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Bulevar Džordža Vašingtona 57, Podgorica, Montenegro

Tel/fax: **+382 (0) 20 268 686**

E-mail: **info@institut-alternativa.org**

For the publisher: **Stevo Muk**

Editor: **Stevo Muk**

Author: **Milena Milošević**

Research associates: **Miljana Babić, Aleksandra Vavić**

Layout and design: **Ana Jovović**

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SUMMARY:

This study deals with frequent reorganisations of Montenegrin public administration in relation to the country's stated objective: establishment of a more efficient, rational, and flexible administration. The main findings reveal that the decision-makers have too much space for arbitrary and discretionary decisions in adopting new and amending existing acts on the internal organization of public administration bodies, and that these decisions do not follow workforce plans.

In the four years since the coming into force of the Law on Civil Servants and State Employees, the Government adopted two workforce plans, both of them in the middle of the calendar year (in 2015 and 2016). That the plans were not adopted at the start of the budget year substantially detracts from their effectiveness. The plan for 2017 was never adopted. At the same time, the Decree on organization and functioning of public administration in Montenegro was amended 14 times in the period between January 2012 and March 2017, which suggests that re-organization is not an exception, but the rule in the Montenegrin public administration.

Instead of serving as a mechanism for strategic adaptation of the administration to new tasks and roles, frequent reorganizations act, among other, as a potential tool for politicization of the administration and as a way of undermining the autonomy of civil servants and employees. In 2017, in the first ten months of the year, the Constitutional Court received at least two pleas to evaluate constitutionality of organizational changes in public administration. The Complaints Commission, the second instance body in charge of protecting the rights of state employees, endorsed more than 70% of complaints against personnel changes caused by reorganizations of public bodies.

The legal framework is excessively vague with respect to the legal basis for establishment and dissolution of public administration bodies, as well as in regard to the requirements for internal reorganization of public administration bodies.

In order to reduce the scope for arbitrary reorganizations and legal insecurity of public employees, there should be a clear link between workforce planning and public administration reorganizations. In other words, workforce plans ought to include analyses of job requirements for positions to be opened in the upcoming period, as well as for those that are to be eliminated. It is also necessary to make compliance with these plans binding. The few positive examples of reorganization plans in some public administration bodies should be taken into account when defining the terms of workforce planning in the new Law on Civil Servants and State Employees, as well as in the accompanying bylaws.

INTRODUCTION:

Optimization and reform of public administration are largely intertwined processes. Optimization refers to transformation of public administration in a way that realizes its full functionality, i.e. the highest possible degree of effectiveness.¹ To do so, this process should ensure that the administration adapts to social, economic, and technological changes.²

Despite the existing strategic framework, there is no clear definition of the target values for the parallel and closely related processes of reorganization, rationalization and optimization of public administration.³ For the purposes of this study, reorganization is defined as the process of internal structural change in a public administration body, or public administration as a whole, while rationalization is defined as a process that leads to lower overall costs of the administration, as well as better value to citizens for the money invested in public administration.

The main question the study tries to answer is the following: How much have the frequent reorganizations to date contributed to its successful functioning and lowered its cost for the citizens? In other words, our goal is to show what stands behind the big words and declared objectives of Montenegro's Public Administration Reform Strategy.

The importance of this issue is clearly evident from the figures that show Montenegro to be among the countries with proportionally the largest public administration – according to the latest available data, the number of employees in the public sectors was above 51 000.⁴ Bearing in mind that the total number of persons employed in the Montenegrin economy in 2015 was 175 617⁵, the share of the public sector in total employment would have been at least 29%, or 10% higher than the OECD average.⁶ Among the OECD countries

¹ / The Optimization of Public Administration in the Western Balkan Region: Comparative Study with Baseline Analysis, Regional School of Public Administration, 2016.

² / Ibid.

³ / The Strategy maintains that in order to identify the optimal number of employees in public administration bodies it is necessary to take into account all relevant factors, such as the extent of tasks assigned to each public administration body, the current number of employees, the requirements of EU integration in certain areas). The Strategy itself however only stipulates the necessity to adopt a methodology for identifying the optimal number of employees but does not state the starting values for the reduction of employment. See: Strategy for the reform of public administration in Montenegro 2016-2020, Government of Montenegro, July 2016. Available (in Montenegrin) at: <http://media.mojauprava.me/2016/11/Strategija-reforme-javne-uprave-u-Crnog-Gori-2016-2020.godine.pdf> (Accessed on 13.11.2017).

⁴ / Video from the media conference following the 53rd seating of the Government of Montenegro, available at: <https://www.youtube.com/watch?v=IwVmUXQYV04> Accessed on 14.12.2017.)

⁵ / Statistical yearbook 2016, Statistical Office of Montenegro, available at: [http://monstat.org/userfiles/file/publikacije/GODISNJAK%202016%20\(1\).pdf](http://monstat.org/userfiles/file/publikacije/GODISNJAK%202016%20(1).pdf)

⁶ / The average share of public sector in total employment is about 18% in OECD countries. See: OECD, Government at a Glance 2017 – Highlights.

the largest public administrations are in the Scandinavian countries, where the share of public employment can reach up to 30% (Norway). Smaller European Union members also have relatively larger public administrations, at or about OECD average: for instance, 17.3% in Slovenia, 19.3% in Slovakia, and 23% in Estonia. All of them, however, pale in comparison to Montenegro.

Similarly, the latest report of the State Audit Institution shows that the spending on salaries of public sector employees reached EUR 430 million euro in 2016, or 11% higher than the limit set by the Guidelines on macroeconomic and fiscal policy for the period 2015-2018.⁷

Five years after the Government revealed that Montenegro's public administration suffers from an excess number of bodies without clearly defined responsibilities and jurisdiction, with negative consequences for the productivity and stability of administration, as well as for the accountability and long-term reform⁸, the situation has not moved from the starting line. As of December 2017, Montenegrin public sector had 54 public administration bodies⁹, more than 150 public enterprises at the national and local levels, 23 local self-governments and two urban municipalities with at least 58 public institutions at the local level, over 100 secretariats and 27 other bodies – all of this for just 620 000 citizens.

Focusing on a seemingly technical dimension of governance in Montenegro, one that concerns the organizational prerequisites of good governance, this study examines the scope for arbitrary decision-making and its apparent disconnect with workforce planning. In this task we focus above all on the central – state level. In the first part, we offer an overview of the practice of (re)organization of the Montenegrin public administration to date, followed by an explanation of how an incomplete and vague legal framework leads to bad practices in this area. The third part contains the analysis of shortcomings of workforce planning in Montenegro and the lack of connection between it and the organization of public administration. The fourth part showcases some improvements in this area that could serve as a source of inspiration for drafting better regulation in the future. The main finding of the study is that changes in the organization of public administration should be firmly founded in workforce planning.

7 / Guidelines for macroeconomic and fiscal policy for the period 2015-2018 set limits on public spending on gross salaries, employer's contributions and other financial compensations of public sector employees to EUR 390.99 million per year. See: Annual report on conducted audits and activities of the State Audit Institution of Montenegro for the period October 2016-October 2017. State Audit Institution, Montenegro. Available (in Montenegrin) at: <http://www.dri.co.me/1/doc/Godisnji%20izvjestaj%20o%20izvršenim%20revizijama%20Drzavne%20revizorske%20institucije%20za%20period%20%20oktobar%202016%20do%20oktobar%202017%20godine.pdf> (Accessed on 07.11.2017).

8 / Legal and institutional analysis of the organization of public administration system in Montenegro with proposals for future solutions. Ministry of Interior Affairs and Ministry of Finance, Podgorica, 23 December 2011.

9 / A total of 18 ministries, 21 integrated bodies and 15 independent bodies.

REORGANIZATION OF PUBLIC ADMINISTRATION: NOT AN EXCEPTION, BUT A RULE

Decree on the organization and functioning of public administration in Montenegro currently in force was amended altogether 14 times¹⁰, which goes far to illustrate our claim that reorganization is not an exception but a rule in the Montenegrin public service.

None of the changes we analysed included an explanation why, for instance, the Agency for Protection of Environment ceased to be an independent body and was integrated into the Ministry for Sustainable Development and Tourism in March 2017, or why the Directorate for Diaspora was suddenly established as a separate body within the Ministry for Foreign Affairs in April 2013. Nor is any reason apparent from the materials presented at the Government sessions which initiated or approved these changes, despite the fact that these changes have repercussions for the overall functioning of the administration. In a nutshell, reorganization of public administration, as well as that of individual bodies, can serve as:

- a mechanism to adapt administration to new tasks and responsibilities, as an authentic expression of the strategic orientation of the administration;
- a mechanism to redistribute positions and influence among the parties in power and thus as a potential tool for politicization of the administration.

Decree on the organization and functioning of public administration was amended 14 times between January 2012 and March 2017.

According to the Law on State Administration, the Government of Montenegro establishes public administration bodies, and determines their organization and functioning. The three main types of public administration bodies are: ministries, independent administrative bodies and administrative bodies integrated within the ministries. Independent administrative bo-

dies should only be created in exceptional circumstances, "to perform expert and related tasks that require use of scientific and other specialized methods and knowledge; to perform tasks within a specialized administrative field when it is not possible to create a dedicated ministry, and in other circumstances as defined by the law¹¹".

¹⁰ / Regulation on the organization and functioning of public administration (Official Gazette of Montenegro no. 005/12 on 23.01.2012, 025/12 on 11.05.2012, 044/12 on 09.08.2012, 061/12 on 07.12.2012, 020/13 on 26.04.2013, 017/14 on 04.04.2014, 006/15 on 10.02.2015, 080/15 on 31.12.2015, 035/16 on 03.06.2016, 041/16 on 06.07.2016, 061/16 on 26.09.2016, 073/16 on 25.11.2016, 003/17 on 13.01.2017, 019/17 on 27.03.2017).

¹¹ / Law on State Administration, "Official Gazette of the Republic of Montenegro" no. 038/03 on 27.06.2003, "Official Gazette of Montenegro" no. 022/08 on 02.04.2008, 042/11 on 15.08.2011, 054/16 on 15.08.2016.

Administrative bodies within the ministries, on the other hand, are established in order to “implement the laws and other regulations, and perform administrative and expert tasks relevant to specific administrative areas in circumstances when the volume and nature of these tasks does not require special organization and independence¹²”.

These legal definitions leave a lot of space to discretionary interpretation, as they do not contain clear criteria distinguishing independent bodies and bodies within the ministries. In the draft Analysis of the functional and financial effects of the introduction of “bodies within the ministries” into the Montenegrin administrative system, the Ministry of Public Administration similarly warns that the introduction of this category via the 2012 Decree on public administration failed to improve functional relations between public administration bodies, their accountability, or their effectiveness¹³.

AMBIGUOUS RULES – CHANCE FOR POLITICISATION?

Regulatory ambiguity leaves space for reorganizations that have no grounding in the assessment of the volume and complexity of administrative tasks. They also frequently allow dismissal or transfers of employees without reference to clear criteria.

After the collapse of the long lasting Alliance between the Democratic Party of Socialists and the Social-Democratic Party, it turned out that the ambiguities of the legal framework can play into the hands of the politicians eager to increase their leverage over the administration. Among other, two independent administrative bodies (Bureau for Intellectual Property and Agency for the Protection of

Environment) have been integrated into the ministries, and this transformation provided the legal basis to dismiss their directors, formerly or currently high-ranked politicians of the now oppositional SDP.

The former director of the Bureau for Intellectual Property filed a request for the assessment of constitutionality of the Decree on amendments to the Decree on the organization and functioning of public administration which allowed the Bureau to be integrated into the Ministry of Economy. In the request, he claims that in demoting the status of this body the Government used legal violence and arbitrariness to overrule international conventions in the field of intellectual property law, as well as the Montenegrin Constitution and a number of national laws, among them the Law on State Administration. In its response to the complaint, the Government responded that in integrating the Bureau into the Ministry

¹² / Ibid.

¹³ / Analysis of the functional and financial effects of the introduction of “integrated administrative bodies” into the Montenegrin administrative system – DRAFT. Ministry for Public Administration, Government of Montenegro, October 2017.

of Economy it only acted in accordance with the Law, which gives it the prerogative to define the organization of public administration¹⁴.

Another initiative for reassessment of constitutionality of reorganization was filed in 2017, this time concerning internal reorganization of administrative bodies¹⁵. The former chief veterinary inspector in the Directorate for Inspection Affairs filed a request for reassessment of constitutionality of the Rules on internal organization and systematization of the Ministry of Agriculture and Rural Development. This was after her job was abolished and the responsibilities hitherto assigned to her transferred to the Ministry. She believes that the new Rules compiled by the Ministry are in breach of the law in view of their failure to include the position of the chief inspector for veterinary issues, while the Government in its response to the complaint maintains that it is up to the Ministry to define the number and rank of inspection jobs "in accordance with the volume and complexity of tasks¹⁶".

There is, however, no methodology to ascertain the volume and complexity of tasks, since workforce planning never took off in the Montenegrin public administration. Initiatives to reassess the legality of reorganizations thus serve to illustrate the extent to which the absence of clear criteria and justifications for administrative reorganizations leave space for different interpretations of the legal framework and can eventually undermine the trust in administration.

The Law on civil servants and state employees also regulates the dismissal and reappointment of employees in response to reorganization, but it is similarly incomplete. The criteria for transfer are vaguely worded and can be interpreted broadly, as evidenced by a high number of complaints. In 2016 complaints against irregular transfers have accounted for a tenth of all complaints received by the Complaints Commission, the second-instance body responsible for the protection of rights of state employees¹⁷.

The main problem is that the Law leaves an enormous margin for interpretation of the conditions under which an employee may be transferred. Permanent transfer due to reorganization of an administrative body should be to a position corresponding to their

¹⁴ / Draft opinion in response to the request of the Bureau for Intellectual Property to initiate reassessment of constitutionality and legality of the Article 3, point 2 of the Regulation on amendments to the Regulation on organization and functioning of public administration (without discussion). Government of Montenegro, 7 September 2017.

¹⁵ / By the completion of these studies all of these cases still remained pending before the Constitutional Court.

¹⁶ / Draft opinion on the Request to initiate reassessment of legality of the Rules on internal organization and human resources of the Ministry of Agriculture and Rural Development submitted by Mirjana Drašković from Podgorica (no discussion), Government of Montenegro, 21 September 2017.

¹⁷ / Complaints Commission, Report on the work of the Commission in the period 1 January – 31 December 2016, Podgorica, April 2017.

level of education and for which they fulfill other criteria. Another regulation stipulates that earlier employment and assessment in the past three years ought to be considered, but does not specify how.

In practice this leads to arbitrary assignments or even dismissals. In 73% of the cases filed in 2016, the Commission voided the decisions on transfer after the employees complained¹⁸.



REORGANIZATION AND WORKFORCE PLANNING: THE MISSING LINK

In order to improve human resource management, the 2013 Law on Civil Servants and State Employees obliges the Government to adopt annual workforce plans that should include the total as well as individual information on employees in public administration bodies as well as the recruitment plans for the coming year. These plans ought to be adopted for each calendar year within 30 days after the adoption of the Budget for that year¹⁹. The practice has revealed several problems with the implementation of these stipulations, which, in addition to “chaotic” reorganizations of administration, include belated, formalistic adoption of workforce plans, or simply the failure to adopt them.

Workforce planning, the concept widely used in the advanced industrial countries, is defined as “a dynamic process that ensures that an organization has an adequate number of employees with the right skills, in the right time, and at the right place to fulfill its short- and long-term goals²⁰”. This definition is in many ways beyond the reach of the current workforce planning in Montenegro, since:

- the law requires the workforce plan for public administration to be adopted after the budget has been set, which makes it impossible to plan the spending on training and recruitment;
- there is no explicit link between workforce plans and long-term goals, or the vision of how tasks are to be organized within an administrative body.

¹⁸ / Ibid.

¹⁹ / Law on Civil Servants and State Employees, “Official Gazette of Montenegro” no. 039/11 on 04.08.2011, 050/11 on 21.10.2011, 066/12 on 31.12.2012, 034/14 on 08.08.2014, 053/14 on 19.12.2014, 016/16 on 08.03.2016.

²⁰ / Huerta Melchor, O. (2013), “The Government Workforce of the Future: Innovation in Strategic Workforce Planning in OECD Countries”, OECD Working Papers on Public Governance, No. 21, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5k487727gwvb-en>

In the first four years of implementation of the Law on Civil Servants and State Employees the Government adopted only two workforce plans – both half way through the calendar years, in June 2015 and May 2016²¹. This practically made these plans irrelevant, and the 2017 Workforce plan was never adopted. Information adopted by the Government of Montenegro in February 2017 states that the Human Resource Management Authority (HRMA) could not prepare the plan, among other because some of the ministries failed to adopt regulations on workforce planning, while others did not align theirs with the Workforce on the organization and functioning of public administration. The Government adopted the instruction that the plan should be prepared as a matter of urgency, by March 2017, but this did not happen²².

The two adopted Workforce plans cite changes to the Rules on internal organization and human resources as the basis for new recruitment. There are, however, no analyses of staff needs or strategic goals for future development of the administration that would

Workforce planning never took off in Montenegro. Only two workforce plans were adopted for public administration as a whole, both of them half way through the calendar years (2015 and 2016), which made them practically irrelevant.

justify such reorganization, apart from very general statements of “increased volume of work” and “need for new organization to fulfil the tasks more effectively and efficiently”²³.

An important obstacle to effective workforce planning is the fact that the Central human resource registry that ought to contain all relevant information on employees has never been completed, nor linked to the payroll registry maintained by the Ministry of Finance. The result such unplanned and “chaotic” reorganizations and recruitment is the continuous increase of spending on public employees’ salaries: by more than EUR 50 million between 2011 and 2017²⁴.

²¹ / Workforce plan of public administration bodies and the Government of Montenegro for 2015. Government of Montenegro, June 2015. Workforce plan of public administration bodies and the Government of Montenegro for 2016. Government of Montenegro, May 2016.

²² / Information on the implementation of the institute of workforce planning in public administration bodies and General Secretariat of the Government of Montenegro, February 2017.

²³ / Justification of the human resource plan for the public administration bodies and Secretariat of the Government of Montenegro. Government of Montenegro, June 2015, available (in Montenegrin) at: <http://www.uzk.co.me/images/stories/dokumenti/KADROVSKI%20PLAN/Kadrovski%20plan%20BRAZLO%C5%BDENJE.pdf> (accessed 8.11.2017).

²⁴ / Laws on the final budget of Montenegro for 2011, 2012, 2013, 2014 and 2015 (Official Gazette of Montenegro no. 066/12 on 31.12.2013, no. 160/13 on 27.12.2013, no. 060/14 on 31.12.2014, no. 078/15 on 31.12.2015, no. 001/17 on 09.01.2017); Draft Law on the finalized account of the Budget of Montenegro for 2016, Ministry of Finance, May 2017, available (in Montenegrin) at: <http://www.mif.gov.me/ResourceManager/FileDownload.aspx?rid=292026&rType=2&file=Predlog%20Zakona%20o%20završnom%20računu%20Bud%20CG%20za%202016.%20godinu.docx> (accessed 13.11.2017).

FROM REORGANIZATION TO OPTIMIZATION: SOME ACHIEVEMENTS

According to the OECD, good workforce planning includes, among other, mutual harmonization of institutional strategy and workforce planning²⁵. A positive example in this regard can be found in Montenegro in the Plan of reorganization and strengthening of administrative capacities for environment and climate change in Montenegro (2017-2020)²⁶.

The plan is based on the principles of (de)bureaucratization and process optimization, which includes effective utilization of available resources, continuous training of civil servants and employees, and human resource management aimed at the optimization of the number of employees in the public sector, which includes a realistic assessment of the existing capacities and their redistribution between institutions in order to ensure optimal utilization.

What is particularly commendable about this plan is that it followed a comprehensive study of responsibilities of all employees in the sector, including assessment of the need to strengthen administrative capacities – not only as regards new recruitment, but also in terms of further education and redistribution of employees across different units. As an exception from the prevailing Montenegrin practices, the authors of the plan consulted the employees and heads of units of the surveyed institutions when drafting the proposal. Moreover, in consultation with the heads of units they also prepared the descriptions of the jobs that will be opened in the coming period, which should make the organization of work in this sector more predictable and grounded in sound analysis. Instead of the current practice, in which workforce plans are adopted following amendments to the rules on internal organization and human resources, this Plan opens up the possibility to conduct reorganization in a way that follows previously established needs for human resources.

As the plan was adopted in July 2017, it is too early to assess its implementation, but all comparisons suggest that the implementation of these plans should be carefully monitored. The OECD, for instance, recommends that good practices should include key performance indicators in order to ensure adequate evaluation of the workforce plans and adapt them when necessary. These indicators ought to cover instances of increased

²⁵ / Huerta Melchor, O. (2013), „The Government Workforce of the Future: Innovation in Strategic Workforce Planning in OECD Countries”, OECD Working Papers on Public Governance, No. 21, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5k487727gwvb-en>

²⁶ / Available at (in Montenegrin): <http://www.mrt.gov.me/rubrike/spi/spi-planovi/174669/Plan-reorganizacije-i-jacanja-administrativnih-kapaciteta-za-sektore-zivotne-sredine-i-klimatskih-promjena-u-Crnoj-Gori-2017-202.html> (accessed 8.11.2017).

or reduced demand, unplanned absences, resignations, and dismissals, employees' satisfaction, etc.²⁷

In Montenegro, there is no obligation to report on the implementation of the workforce plans, except for the general obligation of the Human Resource Management Authority to monitor and evaluate implementation of the training programmes and "other human resource development programmes". On the other hand, as has already been noted in the Public Administration Reform Strategy, there is still no provision to regularly monitor the level of satisfaction of employees of public administration bodies, i.e. there is no measurement or analysis of the organizational climate²⁸.

CONCLUSION

Montenegrin administration has not yet introduced an effective system of workforce planning, the implementation of which could help to ascertain in advance the necessary workforce profiles and thereby limit the practice of arbitrary reorganizations of the entire public administration as well as of individual public administration bodies.

The notion of workforce planning that has been in use to date has been doomed to failure as it remained disconnected from a key parallel process – that of the budget planning. Bad "timing" made the institution of workforce planning practically irrelevant. The obligation to adopt the plans annually is equally questionable, as workforce plans ought to be aligned with long-term, as well as short-term, needs of the institutions. As a consequence, the "ambitious" requirement to adopt workforce plans every year, without harmonizing them with the training programmes and mid-term strategic documents, clearly failed to produce positive results in practice.

While the Government has acknowledged that there are problems with integrated public administration bodies, it is unclear what can be expected from the pending changes of the relevant legal framework, above all of the Law on state administration and the Law on civil servants and state employees. In the context of frequent changes of the rules of internal organization and human resources, vague and incomplete provisions regarding the transfer of employees in particular can undermine their legal security. Five years after starting negotiations with the European Union, in the run-up to the final stretch of the negotiations, it is necessary to create a more durable organization of public administration,

²⁷ / Huerta Melchor, O. (2013), „The Government Workforce of the Future: Innovation in Strategic Workforce Planning in OECD Countries", OECD Working Papers on Public Governance, No. 21, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5k487727gwvb-en>

²⁸ / Strategy for the reform of public administration in Montenegro, 2016-2020, Government of Montenegro, July 2016. Available (in Montenegrin) at: <http://mojauprava.me/strategija-reforme-javne-uprave-u-okviru-strategije/> (accessed 8.11.2017).

one that will be so dependent on the current composition of the government and the balance of political forces, but perform its basic functions of administration as a service to the citizens in an effective and predictable manner. To that end, this process should be implemented with support of a broader circle of experts, civil society, and the Parliament.

RECOMMENDATIONS:

- The Government should create a clear link between the mandatory workforce planning and reorganisations of the administration, by ensuring that all workforce plans include analyses of job profiles to be filled or phased out in the next period;
- All public administration bodies should be bound by law to prepare annual reports on the implementation of workforce plans;
- Multi-annual workforce plans, to be adapted and updated on annual basis according to need, would constitute a more flexible and effective solution than the current annual plans, and would allow for more effective reporting on their implementation as well as facilitate the adoption, implementation, monitoring, and evaluation of public policies, i.e. improvement of services to the citizens and businesses;
- Questionnaires to employees about job satisfaction and workforce planning ought to include questions about the burden of work and suggestions for improved work organisation in the unit in question;
- Examples of good practices in terms of reorganisation plans within individual units should be taken into account when revising the definition of workforce planning in the new Law on Civil Servants and State Employees and the accompanying bylaws.

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We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within following programme strands: Public Administration, Accountable Public Finance, Parliamentary Programme, and Security and Defence. On the basis of our programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups for chapters 23 and 32. Our flagship project is the Public Policy School, which is organised since 2012. Institute Alternative was granted with the licence to conduct research activities in the field of social sciences by the Ministry of Science in 2013.

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