 On the scale from A to F where A is the best mark.

- Even though SAI is not under the obligation to formally submit individual audit reports to the Parliament, except for the obligation to submit final reports once a year, the reports are nevertheless available online, on the SAI's website straight after being adopted by the Senate. This means the MPs can review them and debate on a particular report if needed, independently from the final audit report that is submitted formally with the proposal of the Annual budget execution statement.¹⁰⁹

Currently used structure and content greatly differs among the audit reports, being marked by randomness, various styles and uneven method of presenting conclusions and recommendations. The structure of the audit reports changes depending on the particular member of the Senate who is behind it and each of them has his own particular "style". This, joined by the frequent use of technical vocabulary and specialized terminology, makes it difficult for the media and general public to monitor and understand the work of the SAI.

Media

The SAI has to acknowledge that the perception of its work starts and ends in the media - through the printed media, reports on the TV and radio stations and the internet portals. The audit reports are often written in a specific style and often use specific terminology and concepts. Also important is the fact that different sectors of SAI use different structure of reporting which also contributes to the tightness of the published reports. Taking all this into account, it is necessary for the SAI to pay attention to the way the media reports about its work, at the same time respecting the freedom of the press and media independence. SAI should reach out to the media in order to emphasize the most important findings from the reports in its own interpretation (the interpretation that does not have to be the most important and completely correct but certainly the most competent). This can be done by publishing special reports for the media, written in a simple and approachable language with the most important findings and recommendations, as well as the gravest irregularities. Although media cannot and should not have limited space for their own interpretation of the audit reports, it would be of great significance for the work of SAI to draw public attention to the most important issues. Also, the SAI should not hesitate to deliberately attract media attention in order to promote its work by insisting on the most important problems. Such a step would have a double significance - it would place additional pressure on the audited entities to introduce changes and correct irregularities, and at the same time help to direct the MPs attention toward certain issues.

Montenegrin media often interpret the audit reports very differently. They frequently report about same audit reports focussing on different aspects, emphasizing different findings, giving them more or less space. According to Institute Alternative's records and articles collected from the printed media over the last three years, daily newspaper *Dan* stands by the amount of space given to the reports on the work of SAI. Daily newspaper *Vijesti* follows with the number of articles on SAI's activities while *Pobjeda* is far behind.

This year, SAI held a press conference after it published the Annual Report¹¹⁰, and the speeches of the President and the member of the Senate were posted on the website of the Institution. The President of the Senate was guest in many TV shows on many occasions and gave interviews to the printed media.

¹⁰⁹ Montenegro Public Expenditure and Financial Accountability Assessment, Public Financial Management Performance Report, July 2009.

¹¹⁰ Conference was held on the 8th of November 2010.

Good relation with media is important in order to promote the general impression among the public about SAI's work and its overall influence. Although the best proof of SAI's quality, objectiveness and professionalism is given in its audit reports, media reporting has a significant impact on SAI's credibility.

The present situation in which the individual reports are not formally submitted to the MPs gives media and their interpretation of SAI's work a special role. It can be assumed that the newspaper articles may urge parliamentarians to read the whole audit report and thus use SAI's finding in their work (in controlling the executive branch). Additionally, the motive to gain public attention by addressing the "hot topics" from the media should not be underestimated.

www.dri.co.me

The SAI's webpage is clear, simple to browse and bilingual (English and Montenegrin language, although only the basic information are translated). It contains data on present affairs, all report on the performed audits and all annual reports, legislation (except for the Rules and Procedures on the Inner Organization and Systematization of SAI's Work which is not published in the Official Gazette of Montenegro), translation of the INTOSAI standards, data on organization, sectors and departments, secretary, organizational chart, members and the President of the Senate, international cooperation. The website also contains data on examinations for gaining the title of an auditor, but the page "Manuals for Audit Examinations" does not contain any data although the members of the Senate and external employed experts did write a Manual for Audit Examination. The page "Library" contains no data although the SAI was the publisher of the "Comments on the Law on State Audit Institution"¹¹¹, with the page "Guide to Access Information"¹¹² also having no contents.

111 Created with the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GTZ) Podgorica, July 2007.

112 Created with the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GTZ) Podgorica, July 2007.

SAI's Resources and Capacities

SAI's Internal Organization

The entire work of the State Audit Institution is performed by five Sectors and a Secretariat for administrative and technical tasks.

If we analyze SAI's organizational chart available on its website, a significant difference in the scope of work done by the Sectors can be noticed. Also, there is a lack of thematic approach to the division of labor. It is best illustrated by the tendency of not centralizing the supervision over the institutions dealing with public procurements in a single Sector. Therefore the Commission for the Control of Public Procurement Procedure is in Sector I and the Public Procurement Directorate in Sector IV.

Office Space

SAI uses business premises belonging to the Central Bank of Montenegro based on the Indeterminate Lease Contract having to pay no rental fees. The overall space SAI has at its disposal amounts to 207,21 m² + 109 m² + 29,50 m².

During the session held on the 17th of May 2007, the Government of Montenegro decided on integration of the SAI and the Auditing Company "Montrev" Ltd. from Podgorica. After the integration, "Montrev" Ltd. gave its business premises of total 174 m² to the SAI. The SAI ceded this space to be used by the German Technical Agency (GTZ) and the Audit Authority for the IPA funds.

According to the answers IA received from the SAI, the further development of this Institution is partially limited by the lack of office space. "The total amount of space used by the SAI is not enough and thus the Institution contacted the Central Bank of Montenegro several times with requests for additional office space."¹¹³

Technical Equipment

The telecommunication installations had been installed in the offices used by the SAI. Desktop computers in every office have the access to ADSL internet. Couple of computers are integrated into the network used by all state bodies in order to gain access to certain specific applications.

All employees have desktop computers in their offices as well as printers, scanners and copiers. Auditors use notebooks computers for field work. All computers used by auditors have installed trial (free) version of IDEA software for analyzing data. Heads of the Sectors have been bought

¹¹³ ¹¹⁸ The SAI's answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

licensed versions and they use full versions of IDEA software. The DMS software used for managing documents and other SAI's business processes is in the final stage of development.

Although the price should not be the main factor when choosing software used for audits, the aforementioned IDEA package is one of the most expensive ones on the market (single license IDEA costs 2000\$, TopCAAT 199\$)¹¹⁴. On the other hand, certainly one of the most important criteria in choosing the right software is the ease of use. The software used by the SAI is very complex and demands additional training in order to be used properly. It very often requires several multi-day trainings and are very unfriendly towards the employees with medium IT knowledge. The TopCAAT software is a Microsoft Excel add-in which makes it simple to use (Excel is the main tool of every auditor). If comparing other characteristics and options, it is basically same as IDEA - able to perform all the operations, costing much less and much easier to use (which adds up to the cut of expenses since no training is required).

National Program for Integration of Montenegro into the EU provides the introduction of intranet and electronic communication with the Ministry of Finance, State Treasury and all budgetary units (audit entities) as a short term priority. This is yet to be accomplished.

Every computer in the SAI has the Catalogue of Regulations and the Catalogue of the Municipal Regulations installed and regularly updated. The SAI recently re-designed its website www.dri.co.me and uses it to regularly publish its audit reports. Every employee of the SAI has an email account within @dri.co.me domain.

According to the opinion of the SAI¹¹⁵, the listed equipment is sufficient for the proper functioning of the current number of employees.

Personnel

Eighty working places had been systematized by the Rulebook on Internal Organization and Systematization of job positions of the SAI: 65 for the tasks of auditing and 15 for administration. Current number of employees working as auditors is 38, while 13 are working in the administration¹¹⁶. There are 26 employees who graduated in Economy, 13 in Law, 4 employees with other diplomas and 8 with high school education. Out of the total number of employees, 32 are female and 18 male¹¹⁷.

The important issue here is the financial position of the state auditors and their income status in comparison with the auditors engaged in commercial audits.

The salaries of SAI's employees are regulated by the Law that regulates the incomes of all civil servants and state employees¹¹⁸.

Due to the specific professional engagements of the state auditors and undefined position of this vocation in the Law that regulates the income of the state officers and other employees, the Law on SAI puts the state auditors into the 4th income class. It also provides them with a supplemental income calculated through the coefficient entitled to the income class based on the Law that regulates

114 Comparison of Generalized Audit Software, <http://www.auditsoftware.net/documents/GeneralizedAuditSoftware.pdf> (21/11/2010)

115 The SAI's answers to the questionnaire submitted by the Institute Alternative (10/06/2010)

116 From the Annual Report of SAI for 2009-2010

117 Note that there is an insufficient number of women in higher ranking, decision-making positions; consequently there are no female members of the Senate.

118 "Official Gazette of Montenegro", No. 86/09

the incomes of the civil servants and state employees¹¹⁹. Auditors' status is further strengthened by the Regulation on Auditing Addition and Other Additions to the Incomes of the SAI's Employees. Nevertheless, the average income of the employees in the external audit of the public sector is still three times lower than the income in the commercial audit¹²⁰.

Establishment of the Audit Authority within SAI

One of the requirements for the Montenegrin administration imposed by the European Commission, during the process of adopting the Decentralized Implementation System (DIS) of the funds provided by the EU, was the establishment of the Audit Authority. This body would perform the audits on the use of IPA funds relying on the IPA Implementing Regulation¹²¹ and the Framework Agreement¹²².

Deputy Prime Minister and Minister of Finance Igor Lukšić and the President of the Senate of the SAI Miroslav Ivanišević signed the Agreement on Establishment of the Audit Authority as the part of the framework of the DIS of the Instrument for pre-accession assistance (IPA). The Agreement provided the establishment of a special unit - Audit Authority and its internal organizational structure and number of employees. This unit would function independently inside the SAI's framework and perform the audits of the IPA funds. The head of the Audit Authority shall be appointed by the Senate and have the authorizations and responsibility to make decision and sign documents related to the functions and responsibilities of the Audit Authority. The Audit Authority shall make annual plan of audits every year in order to check the efficiency of the system management and supervision as well as the reliability of the accounting data submitted to the EC. All agreements on financing, as well as programs and agreements based on them, would be subject to supervision and financial control of the Audit Authority¹²³.

119 Interesting data about the incomes of the state auditors in Montenegro and region in the article "Ivanišević does not like to stir things up" Daily newspaper *Dan*, 09/05/2010:

"The income of the members of the Senate of the SAI is somewhere between 1.337 and 1.770 euros depending of the years of employment and function in the Senate. The President of the Senate Miroslav Ivanjišević has the highest and Branislav Radulović lowest incomes. Milan Dabović who has the income of 1.533 euros, Dušan Mrdović also 1.533 and Dragiša Pešić with 50 euros less, stand in the middle. (...) Until recent in Serbia, where the war going on between the Auditors and the Parliament about the incomes state financial controllers should have. Currently the income of the President of the Senate Radosav Sretenović is 958 euros and all other members of the Senate receive 838 euros each, the Supreme State Auditor receives 755 and authorized state auditor 639 euros. (...) The best payed auditors in the region are the auditors in Croatia who established this institution in 1993. The President of the Croatian State Audit Office Šima Krasić who occupies this position for 16 years now has the monthly income of 5.000 euros." Complete article available at: <http://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=230530&najdatum=2010-05-09&datum=2010-05-10> (19/11/2010)

120 Average net income of the employees in the external audit in public sector: 615,96€

Average net income of the employees in the external audit in private sector: 1635,33€

-Data taken from the Answers to the EU Questionnaire (additional questions), April, 2010.

121 IPA IR (IPA Implementing Regulations) Regulation on IPA implementation

122 Framework Agreement between the Government of Montenegro and Committees on the rules for co-operation concerning EC-Financial assistance to Montenegro in the Framework of the implementation of the Assistance under the Instrument for Pre-accession Assistance (IPA)

123 Press Release :Signed Agreement on the Establishment of the Audit Authority within the Decentralized Implementation System of the Instrument for Pre - accession Assistance (IPA) <http://www.mf.gov.me/organizacija/Sektor-za-ugovaranje-sredstava-iz-EU/87756/179128.html> (07/09/2010)

This solution is violating constitutional and legal restrictions mainly due to the conflict of interest and necessity to respect the independence of the SAI. The Audit Authority is submitting its Annual Plan of audits to the European Commission and the National Authorizing Officer (part of DIS terminology, the NAO is equal to the Assistant Finance Minister for Treasury in Montenegro) and informing the Competent Accrediting Officer (Minister of Finance). SAI's opinion given in the Annual Report for period 2008-2009, is that the best solution is to locate the Audit Authority outside the SAI. This opinion was supported by the representatives of both the Directorate-General for Budget and SIGMA¹²⁴.

SAI's proposal was to take part in the establishment of the unit by securing the auditors personnel and services for education.

In the transitional and final provisions of the Resolution on establishment of this body ¹²⁵ it is prescribed to adopt a special resolution on exclusion of the Audit Authority from the SAI upon opening Chapter 32 (Financial Control) between the European Commission and Montenegro.

In the Annual Report for the period 2009-2010 this issue was treated in the following text:

- With the aim of final defining the position of an independent Audit Authority in the framework of decentralized management of IPA funds, the Agreement has been amended, stipulating that the Government of Montenegro, by 31 December 2011, or no later than by the date of submitting the application to the European Commission for the transfer of authorization to manage the EU funds, will propose the law and adopt regulations on the organization of the authority in charge of IPA funds auditing as an independent body, outside the organizational structure of the Institution.

Question being raised is that of the extent of the impact this temporary institutional solution will have on the work of SAI. It is almost certain that there will be fewer performed audits in the period from October 2010 to October 2011 than the last year number. The execution of tasks in the scope of the Audit Authority require 8 employees - 7 auditors and 1 translator and they are all allocated from the current staff of the SAI¹²⁶. This means that the SAI remains short for 7 trained auditors (out of its 38 current auditors) for an undefined period of time. Also, general and personnel business, financial, accounting and technical work of the Audit Authority would be provided by the administration of the SAI, which also represents a significant impact on the already limited resources of the SAI¹²⁷.

The necessary funds for the work of this Audit Authority would be provided from the State Budget as a part of the program budget for the SAI ¹²⁸. According to 2011 Budget Proposal, out of the planned 1.17 million euros budget for the SAI, 130,000 euros is planned for the expenses of the incomes, materials and services of the Audit Authority.

The assumption that the employees will continue to work in the Audit Authority after its separation from the SAI is almost certain. The SAI has to put a great deal of effort to fill this gap and lessen the impact of this separation on its capacities through the increased budget as well as employment and training of new auditors.

124 Support for Improvement in Governance and Management, joined initiative of OECD and EU. Data taken from the *Evaluation of the External Audit in Montenegro, May 2009*

125 Decision on creating special Audit Authority responsible for control of the effective and efficient functioning of management and control systems under IPA (Official Gazette of Montenegro, No. 05/10 from 29.01.2010)

126 *Ibid.* Article 9

127 *Ibid.* Article 6

128 *Ibid.* Article. 6

Conclusions and Recommendations

The work SAI performed so far deserved respect and trust of not just the politic figures but wide general public. Remarks and recommendations presented in the SAI's reports provided all interested sides with many information and objective image of the condition of public finance management. The SAI's recommendations are valuable contribution to the development of the legal framework and practice in public finance in Montenegro.

Nevertheless, the influence of SAI's work is limited by many factors among which are: the insufficient capacities for performing regular audits of the audit entities, non-mandatory status of recommendations, undeveloped system of reporting on fulfillment of the recommendations, general public low level of understanding of the work related to the control of the budget funds expenditure, nonexistence of detailed audit methodology manual, civil organizations insufficient activity on promotion and assistance to the SAI etc.

SAI's limited influence is conditioned by the fact that other responsible figures did not follow its recommendations and conclusions to the full extent. Probably the greatest accountability for this is carried by the Parliament whose Committees haven't paid as much attention to the SAI's reports as they should have. The Parliament is also responsible for the incomplete status of the SAI's Senate during 2010. Also, there is the presence of the conflict of interest within the Members of the Parliament who are important executive officials of the audit entities at the same time.

Many reports SAI made proved number of irregularities and illegal activities in connection with public finance and assets management. Related to this is the disturbing fact that neither SAI nor other parts of the public finance control system took necessary steps in their jurisdiction necessary to determine the offense and criminal liability or determine the misuse of the state property. Such practice contributes to the development of irresponsible habits of the accountable administrators as well as other state officers.

Measures we think would contribute to the improvement of the current condition and strengthen the influence of the external audit in Montenegro are the following:

Independence

- In order to strengthen SAI's financial independence it is necessary to ensure that the Final Proposal on the Budget of SAI is determined by the authorized Parliament Committee upon the SAI's proposal, as well as to make a clear statement that the Ministry of Finance or the Government shall not make any changes in the budget proposal. Although so far the Ministry of Finance and Government did not make any changes in the SAI's budget it is of great importance to eliminate such possibility.

- It is necessary to consider the possibility of establishment of the one-line vote budget (general state budget) in order to increase SAI's financial independence.

- It is necessary to introduce the elements of regular parliamentary control mainly by employing external audit companies to perform the audits of the Final Statement of the Budget of the SAI. This external control should be employed by the Parliament or its authorized Committee.
- The members of the SAI's Senate should have the functional immunity for any act that results from the normal discharge of their duties.
- The Senate should not be allowed to function without the full number of members and thus it is necessary to speed up the process of naming the fifth member of the Senate. In such occasion, the Administrative Committee of the Parliament must bare in mind that the Law on SAI demands that at least two members of the Senate need to have a diploma in Laws.

Authority and the scope of the audit entities

- Taking numerous and argumentative charges against the legality of the processes of privatization into account, it is necessary to consider the possibility of enabling SAI to perform the audit of privatization processes. Positive and negative experiences from the audit of privatization in Croatia, rich international practice as well as the guidelines and analyzes in INTOSAI framework, could represent a good starting point in planning such process.
- SAI should perform the audit of the state loans, guaranties and other insurances provided from the budget funds and the level of protection of the state interest by the approval of such measures.
- The Law on SAI should be amended in order to provide the SAI with necessary authority to enable the commercial audits of the business in the local self-governments, private companies and other entities whose source of finance is either public or from the state assets.
- It is necessary to adjust the terminology of the sub-legal acts with the official translation of INTOSAI standards in terms of types of audits and their definition.
- It is necessary to adopt audit methodology guidelines and manuals. These documents would describe precise steps in audit performing and provide an opportunity to standardize the structure and content of the audit reports.

Planning the audit

- It is of great importance to determine the procedure by which the entities outside the SAI, mainly the MPs of the Committee on Economy, Finance and Budget, could submit their suggestions of the Annual Audit Plan. The SAI should not have any obligations towards such suggestions, it would simply define details of the submitting procedure, consideration and Senate comments on these suggestions. Such practice would strengthen the trust in SAI's criteria for selection of the audit entities.

Criminal responsibility

- The SAI should consider changing the present practice of bringing criminal and offense charges. It is necessary to strengthen the capacities especially through expanding the specialized jurist profession team inside the Institution.
- The cooperation with the State Prosecutor's Office has to be more intense in terms of regular delivery of the audit reports, training of the state auditors as well as establishment of the formal procedure for analyzing the facts in the process of bringing criminal charges between the SAI and the Prosecutor. It is necessary to avoid shifting of authorization to bring criminal charge between the institutions by mutual activities and efforts.

Offense responsibility

- In order to achieve greater discipline and regularity of the use of budget funds during the next period, it is necessary to work on inclusion of the offense provisions and defining of actions that represent the offense in the Organic Law on Budget.

Inter institutional cooperation

- It is necessary to institutionalize the cooperation with the state authorities and the authorities in charge of the control over the regularity of the use of the public funds. The agreements on cooperation would define details on data and findings exchange between these institutions and thus overcome the technical and formal obstacles to the improvement of the efficiency of the work on prevention of all shapes of misuse of the financial system.

SAI's relations with the Audit Entities

- The Law on SAI should provide the audited entities with an obligation to inform the SAI on fulfillment of the recommendations given in the audit report together with the precisely determined deadlines and structure of the reports. Publishing these reports on SAI website in separate category would make them even more significant. It is necessary to define further actions and consequences in case the audit entity fails to issue a report.
- The SAI need to pay more attention to the comments of the audit entities on the draft version of the audit report in order to reach the agreement over the factual status on both sides.

SAI's relation with the Parliament of Montenegro

- In order to improve relations between the Parliament and the SAI as well as strengthen political control of the budget, it is necessary to define the obligation to submit individual reports to the authorized Committees of the Parliament.
- The function of the MP is not professionalized and thus certain MPs are important executive officials of the audit entities which inevitably leads to the conflict of interest especially during the debate on the SAI's reports

in the Committee and Plenum. If present solution remains applicable, the authorized Committee should consist of the MPs who are not executives in the audit entities and if it happens they are, they should not take part in debate and voting in case of direct conflict of interest.

- Parliamentary debate on the Final Statement of the Budget of Montenegro and its audit report should be separated from the debate on Annual Report on the Activities of the SAI. Thus it is necessary to change the structure and content of the Annual Report of the SAI.
- It is necessary to consider the idea of establishment of parliamentary sub-committee on budget and audits.
- It is necessary for the MPs to intensify the use of authorities given in the Law on SAI which provides the Parliament with possibility to demand additional explanations of certain facts and situations from the SAI.

SAI's relation with the Ministry of Finance/Government

- Ministry of Finance needs to strengthen its capacities for following the work of the SAI, especially the fulfillment of the recommendations issued to the Government and the Ministry of Finance. Also, it is of great importance to establish stronger relations between the system of public internal financial control and SAI's work.
- Ministry of Finance should provide horizontal use of the system recommendations given by the SAI in individual reports.
- Taking the need to institutionalize the cooperation between the SAI, Parliament Committee and the Ministry of Finance in consideration, it is necessary to adopt the act that would define this cooperation even closer. These issues have to be determined by the Law but meanwhile it is necessary to point out main ways and mechanisms of cooperation through the memorandums and agreements on cooperation.

Public relations

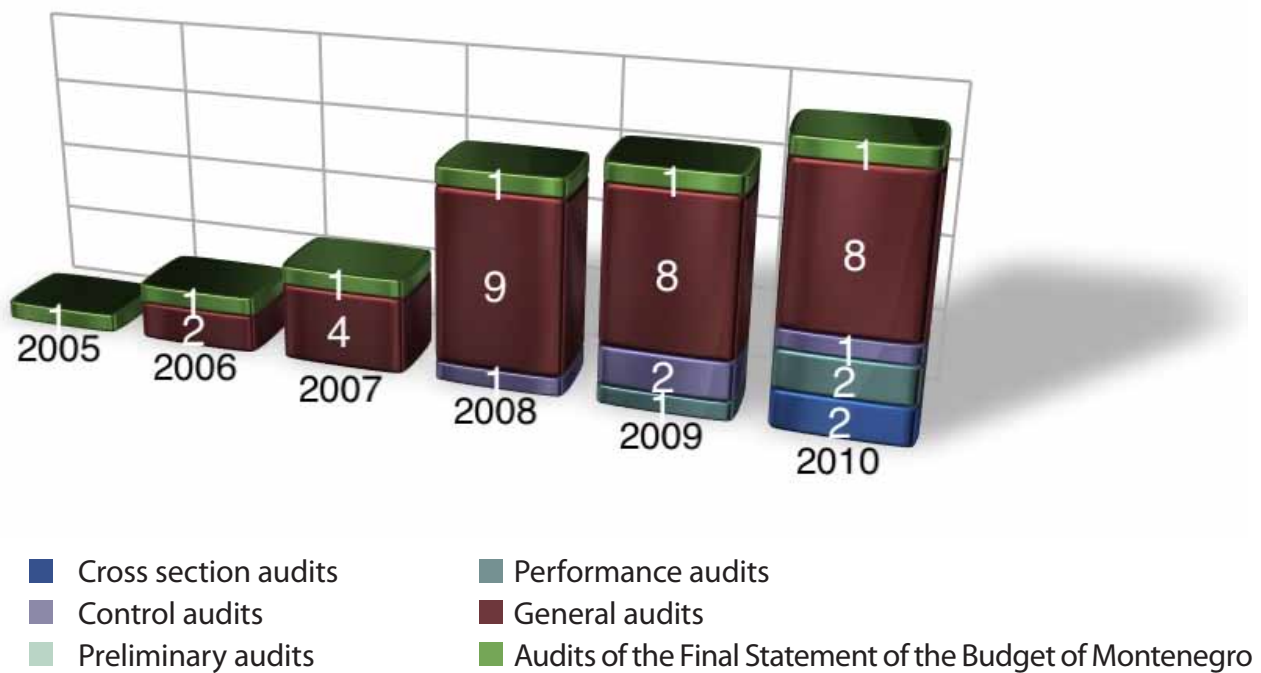
- The SAI should adopt Public Relations Strategy and perform education of the general public by creating and distributing manuals, but also running media campaigns with a goal to raise understanding of importance of the work related to the control of the budget funds spending.
- SAI should have free access to the media in order to issue the most important finding from the reports according to its own interpretation of data. That can be done by publishing special reports for media, with simple terminology and understandable style, in which the SAI would point out the main findings, important recommendations and most serious irregularities.
- As one of the most important anti-corruption element, the SAI should take a lead in responsible implementation of the measures provided by the Action Plan for the Fight against Corruption.

SAI's Capacities

- The strategy of SAI's development takes long time to finish. The drafting process should be much faster and all interested parts should be allowed to take part during the process.
- During the planning phase of the process of separation of the Audit Authority for the IPA fund from the SAI's framework, the budget of the SAI should be strengthened in order to overcome the problems of insufficient capacities and trained personnel created by the establishment of new, independent commercial audit.
- It is necessary to work on reduction of differences in incomes of the auditors in state and commercial audit organizations in order to motivate and reward the state auditors and thus improve the stability of the human resources inside the SAI. This would attract new auditors with good qualifications and prevent losing present ones to the commercial audit domain .
- It is of great importance to strengthen SAI's capacities for communication and cooperation with media and civil society. Public relations Strategy should be adopted as soon as possible, after consultation with media and NGO sector representatives.

Additional : Graphs and Tables

Graph No. 1 - Review of SAI activities by the type of audit



Graph No. 2 - SAI's budget (in EUR) between 2005 and 2009

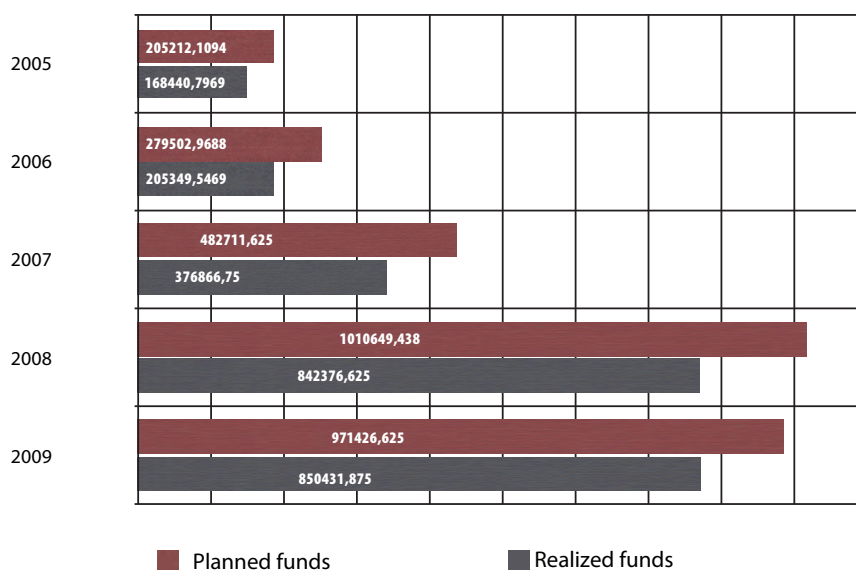


Table No. 1 - Review of the SAI's activities by the audit entities (individual audits)

Type of entity	Name	Year of audit performance	Type of Audit
Municipalities	Nikšić	2006.	General audit
		2009.	Control audit
	Danilovgrad	2006.	General audit
		2009.	Control audit
	Ulcinj	2006.	General audit
		2009.	Control audit
	Kolašin	2007.	General audit
		2009.	Control audit
		2009.	Cross Section Audit "Collection and allocation of residence tax"
	Rožaje	2008.	General audit
		2009.	Control audit
	Budva	2009.	Cross Section Audit "Collection and allocation of residence tax"
Bar	2009.	Cross Section Audit "Collection and allocation of residence tax"	
Herceg Novi	2009.	Cross Section Audit "Collection and allocation of residence tax"	
	2010.	Control audit	
Spending Units	Ministry of Culture, Sports and Media	2007.	General audit
		2008.	Control audit
	Constitutional Court of Republic of Montenegro	2008.	General audit
	Hydrological and Meteorological Service of Montenegro	2008.	General audit
	Veterinary Directorate	2008.	General audit
		2009.	Control audit
	Ministry of Defence	2008.	General audit
	National Museum of Montenegro	2008.	General audit
	Human Resources Management Authority	2009.	Revizija uspjehnosti
	Protector of Human Rights and Freedom	2009.	General audit
	Ministry of Interior Affairs and Public Administration	2009.	General audit
	Ministry of Tourism and Environmental Protection	2009.	General audit
		2009.	Cross Section Audit "Collection and allocation of residence tax"
State Prosecutor's Office	2009.	Annual financial statements audit	
Montenegrin Foreign Investment Promotion Agency	2009.	Revizija Godišnjeg finansijskog izvještaja s revizijom uspjehnosti	

Type of entity	Name	Year of audit performance	Type of Audit
Spending Units	Montenegrin National Theatre	2010.	General audit
	Police Academy	2010.	General audit
	National Tourism Organization	2010.	General audit
		2009.	Cross Section Audit "Collection and allocation of residence tax"
	Bureau for International Scientific, Education-Cultural and Technical Cooperation	2010.	Annual financial statements audit and performance audit
	Agency for Enforcement of Criminal Sanctions	2010.	Annual financial statements audit
	University of Montenegro	2010.	General audit
	Bureau for Care of Refuges	2010.	General audit
	Secretariat for Development	2010.	Cross Section Audit "Public procurements of Information Technologies"
	Customs Administrations	2010.	Cross Section Audit "Public procurements of Information Technologies"
	Real Estate Directorate	2010.	Cross Section Audit "Public procurements of Information Technologies"
Directorate for Public Procurements	2010.	Cross Section Audit "Public procurements of Information Technologies"	
Funds	Montenegrin Employment Agency	2009.	General audit
		2010.	Control audit
	Development Fund	2009.	General audit
	Republic Pension Fund	2008.	General audit
		2010.	Cross Section Audit "Public procurements of Information Technologies"
Republic Health Care Fund	2007.	General audit	
	2010.	Cross Section Audit "Public procurements of Information Technologies"	
Public companies	Airports of Montenegro	2010.	General audit
	PE "Coastal Are"	2009.	General audit
	Montenegrin Railways	2008.	General audit
Other audit entities	Agency for Telecommunications and Postal Services	2008.	General audit

Table No. 2 - SAI obligations according to the Action plan for implementation of the Strategy for the period 2010-2012 129

Objective	Measures	Performance indicators
Political Party Funding And Election Processes		
Greater transparency of financial reporting of political parties and election campaigns	Organize trainings for acquiring specialized knowledge for conducting audits of financial operations of political parties, independent lists and candidates	- Training program - Number of delivered trainings
Public Finances		
Public finance normative framework is fully harmonized	Proposal of the Law on State Audit Institution (amendments) Committee for Economy, Finances and Budget in cooperation with SAI	Proposal of the Law on Amendments to the Law on SAI prepared and public debate organized
	Law on State Audit Institution (amendments) adopted; Parliament of Montenegro in cooperation with SAI	Law on SAI adopted, harmonized with the Constitution of Montenegro (particularly in the part concerning hiring commercial audit firms to carry out audit of operations of municipalities and public enterprises, ensuring full financial autonomy of SAI etc.)
	Proposal of the law or regulation on setting up the Audit Authority for external audit of IPA funds; SAI and MF, Government of Montenegro	Proposal of the regulation for setting up Audit Authority to carry out audit of IPA funds in line with the SAA prepared
	Adoption of the law on setting up the Audit Authority to carry out audit of IPA funds; Parliament of Montenegro	Law or regulation on setting up the Audit Authority to carry out audit of IPA funds adopted;
	Set up an autonomous Audit Authority outside the organizational structure of SAI	Autonomous Audit Authority outside the organizational structure of SAI established
Public spending at national and local government levels is transparent, efficient and economical	Regular submission of annual audit report and individual audit reports to the Parliament of Montenegro	-Increase in performance of audits of regularities and audits of cost-effectiveness, efficiency and effectiveness ; -Increased regularity in spending public funds through an increased scope of coverage of public spending by audit; -Increased external control of all budget beneficiaries in spending public funds; -Increased financial and fiscal discipline in public spending
	Presentation of SAI audit findings to the public through regular press conferences held after performance of audits	-Number of press conferences held after performance of audits -Increased transparency of public spending
	Hiring necessary auditing staff in accordance with the Rulebook on internal organization and job descriptions	-Recruitment plan until 2012 adopted; -Competition for recruitment of new state auditors announced; increased capacity of SAI by recruitment of new auditing staff

129 Whole document available at: http://antikorupcija.me/en/index.php?option=com_phocadownload&view=category&id=7%3A&Itemid=91 (15/11/2010)

Objective	Measures	Performance indicators
Administrative, technical and resource capacity in the public finances sector is developed	Recruitment of staff in Audit Authority to carry out audit of IPA funds; SAI, Ministry of Finance	-Recruitment plan until 2012 adopted, -Competition for recruitment of staff announced, - Staff in the Audit Authority to carry out audit of IPA funds has been provided and recruited.
	Education of auditing staff to carry out audit of IPA funds and audit of cost- effectiveness, efficiency and effectiveness	-Number of delivered seminars and trainings for auditing staff under IPA project -Capacity built in public finances sector through the presence of auditing staff in possession of state auditor license and knowledge and skills gained in the field of audit
Effective control system is in place to overview disposal of public funds by budget spending units	Continuously control beneficiaries of budget funds	Decreased number of irregularities in spending public funds -Number of controls of beneficiaries of budget funds -Number of identified irregularities
Control audits in audit subjects are efficient	Continuously control and comply with recommendations from the findings of State Audit Institution	-Control of regularity of the procedure for opening accounts of spending units at commercial banks and regularity of their operations -Increased compliance with and implementation of SAI recommendations
Risk analysis system in public finances is further developed	Risk analysis system in public finances is further developed	-Trainings plan developed; -Number of trainings for the management staff -Number of trainings for civil servants
Local self government		
Internal and external control of the work of local government units is strengthened	External audit of financial operation of municipalities	SAI report

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- The minutes from the sessions of the Committee for Economy and Finance of the Parliament of Montenegro;
- Joint First and Second Evaluation Report on the evaluation of the Republic of Montenegro, adopted by GRECO at 30 Plenary session (Strasbourg, 09-13. October, 2006);
- Action plan for implementing the Anti-Corruption and Organized Crime (adopted on 4 August 2006) and the changes of 29 May 2008;
- XII Report of the Network for Affirmation of the NGO sector on the implementation of the Action Plan for Combating Corruption and Organized Crime;
- Strategy for Combating Corruption and Organized Crime 2010 - 2014;
- Action Plan for Combating Corruption and Organized Crime 2010 - 2012;
- The National Programme for Integration of Montenegro into the EU (NPI) for the period 2008-2012
- Montenegro Public Expenditure and Financial Accountability Assessment, Public Financial Management Performance Report, July 2009.
- Best Practice for the Audit of Privatisations, Best Practice for the Audit of Public / Private Finance and Concessions, Best Practice for the Audit of Risk in Public / Private Partnerships, Working Group on the Audit of Privatisation, Economic Regulation and Public Private Partnerships;
- Montenegro Public Expenditure and Financial Accountability Assessment, Public Financial Management Performance Report, July 2009;
- Comparison of Generalized Audit Software, <http://www.auditsoftware.net/documents/GeneralizedAuditSoftware.pdf>;
- Report on the work of the State Audit Office in 2004 (Croatia);
- Replies of the Government of Montenegro to the additional questions in the Questionnaire of the European Commission (April 2010);

- Assessment of external auditing in Montenegro, May 2009, Support for Improvement in Governance and Management (SIGMA);
- Recommendations of the International conference “The role and position of the State Audit Institution in the parliamentary system and the Constitution of Montenegro”, held as part of a public hearing on the Draft Constitution of Montenegro in April 2007;
- Introductory remarks of the President of the Senate of the SAI Miroslav Ivanišević at a news conference presenting the annual report on the audit and activities for the period October 2009 - October 2010.
- Press release: Agreement on the formation of the audit authority under decentralized management instrument for Pre-Accession Assistance (IPA).

Questionnaires and interviews

- Responses to the questionnaire by Head of the Development Fund of Montenegro (Investment and Development Fund), Dragan Lajović, (28/07/2010);
- Responses to the questionnaire by the President of the Committee for Economy and Finance Aleksandar Damjanović, (08/10/2010);
- Interview with Branislav Radulović, a member of the SAI’s Senate, (29/07/2010);
- Interview with Damir Šehović, a member of the Committee on Economy, Budget and Finance
- Interviews with representatives of the Directorate of Personnel, Ministry of Defence, Protector of human and minority rights (October, 2010);
- Interview with the President of the Committee of Economy, Budget and Finance, Aleksandar Damjanović (23/11/2010);
- Interviews with the heads of SAI’s sectors, Stana Bešović and Nikola Vukićević (29.10/01.11. 2010.);
- Answers of the State Audit Institution to the questionnaire of Institute Alternative (06/10/2010).

Legal acts

- Budget Law of Montenegro (Official Gazette, No.40/01, 44 / 1, 28/04, 71/05, Official Gazette, No.12/07 of 14.12.2007, 73/08 from 02.12. 2008, 53/09 of 07/08/2009)
- Law on Budget of Montenegro for 2010 (Official Gazette, No. 01-976/59);
- Law on Minor Offences of Montenegro (Official Gazette of RM no. 048/99-1);
- Law on Budgets in the Federation of Bosnia and Herzegovina (Official Gazette, No. 01-02-264/06);
- Budget Law of Bosnia and Herzegovina for 2010 (Official Gazette No. 103/09);
- Law on Minor Offences of Bosnia and Herzegovina (Official Gazette number 31/06);
- Law on State Budget Croatian (Official Gazette, 96/03);
- Croatian Law on Minor Offences Act (Official Gazette 740-04/07-01/01);
- Law on Croatian state budget for 2010 (Official Gazette 71-05-03/1-09-2);
- Budget Law of Macedonia (Official Gazette of the Republic of Macedonia, No.35/01);
- Budget Law of Macedonia for 2002 (Official Gazette, No. 07/4745/1);
- Law on Minor Offences of Macedonia (Official Gazette No. 25/92);
- The Code of Criminal Procedure (Official Gazette no. 71/03);
- Law on State Budget - Croatia;
- Law on State Audit (Official Gazette 70/93, 48/95, 105/99, 36/01, 44/01, 177/04);
- Audit Act of transformation and privatization, 8 May 2001. (Official Gazette 44/01 and 143/02)
- Law on Transformation of Socially Owned Enterprises;
- Law on Transformation and Privatization and the Law on social capital;
- Rules of Procedure of the State Audit Institution ("Official Gazette of RM" no. 50/07 of 17.08.2007);
- Decision on the establishment of a special audit body responsible for checking the effective and valid functioning of the management and control of IPA (Official Gazette of Montenegro, no. 05/10 of 01.29.2010.);
- Guidance on the methodology of the State Audit Institution;
- Rules of Procedure of the Parliament of Montenegro;
- Rulebook on Internal Organization and Systematization of the Ministry of Finance;
- The Framework Agreement between the Government of Montenegro and the Commission of European Communities on the rules for cooperation concerning EC financial assistance to Montenegro in the implementation of the Instrument for Pre-Accession Assistance (IPA).

Media articles

- “Ivanišević lighthearted with the money”, Dan, 09/05/2010;
- “Will the open affairs be investigated”, Radio Free Europe, 08/31/2010;
- “The audit will reinforce the battle against corruption”, Pobjeda, 09/11/2010;
- “No one to bear the consequences for violations of the law”, Dan, 24/10/2010;
- “Parliament to form a commission to control the privatization process”, Pobjeda, 28/06/2007;

About Institute Alternative

Institute Alternative is a non-governmental organization, established in September 2007 by a group of young, educated citizens, experienced in the civic society, public administration and business sectors.

The mission of Institute Alternative is the strengthening of democratic processes in Montenegro by identifying and analyzing public policy options.

Strategic Aims of Institute Alternative are to: increase the quality of development of public policy, contribute to the development of democracy and the rule of law, and to contribute to the protection of human rights in Montenegro.

Values that we follow in our work are the devotion to our mission, independence, constant learning, networking, cooperation and teamwork.

The Institute has completed the project “Public Administration in Montenegro – salary schemes, mechanisms of appraisal and possibilities for professional advancement in law and in practice” (January to June 2008). Under the aegis of the project, research was conducted, yielding a study with the aforementioned title, and a roundtable whereby the study was discussed.

The Institute has published a short brief with recommendations on the transparency of financial affairs of the Parliament of Montenegro (June 2008).

Institute distributes its Weekly Brief to a large number of recipients. Institute Alternative’s Weekly Brief contains the most important information in the areas of politics, society, economy and regional cooperation. The recipients of Institute Alternative’s Weekly Brief are mostly the representatives of foreign organizations and diplomatic envoys to Montenegro.

The Institute is the co-publisher of the publication “Political Criteria for the Accession to the European Union”, authored by Aleksandar Saša Zeković, MA.

In June 2009, a study entitled “The Case of the First Bank – experiences for supervisors and other decision makers”. The author of the publication is Mila Kasalica. This publication has been supported by Friedrich Ebert Foundation. In December 2009, the Institute has published a study, entitled “Lipci Case 2008 – How to Prevent it from Repeating?” In January 2010, Institute Alternative has published “Parliamentary oversight of the security and defense sectors in Montenegro – What next?”, also with the support of Friedrich Ebert Foundation. In February 2010, an analysis entitled “The Assessment of Legal Framework and Practice in the Implementation of Certain Control Mechanisms of the Parliament of Montenegro (Consultative hearing, control hearing and parliamentary inquiry)” was published.

A representative of Institute Alternative has participated to the session of the Committee for economics, budget and finance, when the Draft Law on the Budget of Montenegro for 2009 was on the agenda. The representative of Institute Alternative has presented Institute Alternative’s comment on this draft law.

Institute Alternative is participating in the project entitled “EU Matrix – monitoring of the process of European integration – monitoring of the National Program for Integration of Montenegro to the EU” as a partner institution of the European Movement in Montenegro and the Monitoring Centre. The focuses of Institute in this project are public private partnerships and public procurement.

European Fund for the Balkans has supported a project of Institute Alternative dealing with external

financial control, that is, with the examination of the legal framework and practice of the State Audit Institution. The publication of the results of this research is forthcoming in August 2010.

Activities of Institute Alternative have been supported by the Foundation Institute for an Open Society -Representative Office Montenegro (FOSI ROM) and Think Tank Fund, Friedrich Ebert Foundation, Commission for the distribution of funds for NGO projects of the Parliament of Montenegro, Canada Fund and the European Fund for the Balkans. Institute Alternative has established cooperation with the European Stability Initiative (ESI), with the seat in Berlin. ESI has conducted a capacity-building program for IA's associates.

Institute Alternative is a member of the self-regulatory body of NGOs, and has offered full details on its financial affairs in line with the Activity Code for NGOs, to which Institute Alternative is a party.

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