

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN MONTENEGRO

by Center for Democratic Transition

Acknowledgements

With the aim of contributing to the national UNCAC review in Montenegro in its second cycle, this parallel report was written by the Centre for Democratic Transition (CDT), using the guidance materials and report template designed by the UNCAC Coalition and Transparency International. The production of this report was supported by the UNCAC Coalition, made possible with funding provided by the Norwegian Agency for Development Cooperation (Norad) and the Ministry of Foreign Affairs of Denmark (Danida).

The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of July 31, 2023.

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The Centre for Democratic Transition (CDT) is one of the most prominent advocacy think tanks in Montenegro, established in 2000. We work in two main program areas: democratic institutions, where our activities help build the rule of law based on integrity, and democratic society, where our activities vouch for our commitment to building and preserving the democratic values of a society based on freedom, justice and equality.

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Abbreviations

ACA	Agency for Prevention of Corruption/Anti-Corruption Agency
AML	Anti-Money Laundering
CDT	Centre for Democratic Transition
CEDEM	Centre for Democracy and Human Rights
CEGAS	Centre for Civic Freedoms
CPR	Centre for Policy Research
CPI	Corruption Perceptions Index
CSO	Civil Society Organization
ESW	Economic & Sector Work
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
ICIJ	International Consortium of Investigative Journalists
ILM	Internal Labor Market
JIT	Joint Investigation Team
LEA	Law Enforcement Agency
LPMLTF	Law on Anti-Money Laundering and Combatting the Financing of Terrorism
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
MF	Ministry of Finance
MONEYVAL	Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism
NCAC	National Council against Corruption
PAR	Public Administration Reform
SFOP	Streamlined Foreign Offshore Procedures
STR	Suspicious Transaction Report
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

List of Persons Consulted

Name	Job title	Affiliation	Date of interview
Nataša Starovlah Knežević	Senior Adviser	Financial Investigation Unit, Police Directorate, Ministry of Interior	01.11.2022
Marina Mićunović	Chief of the Department for International Cooperation, Standards and Public Relations; UNCAC focal point	Anti-corruption Agency	01.12.2022
Boris Marić	Government Secretary General	Government of Montenegro	05.10.2022
Marija Popović Kalezić	Director	NGO Centre for Civic Freedoms (CEGAS)	13.09.2022
Marko Pejović	Program Director; Member of Ethics Board, Ministry of Interior	NGO Centre for Democracy and Human Rights CEDEM	06.10.2022
Name withheld on request	N/A	Ministry of Public Administration	06.09.2022
Name withheld on request	N/A	State Prosecution Office	13.11.2022

I. Introduction

As part of the former State Union of Serbia and Montenegro, Montenegro signed the United Nations Convention against Corruption (UNCAC) on December 11, 2003 and ratified it on December 20, 2005. The UNCAC implementation law of Montenegro was adopted on October 22, 2005 and entered into force on December 20, 2005. Based on a statement of succession deposited at the UN Secretary General in 2006, Montenegro joined UNCAC as an independent state and ratified it on October 23, 2006.

This report reviews Montenegro's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Montenegro was selected by the UNCAC Implementation Review Group in May 2019 by a drawing of lots for review in the fourth year of the second cycle. In August 2022, Montenegro signed the UNCAC Coalition's Transparency Pledge, voluntarily committing to a high level of transparency during the second cycle of the UNCAC implementation review. A final draft of this parallel report will be provided to the Government of Montenegro.

1.1 Scope

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), public procurement (Article 9.1), the management of public finances (Article 9), access to information and the participation of society (Articles 10 and 13.1), judiciary and prosecution service (Article 11), private sector transparency (Article 12), and measures to prevent money laundering (Art. 14) under Chapter II. Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

1.2 Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Montenegro as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

1.3 Methodology

The report was prepared by Centre for Democratic Transition with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with

government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

In preparing this report, the authors took into account the recent review of Montenegro carried out by other review mechanisms, including Council of Europe monitoring bodies (GRECO and MONEYVAL), in 2017 and 2015, respectively.¹

¹ GRECO Fourth Evaluation Round (2017), Second Compliance Report on <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809a5bdd> and MONEYVAL Fourth Evaluation Round (2015), Second Revised Follow-up Report (May 2020), <https://www.coe.int/en/web/moneyval/-/montenegro-exits-moneyval-s-fourth-round-regular-follow-up-procedure>, accessed on 09.09.2022.

II. Executive Summary

To contribute to the review process of the United Nations Convention against Corruption (UNCAC) in its second cycle covering Chapter II (Preventive Measures) and Chapter V (Asset Recovery), the Centre for Democratic Transition (CDT) has been commissioned to conduct a civil society parallel assessment of UNCAC implementation by Montenegro. This report is intended as a contribution to the UNCAC implementation review process currently underway. It aims to identify Montenegro's progress in implementing the UNCAC, highlighting main achievements and challenges in implementing UNCAC provisions, as noted during the review process. Where possible, it also includes evidence of good practices and gaps in the implementation of preventive and punitive anti-corruption and asset recovery measures.

2.1 Description of the Official Review Process

According to information provided by Agency for Prevention of Corruption (ACA), the second review cycle of UNCAC implementation which evaluated the implementation of Chapter II - Preventive measures and Chapter V - Asset Recovery, involved several stages: filling in the questionnaire for self-assessment of the implementation of UNCAC in February 2020, a country visit in March 2022, as well as drawing up the final Evaluation Report. The entire procedure of evaluation that started in June 2019, was coordinated by UNODC on behalf of the UNCAC Conference of the States Parties.

The ACA team, in cooperation with the Supreme State Prosecutor's Office and other institutions, as well as representatives from the private and civil sectors, carried out the most important stages of review process. The aim of the evaluation is to identify challenges and good practices in order to provide technical assistance to the states, in order to ensure the effective implementation of the Convention.

2.2 Availability of Information

The present report draws upon information collected and analyzed under the framework of UNCAC review process in Montenegro, based on different sources of verification, including official reports by relevant state institutions, available statistics, reports by international organizations and NGOs, reports by the media, etc. The team of authors also made efforts to consult different Montenegrin stakeholders, including government officials, civil society, academia and private sector representatives in order to obtain up-to-date information and insights related to the implementation of selected articles under Chapters II and V of the UNCAC.

The authors of this report compiled all relevant, publicly available, official reports and data, including reports from anti-corruption and judicial institutions. Additional data, including updated statistics that were not listed in institutions' annual reports, have been obtained through requests for access to information (details provided below). Key anticorruption legislation and documents were already accessible to the public. However, a centralized, publicly available legal database is not available, so some final versions of legal acts are not accessible.

Most information derives from secondary sources, available online. However, some information is only available on an annual basis, while accurate, up-to-date information

related to specific sectors or cases has only become available through free access to information tools. Certain data that the team tried to obtain was not available in ready-to-use format, but required preparation by institutions upon demand. Finally, certain data have been retrieved from relevant reports by other international organizations, including GRECO and the European Commission.

Following a desk research phase, the team scheduled a set of interviews with key stakeholders (both state and non-state actors, as presented in the table above) to obtain more in-depth information on the implementation of UNCAC provisions by law and in practice. To this aim, formal requests for interviews were sent to government officials and CSO representatives. Certain institutions opted for written responses and input, whereas a number of interviews were also organized. Meetings with Montenegrin CSOs Center for Democracy and Human Rights (CEDEM) and Center for Civic Freedoms (CEGAS), involved in monitoring public sector reforms including in the field of anti-corruption, were arranged to grasp independent, evidence-based civil society perspectives and views on the status of UNCAC implementation in Montenegro.

2.3 Implementation in Law and in Practice

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 – Preventive anti-corruption policies and practices	largely implemented	moderate
Art. 6 – Preventive anti-corruption body or bodies	largely implemented	moderate
Art. 7.1 – Public sector employment	largely implemented	moderate
Art. 7.3 – Political financing	largely implemented	moderate
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	largely implemented	poor
Art. 9.1 – Public procurement	largely implemented	moderate
Art. 9.2 – Management of public finances	largely implemented	moderate
Art. 10 and 13.1 – Access to information and the participation of society	largely implemented	poor
Art. 11 – Judiciary and prosecution services	largely implemented	moderate
Art. 12 – Private sector transparency	partially implemented	moderate
Art. 14 – Measures to prevent money-laundering	largely implemented	poor

Art. 52 and 58 – Anti-money laundering	largely implemented	poor
Art. 53 and 56 – Measures for direct recovery of property	partially implemented	poor
Art. 54 – Confiscation tools	largely implemented	moderate
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	largely implemented	moderate
Art. 57 – The return and disposal of confiscated property	partially implemented	moderate

Art. 5 – Preventive anti-corruption policies and practices: Montenegro has enacted a comprehensive anti-corruption strategic and legislative framework. Anti-corruption bodies are adequately established by law, to implement preventive anti-corruption policies and practices. However, the existing legal and institutional frameworks need to be further improved in line with the EU acquis,² in particular in terms of asset seizure, to allow for the effective outcomes of financial investigations. The confiscation of the proceeds of crime is still not adequately covered by the existing legislation.³ Efforts are under way to adopt non-conviction-based legislation. Enforcement of the legislation is not fully effective and is hampered by the lack of appropriate competencies and resources. Corruption and cronyism remain widespread. According to Transparency International's 2022 Corruption Perceptions Index, Montenegro is ranked 65th out of 180 countries.⁴ In October 2021, a former Montenegrin President and his son were among the names listed in the Pandora Papers, an investigation by the International Consortium of Investigative Journalists (ICIJ) that revealed improprieties within the global financial system and connections between rich and powerful actors around the world.

Art 6. – Preventive anti-corruption bodies: The track record on prevention of corruption improved, due to positive trend in the work of the Anti-Corruption Agency (ACA).⁵ However, the independence of the ACA remains questionable both in terms of legal and practical aspects. Additional efforts are needed to enhance to ACA's integrity, impartiality and accountability. Although senior public officials are required to declare details regarding their assets and liabilities to the ACA, a strong link between the results of the ACA's work and the detection and prosecution of illicit enrichment is still missing. Asset and income declarations of all persons with top executive functions need to be subjected to more substantive and coherent verification by the ACA.

² Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 09.09.2022.

³ MONEYVAL, Second Revised Follow-up Report (May 2020), page 10, <https://www.coe.int/en/web/moneyval/-/montenegro-exits-moneyval-s-fourth-round-regular-follow-up-procedure>, accessed on 09.09.2022.

⁴ Transparency international, National Chapter Montenegro <https://www.transparency.org/en/countries/montenegro>, accessed on 10.09.2022.

⁵ Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 20.10.2022.

Art. 7.1 – Public sector employment: Montenegrin legislation has established important provisions regarding the employment of civil servants, integrating standards for merit-based recruitment and the career advancement of civil servants. In general, public-sector positions are advertised and open for applications to all possible candidates who meet the legal conditions for employment. However, practices observed in the field indicate the long-standing practice of nepotism and political influence over the process of employment in the public sector. Appointments to central bodies of the public administration are often made on political party lines and are generally immune to the rule of law.

Art. 7.3 – Political Financing: Public funding of political parties is awarded in a fair and transparent manner in the legal framework. Political parties have a clear obligation to keep records of all their revenues and expenditures. However, the process is still not transparent enough, due to limited public access to the financial reports of political parties and a need to further strengthen politically independent oversight of political financing.

Art. 9.1 – Public Procurement: In recent years, Montenegro has made efforts to increase its fiscal transparency and to make budget information available; however, public participation and budget oversight by the legislature and the auditing institution remain weak. A solid framework for state contracting has been established and has evolved over the years, regulating procurement rules and practices. However, the sector is still prone to corruption and malpractice, especially involving large scale projects, contracts and licenses. There are persistent concerns about the independence of procurement committees and a lack of an effective oversight of their work.

Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations: The ACA informs the general public about its results in the areas of preventing conflicts of interest and reporting political officials' income and assets through press releases and press conferences. A positive trend in the work and performance of ACA in conflicts of interest and asset declarations has been noted in the European Commission report on Montenegro for 2022: throughout 2021 and in the first 9 months of 2022, the number of administrative and misdemeanor proceedings initiated significantly increased compared to previous years.⁶ Despite progress made, obstacles remain. The obligation of public officials and members of their joint household to submit asset and income declarations only applies to the country of origin of said assets. The Law on Prevention of Corruption fails to obligate public officials to grant the ACA permission to review their bank accounts, leaving the agency without a means to verify the information provided in annual reports.

Art. 9.2 – Management of Public Finances: The Public Finance Management Reform Program (PFMRP) 2022 – 2026 was adopted in March 2023. The PFM RP is expected to significantly improve budgetary system functioning, managerial accountability, budget execution, and internal and external auditing, aligning with EU legislation and ensuring fiscal sustainability. The adoption of the PFM RP is necessary to secure further support from the Instrument for Pre-Accession Assistance (IPA) and

⁶ Montenegro Report 2022, Directorate-General for Neighbourhood and Enlargement Negotiations, European Commission, 12 October 2022, available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed 16.07.2023.

is a prerequisite for Sector Budget Support through the IPA. The PFM RP outlines priority objectives, progress indicators, targets for 2024 and 2026, sequenced activities, and estimates additional resource needs for planned activities. Public financial management is included as a key pillar in the Strategy and is affirmed by the Economic Reform Program (ERP) 2022-2024.⁷

Art. 10 and 13.1 – Access to information and the participation of society: Although recognized and guaranteed by the Constitution and an advanced legislative framework, the concept of free access to information is not implemented in practice. Montenegrin government and administrative bodies continuously refuse to fully implement it, and continue to try to narrow the scope of free access, while civil society organizations advocate for improvement in this area. In 2019, the Government attempted to introduce a so-called “abuse of the right to access information” and give institutions the right to, without any criteria, refuse the publication of information of public importance, which was prevented through a joint initiative by 44 CSOs.⁸ Following a political crisis and institutional instability, the new Law on Free Access to information is still pending, waiting for a more progressive government and parliamentary majority.

Art. 11 – Judiciary and prosecution services: Despite high normative guarantees of judicial independence required by the Constitution in 2013 and further provided by judicial legislation and the respective Code of Ethics of judges and prosecutors, enforcement remains lenient. In practice, the judiciary is widely perceived as lacking independence and is susceptible to political influence. Both judges and prosecutors are required to declare their assets, however, the verification of these declarations rarely leads to established disciplinary measures for judges and prosecutors. The accountability of members of the judiciary for violating the Code of Ethics remains very limited; the system for effective detection and follow-up of all breaches of judicial ethics and discipline needs to be significantly improved.

Art 12. – Private Sector Transparency: The existing Montenegrin legal framework has created a relatively favorable business environment. Companies have established internal audit mechanisms and are also required to have external/independent audit reports. There are modalities for registering beneficial ownership. Yet, country-wide threats to business integrity include the high level of perception of widespread petty corruption. There is a strong lack of transparency, including around the collection of information on who owns and controls private sector entities through public beneficial ownership registries.

Art. 14 – Measures to prevent money-laundering: Since 2004, Montenegro’s legislative and strategic frameworks have introduced measures to prevent money-laundering which were not fully compliant with international standards. In 2022, Montenegro made efforts to improve its anti-money laundering (AML) framework to address multiple money-laundering risks identified in the country’s risk assessment

⁷ Public Finance Management Reform Program of Montenegro for 2022-2026, available at: <https://www.gov.me/en/article/public-finance-management-reform-program-2022-2026>, accessed on 16.07.2023.

⁸ Open letter of 44 NGOs on the occasion of the International Date of Free Access to Information, (27 September 2019), available at: <https://institut-alternativa.org/otvoreno-pismo-44-nevladine-organizacije-uoci-medjunarodnog-dana-spi/>, accessed on 02.02.2023.

documents. The AML legislative framework is yet to provide for the non-conviction-based confiscation of assets in a civil procedure, through new legislation which is still pending. Efforts are underway to revise asset recovery legislation and allow for effective confiscation and seizure of proceeds of crime, including for the non-conviction-based confiscation of assets. Various government bodies are working on this legislative project; however, significant challenges remain, including how to divide powers among the relevant institutions and ensuring the effective management and disposal of confiscated assets. In practice, only limited freezing and confiscation of the proceeds of crime is conducted.

Art. 52 and 58 – Anti-money laundering: Institutional and organizational changes reflected in the implementation of an anti-money laundering system with an insufficient track record in the prosecution of money-laundering criminal offences. Montenegro needs to put more efforts in the implementation and strengthen the cooperation between authorities responsible for tackling this issue. The capacity of the institutions to tackle money laundering needs to be significantly improved.

Art. 53 and 56 – Measures for direct recovery of property: The Montenegrin legislative and institutional framework provides measures for the direct recovery of property. On the other hand, the Montenegrin Mutual Legal Assistance Law does not have any provisions regarding the proactive sharing of information.

Art. 54 – Confiscation tools: The Criminal Code provides all necessary tools for the confiscation of instrumentalities and proceeds of crime as well as assets where predicate offences are committed abroad. The Asset Recovery Law regulates extended confiscation and to some extent non-conviction based (NCB) confiscation of assets. Still, the freezing and confiscation of criminal proceeds, instrumentalities, and property of equivalent value remains limited due to the lack of money laundering and asset recovery proceedings.

Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation: The Montenegrin legislation, at the general level, defines broad international cooperation instruments for the purpose of confiscation. The Montenegrin MLA law does not directly stipulate provisions regarding international cooperation intended at confiscation the proceeds of crime and its instrumentalities, including asset sharing. The Montenegrin legal framework also includes the Law on Mutual Legal Assistance (MLA) in criminal matters, which stipulates the requirements and procedures for Montenegrin authorities to process legal assistance requests in criminal matters from other countries, including those related to recovery of assets. However, Montenegro has yet to repatriate confiscated assets to a foreign jurisdiction.

Art. 57 – The return and disposal of confiscated property: The Montenegrin legal framework recognizes and defines the return and disposal of confiscated property on a substantive level. Some improvements need to be made in regard to the return and disposal of confiscated property with clearly defined grounds and procedures in place, on an international level.

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
Anti-Corruption Agency (ACA)	moderate	The capacities and resources of the ACA have increased in recent years, as well as the number of cases processed by the ACA. However, its independence and capacity to uphold its prerogatives without any political or other illicit pressure remain questionable. Concerns that the ACA is used as a political tool against or in favor of certain political elites persist.
State Commission for Public Procurement	poor	Significant steps are needed to increase budget transparency and publish procurement reports and contracts.
Financial Intelligence Unit (FIU)	moderate	The FIU is equipped with adequate financial resources and sufficient operational autonomy and decision-making competencies. The FIU's capacity to produce financial intelligence for competent authorities has increased in previous years; however, the number of suspicious transaction reports leading to money-laundering cases remains very limited.
Judicial Council, Prosecutorial Council, Supreme Court, Supreme State Prosecutor's Office, Constitutional Court	moderate	Judicial reform in the country is stagnating. According to the European Commission's report on Montenegro, no progress in judicial reforms has been made in 2021. ⁹
Asset Recovery Bodies (State Prosecution Service, the Police)	poor	All bodies responsible for asset recovery, i.e., the prosecution services, the police, other law enforcement agencies (LEA), and the courts, failed to produce sufficient track records of asset recovery so far. The number of finalized proceedings for extended confiscation indicates an insufficient application of asset recovery in the practice of judicial authorities in Montenegro.

⁹ European Commission, Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 20.12.2022.

2.4 Recommendations for Priority Actions

1. Further strengthen the independence and accountability of the Anti-Corruption Agency (ACA), including through consolidated track records of the ACA's investigations, better monitoring mechanisms by the ACA and a credible criminal justice response, in particular when it comes to high-level corruption cases;
2. Facilitate inclusive anti-corruption efforts, taking on board input from civil society, inter alia, to strengthen public trust into the work of anti-corruption bodies;
3. Improve public reporting on anti-corruption efforts and results, including through nation-wide consultations on anti-corruption policies and practices and greater transparency on anti-corruption measures and decisions;
4. Strengthen mechanisms for addressing the influence of politics in public hiring, including through implementation of Public Administration Reform (PAR) Strategy measures and improving control of ACA for political party campaign employment;
5. Improve the transparency and effective oversight of political financing;
6. Re-organize and enhance the asset declaration regime and ensure effective implementation of integrity plans per institution, to address long-standing integrity gaps and allow for effective detection and follow-up of all cases of breaches of professional conduct;
7. Improve company ownership transparency: undertake efforts to populate the recently established Beneficial Ownership Register with comprehensive and structured data; improve reporting by private entities on their shareholders and beneficial owners;
8. Implement judicial independence guarantees in practice and ensure that any violations of judicial ethics and discipline in judiciary are reported, investigated, effectively addressed and sanctioned;
9. Provide support to judicial self-regulatory bodies (such as the Judicial Council, Prosecutorial Council) in assuming their roles and prerogatives and enable them to fully function according to their composition and mandate, including through the completion of pending processes of appointment of lay members of the Judicial Council;
10. Strengthen the implementation of anti-money laundering legislation in practice, including through further support for the FIU's operational independence and resources; enhance national financial intelligence capacities and skills; further strengthen coordination among AML authorities; and advance the system of AML oversight, including over non-profit organizations, lottery, real estate companies and other private sector entities;
11. Review the legal and operational approach to financial investigations, asset recovery, the fight against money laundering and ensure stronger mutual understanding between courts and the prosecution on key legal concepts such as money laundering and the quality of evidence;
12. Strengthen the track record of court decisions on money laundering, the use of financial investigations and the capacity to confiscate the proceeds of crime;

13. Foster government interaction with CSOs in the UNCAC review by organizing an open and inclusive process to ensure that the self-assessment reflects input from various stakeholders.

III. Assessment of Review Process for Montenegro

With respect to transparency of the government's UNCAC review process, information on the UNCAC review process has been publicly available. However, according to available information, due to political and institutional crises in the country, formal consultations with stakeholders, including with civil society actors, academia and trade unions were limited in their scope and effectiveness.

3.1 Report on the Review Process

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	yes	Information on the second cycle of UNCAC implementation review was published on ACA's website. ¹⁰ At the time of writing this report, the country focal point was Ms. Marina Mićunović, Head of the International Department Cooperation at the ACA.
Was the review schedule published somewhere/publicly known?	yes	The review schedule is available on the ACA's website. ¹¹
Was civil society consulted in the preparation of the self-assessment checklist?	yes	According to information provided by the UNCAC focal point, six civil society organizations were invited to partake in the review process, and three were present. Consultations were held with the following actors: <input checked="" type="checkbox"/> Anti-corruption and access to information CSOs <input checked="" type="checkbox"/> CSOs working on other issues
Was the self-assessment checklist published online or provided to civil society?	no	The self-assessment checklist is not publicly available (online or in another format), nor is other information about it. According to information provided by UNCAC focal point, the self-assessment checklist will be published with the report once it has been prepared.
Did the government agree to a country visit?	yes	Montenegro held the country visit from 29 to 31 March 2022. ¹²
Was a country visit undertaken?	yes	Please see above.
Was civil society invited to provide	yes	According to available information, civil society was included in the review process, however,

¹⁰ Webpage of ACA, <https://www.antikorupcija.me/en/international-cooperation/unac/>, accessed on 22.12.2022.

¹¹ Ibid.

¹² Webpage of ACA, <https://www.antikorupcija.me/me/novosti/2204011248-zavrse-na-ekspertska-misija-koja-ocjenjuje-primienu-konvencije-un-protiv-korupcije>, accessed on 15.01.2023.

input to the official reviewers?		<p>information on the manner of consultations is not fully available on the ACA's website. On the other hand, other governmental websites, including the central Government's portal, have not been accessible in recent months, due to severe hacker attacks targeting governmental websites and databases.</p> <p>The following actors participated in this process: <input checked="" type="checkbox"/> Anti-corruption and access to information CSOs</p> <p>Their input consisted of a joint workshop and meetings arranged between representatives from CSOs and the official reviewers, focusing on the review of Chapter II of the UNCAC.</p>
Was the private sector invited to provide input to the official reviewers?	yes	According to information provided by the UNCAC focal point, representatives of the Chamber of Commerce were invited to an official meeting with the reviewers, but they canceled.
Has the government committed to publishing the full country report?	yes	The Government committed to publishing the full country report in English and a summary in Montenegrin in August 2022. ¹³ Montenegro also signed UNCAC Coalition's Transparency Pledge, in August 2022, voluntarily committing to transparency and civil society inclusion in the second cycle of the UNCAC implementation review. ¹⁴

3.2 Access to Information

For the purpose of developing this report, the team of authors obtained most information from secondary sources posted online, e.g., reports from media, international organizations and CSOs. Most information from official sources was found on the ACA's website,¹⁵ including the Anti-Corruption Law and bylaws, as well as different reporting guidelines, templates and internal acts adopted by the ACA.

In order to validate the information obtained through online sources, the team sent the requests for interviews to several institutions and civil society actors. Out of ten requests sent, seven actors responded positively. In order to obtain relevant statistics

¹³ Ministry of Justice of Montenegro (August 2022), Information on the need for Montenegro to join the Transparency Pledge UNCAC Coalition, accessed on: 12.10.2022. and <https://wapi.gov.me/download-preview/65f99399-fcfd-4112-8dcb-9f3a3b2f5ce7?version=1.0>, accessed on 12.10.2022.

¹⁴ UNCAC Coalition, Montenegro signs the UNCAC review Transparency Pledge, August 2022, <https://uncaccoalition.org/montenegro-signs-the-uncac-review-transparency-pledge/> accessed on 15.06.2023.

¹⁵ Webpage of ACA, <https://www.antikorupcija.me/me/>, accessed on 25.12.2022.

on anti-corruption, money laundering and asset recovery cases, requests for access to information were sent to the main institutional actors, including the Ministry of Finance, Ministry of Interior, and the Police Directorate (see annex of this report for list of freedom of information requests sent).

The main challenges in terms of access to information concerned details about specific corruption and asset recovery cases, prosecuted currently or in recent months. Additional difficulties in obtaining relevant information concerning UNCAC implementation at the national level were caused by cyber-attacks on the Montenegrin public digital infrastructure that took place on 22 August 2022.¹⁶ Due to these attacks, it was not possible to retrieve all relevant official reports by other institutions and governmental agencies, since most of their websites were dysfunctional and inaccessible for months. Most of the Government's websites were restored in November 2022, however, occasional disruption in the functioning of websites and email accounts in courts and prosecution offices persist. A specific problem is that those containing databases, such as the Central Register of Business Entities, Database for Public Procurements, or the Official Gazette of Montenegro, are still not fully accessible.

¹⁶ Samir Kajosevic and Ivana Jeremic "Montenegro Sent Back to Analog by Unprecedented Cyber Attacks", <https://balkaninsight.com/2022/09/01/montenegro-sent-back-to-analog-by-unprecedented-cyber-attacks/>, accessed on 14.11.2022.

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyzes the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Montenegro through the application of laws, regulations and practices and highlights both good practices and areas for improvement.

4.1 Chapter II

4.1.1 Art. 5 – Preventive Anti-Corruption Policies and Practices

Nominally, there is a high-level of political commitment to strengthen the effectiveness of anti-corruption efforts in the country by institutions and the political elite. The anti-corruption framework of Montenegro is comprehensive enough and built upon the main anti-corruption policy, i.e., the Anti-Corruption Law¹⁷ which came into force in December 27, 2014 and enacted on January 1, 2016. The Law stipulates measures to prevent conflicts of public and private interest, regulates restrictions on the performance of public functions, submission of reports on income and assets of public officials, protection of whistleblowers, as well as other issues of importance for the prevention of corruption. Representatives of civil society also participated in the work of the Working group for drafting the Law. However, according to the European Commission's Montenegro Report for 2022, further improvements are needed in terms of asset seizure and confiscation needs to be further improved in line with the EU acquis, to allow for the effective outcomes of financial investigations and provide for both direct and indirect asset seizure.¹⁸

In previous years, Montenegro also had a National Strategy for the Fight against Corruption and Organized Crime.¹⁹ The first National Anti-Corruption Strategy, with an Action Plan, was adopted in 2010, having outlined the strategic goals, key activities and performance indicators in the area of anti-corruption for the period 2010-2014.²⁰ Since the Strategy expired, a new strategic framework is needed to foster an integrated approach to the prevention and repression of corruption. The process of drafting the new Anti-Corruption Strategy is ongoing. On June 29 2022, the Government launched a public call for stakeholder consultations in the process of drafting the National Anti-Corruption Strategy. The process was slowed down due to the institutional crisis, caused by a vote of no confidence against the mandate of the Government in August 2022.²¹

¹⁷ Law on Prevention of Corruption "Official Gazette of Montenegro" No. 53/2014, 42/2017

¹⁸ European Commission, Montenegro 2022 Report, COM(2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 12.02.2023.

¹⁹ Government of Montenegro, Strategy for combating corruption and organized crime for the period 2010-2014, available at: <https://www.gov.me/dokumenta/99dcfb0a-b695-4756-9407-58e8922f85fa>, accessed on 12.02.2023.

²⁰ Government of Montenegro, Action Plan for Enforcement Strategies for Combating Corruption and Organized Crime for the period 2013-2014, available at: <https://wapi.gov.me/download-preview/547938fd-4e3c-4774-b879-9c49e2c368b2?version=1.0>, accessed on 12.02.2023.

²¹ The 43rd Government of Montenegro was voted no confidence on 19 August 2022, with the votes of 50 MPs, upon initiative of opposition parties, led by Democratic Party of Socialists,

Pursuant to the Government's decision on the establishment of the National Council against Corruption (NCAC), NCAC was established in December 2020 to address systematic problems related with serious and high-level corruption.²² However, in January 2022, the Prime Minister dismissed the Deputy Prime Minister from the position of President of the Council. Consequently, three Council members resigned and have not been replaced at that time. Consequently, the Council did not hold any sessions in 2022. The Decision on the new composition of the Council²³ was adopted on 3 August 2022.²⁴ The constitutive session of the new Council was held on 23 January 2023.²⁵ A clear role and missions are to be assigned to the Council so as to ensure the consistency of the overall strategy for preventing and fighting corruption. Namely, there are multiple overlaps between the Council's powers and other institutions, most notably the ACA and the prosecution service; therefore, its institutional role, relations with other bodies and its powers, as well as safeguards in this respect, still need to be defined in a proper manner.

The Anti-Corruption Law covers a range of preventive anti-corruption policies and practices, including requirements for public officials to declare their assets, liabilities, and public engagement on the negative impacts of corruption. However, the existing legal framework needs stronger institutional capacities for the prevention of corruption and in order to address issues identified with regard to its enforcement, in line with international standards, the EU acquis and European best practices. The implementation of the legislation also implies comprehensive risk assessments of areas or sectors particularly susceptible to corruption, some of which have been implemented so far. Not all sectors vulnerable to abuse for money laundering have been subject to regular risk assessments, including the sectors of non-profits, real estate and lottery/games of chance. Risk assessments in these sectors have been recently initiated and are ongoing. In cooperation with the United Nations Development Program (UNDP) in Montenegro, the Methodology for the analysis of regulations in order to determine risk areas from the origin of corruption²⁶ was improved in November 2022 and the list of risks updated.²⁷

In recent years, a range of capacity-building programs were delivered by international organizations (UN, OSCE, EU, Council of Europe) to representatives of the ACA, police officers, judges and state prosecutors on international and European standards for investigating and persecuting corruption offences. The ACA also regularly conducts anti-corruption training, targeting newly appointed public officials. However, according

<https://balkans.aljazeera.net/news/balkan/2022/8/19/predstavljen-prijedlog-rekonstrukcije-vlade-crne-gore>, accessed on 10.01.2023.

²² Decision the National Council against Corruption, Official Gazette of Montenegro", No. 125/20, 11/21

²³ The Council has 22 members, including 4 CSO members. The Prime minister is the president of the Council.

²⁴ Decision on the new composition of the Council „Official Gazette of Montenegro “, No. 086/22

²⁵ Government of Montenegro, Announcement on the constitutive session of the NCAC, 23 January 2023, available at <https://www.gov.me/clanak/odrzana-konstitutivna-sjednica-nacionalnog-savjeta-za-borbu-protiv-korupcije-govorilo-se-o-nelegalnoj-eksploataciji-sljunka>, accessed on 20.02.23.

²⁶ Regional Anticorruption Initiative (November 2022), Methodology for the analysis of regulations in order to determine risk areas from the origin of corruption, Podgorica, https://www.antikorupcija.me/media/documents/Inovirana_Metodologija_za_procjenu_rizika_od_korupcije_u_propisima_CG_oifS50k.pdf, accessed on 10.01.23.

²⁷ Summary of the results of ACA in 2022, page 13, <https://www.antikorupcija.me/me/2110070719-izvjestaji-radu-ask/2110070811-izvjestaji-radu-ask/>, accessed on 10.01.2023.

to MONEYVAL, in view of the country's forthcoming fifth round mutual evaluation, the authorities should be encouraged to enhance preventive measures to combat ML/FT, and intensify planned actions in terms of training and supervision.²⁸

Montenegro is a member of MONEYVAL and GRECO and regularly participates in evaluation and follow-up procedures of these Council of Europe bodies, to address key recommendations for the prevention of Corruption, Money Laundering and Terrorist Financing. These evaluation processes provided for a comprehensive assessment of the existing legal and institutional framework to prevent and sanction acts of corruption, including in view of FATF recommendations.

The fifth evaluation round of GRECO was launched on 20 March 2017, focusing on the prevention of corruption and promotion of integrity in central governments (top executive functions) and law enforcement agencies. The Evaluation Report was issued on 25 October 2022,²⁹ outlining 22 recommendations for Montenegrin authorities, including a need for a coordinated strategy for preventing corruption amongst persons entrusted with top executive functions to be adopted on the basis of risk assessments and made public.

Montenegro also successfully completed MONEYVAL's 4th round regular follow-up process, following the adoption of the Fourth round MER in April 2015. In its Second Revised Follow-up Report issued in May 2020, MONEYVAL acknowledged Montenegro's progress vis-a-vis criminalization of money laundering, confiscation measures, customer due diligence, suspicious transaction reporting and international cooperation and decided to remove Montenegro from the follow-up procedure.³⁰

The membership of the Montenegrin FIU in the EGMONT Group was renewed in 2020, after it was temporarily suspended in 2019, following the changes in the status of FIU from independent agency to Police Directorate's Department.³¹ The process of admission of the Police Department for Combating Money Laundering and Terrorism Financing, i.e., a Montenegrin FIU, to the Egmont Group was completed on 3 November 2020.³²

Good practices

- Montenegro established comprehensive anti-corruption legislation that promotes the principles of the rule of law, integrity, transparency and accountability, also encompassing provisions for cooperation with relevant international and regional organizations in promoting and developing

²⁸ MONEYVAL, Second Revised Follow-up Report (May 2020), page 19, <https://www.coe.int/en/web/moneyval/-/montenegro-exits-moneyval-s-fourth-round-regular-follow-up-procedure>, accessed on 25.12.2022.

²⁹ GrecoEval5Rep(2022), FIFTH EVALUATION ROUND, Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Evaluation Report, 2, Strasbourg, 13-17 June 2022, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a8a106>, accessed on 25.12.2022.

³⁰ Council of Europe, Montenegro exits MONEYVAL's Fourth Round regular follow-up procedure, available at: <https://www.coe.int/en/web/moneyval/-/montenegro-exits-moneyval-s-fourth-round-regular-follow-up-procedure>, accessed on 10.01.2023.

³¹ EGMONT group is a specialized international organization of the World Financial Intelligence Units (FIUs), <https://egmontgroup.org/members-by-region/>, accessed on 11.01.2023.

³² EGMONT group, Members by Region, available at: <https://egmontgroup.org/members-by-region/>

preventative anticorruption policies and practices, including through the framework of the UNCAC.

- Montenegro is preparing a new law to amend the Law on the confiscation of material benefit derived from criminal activities to improve the criminal justice response to the fight against corruption and organized crime.

Deficiencies

- Concerns persist regarding the scope and effects of the practical implementation of key anticorruption policies and practices in Montenegro.
- The strategic framework for the fight against corruption is yet to be renewed, including through the adoption of a new National Anti-Corruption Strategy. The sectors most vulnerable to corruption require targeted risk assessments and dedicated action.
- The NCAC which is monitoring the implementation of the Strategy was re-established in 2023, however, it needs to function effectively and continue working to improve the overall performance of the anti-corruption sector in Montenegro, as recommended by GRECO.³³

4.1.2 Art. 6 – Preventive Anti-Corruption Body or Bodies

The Anti-Corruption Agency (ACA), established by the Anti-Corruption Law in 2016 as an autonomous and independent agency established by the Parliament of Montenegro, represents a key institution for preventing corruption in Montenegro.³⁴ In implementing its activities, the ACA co-operates with several public bodies, including the prosecution services and the State Audit Institution. The ACA has a Director and an Anti-Corruption Council, consisting of five members elected by the Parliament who are in charge of the ACA's decision-making and for the appointment of its Director.

The ACA's current Director was appointed in July 2019, for a four-year mandate. Concretely, the ACA is responsible for preventing conflicts of public and private interest, imposing restrictions on performing public functions, verifying reports on the income and property of public officials and providing protection to whistleblowers. Citizens, CSO members and other stakeholders may address the ACA with a report on corruption allegations. Rules and standard operating procedures of the ACA are regulated by secondary legislation. The annual reports of ACA are presented before the Parliament and available on the ACA's website. According to Article 97 of the Anti-Corruption Law, the ACA's Council adopts the Code of Ethics which is applicable to the ACA staff members and which provides internal mechanisms to determine ethical responsibility of the ACA's employees. The Code of Ethics was adopted in 2016.³⁵

³³ FIFTH EVALUATION ROUND Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Evaluation Report, GrecoEval5Rep(2022)2, Strasbourg, 13-17 June 2022, page 49, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a8a106>, accessed on 16.12.2022.

³⁴ The Anti-Corruption Agency (ACA) website: <https://antikorupcija.me/en/about-us/about-agency/>.

³⁵ Code of Ethics of Employees in the Anti-Corruption Agency, available at: https://www.antikorupcija.me/media/documents/Eticki_kodeks_zaposlenih_u_ASK-1.pdf, accessed on 16.12.2022.

In September 2022, the ACA adopted its Integrity Plan for the period 2022 – 2024,³⁶ which defines a set of measures for addressing integrity risks in ACA, based on an institutional risk assessment.

According to the European Commission's Report on Montenegro for 2022,³⁷ the track record on prevention of corruption further improved,³⁸ in particular due to the positive trend in the ACA's work on in-depth verification procedures of asset declarations and the number of misdemeanor proceedings initiated by the ACA which doubled in 2021 (1164), compared to 2020 (510).³⁹ Despite this positive trend in the work of ACA, more needs to be done to ensure the ACA's integrity, impartiality and accountability, since it remains questionable both in terms of legal and practical aspects, and to ensure an effective and consistent criminal justice response to the outcomes of the ACA's work.

The ACA continued to demonstrate consistent proactivity in their work, including by addressing the caseload from previous years, and increasing their outreach activities towards the public, media, private sector and civil society. In particular, in view of local electoral campaigns implemented in 2021/2022 in Niksic, Herceg Novi and Podgorica, ACA held regular consultations with CSOs which monitored the implementation of the electoral legislation in those municipalities.⁴⁰ The ACA also continued with its practice of hosting an open day for NGOs and also organized several anti-corruption campaigns in 12 municipalities.⁴¹ Consultations with the civil society on the topic of improving the form of reporting on ACA's work were also initiated in 2022.

While some progress has been made in the prevention of corruption, results were limited with respect to the repression of corruption, due to the lack of a credible and effective criminal justice response. Consequently, the number of investigations, prosecutions and final convictions in the fight against corruption, including high-level corruption, remained limited.⁴²

³⁶ ACA Integrity plan 2022-2024, available at <https://www.antikorupcija.me/me/integritet/zakonska-regulativa/>, accessed on 10.6.2023.

³⁷ Montenegro 2022 Report, COM(2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 02.02.2023.

³⁸ "In 2021, the ACA instituted 1164 proceedings before misdemeanor courts, which is more than twice to the figure for 2020 (510 proceedings). 808 proceedings were completed (including those from previous years) and sanctions were imposed in 88.6% of cases. In 2021, the Agency issued 136 direct misdemeanor orders (2020: 42). The total amount of fines, including direct misdemeanor orders, amounted to EUR 149 242 (2020: EUR 89 659). In 2021, the ACA requested seizure of material gains before the competent courts in one case, and the courts approved confiscation in two cases. In the first semester of 2022, the ACA submitted 812 requests to the competent courts to initiate misdemeanor proceedings for violations of anti-corruption laws." Montenegro 2022 Report, COM (2022) 528 final, page 31, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 02.02.2023.

³⁹ European Commission, Montenegro 2022 Report, COM(2022) 528 final (12 October 2022), page 31, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 05.02.2023.

⁴⁰ Anticorruption Agency, Press release, ACA Continues cooperation with CSOs, <https://antikorupcija.me/me/novosti/2103181348-nastavak-saradnje-nvo-sektorom/>, accessed on 20.09.22.

⁴¹ European Commission, Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 28, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 02.02.2023.

⁴² To illustrate, in 2021 only three indictments for corruption were lodged with the Higher Court of Podgorica, and only seven financial investigations instituted: Supra, page 29.

Overall, Montenegro needs to ensure better inter-institutional coordination and cooperation among all relevant anti-corruption actors and stakeholders.

Good practices

- The ACA and its Council continued to demonstrate proactivity their work, including by addressing the caseload from previous years, and in increasing their outreach activities towards the public, media and civil society. A certain level of improvement in the capacities, overall performance and working methods of the ACA have been noticed as well, compared to previous years.
- The track record on the prevention of corruption continues to improve, as demonstrated by the increase in the number of opinions issued, verification procedures conducted and instituted proceedings before competent courts for violations of anti-corruption laws.
- The ACA initiated and expanded a number of investigations against high-level members and families of the ruling parties and public officials and has established a practice of monitoring the lifestyle of public officials, using publicly available data and media reports.

Deficiencies

- The ACA still needs to demonstrate that there is no selective approach to their investigations on high-level officials to improve the legitimacy and reasoning of its decisions.
- The ACA's independence remains questionable. Public trust into its work needs to be improved.
- The sectors most vulnerable to corruption require updated targeted risk assessments and follow-up actions. The detailed risk analysis across different sectors and entities made in 2020 is yet to be updated.
- Asset and income declarations of all persons with top executive functions need to be systematically subject to the various levels of substantive control by the ACA.
- Asset and income declarations of all persons with top executive functions need to be systematically subject to the various levels of the substantive control by the ACA, including through strengthened quality control mechanisms of the ACA, as recommended by GRECO.⁴³

4.1.3 Art. 7.1 – Public Sector Employment

The Law on Civil Servants and State Employees,⁴⁴ adopted by the National Assembly of Montenegro on 10 January 2018 and amended in 2019 and 2021, includes provisions regarding the employment of civil servants and state employees in Montenegro, or more precisely, persons who entered employment in a state authority to perform the tasks to exercise competency of that authority prescribed by the Constitution, law and other regulations.

⁴³ FIFTH EVALUATION ROUND Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Evaluation Report, GrecoEval5Rep(2022)2, Strasbourg, 13-17 June 2022, page 49, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a8a106>, accessed on 16.12.2022.

⁴⁴ Law on Civil Servants and State Employees, Official Gazette No. 002/2018, 034/2019, 008/2021.

The state authority encompasses ministries and other administrative bodies reporting to them, the staff working in the office of the President, the Parliament, the Government, the courts including the Constitutional Court and the State Prosecutor's Office. It also incorporates employees of other legal entities such as the Pension and Disability Insurance Fund of Montenegro, Health Insurance Fund, Employment Office, Labor Fund, and Agency for Peaceful Settlement of Labor Disputes, but excludes employees of a number of regulatory agencies and independent bodies. The agencies and other organizations exercising public powers have the status of public law legal entities, and their employees do not have the status of civil servants. Employees of the local administration are also civil servants, as provided by the Law on Local Self-Government.⁴⁵

The Law on Civil Servants and State Employees defines the categories, titles, requirements, rights, and obligations of the employees; integrity, legal and labor protection of persons who report suspicions of corruption in state bodies while the salary, compensation, and other earnings are prescribed by the separate Law on Wages of Public Sector Employees in Montenegro.⁴⁶

The latest amendments to the Law on Civil Servants and State Employees, adopted in January 2021, lowered qualification requirements for the senior management staff and prescribed the possibility to dismiss the heads of the authority for any irregularity in their annual reports and appointment of acting heads in public administration. These changes are affecting merit-based recruitment and the competence and independence of the public service. As a result, during the first year of implementation, 65% of senior management staff at the central level were dismissed or resigned.⁴⁷

Salaries for public sector workers experienced a significant increase in 2022. The minimum wage for civil servants and employees was raised from 250 to 450 EUR, and the average salary increased from 530 to 700 EUR.⁴⁸

The Human Resource Management Authority, under the supervision of the Ministry of Public Administration, participates in the formulation of civil service policy and legislation, and it is responsible for developing personnel plans, the announcement of vacancies, professional training of civil servants, keeping the Central Personnel Records (CPR) and the Internal Labor Market (ILM) record.

The Law on Civil Servants and State Employees regulates recruitment based on the principle of equal access to jobs and establishes the public announcement of vacancies, equal terms for all candidates, and the assessment of candidates based on merit. Chapter 3 of the Law precisely outlines the requirements for recruiting civil servants and employees on the basis of merit. Notably, Article 46 states that

⁴⁵ The Law on Local Self-government, Official Gazette No. 2/2018, 34/2019, 38/2020.

⁴⁶ Law on Wages of Public Sector Employees in Montenegro, Official Gazette No. 016/16, 083/16, 021/17, 042/17, 012/18, 039/18, 130/21, 146/21.

⁴⁷ European Commission (2021), Report 2021 Montenegro, Strasbourg, 19.10.2021., https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en, p.16, accessed on 20.11.2022.

⁴⁸ Parliament of Montenegro, speech of the President, <https://www.skupstina.me/en/articles/mr-bebic-i-am-proud-that-citizens-will-enjoy-benefits-of-december-sitting>, accessed on 01.12.2022.

candidates that meet the requirements of an internal or public announcement shall be subject to the mandatory procedure for testing of knowledge, capabilities, competencies, and skills, depending on the job position category. Testing is done in writing and by interview, by a commission formed by the authority in charge of human resources management, and it shall consist of a representative of the authority in charge of human resources management, representative of the employing state authority which, as a rule, is the head of the organizational unit filling the job position and experts for testing specific skills required by the announcement.

The rights of the candidate can be protected by filing a complaint with the Complaints Commission regarding the decision to appoint another candidate to a job in a state institution. The deadline for filing the complaint is 8 days from the receipt of the decision, while the commission is obliged to make a decision within 30 days. During this period, the selected candidate is not allowed to establish an employment relationship. If the candidate believes that the commission has unjustly rejected the complaint, they can file a lawsuit with the Administrative Court of Montenegro.

Even though the Montenegrin legal framework is set in accordance with the Sigma recommendations⁴⁹, recruitment continues to attract a low number of candidates. The latest Sigma/OECD⁵⁰ report on Montenegro for 2021 stipulates that the lack of well-developed job descriptions and competency-based selection tools, difficulties in having external experts on selection panels, together with the possibility of appointing any of the three best-ranked candidates challenge the professionalism of the procedures are key limitations. The reason for this is that the head of the state institution makes the final decision and is not obligated to choose the top-ranked candidate, which creates room for corrupt behavior or employment based on political affiliation. As the European Commission noted in its latest report on Montenegro, it is crucial to amend the Law on Civil servants and State Employees and the Law on Local Self-Government to ensure recruitment according to the principles of merit, competence, and transparency.

Data on the total number of civil servants and employees working in state administration bodies considerably differs between Central Personnel Records and the data of the Ministry of Finance (MF), responsible for compensation policy. Following the official data of the MF, the total number of employees in state authorities is 50,502, whereas 43,727 are at the central level and 6,775 at the local level.⁵¹ These numbers are significantly lower in the Central Personnel Records and their inaccuracy creates a key obstacle when it comes to human resource planning in the state authorities.

However, the previously adopted Public Administration Optimization Plan 2018-2020 envisaged a reduction of the number of employees at the central level by 5%, and at

⁴⁹ SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union. Its key objective is to strengthen the foundations for improved public governance.

⁵⁰ SIGMA/OECD (November 2021), Monitoring report, The Principles of Public Administration, Montenegro, page 21, <https://www.sigmaweb.org/bycountry/montenegro/>, accessed on 10.01.2023.

⁵¹ Portal CDM (August 1st, 2022), Dukaj: More than 44,000 employees in state administration, <https://www.cdm.me/english/dukaj-for-cdm-more-than-44000-employees-in-state-administration/>, accessed on 12.01.2023.

the local level by 10% until the end of 2020.⁵² This goal was not achieved; on the contrary, there was an increase in the number of employees both at the central and local levels. The product of the growth in the number of employees is increased costs for human resources in public administration, which does not necessarily imply improvements in the delivery of public services to citizens. For comparison, the data on expenditure for gross salaries and contributions at the expense of the employer are listed for the years 2021-2023, in Table 4.

Table 4: Expenditures for gross salaries and contributions at the expense of the employer

Fiscal year	Total expenses in Euros (€)
2021	522,9 million ⁵³
2022	545,9 million ⁵⁴
2023	627,4 million ⁵⁵

As for the integrity and the anti-corruption system, the legal framework is regulated by the Law on Prevention of Corruption,⁵⁶ which refers only to public officials and the Law on Civil Servants and State Employees and the Code of Ethics, covering all civil servants and state employees. In accordance with Article 6 of the Law on Civil Servants and State Employees, a civil servant and/or a state employee is bound by the Code of Ethics for Civil Servants and State Employees adopted in 2018 when performing his/her duties.⁵⁷

As SIGMA pointed out in its latest report on Montenegro, the most significant challenge faced by the country is the lack of a comprehensive anti-corruption policy for the public sector. Despite the adoption of integrity plans and the appointment of integrity managers in all institutions, who are tasked with monitoring their implementation, there are concerns about their effectiveness. In 2021, the Anti-Corruption Agency issued 186 opinions on cases of conflict of interest and incompatibility of functions. During this time, 26 public officials resigned, and two were dismissed. In the first half of 2022, the Agency issued 119 opinions on cases of incompatibility of functions; eight public officials resigned, and two were dismissed.⁵⁸

In December 2021, the government adopted a new public administration reform (PAR) strategy for 2022-2026 and an action plan for 2022-2024 by following the document 'Principles of Public Administration' developed by the European Commission and

⁵² The Public Administration Optimization Plan 2018-2020 is a strategic document adopted by the Government of Montenegro in July 2018 with a view to strengthening public administration effectiveness and achieving its full functionality, <https://www.gov.me/dokumenta/d21db991-ccfd-42ac-a180-ae62c950c32b>, accessed on 12.01.2023.

⁵³ Law on the Budget of Montenegro for 2021, Official Gazette No. br. 070/21 od 25.06.2021.

⁵⁴ Law on the Budget of Montenegro for 2022, Official Gazette No. br. 144/21 od 31.12.2021, 055/22 od 26.05.2022, 109/22 od 03.10.2022 <https://www.gov.me/dokumenta/2f8db36e-479b-42aa-88c9-ec1ee86245b2> and <https://www.gov.me/dokumenta/f575125f-358c-4d91-9fdd-df8726df6b31>.

⁵⁵ Proposal of the Law on the Budget of Montenegro for 2023, <https://www.gov.me/dokumenta/58409c3f-8b07-4b32-b354-db073b2e0e3f>.

⁵⁶ Law on Prevention of Corruption, Official Gazette No. 053/2014, 042/2017.

⁵⁷ Code of Ethics for Civil Servants and State Employees, <https://www.gov.me/dokumenta/1b60309b-7065-449e-b331-f46c37d9c901>.

⁵⁸ European Commission (2021), Report 2021 Montenegro, p.28, accessed on 20.12.2022.

SIGMA.⁵⁹ This document lists the basic requirements that countries should follow during the EU integration process. These are: a strategic framework of public administration reform, creation, and coordination of policies, public service, personnel management, liability, provision of services, and management of public finances. Still, the implementation of both strategic documents is yet to be seen and evaluated.

Good practices

- Salaries for civil servants and employees significantly increased in 2022. The public sector minimum wage was raised from 250 to 450 EUR, and the average salary was raised from 530 to 700 EUR. An increase in wages in the public sector will continue in 2023.
- The new public administration reform (PAR) strategy for 2022-2026 and an action plan for 2022-2024 were prepared and adopted in accordance with the EU and SIGMA principles of public administration. These documents recognize key challenges and propose solutions.

Deficiencies

- Lower requirements introduced by amendments to the Law on Civil Servants and State Employees impede merit-based recruitment, competence, and the independence of civil servants.
- Although procedures for merit-based recruitment formally exist, there is still no reliable system for transparent selection, based solely on professional criteria.
- The Law on Civil Servants and State Employees does not include employees of regulatory agencies and other independent bodies.
- Limited progress in the implementation of the Public Administration Optimization Plan: instead of decreasing the number of public servants and employees, Montenegro increased this and consequently created an additional budgetary burden for public administration, without improvement in the delivery of public services to citizens.
- Inconsistency between the data of the Central Personnel Records and the data of the Ministry of Finance on the total number of civil servants and employees working within state administration bodies.
- A high level of politicization of state authorities is present and recognized by the public.

4.1.4 Art. 7.3 – Political Financing

The financing of political entities in Montenegro is regulated by the Law on Financing of Political Entities and Election Campaigns.⁶⁰

Political entities are financed from public and private sources. Budget funds can be used to finance the work of political entities and the costs of election campaigns.

Budget funds for financing the regular work of political entities in Parliament amount to 0.5% of planned total budget funds. When an adequate percentage of budgets for

⁵⁹ SIGMA/OECD Principles of Public Administration, <https://www.sigmaweb.org/publications/principles-public-administration.htm>.

⁶⁰ The Law on Financing of Political Entities and Election Campaigns, Official Gazette of Montenegro Official Gazette of Montenegro br. 003/20 od 23.01.2020, 038/20 od 25.04.2020.

financing political entities is determined, total budget funds, do not include the funds of the capital budget and the state funds budget. Funds provided for the work of women's organizations among political entities in Parliament amount to 0.05% of the planned total budget funds, excluding the capital budget and state funds budget, for the specific budget year.⁶¹ The amount of funds from private sources that the political entity collects for its regular work in the current calendar year can match by 100% the amount of the funds it receives from the state budget.⁶² Budget funds for financing the costs of election campaigns are provided during the year in which regular elections are held, in the amount of 0.25% of total planned budgets, excluding capital budget and state funds budget, for the specific budget year.⁶³

The monitoring and verifying of the finances of political entities is done by the ACA. While the work and competencies of the ACA are defined by the Law on Prevention of Corruption when it comes to building integrity and the prevention of corruption, the work of the Agency in the field of political financing is regulated by the Law on Financing of Political Entities and Election Campaigns.

The performance of the ACA as a watchdog for political financing has come under public criticism due to its perceived lack of capability for effective oversight.⁶⁴ In the previous period, the efforts of the ACA to improve transparency were noticeable, but this institution has yet to prove that it has the ability to implement in-depth audits and investigations. An increase in administrative transparency refers to improvements in the contents of the ACA's website and its communication with the media. The problem that still exists is that the published documents are technical and tedious in nature, while practical, analytical reports and conclusions on observed abuses are absent. A combined working group for monitoring the election campaign is formed by the ACA at the beginning of each electoral process, with the participation of NGO representatives.

The Law on Financing of Political Entities and Election Campaigns defines the rules for financing political entities, which involves the manner of acquiring funds, prohibitions and restrictions. There are also provisions on the abuse of public resources during election campaigns, surveillance rules and audits on the operations of political entities.

The law imposes restrictions on employment in the public administration during an election campaign, addressing issues such as employee pressure, the misuse of public resources for political purposes, the abuse of social benefits, the abuse of public machinery, and debt forgiveness. It also regulates public spending and the use of official vehicles in election campaigns.

The law recognizes restrictions for financing by individuals and legal persons while contributions from abroad are prohibited. The guidance and financing of third-party campaigns in favor of a party or candidate is not regulated, which allows the rules to be circumvented. This is especially important when it comes to campaigns on social media, where it is difficult to get information on real campaign costs and who actually

⁶¹ Ibid, Art 14.

⁶² Ibid, Art 15.

⁶³ Ibid, Art 20.

⁶⁴ European Commission, Report 2021 Montenegro, Strasbourg, page 4, accessed on 19.10.2021.

covers them. Indications that certain campaigns are financed by businesses, religious communities, non-governmental associations and foreign countries remain out of reach of competent institutions and contribute to the low confidence in elections in Montenegro.

This law is part of the package of laws related to the election process, and its improvement was expected through the work of the Parliamentary Committee on Electoral Reform. However, due to the political crisis, the Committee experienced a collapse, and improvements in the field of financing of political entities were also halted.

The legality of financing election campaigns is one of the key problems with elections in Montenegro. The ruling parties abuse public resources for the purpose of pre-election promotion, which remains unsanctioned by institutions. The regulation of the financing of political entities is not legally accounted for in such a way to have significant effects, so through constituency cycles, campaigns are more expensive than is shown in the self-declarations of political entities, and public resource abuses remain without adequate sanctions.

Financial reports of and on political entities are not precise enough, containing a number of illogical details and inconsistent information. The reports are available on the ACA's website, where there is an easily searchable database.⁶⁵ Data on campaign donations is also publicly available.

The state's ability to verify the financing of political entities was weakened by the abolition of the obligation of the State Audit Institution (SAI) to perform regular annual revisions of the consolidated accounts of all political entities. The new legal situation that the SAI is obliged to execute one audit of the annual account of each parliamentary entity in the four-year period represents a step back in the field of transparency of party financing, as well as in the quality of audits.

The amendments to the Criminal Code in 2020 criminalized illegal political party financing. Anyone who provides funding for an election campaign of a registered political entity in Montenegro may face a fine or imprisonment for up to three years. If the offense is committed by a public official, they may be fined from three months to five years. The law also holds responsible the person from the political entity who accepts the donation from prohibited sources.⁶⁶

Good practices

- The Law on Financing of Political Entities and Election Campaigns defines a wide range of prohibitions and abuses that aim to prevent illegal funding and abuse of public resources for election purposes.
- Relevant databases with data on financial statements of political entities, analytical cards of all financial transactions and travel orders as well as donor data are available on the website of ACA.

⁶⁵ Anti-corruption Agency website: <https://www.antikorupcija.me/en/controlling-political-party-election-campaigns/public-records-cp/>.

⁶⁶ Amendments to Criminal Code of Montenegro, Official Gazette of Montenegro Official Gazette of Montenegro br. 003/20 od 23.01.2020, 026/21 od 08.03.2021.

Deficiencies

- Lack of political consensus for the implementation of electoral legislation reform prevents the improvement of laws and measures for monitoring financial entities.
- The institutions responsible for monitoring do not show the will to oppose the political power centers.
- The quality of the report of political entities is not satisfactory.
- Third-party financing is not recognized by law and remains beyond the control of institutions, although it exists in practice and increases the real costs of the political campaigns.

4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

The Montenegrin Law on the Prevention of Corruption prescribes conflict of interest and asset declarations of public officials as part of broader anti-corruption measures. The Anti-Corruption Agency of Montenegro (ACA), as an independent institution established in January 2016, ensures compliance with the law and performs its role in accordance with the Annual Verification Plan.⁶⁷ In implementing its activities, the Agency co-operates with prosecution services and the State Audit Institution.

Chapter 2, Article 7 of the law defines conflict of interest as a situation where a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function.⁶⁸ A public official, in terms of this law, is defined broadly and includes all elected, authorized, or appointed persons in a state, state administration, judicial, local self-government, independent and regulatory bodies, public institutions, public enterprises, or any legal entity that performs public functions, or activities of public interest or is in state ownership, as well as a person whose election, authorization or appointment by the authority gives consent, regardless of the permanence of the function and compensation.

Furthermore, Article 8 of the law stipulates that if public officials participate in the discussion and decision-making in a matter in which they, or a person related to them, have a private interest, they must inform other participants in the discussion and decision-making by making a statement on the existence of this private interest, prior to his/her participation in the discussion, and no later than before the beginning of decision-making. Political officials cannot participate in the discussion and decision-making until the Anti-Corruption Agency (ACA) issues an opinion on the existence or not of a conflict of interest. Also, when an official suspects that there is a conflict of interest or restriction in the exercise of public office, such a public official is *obliged* to take measures to resolve conflicts of interest, or respect restrictions in accordance with the law, as well as to report to the ACA the suspicion of the conflict of interest or restriction on exercising a public function, which gives an opinion on that.⁶⁹

⁶⁷ Law on prevention of Corruption, Official Gazette of Montenegro, No. 53/2014 and 42/2017, article 4.

⁶⁸ Law on prevention of Corruption, Official Gazette of Montenegro, No. 53/2014 and 42/2017.

⁶⁹ Ibid, Art. 28.

As for the obligation of asset declarations, a public official is obliged to submit to the ACA a report on their income and assets within 30 days of assuming the function, as well as on assets and income of married and common-law spouses and children, if they live in the same household. Data from the reports are kept in the Register of Income and Assets of Public Officials and are publicly available. On the other hand, the ACA should verify the data from reports by comparing these data with the data collected on the assets and income of public officials from authorities and legal persons who hold such data.

In the described situation, and as stipulated by the law, the ACA can take measures to prevent and control restrictions on exercising public functions with:

Conflicts of interest in the exercise of public functions:⁷⁰

- Give an opinion at the request of a public official in case of suspicion of a conflict of interest and concerning restrictions on exercising public functions;
- Collect the records of public officials and verify the data from the reports by comparing these data with the data collected on the assets and income of public officials from authorities and legal persons who hold such data;
- Initiate and conduct proceedings for establishing the violation of the provisions of the present and other laws governing the responsibilities of the Agency;
- Initiate the procedure for determining the existence of threats to the public interest that indicates the existence of corruption *ex officio*, based on its knowledge or based on anonymous requests;
- Initiate at the request of the authority in which the public official exercises or has exercised a public function, or the authority responsible for the election, appointment, or assignment of the public official, other state or municipal authority, other legal or natural people;
- Conducting administrative proceedings *ex officio* or at the initiative of the parties, as well as making decisions after the administrative procedure;
- Inform the authority in which the public official exercises a public function and the authority responsible for the election, appointment, or assignment of the public official, to initiate the procedure of dismissal, suspension, or imposition of disciplinary measures;
- Referral of cases to the competent prosecutor's office/authority in case of suspicion that a criminal offense has been committed.

Income and assets of public officials and civil servants:⁷¹

- Receive and conduct monitoring on the data from the report on the income and assets of public officials;
- Forward the case to the competent prosecutor's office in case of suspicion that a criminal offense has been committed;
- Initiation of administrative proceedings/submission of requests for initiation of misdemeanor proceedings, issuance of misdemeanor orders;
- Administrative and technical verification, verification of the accuracy and completeness of data, as well as full verification of the report, following the Annual Verification Plan.

⁷⁰ Ibid, Art. 8, 30, 31, 37, 42, 54.

⁷¹ Law on prevention of Corruption, Official Gazette of Montenegro, No. 53/2014 and 42/2017, article 78.

Furthermore, the ACA is entrusted with the monitoring of all the asset and private interest declarations of public officials and can issue non-binding opinions on issues such as threats to the public interest and the existence of corruption.⁷² It can initiate such opinions *ex officio* or at the request of an authority, company, legal entity, entrepreneur, or natural person.

To ensure compliance with the law, and as part of preventive measures, public officials may request advice from the ACA, more precisely from the Division for Prevention of Conflict of Interest and Division for Income and Assets Verification. However, as GRECO noted in their fifth evaluation report on Montenegro, there is no clear protocol and organized system of confidential counseling in situations of risks of conflicts of interest and similar situations.⁷³

In the first nine months of 2022, the ACA, acting on all requests received, issued a total of 169 opinions out of which 47 were for conflict of interest and 59 for restrictions in exercising public functions.⁷⁴ In comparison, in 2021, a total of 186 opinions were issued, out of which 45 were for conflict of interest and 92 for restrictions in exercising public functions.⁷⁵ Additionally, in the first three quarters of 2022, a total of 9,987 income and assets statements were submitted to the Agency, while for 2021, the ACA received a total of 10,657 reports on income and assets. For regular annual income and assets statements, a total of 6,094 statements were received between January 1 and September 30, 2022, for the previous calendar year (2021).

The European Commission's report on Montenegro noted that significant progress was achieved in the number of verified asset declarations and the ACA's application of in-depth verification procedures. They also reported that the ACA issued 186 opinions (2020: 135) on the incompatibility of functions and conflict of interest. As a result, 26 public officials (2020: 41) resigned, and two (2020: 1) were dismissed. Between January and June 2022, 119 opinions on the incompatibility of functions were issued; eight public officials resigned, and two were dismissed. In 2021, the Agency initiated 295 administrative proceedings (2020: 138) and violations of the law were found in 160 cases (2020: 60). Sanctions were imposed in nine cases (2020:10).⁷⁶

In September 2021, the Government adopted the Code of Ethics for top executive officials, however, in the form of non-binding guidelines. In order to enhance the implementation of the rules on prevention of corruption, a Code would need to be

⁷² Ibid, Art. 54.

⁷³ Council of Europe, GRECO (June 17, 2022), fifth evaluation round, Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies; Evaluation report, MONTENEGRO, p.18. <https://www.coe.int/en/web/greco/-/montenegro-publication-of-5th-round-evaluation-report>, accessed on 12.11.2022.

⁷⁴ Anti-Corruption Agency of Montenegro (ACA) (October 2022), Summary of ACA results in the first nine months of 2022, page 2, accessed on 12.11.2022.

⁷⁵ Anti-Corruption Agency of Montenegro (ACA) (February 2022), Report on the work of ACA for 2021, p.2. https://www.antikorupcija.me/media/documents/Izvještaj_o_radu_ASK_u_2021_.pdf, accessed on 13.11.2022.

⁷⁶ European Commission (12 October 2022), Montenegro 2022 Report, COM, 528 final, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 13.11.2022.

effectively embedded in the Montenegrin legal system, as it is dependent on the adoption of the Law on Government, to provide the basis for such a mandatory Code.

Good practices

- Regarding the transparency of the work of the ACA, the Annual Verification Plan is available on the ACA website, as well as all reports with collected data and measures taken.
- The ACA informs the general public about its results in the areas of preventing conflicts of interest and reporting political officials' income and assets through press releases and press conferences.
- A positive trend in the work and performance of ACA in conflicts of interest and asset declarations has been noted in the European Commission report on Montenegro for 2022.
- Progress was achieved in the number of verified asset declarations and the ACA application of in-depth verification procedures. In 2021 and the first nine months of 2022, the number of administrative and misdemeanor proceedings initiated significantly increased compared to previous years. However, there is still a lack of results, particularly regarding high-profile cases.

Deficiencies

- The obligation of public officials to submit asset and income declarations, for them and members of their joint household does not refer to data abroad, but only in the country of origin.
- The Law on Prevention of Corruption fails to obligate public officials to grant the ACA permission to review their bank accounts, leaving the Agency without a means to verify the information provided in annual reports. This lack of oversight undermines the effectiveness of the ACA's efforts to prevent corruption.
- The Agency for Prevention of Corruption suffers from inadequate human resource capacity, in particular, in conducting administrative procedures for the verification of income and assets, as noted by both the European Commission and GRECO.
- A code of conduct of ethics for ministers and political officials has not been drafted and adopted in Montenegro, even though guidelines have been prepared by the ACA and the Ministry of Justice. There are neither documents regulating the ethics of top executive officials, nor any mechanisms for supervision and sanctions.

4.1.7 Art. 9.1 – Public Procurement

The new Public Procurement Law (PPL)⁷⁷ has been adopted in 2019, but its implementation started in 2020. The new PPL envisaged the adoption of a number of secondary legislations, methodologies and other accompanying documents necessary for adequate implementation of the law. The majority of these bylaws were adopted in 2020. Furthermore, the government adopted a new 2021-2025 Strategy for

⁷⁷ The Public Procurement Law, Official Gazette of Montenegro, 074/19.

improving public procurement and public-private partnership policies in 2021, with an action plan for 2022.⁷⁸

The new legal framework facilitated procedures for bidders and improved the transparency and competitiveness of public procurement procedures. At the same time, the new Law on Public-Private Partnership⁷⁹ was prepared and adopted, with accompanying bylaws, making the Montenegrin legislative framework mostly harmonized with the EU *acquis*.

Moreover, the institutional framework for the public procurement system was changed and strengthened with the transfer of Public Procurement Agency competencies and staff to the Directorate for Public Procurement Policy, within the Ministry of Finance. This ensured that public procurement is situated within the jurisdiction of the ministry responsible for the sector.

The Commission for Protection of Rights in Public Procurement Procedures is the institution in charge of reviewing complaints from economic operators against decisions of the contracting authorities. Its responsibilities are: to consider complaints submitted by tenderers concerning the public procurement procedures and decide on them; to examine whether the Law on Public Procurement has been correctly applied and to propose and undertake corrective measures to provide competitive behavior among tenderers and transparency of the procurement process; to lay down principles and policies aimed at uniform law application and to perform other duties as defined in the Law on Public Procurement.⁸⁰

The Commission received 162 complaints between 15 June 2021-15 June 2022, a decrease of 33% in comparison to the previous period. The Commission also acted on 20 judgments received from the Administrative Court of Montenegro, which represent cases returned for reconsideration. There were no significant delays in the treatment and resolution of the complaints.⁸¹

In previous years, most of the implementation issues centered around transparency, corruption, and limited competition. By implementing new strategies such as market analysis, selection of the most economically advantageous tender as the evaluation criterion, contract performance reporting, and simplified procurement procedures, it is hoped that the public procurement process will see substantial improvements. Even though the new PPL provides that the most economically advantageous tender is the obligatory award criterion for all procurement items, which is a step forward in comparison to the previous condition that the lowest price was the predominant award criterion, the capacity of contracting authorities for this new task is limited.⁸²

⁷⁸ Government of Montenegro (October 18, 2021), Good results within the negotiation: Chapter 5 – Public Procurement, <https://www.eu.me/en/good-results-within-the-negotiation-chapter-5-public-procurement/>, accessed on 20.01.2023.

⁷⁹ The Law on Public-Private Partnership, Official Gazette of Montenegro 73/2019.

⁸⁰ Commission for Protection of Rights in Public Procurement Procedures, <http://www.kontrola-nabavki.me/1/index.php?lang=en>, accessed on 12.11.2022.

⁸¹ European Commission (12 October 2022), Montenegro 2022 Report, COM (2022) 528 final page 72, accessed on 12.11.2022.

⁸² Sigma/OECD (2021), Monitoring Report, The Principles of Public Administration, Montenegro (November 2021) <https://sigmaweb.org/countries/montenegro-sigma.htm> page 150, accessed on 10.12.2022.

The new e-procurement system⁸³ has been put into operation since January 2021. This system is important due to its potential to reduce the risks of corruption and breaches of competition rules because it incorporates all relevant functionalities from the publication of procurement plans, tender documents, the public opening of tenders, and tender submissions, up to the e-complaint system. The electronic public procurement system became fully operational in 2021. By June 2022, all 662 contracting authorities and 3,687 economic operators were registered in the system.⁸⁴

The PPL requires procurement entities to develop a Public Procurement Plan in furtherance of a public procurement procedure. The additional request is that sufficient funding must be secured beforehand. Public procurements are divided into seven categories,⁸⁵ according to specific value thresholds which determine what type of procedure is applicable. A contracting authority must choose, based on prior information, either open or restricted procedures for the award of public procurement contracts. Also, as prescribed by Article 84, all contracting authorities must obtain prior approval for their procurement plans from the Ministry of Finance. Without such approval, they cannot start the tender procedure. In their report on Montenegro, SIGMA/OECD noted that this is causing unnecessary delays for all contracting authorities that are budgetary users.⁸⁶

A total number of 669 administrative bodies competent in public procurement in Montenegro were identified and reported by the Ministry of Finance of Montenegro. Between January and June of 2022, a total value of 187 million euros⁸⁷ were awarded in contracts, while for 2021, the total value for 4523 contracts was 332 million euros.⁸⁸

The new Public Procurement Law introduced market research in the course of developing a Public Procurement Plan or when launching a public procurement procedure. Transparent and inclusive implementation of prior market analysis has the potential to ensure more adequate public procurement planning. An additional improvement was that the urgent procurement procedure was removed from the new PPL: the previous law contained a provision allowing contracts to be awarded without formal competition in the case of urgent procurement related to unforeseen events, when it would not be possible to comply with the prescribed timeframe, which was often criticized as an open door for corruption.

All of these changes in the legal and institutional framework were noted by the European Commission in their report on Montenegro for 2022. They noted that Montenegro is moderately prepared/has a good level of preparation for public procurement, and that good progress was achieved in 2021.⁸⁹ Even though significant legal and institutional changes were made, making the system of public procurement

⁸³ Ministry of Finance, Public Procurement Database, <https://cejn.gov.me>.

⁸⁴ European Commission (12 October 2022), Montenegro 2022 Report, COM, 528 final.

⁸⁵ The Public Procurement Law, Official Gazette of Montenegro, 074/19, article 20.

⁸⁶ Sigma/OECD (2021) Monitoring Report, The Principles of Public Administration.

⁸⁷ Ministry of Finance of Montenegro, Directorate for Public Procurement Policy, Semi-Annual Report for 2022, p.6, <https://www.gov.me/en/mif>, accessed on 23.12.2022.

⁸⁸ Ministry of Finance of Montenegro, Directorate for Public Procurement Policy, Annual Report for 2021, page 4, accessed on 22.12.2022.

⁸⁹ European Commission (12 October 2022), Montenegro 2022 Report, COM 528 final, page 71.

more aligned with the *acquis*, the first six months of implementation exposed several problems.

Montenegrin NGO Institute Alternative published a report on the implementation of the new Public Procurement Law and observed certain limitations in the implementation of the new provisions. For example, they noted that novelties such as market analysis have the potential to bring more damage than benefits to the public procurement system. Contrary to expectations, the implementation of market analysis in public procurement procedures has created new opportunities for abuse and favoritism towards certain tenderers. There is no requirement to develop or publish reports on consultations with business operators regarding the value of procurement, and it is unknown if any market analyses were conducted by ministries and municipalities during the second half of 2020. Despite the fact that only price can be used as the sole evaluation criterion in exceptional circumstances, ministries and municipalities continue to prioritize it in the price-quality ratio evaluation: the lowest tender price has been the determining factor in over 90% of tenders from ministries and municipalities since the implementation of the new Public Procurement Law (PPL). Also, inadequate planning and failure to deliver on plans remains a problem. Additionally, NGO Institut Alternativa warn about the abuse of simple procurement as a simplified procedure for faster procurement and lower procurement costs.⁹⁰

Good practices

- The legal and institutional framework on public procurement has significantly improved and is more aligned with the EU *acquis*. The new Public Procurement Law was adopted, as well as the Law on Public-Private Partnership with its accompanying bylaws.
- A strategy for the period from 2021-2025 for improving public procurement and public-private partnership policies, with an action plan for 2022, has been adopted.
- Public Procurement Agency competencies and staff were transferred to the Directorate for Public Procurement Policy, within the Ministry of Finance. This ensured that public procurement is situated within the jurisdiction of the ministry responsible for the sector.
- The new e-procurement system has been in operation since January 2021 and encompasses the publication of procurement plans, tender documents, the public opening of tenders, and tender submission up to the e-complaint system.

Deficiencies

- Systematic changes in the public procurement system were not followed with an adequate capacity-building strategy for the employees of contracting authorities.
- A formalistic approach towards planning and operations is still present. All contracting authorities must obtain prior approval for their procurement plans from the Ministry of Finance which is causing unnecessary delays for all contracting authorities.
- Market analysis should be obligatory, not just optional.

⁹⁰ NGO Institute Alternative (2021), Implementation of the New Public Procurement Law: A Chance to Leave the Vicious Circle, p.24, <https://institut-alternativa.org/primjena-novog-zakona-o-javnim-nabavkama-prilika-za-izlazak-iz-zacaranog-kruga/>, accessed on 20.12.22.

- While public procurement legal and institutional frameworks have improved, the Montenegrin system is largely prone to corruption and misconduct, especially in cases involving large-scale projects and contracts.
- The system is still highly politicized with ties between political parties and companies.

4.1.8 Art. 9.2 – Management of Public Finances

The management of public finances is a critical aspect of any country's governance and economic stability. In Montenegro, the administration of public finances is governed by a range of laws, regulations, and rules aimed at ensuring transparency, accountability, and efficiency in the use of public funds.

The legal framework governing the management of public finances in Montenegro includes the Law on Prevention of Corruption⁹¹, the Law on Public Procurement,⁹² the Law on Budget and Fiscal Responsibility,⁹³ and the Law on State Audit,⁹⁴ among others. These laws provide the framework for the proper administration of public funds, outlining the responsibilities of government officials and financial managers, and establishing procedures for conducting internal and external audits.

The administration of public finances is primarily the responsibility of government agencies, including the Ministry of Finance, the State Audit Institution, and the ACA. The Ministry of Finance is responsible for overseeing the implementation of the budget, ensuring the proper allocation of public funds, and preparing financial reports. The State Audit Institution is responsible for conducting independent audits of the financial operations of state and local governments, while the ACA is responsible for monitoring and preventing corruption in the administration of public finances.

The laws providing a comprehensive legal framework for the budget process in Montenegro, aimed at ensuring fiscal responsibility, transparency, and accountability in the management of public finances are:

1. Law on Budget and Fiscal Responsibility:⁹⁵ This law defines the principles and procedures for the preparation, adoption, execution, monitoring, and control of the state budget, local government budgets, and budgets of public funds and entities, and sets out the rules for ensuring fiscal sustainability, including limits on public debt, deficits, and expenditures.
2. Law on Audit of Public Finances: This law establishes the framework for the external audit of public finances, including the role and responsibilities of the State Audit Institution.
3. Law on Accounting in the public sector:⁹⁶ This law defines the accounting and financial reporting standards for public entities.
4. Law on Public Procurement:⁹⁷ This law regulates the procedures for public procurement, including the procurement of goods, services, and works.

⁹¹ Official Gazette 53/2014 and 42/2017.

⁹² Official Gazette 074/19 od 30.12.2019, 003/23 od 10.01.2023, 011/23 od 27.01.2023.

⁹³ Official Gazette 20/14, 56/14, 70/17 and 4/18.

⁹⁴ Official Gazette 1/2017.

⁹⁵ Official Gazette 20/14, 56/14, 70/17 and 4/18.

⁹⁶ Official Gazette 066/19.

⁹⁷ Official Gazette 074/19, 003/23 and 011/23.

The budget adoption procedure in Montenegro is governed by the Budget Law, which sets out the rules and procedures for the preparation, adoption, execution, monitoring, and reporting of the budget. The procedure typically involves several stages, as follows:

- **Preparation of the Draft Budget:** The Ministry of Finance prepares the draft budget, which includes estimates of revenues and expenditures for the coming year. The draft budget is then submitted to the Government for approval.
- **Approval by the Government:** The Government reviews the draft budget and makes any necessary changes. Once the Government approves the draft budget, it is submitted to Parliament.
- **Review by the Parliamentary Committees:** The draft budget is reviewed by the parliamentary committees responsible for finance and budget. The committees may propose amendments to the budget, which are then submitted to the plenary session of Parliament.
- **First Reading in Parliament:** The Parliament discusses and votes on the proposed amendments to the budget. If approved, the budget is sent back to the Government for revision. If not, the budget moves to the second reading.
- **Second Reading in Parliament:** The Parliament discusses and votes on the revised budget. If approved, the budget is sent to the President for signature. If not, the budget goes back to the Government for further revision.
- **Presidential Signature:** If the President approves the budget, it is signed into law and becomes the national budget for the year. If the President vetoes the budget, it is sent back to the Parliament for further review and voting.
- **Implementation:** Once the budget is adopted, the Government is responsible for implementing it. This includes collecting revenues, disbursing funds, and monitoring expenditures to ensure that they are within the approved budget.

Overall, the budget adoption procedure in Montenegro involves close collaboration between the Government and the Parliament, with multiple opportunities for review and revision to ensure that the budget accurately reflects the needs and priorities of the country. The government also releases annual budget reports, which provide information on the government's revenue and expenditure activities over the previous year. The budget report is typically released in the first quarter of the following year.⁹⁸

Despite the existence of a legal framework and government agencies responsible for the management of public finances, Montenegro still faces several challenges in this area. One of the key challenges is the lack of transparency in the allocation of public funds, which can create opportunities for corruption and mismanagement. Civil society actors continuously point to this problem, but without results.⁹⁹ In addition, the administration of public finances is often complex and bureaucratic, making it difficult for the public to understand how the tax revenue is being spent.

⁹⁸ Ministry of Finance, Budget reports available at: https://www.gov.me/vijesti?sort=published_at&ou=13&tags=1283, accessed on 10.06.2023.

⁹⁹ Institute Alternative "Again behind closed doors and without a public hearing" available at: <https://institut-alternativa.org/intervju-za-vijesti-opet-iza-zatvorenih-vrata-i-bez-javne-rasprave/>, accessed on 10.06.2023.

Another challenge faced by Montenegro in the management of public finances is the limited capacity of government agencies responsible for financial management. This can result in a lack of effective oversight and the inability to detect and prevent financial irregularities. Furthermore, the country's economy is heavily dependent on foreign investment, and a lack of stability in the financial sector can discourage investment and negatively impact the country's economic growth.

Montenegro launched the Economic Reform Program (ERP) in January 2022, for the period 2022-2024. The ERP represents a comprehensive set of reforms and is the country's key strategic document for medium-term macroeconomic and fiscal programming. This economic program, also known as 'Europe Now', includes a change in tax policy and the abolition of contributions for compulsory health insurance paid by employees. Key reforms were related to the tax regulations that imply the introduction of progressive taxation on income and corporate income, increase in tax rates on dividends, interest, royalties, and capital gains, and reduction of the tax wedge by eliminating health contributions and personal income tax.¹⁰⁰

In general, this program is based on five key pillars: an increase in the standard of living of the citizens, increasing employment, reducing the gray economy in the labor market, and improving the business and investment environment. To achieve these goals, the program envisages a wide set of economic policy measures, such as: increasing the net minimum wage from 250 to 450 euro per month, the substitution of contributions for mandatory health insurance with other state revenues, exemption from personal income tax for earnings up to 700 euro and the introduction of a progressive personal income tax.

The ERP was supported by Parliament and was followed by a set of legal changes necessary for program implementation. In total, eight laws have been amended, such as the Law on Amendments to the Law on Personal Income Tax, Law on Amendments to the Law on Tax Administration, Law on Amendments to the Law on Salaries of Employees in the Public Sector, Law on Amendments to the Law on Mandatory Health Insurance, etc. Just in the first year, the implementation of this program has produced a number of direct and indirect effects on a variety of sectors of the economy and society. However, political instability and change in the government which has proposed and started the implementation of the aforementioned program, have created additional challenges and obstacles for the full implementation of all proposed activities.

For the first time, Montenegro adopted a program-based and gender-sensitive state budget in 2021 for 2022. The adoption of several decrees in the last quarter of 2020 and the adoption of amendments to the Law on Budget and Fiscal Responsibility in June 2021 supported these reforms. Generally, budget planning and execution, fiscal responsibility, borrowing and guarantees, and other matters of relevance for the budget of Montenegro and budgets of local self-government units are governed by the

¹⁰⁰ Government of Montenegro (January 2022), Montenegro Economic Reform Program 2022 – 2024, Podgorica, <https://www.gov.me/dokumenta/e75a225c-375c-47bb-af21-5b595523b305>, accessed on 20.12.2022.

Law on Budget and Fiscal Responsibility.¹⁰¹ The Parliament of Montenegro adopts the budget and the final budget statement,¹⁰² based on the proposal of the government.

Good practices

- The budget adoption procedure in Montenegro involves close collaboration between the Government and the Parliament, with multiple opportunities for review and revision to ensure that the budget accurately reflects the needs and priorities of the country.
- The government also releases annual budget reports, which provide information on the government's revenue and expenditure activities over the previous year.
- For the first time, Montenegro adopted a program-based and gender-sensitive state budget in 2021 for 2022.
- Implementation of the Economic Reform Program (ERP), adopted for the period 2022-2024, includes a change in tax policy and the abolition of contributions for compulsory health insurance paid by employees.

Deficiencies

- Lack of transparency in the allocation of public funds, which can create opportunities for corruption and mismanagement.
- Limited capacity of government agencies responsible for financial management. This can result in a lack of effective oversight and the inability to detect and prevent financial irregularities.
- Lack of adequate set of monetary policy tools to tackle rising inflation. Russia's war against Ukraine intensified price pressures and inflation has remained elevated throughout 2022.

4.1.9 Art. 10 and 13.1 – Access to Information and the Participation of Society

Access to information possessed by state authorities is a right guaranteed by the Constitution. It can be limited only in the interest of protection of human life, public health, morality and privacy, criminal proceedings, security and defense of Montenegro, external, monetary and economic policies.¹⁰³

Further elaboration of the right to access information was contained in the Law on Free Access to Information, which guarantees this right to each domestic and foreign natural and legal entity, without obligation to state the reasons or to explain the interest in seeking the information.¹⁰⁴

This law emphasizes the proactive publication of information by authorities. The scope of information that the body must publish on its website is quite wide, and includes

¹⁰¹ Law on Budget and Fiscal Responsibility, Official Gazette of Montenegro 20/14, 56/14, 70/17, and 4/18.

¹⁰² Constitution of Montenegro, Article 82.

¹⁰³ Constitution of Montenegro, Official Gazette of Montenegro ", No. 001/07 of 25.10.2007, 038/13 from 02.08.2013, Article 51.

¹⁰⁴ Law on Free Access to information, Official Gazette of Montenegro ", No. 044/12 from 09.08.2012, 030/17 from 09.05.2017, Article 3.

public registers, reports, work programs, contracts, list of employees, earnings of officials, etc.¹⁰⁵

This seemingly advanced legislative framework, is in practice the opposite. Since its enactment, the government and administrative bodies have refused to fully implement it, and continue to try to narrow the scope of free access while civil society organizations advocate the need for improvement in this area. In 2019, the Government's attempt to introduce so-called "abuse of the right to access information" and give institutions right to, without any criteria, refuse the publication of information from public importance was prevented through a joint initiative by 44 CSOs.¹⁰⁶

Due to a change in government in 2020, positive developments in the field of transparency of public information and the work of state bodies was promised, but concrete changes and improvement of the legislative framework remain on hold. Great expectations of the civil sector for the implementation of grassroots reforms and publication of information that have been kept secret for years were not fulfilled.¹⁰⁷ The government is still expected to remove from the Law problematic restrictions on information, especially business and tax secrets, exclusion of data of international organizations, foreign countries and on the security sector.¹⁰⁸

Since 2020, the implementation of the law and the situation with regards to free access to information have seen clear regressions instead of the expected improvements in the normative framework and in practice. Access to information which institutions have within their possession has been hindered. There is also a negative trend observed regarding the proactivity and transparency of authorities¹⁰⁹ despite credible announcements of government transparency reform, which is necessary for further progress in Montenegro's path towards European integration.¹¹⁰

In case an information request is not answered, a complainant can address the second instance body, the Agency for Personal Data Protection and Free Access to Information, and after that, submit a lawsuit to the administrative court, as final instance. The number of complaints before the second instance authority for not responding to freedom of information requests continues to grow. Statistics show that this number increased from 418 complaints in 2018, to 1002 complaints in 2020,¹¹¹

¹⁰⁵ Ibid, Article 12.

¹⁰⁶ Open letter of 44 NGOs on the occasion of the International Date of Free Access to Information, (27 September 2019) <https://institut-alternativa.org/otvoreno-pismo-44-nevladine-organizacije-uoci-medjunarodnog-dana-spi/>, accessed on 02.02.2023.

¹⁰⁷ Center for Democratic Transition: "Instead of reforms, government still keeps secrets" (28 September 2021) <https://www.cdtmn.org/2021/09/28/umjesto-korjenitih-promjena-vlast-i-dalje-cuva-tajne/>, accessed on 08.02.2023.

¹⁰⁸ Institute Alternative, MANS: Remove problematic restrictions to access to information (01.11.2021.) <https://institut-alternativa.org/ia-i-mans-ukloniti-problematicna-ogranicenja-pristupa-informacijama/>, accessed on 08.02.2023.

¹⁰⁹ Center for Democratic Transition (2022), Regional Index of Institutional Openness, Results for Transparency of Institutions for 2022 are available at: <https://otvoreneinstitucije.cdtmn.org/>, accessed on 05.02.2023.

¹¹⁰ Portal Vijesti: "Krivokapić – We will be determined, credible and transparent in the implementation of reforms" (16 December 2020) <https://www.vijesti.me/vijesti/politika/495395/krivokapic-bicemo-odlucni-kredibilni-i-transparentni-u-sprovodjenju-reformi>, accessed on 05.02.2023.

¹¹¹ Government of Montenegro (14 May 2021), Ministry of Public Administration, digital society and media: Report on implementation of Public Administration Reform Strategy 2016 –2020, with focus on

and at the end of 2022 the number of lawsuits for silence of state administration was 6000.¹¹² In practice, this also makes the research activities of civil society organizations more difficult, since government institutions are not willing to provide important data.

The hacking attack on the government information system in August 2022 further unfavorably affected the availability of information that public institutions had within their possession. Institutions' websites and mail servers were unavailable for months, which made the publication, search or delivery of data impossible. According to experts in the field of cyber security, the attack was assessed as very serious, since hackers came into possession of a large number of files taken from the websites of Montenegrin institutions, including financial documents, accounting, information on fees, tax documents and source codes.¹¹³ Statements made by the National Security Agency indicate that the Russian intelligence services are responsible for this destabilization of the IT system in Montenegro.¹¹⁴

Over the past decades, Montenegro has faced challenges regarding media freedom, with issues related to censorship, lack of pluralism, and intimidation of journalists. International organizations monitoring media, such as Reporters Without Borders and Freedom House have raised concerns about the state of media in Montenegro. Unlike the government led by Đukanović, the government elected in 2020 did not seek to pressure reporters. On the other hand, Prime Minister Abazović brought back some of the rhetoric targeting critical journalists and civil society.¹¹⁵ Montenegro's ranking in the World Press Freedom Index has fluctuated over the years.

Good practices

- Free access to information which state authorities possess is a right defined by the Constitution.
- The law defines a wide scope of information that should be proactively published and available to the public.
- Legal protection is available in front of the first instance and second instance courts.
- Civil society organizations monitor implementation of the Law and the level of institutional openness on an annual basis.¹¹⁶

Deficiencies

activities in 2020 <https://www.gov.me/dokumenta/9bd7ecd6-1673-4469-8e47-18a88af893db>, page 19, accessed on 07.02.2023.

¹¹² Portal Dan (06 December 2022): "President of the Administrative Court: We are covered with 6,000 lawsuits for silence of the state administration", <https://www.dan.co.me/vijesti/drustvo/predsjednik-upravnog-suda-zatpani-smo-sa-6-000-tuzbi-zbog-cutanja-drzavne-uprave-5149828>, accessed on 05.02.2023.

¹¹³ Monitor (02 September 2022): "Montenegro under Cyber Attacks: Safety without staff, money and infrastructure" <https://www.monitor.co.me/crna-gora-pod-sajber-napadima-bezbjednost-bez-kadrova-novca-i-infrastrukture/>, accessed on 07.02.2023.

¹¹⁴ Portal Slobodna Evropa (26 August 2022): "Russian services performed cyber-attack on Montenegro's government, claims security agency" <https://www.slobodnaevropa.org/a/ruski-hakeri-napad-vlada-crne-gore/32005931.html>, accessed on 07.02.2023.

¹¹⁵ Freedom House, Freedom in the World, Montenegro 2023, available at <https://freedomhouse.org/country/montenegro/freedom-world/2023>, accessed on 12.06.2023.

¹¹⁶ Regional index of institutional openness, available at <https://otvoreneinstitucije.cdtmn.org/> accessed on 02.03.2023.

- Transparency policies are not considered a priority by state authorities.
- Release of information which authorities possess depends on the will of the institution manager, in the absence of a systemic approach.
- There is a large number of cases before the second instance authority that the current administration is facing due to its refusal to address freedom of information requests.
- Cyber-attacks in August 2022 made many websites of government institutions as well as its portal unavailable for several months.
- International organizations monitoring media have raised concerns about the state of media in Montenegro. There is some government rhetoric targeting critical journalists and civil society.

4.1.10 Art. 11 – Judiciary and Prosecution Services

The independence of the judiciary is guaranteed in both the Constitution and in primary legislation. According to the 2022 Freedom House Report,¹¹⁷ Montenegro is ranked 67th, worse than in the 2021 report when it was in 63rd place. The report indicated significant problems in the functioning of the judiciary, due to stagnating judicial reforms. Namely, long-pending high-level judicial appointments are yet to take place, concerning lay members of the Judicial Council and judges of the Constitutional Court. The position of the Supreme Court President is also vacant, while the position of the Supreme State Prosecutor has been occupied on an acting basis since October 2019. A new Prosecutorial Council was established at the end of December 2021 and promulgated in February 2022. Concerns remain over the institutional performance and consolidation of independent Judicial and Prosecutorial Councils.

The Judiciary and Prosecution legislation¹¹⁸ stipulates that any contempt to honor, good morals and dignity of judges and prosecutors are regarded as punishable, disciplinary actions under the law. Disciplinary punishments range from verbal reprimands to dismissal of judges and state prosecutors. There are asset declaration requirements for both judges and prosecutors.

However, the independence of the judiciary is to be further enhanced by reducing the influence of the executive over the judiciary and prosecutorial services and improving systems for transparent and objective appointment, transferal, promotion and dismissal of judges and prosecutors. Secret audio recordings and official documents leaked in 2019 implicated the former president of the Supreme Court, who resigned in December 2020 in alleged bribery and corruption affairs which are yet to be

¹¹⁷ Freedom House (2022), Freedom in the World 2022 Country Report for Montenegro, <https://freedomhouse.org/country/montenegro/freedom-world/2022>, accessed on 20.11.2022.

¹¹⁸ Law on Judiciary Council and Judges (Official Gazette 011/15 od 12.03.2015, 028/15 od 03.06.2015, 042/18 od 29.06.2018), Law on State Prosecution (Official Gazette 011/15 od 12.03.2015, 028/15 od 03.06.2015, 042/18 od 29.06.2018).

resolved.¹¹⁹ One special prosecutor is under investigation due to suspicions about being a member of an internationally recognized criminal clan.¹²⁰

The track record on judicial accountability remains limited. The judiciary's accountability and professionalism need to be further strengthened, including by implementing the relevant constitutional and legal frameworks, in line with relevant European standards.

Following the proclamation of the new Prosecutorial Council in August 2021, the Council did not hold any sessions until early 2022 due to its incomplete composition. In December 2021, the Parliament appointed five members from the ranks of eminent lawyers, including one NGO representative.¹²¹ The Council was officially promulgated in February 2022 and has appointed a new acting Supreme State Prosecutor as well as the new Special State Prosecutor.

The revision of the Law on the Judicial Council and Judges,¹²² initiated in 2020, resulted in draft amendments which have recently been submitted by the Ministry of Justice to the Venice Commission. In their opinion the Venice Commission considers that the law, in general, is headed in a good direction: it encourages internal mobility, provides a clear and more systematized assessment system, a new provision on the code of ethics, intensifies responsibility and transparency by the Judicial Council, and entrusts the possibility of initiating disciplinary proceedings. However, the Venice Commission notes that two key topics, the presence of the Minister of Justice in the Judicial Council and the difficulties in the election of prominent members of the Judicial Council, cannot be elaborated further without encroaching on constitutional powers of other bodies.¹²³

The Venice Commission pointed out that several recommendations from December 2022 were respected. Among other things, a partial revision of the evaluation criteria and disciplinary sanctions and other technical improvements were performed, but they consider that additional work is necessary to improve this legal act.¹²⁴

According to research on the attitudes of judicial system, more than half of the judges in Montenegro believe that there is a political influence on the work of the Judicial

¹¹⁹ Vijesti (15 February 2023): Confirmed indictment against Vesna Medenica, <https://www.vijesti.me/vijesti/crna-hronika/643445/potvrđjena-optuznica-protiv-vesne-medenice>, accessed on 10.03.2023.

¹²⁰ Slobodna Evropa (9 December 2022): The Special Prosecutor from Montenegro suspected to be a member of the "Kavači" clan, <https://www.slobodnaevropa.org/a/crna-gora-drzavni-udar-specijalni-tuzilac-sasa-cadijenovic/32169031.html>, accessed on 10.03.2023.

¹²¹ Portal Vijesti (29 December 2021): Members of Prosecutorial Council were elected, <https://www.vijesti.me/vijesti/politika/583154/izabrani-clanovi-tuzilackog-savjeta>, accessed on: 15.03.2023.

¹²² Law on Judicial Council and Judges, (Official Gazette of Montenegro, No. 011/15 dated 12 March 2015, 028/15 of 03.06.2015, 042/18 of 29.06.2018).

¹²³ European Commission for Democracy through Law (Venice Commission) (2022) CDL-AD, 050-e Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, adopted by the Venice Commission at its 133rd Plenary Session, [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)050-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)050-e), accessed on: 19.03.2023.

¹²⁴ Portalanalitika (13 March 2023): The Venice Commission requires additional work on the Law on Judicial Council and the judiciary, [20](#), accessed on 20.03.2023.

Council.¹²⁵ The highest representatives of the executive are accused by the public of using their influence on the work of courts, while commenting on the court's decisions in particular important cases of corruption and organized crime against former judicial office holders.¹²⁶

Good practices

- The independence of the judiciary is guaranteed in both the Constitution and in the primary judicial legislation.
- Members of the Prosecutorial Council are eminent lawyers, including one representative of civil society organizations.

Deficiencies

- Political volatility, government instability and tensions have stalled judicial decision-making and implementation.
- There are growing attempts at interference by the executive and legislature over the work of the judiciary, reflected in political statements on the merits of judicial decisions and more frequent commenting about judicial proceedings by representatives of the Government and the Parliament.
- There are widespread reports by civil society and international organizations of a lack of integrity in the judiciary.¹²⁷
- The system for detecting breaches of integrity rules is still not fully effective, objective, consistent or credible.

4.1.11 Art. 12 – Private Sector Transparency

The registration of a business with the Central Register of Business Entities includes the full name, date of birth, nationality, address of the registered office and the principal place of business. A description of business operations, according to the classification of the fields of operations, is also required. This register is publicly available.¹²⁸ There is an obligation to provide information on the beneficial owners of the registered business, but information on the system of monitoring data is not publicly available.

All legally registered domestic companies are required by law to keep business books,¹²⁹ document every financial transaction and submit financial reports to the authorities. The companies also submit external auditing reports with accompanying

¹²⁵ Mina News (16 January 2023): Half of the judges believe that there is a political influence on the Judicial Council <https://mina.news/vijesti-iz-crne-gore/polovina-sudija-smatra-da-postoji-politicki-uticaj-na-sudski-savjet/>, accessed on 06.02.2023.

¹²⁶ Portalanalitika (17 November 2022): An unacceptable influence on the court, and public is silent <https://www.portalanalitika.me/clanak/neprihvatljiv-uticaj-na-sud-a-u-javnosti-muk>, accessed on 03.03.2023.

¹²⁷ NGO Human Rights Action (October 2022): Analysis of election, advancement and identification procedures of judges in Montenegro in 2022, <https://www.hrraction.org/2022/10/28/analiza-postupaka-izbora-napredovanja-i-utvrdivanja-odgovornosti-sudija-u-crnoj-gori-u-2022-godini/> page 9, accessed on 10.01.2022 and NGO Center for Democratic Transition (December 2020), Judiciary in the shadow of consecutive mandates, <https://docs.google.com/viewerng/viewer?url=https://www.cdtmn.org/wp-content/uploads/2021/11/Pravosudje-final-draft.pdf&hl=en> page 5, accessed on 10.01.2022.

¹²⁸ Central Register of Business Entities, <http://efirma.tax.gov.me/>.

¹²⁹ According to the Law on Accounting annual calculations of salaries should be kept permanently, the financial report, general ledger and the accompanying diary for at least ten years, and support books and financial statements at least five years.

businesses' financial statements – balance sheets and income reports. Financial statements shall be completed in accordance with international accounting standards and international financial reporting standards, including balance sheets and income statements. Accounting requirements may vary depending on the size of the private sector entity.

Corruption and perceptions of corruption are recognized business barriers for investors planning investments in Montenegro, which has been confirmed by government officials as well.¹³⁰ As an obstacle, investors often mention the non-transparency of public procurement, disputable validity of public contracts, certain types of corruption, and the exercise of undue influence on state authorities.¹³¹

Good practices

- The existing legal framework has created a somewhat favorable business environment. Companies have established internal audit mechanisms and are also required to have external/independent audit reports.
- There are modalities for registering beneficial ownership.

Deficiencies

- Threats to business integrity include high levels of perception of widespread, petty corruption.
- Higher levels of transparency are needed, including around the collection of information on who owns and controls private sector entities through public beneficial ownership registries.

4.1.12 Art. 14 – Measures to Prevent Money-Laundering

Montenegro started establishing its money laundering prevention system in 2004 with the adoption of the first Law on Money Laundering Prevention.¹³² Over the years, great efforts have been made to continuously upgrade and harmonize the legislative framework in this area with international standards, primarily through the criminalization of money laundering in the Criminal Code and amendments and additions to the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) and relevant by-laws.¹³³

On 17 December 2019, the Montenegrin Parliament adopted the amended LPMLTF (the Law), which defines the competencies, powers, affairs and organization of the Financial Intelligence Unit (FIU), including the protection of data and information kept by it. The Law (Art.55 and Art.55 a-c) provides for the operational independence and autonomy of the new FIU. The FIU falls within the Police Directorate - the powers of the former Administration for Prevention of Money Laundering and Financing

¹³⁰ Vijesti Miljanic (19 July 2022): "Corruption is one of the biggest obstacles for numerous investors from partner countries", <https://www.vijesti.me/vijesti/ekonomija/613895/miljanic-korupcija-je-jedna-od-najvecih-prepreka-za-brojne-investitore-iz-partnerskih-drzava>, accessed on 02.03.2023.

¹³¹ Slobodna Evropa (16 December 2021), Američki investitori strahuju od korupcije u Crnoj Gori <https://www.slobodnaevropa.org/a/crna-gora-sad-korupcija-investicije/31612886.html>, accessed on 12.01.2023.

¹³² Law on Money Laundering Prevention, Official Gazette of Montenegro No. br. 55/03, 58/03 i 17/05.

¹³³ Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF), Official Gazette of Montenegro No. 33/2014 i 44/2018, 73/2019 i 70/2021.

Terrorism are entrusted to the new sector for the prevention of money laundering and terrorist financing, which was founded in April 2019.

In December 2021, the Montenegrin government adopted its National Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing.¹³⁴ The strategy defines the framework of activities of Montenegro in the fight against terrorism, money laundering and terrorist financing with the aim of improving existing and developing new measures, mechanisms and instruments, all in the function of the stability and security of Montenegro.

The structure of the new strategic document is designed to be in line with the national and sectorial strategic documents and international obligations. It contains a presentation of the legal and institutional framework in Montenegro, the analysis of key issues, an overview of the public policy results so far, an overview of future activities through the implementation of strategic and operational goals and accompanying indicators, as well as guidelines for efficient implementation of the Strategy.

The new national assessment of the risk of money laundering and terrorist financing was adopted at the end of 2020 and represents a systematic process of collecting and analyzing relevant data with the aim of assessing the state's exposure to the risks of money laundering and terrorist financing. Its purpose is a detailed review of the current situation in order to improve the system of preventing money laundering and financing of terrorism in the country, in terms of effective engagement and coordination of available financial, technical and human resources in the fight against money laundering and financing of terrorism and distribution, redirecting available resources from those areas where lower risk is determined to areas of higher risk. The national risk assessment made a general assessment, commenting on a medium level of money laundering risk and a low level of risk of terrorist financing.¹³⁵ Montenegro has been assessed as a country with a low risk of money laundering and terrorism financing by the Basel Index.¹³⁶

In addition to the National Strategy, Montenegro is in the process of updating its AML legal framework with the new Law on the Prevention of Money Laundering and Terrorist Financing. The draft is primarily harmonized with the Directive (EU) 2015/849 of the European Parliament¹³⁷ and of the Council of 20 May 2015 on the prevention of

¹³⁴ Government of Montenegro (December 2021), Ministry of Interior, Strategy for prevention and control of terrorism, money laundering and terrorist financing for the period 2022 – 2025, <https://wapi.gov.me/download/74aa43fb-3f67-4ecf-b741-e3dad584a5d2?version=1.0>, accessed on 05.02.2023.

¹³⁵ Government of Montenegro, National risk assessment of money laundering and terrorist financing With the action plan <https://wapi.gov.me/download/9d90a40d-cca4-4496-b4f9-4aebd5044ad9?version=1.0>, accessed on 20.11.2022.

¹³⁶ Montenegro was ranked 126th out of 141 nations in the Basel Anti-Money Laundering Index (2020). At the moment of assessment, Montenegro hadn't yet been assessed in the fourth-round FATF methodology, which limited comparability), https://baselgovernance.org/sites/default/files/2020-07/basel_aml_index_2020_web.pdf, accessed on 10.12.2022.

¹³⁷ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May (2015) on the Prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission

the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council, among others. Through this Law, certain recommendations of the Financial Action Task Force (FATF) will be introduced into the Montenegrin system. FATF recommendations from 2020 point out that the definitions of money laundering in different pieces of legislation should be aligned, that authorities should amend the law to include the ability of confiscation of proceeds of crime obtained indirectly, and that the Police should introduce a clear legal basis for conducting investigations on behalf of foreign counterparts, among other recommendations.¹³⁸

With the draft law, several important steps crucial for the area of preventing money laundering and terrorist financing have been taken, such as the obligation to have a license to work as a compliance officer for the prevention of money laundering and terrorist financing; restrictions on payment in cash in a way to prohibit the receipt of payments or perform payment in cash above the prescribed amount, as well as prescribing supervision over the Register of Beneficial Owners and enabling the public to access the register (to a certain set of data), prescribing electronic and video-electronic customer identification, strengthening supervision over reporting entities (direct and indirect supervision), establishing the Register of Politically Exposed Persons, and the Register of accounts and safe deposit boxes to which the financial intelligence unit will have access, among others.¹³⁹

The Ministry of Finance is working on improvements on gambling legislation, but new legal solutions are still pending. The Draft Law on Amendments to the Law on Games of Chance, which envisages the introduction of greater amounts for gambling via the Internet and for casinos, is according to Parliamentary Legislative Committee, not in line with the Constitution and the legal system, so this legal act has not moved forward.¹⁴⁰

Good practices

- In December 2021, the Montenegrin Government adopted the National Strategy for the Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing.
- Montenegro conducted its third national money-laundering risk assessment in 2020 to identify AML risks and vulnerabilities in the country across different sectors.
- The AML Law stipulates that the Sector for the Prevention of Money Laundering and Terrorism Financing (FIU) shall be independent and have adequate financial resources.

Directive 2006/70/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>, accessed on 12.10.2022.

¹³⁸ Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL) (May 2020), 4th round Mutual evaluation of Montenegro revised follow up report, , <https://www.coe.int/en/web/moneyval/home>, accessed on 10.02.2023.

¹³⁹ According to an interview conducted with a representative of the Financial Investigation Unit and MoI, Podgorica, accessed on 01.11.2022.

¹⁴⁰ Vijesti (28 February 2023), Ramp for the proposal of the Law on Games of Chance <https://www.vijesti.me/vijesti/ekonomija/645353/rampa-za-predlog-zakona-o-kocki>, accessed on 10.03.2023.

- Montenegro has been assessed as a country with a moderate to low risk of money laundering and terrorism financing.

Deficiencies

- Although the amendments of the LPMLTF and strengthening of the FIU's independence has helped in implementing the laws, some challenges still remain.
- Montenegro has yet to align its Law on the Prevention of Money Laundering and Terrorism Financing with the fourth and fifth EU Anti-Money Laundering Directives and to solve some implementation issues relating to beneficial ownership and supervision.
- The draft Law on Games of Chance, intended to achieve alignment with international best practices, has yet to be adopted.
- There is no publicly accessible data, giving details on up-to-date statistics related to AML and asset recovery cases, including on investigations and follow-up prosecutions/convictions resulting from such investigations.

4.2 Chapter V

4.2.1 Art. 52 and 58 – Anti-Money Laundering

The change in the model of the financial intelligence unit in Montenegro from an administrative to a police type in the beginning of 2019, caused the loss of membership in the Egmont group, and thus the need to invest additional efforts to regain the lost membership in one of the most important international institutions.¹⁴¹

In December 2019 and June 2021, Montenegro adopted amendments to the Prevention of Money Laundering and Terrorism Financing Law. It did so to reflect the changes in the FIU's institutional setting and ensure compliance with FATF recommendations on the FIU's independence.

In May 2020, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) formally removed Montenegro from the fourth-round follow-up process, considering that the country had taken sufficient steps to remedy deficiencies that had been identified in 2015.

In accordance with the decision of the Chief of Financial Intelligence Services on November 4, 2020, the FIU of Montenegro was granted back membership in the world's largest network of financial intelligence units by decision of the Egmont Group.¹⁴² Such membership enables the FIU to exchange financial intelligence data with 165 financial intelligence services from all over the world. The process of admitting Montenegro's FIU to membership in Egmont was completed just 11 months from the date of application.

¹⁴¹ Mina News (4 December 2019), Modifications Prerequisite for re-membership in the EGMONT group <https://mina.news/vijesti-iz-crne-gore/izmjene-preduslov-za-ponovno-clanstvo-u-egmont-grupi/> accessed on 20.03.2023.

¹⁴² Vijesti (4 November 2019), Montenegro is again member of Egmont group <https://www.vijesti.me/vijesti/drustvo/483399/crna-gora-ponovo-clanica-egmont-a> accessed on 23.03.2023.

In 2023, the assessment of Montenegro within the fifth round of regular evaluations by MONEYVAL is underway. Deficiencies in legislative and procedural frameworks and a lack of implementation in practice (low number of cases, cooperation among authorities) could lead, based at the MONEYVAL fifth round of regular evaluation, to Montenegro being added to the FATF grey list, officially known as Jurisdictions Under Increased Monitoring, which includes countries with deficiencies in their AML/CTF regimes.

The LPMLTF recognizes banking and financial institutions, as well as non-bank financial businesses and professions as reporting entities. Article 4 of the AML Law lists numerous institutions and professions that fall within the scope of the Law (the “reporting entities”), such as banks and other credit institutions; financial institutions that perform business; payment service providers for electronic money based in Montenegro, and several others.¹⁴³

According to the Law, the aforementioned reporting entities are obliged to report cash transactions in amounts of 15,000 euros or more, the reporting of all suspicious transactions (regardless of the amount or method of transaction) or clients, as well as the obligation to implement measures to monitor the business relationship of clients, including monitoring the sources of funds with which the client operates, and in particular the control of physical and legal entities that trade in goods, when performing occasional cash transactions in the amount of 10,000 euros or more (regardless of whether the transaction was performed in one or more interconnected transactions).

In accordance with Article 30 of the Law, reporting entities are obliged to undertake measures of in-depth verification and monitoring of the business relationship and monitor client transactions when concluding a business relationship or conducting transactions with a client who is a politically exposed person (or the real owner of the client is a politically exposed person). The list of politically exposed persons is determined by the Agency for the Prevention of Corruption and published on its website.¹⁴⁴ All reporting entities are required to keep records for at least ten years after an account has been closed or the business relationship with a customer has ended.

There are misdemeanor criminal sanctions for non-compliance with the LPMLTF obligations, such as a ban on the business activity of a legal entity and an entrepreneur for up to six months; a ban on the performance of work for a duration of up to six months can be imposed on a responsible person in a legal entity and a natural person; and fines ranging from 150 euros to 20,000 euros.

A register of beneficial ownership was created in February 2022, providing the authorities with information on the individuals ultimately owning or controlling the shares of legal entities registered in Montenegro. The Central Bank of Montenegro has a central register of resident accounts, but does not have a register of non-resident accounts, a crucial tool for investigations involving non-residents.

¹⁴³ For the full list of reporting entities, refer to Article 4 of the LPMLTF.

¹⁴⁴ Agency for Prevention of Corruption, List of politically exposed persons, https://www.antikorupcija.me/media/documents/Lista_politi%C4%8Dki_eksponiranih_lica.pdf, accessed on 10.01.2023.

The Administration for the Prevention of Money Laundering and Terrorism Financing (or FIU) is now integrated in one of the eight departments of the Police Directorate. A significant task of the FIU includes receiving and analyzing suspicious transaction reports from reporting entities to determine whether there are reasonable grounds to believe that a money laundering offence has been committed and, in such cases, refer the matter to the relevant law enforcement agencies for investigation.

The FIU in Montenegro is only part of the anti-money laundering system, and as a police authority, has significant resources, capabilities, and powers. The FIU is the initial link in the system of combating money laundering, together with reporting entities which, in most cases, submit initial financial intelligence information in the form of a report on a suspicious or cash transaction. Further activities in the reconnaissance phase, in cases where grounds for suspicion of money laundering are established, are carried out by other segments of the Police Administration together with the financial intelligence unit, in coordination with the Special State Prosecutor's Office. Criminal prosecution in cases for the criminal offense of money laundering (Article 268 of the Criminal Code of Montenegro) is under jurisdiction of the Special State Prosecutor's Office. At the end of the entire system is the court, on whose expertise, professionalism and knowledge depends a large part of the success and results in the fight against money laundering and terrorist financing.

In addition to the institutions that deal with the fight against money laundering and terrorist financing, the supervisory authorities defined by the LPMLTF, are of exceptional importance, especially in the area of prevention through permanent control.¹⁴⁵

The LPMLTF regulates the procedure for submitting personal data to the authorities responsible for combating money laundering and terrorist financing of a foreign state. Also, the Law enables direct communication between competent administrative bodies that may seek information, data and documents necessary for the detection and prevention of money laundering or terrorist financing. The competent administrative authority likewise may, on its own initiative, submit the data, documentation and information about customers or transactions for which there are reasonable grounds for suspicion of money laundering or terrorist financing, acquired or maintained in accordance with this Law, to the competent authority for the prevention and detection of money laundering and terrorist financing of a foreign state, under the condition of reciprocity.

The FIU of Montenegro continuously implements international cooperation through several channels. Financial intelligence data is exchanged through the Egmont Secure Network (ESN), by foreign police services through the Department for International Operational Police Cooperation (INTERPOL-EUROPOL-SIRENE) and by direct exchange through Europol's communication channel, 'Siena'.

¹⁴⁵ Article 94 of the LPMLTF: Supervision over the implementation of the law and the regulations adopted on the basis of the law, within the competence established by law, is carried out by: The Central Bank of Montenegro; the Agency for electronic telecommunications and postal activity; The Commission for the Capital Market; The Agency for Insurance Supervision; the administrative body responsible for inspection tasks through an authorized inspector in accordance with the law regulating inspection supervision; the competent tax authority; the Bar Association of Montenegro; the Chamber of Notaries of Montenegro, and the Ministry of interior.

The initial track record of investigations into money laundering continued to improve, but the number of cases remained limited. In 2021, the Financial Intelligence Unit of Montenegro (FIU) received 299 suspicious transactions reports and sent 62 notifications to law enforcement agencies. Some 18 preliminary investigations and five investigations were launched. More money laundering cases reached the courts, including cases where money laundering is a stand-alone offence. However, the number of court decisions on money laundering remained small: two court verdicts were brought against three people in 2021, all based on plea bargains. In the first six months of 2022, nine money laundering cases were pending before the courts, of which four cases were stand-alone money laundering cases.¹⁴⁶

Based on the number of reports by reporting entities it can be concluded that FIU receives and processes a large set of data on a daily basis. If we add to that the possibility of requesting a supplementary set of data from the reporting entities, it is clear that the procedure for analyzing financial intelligence data is a complex process that requires specific knowledge in the field of financial forensics, good technological solutions and analytical tools.

In September 2021, Montenegro concluded for the first time an agreement with a third country (the Republic of Moldova) to establish a joint investigation team on a common drug traffic and money laundering case, enabling coordinated searches, arrests, and seizures in both countries.

According to the opinion of professionals involved in the money laundering prevention system, as well as the reports of MONEYVAL, the European Commission and reports and analyses given by the competent state authorities of Montenegro, the conclusion is that in Montenegro there is generally a very good normative framework, as well as administrative capacities for its implementation. The last MONEYVAL assessment visit to Montenegro was carried out from 6 to 17 March 2023.

Good practices

- The Montenegro FIU re-established its membership at the world's largest network of financial intelligence units by decision of Egmont.
- It also completed the fourth evaluation round by MONEYVAL, mainly by establishing independence - organizational and financial - of the FIU.
- According to various international reports and analyses, in Montenegro there is generally a very good normative framework, as well as administrative capacities for the implementation of AML.

Deficiencies

- The communication and reporting system from all reporting entities is insufficient. Most STRs have been reported by banks.
- The number of investigations and court decisions on money laundering remains limited. The capacities of institutions to tackle money laundering needs to be significantly improved.

¹⁴⁶ European Commission (2022), Montenegro 2022 Report, COM, 528 final, accessed on: 12.10.2022.

4.2.2 Art. 53 and 56 – Measures for Direct Recovery of Property

Mutual legal assistance in criminal matters is provided on the basis of multilateral and bilateral agreements, and if there is no international agreement or if specific issues are not regulated by agreements, domestic legislation applies. The Ministry of Justice is the central authority that is responsible for any formal communication with respect to providing mutual legal assistance.

Montenegro is a signatory to a number of multilateral conventions in the field of mutual legal assistance in criminal matters. The most important among these are the Convention of the Council of Europe, the European Convention on Mutual Assistance in Criminal Matters and its two additional protocols.¹⁴⁷

The Law on Mutual Legal Assistance in Criminal Matters¹⁴⁸ stipulates the conditions and procedures for the provision of mutual legal assistance in criminal matters. The Law establishes rules and procedures for acting upon letters rogatory that Montenegro receives and the letters rogatory for mutual legal assistance submitted by Montenegro to a foreign country, depending on the existence of an international agreement.

The MLA Law is of a general nature and deals with extradition, transfer of proceedings (assignment and assumption of criminal prosecution), the recognition and enforcement of criminal judgments and other court decisions, as well as other forms of mutual assistance. In accordance with Article 38 of the MLA Law, the Competent Court in Montenegro will, in order to enforce a foreign court decision in criminal matters, if this is stipulated by an international agreement or if there is reciprocity, make a decision on the imposition of a criminal sanction, i.e., a decision ordering the temporary or permanent confiscation of property (which include claim damages by injured party, e.g. material damages, loss of profits, non-pecuniary loss) obtained through criminal activity, in accordance with domestic law.

In order to implement the provisions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000 and the Protocols thereto (which Montenegro cannot sign and ratify as the scope of its application is limited to EU countries), the amendments to the Law on Mutual Legal Assistance in Criminal Matters – Article 42 – provide for joint investigation teams and delivery of banking data as a special form of mutual legal assistance, which is in accordance with the provisions of the Second Additional Protocol to the Convention.

Good practices

- The Montenegrin legislative and institutional framework provides measures for the direct recovery of property.

¹⁴⁷ European Convention on Mutual Assistance in Criminal Matters (20 April 1959), Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 099); Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182)

¹⁴⁸ The Law on Mutual Legal Assistance in Criminal Matters, Official Gazette of Montenegro, no. 4/2008, 36/2013 and 67/2019.

Deficiencies

- The MLA Law does not have any provisions regarding the proactive sharing of information.
- There is no public information or report by authorities which would refer to asset recovery cases with an international dimension.
- Databases of different authorities involved in asset recovery cases are not synchronized for national reporting purposes.

4.2.3 Art. 54 – Confiscation Tools

According to the Criminal Code of Montenegro, Article 75, the objects/instrumentalities which were used or intended for use in the commission of a criminal offence, or which resulted from the commission of a criminal offence may be confiscated if they are owned by the perpetrator. Instrumentalities may be confiscated even if they are not owned by the perpetrator if required for reasons of security of people or property, or for moral reasons, but also where there is still a risk that they may be used for the commission of a criminal offence notwithstanding however the rights of third persons to claim damages from the perpetrator.

The Criminal Code of Montenegro, Article 112 stipulates that no person may retain pecuniary gain originating from an unlawful act which is established by law as a criminal offence and that such pecuniary shall be liable to confiscation under the conditions laid down by the present Code and a court decision.

In this regard, under Article 113, the court will issue an order for the confiscation of:

- (1) money, property of value and any other pecuniary gain originating from a criminal offence shall be confiscated from the perpetrator, and where such confiscation is not possible, the perpetrator shall pay the equivalent amount in money;
- (2) pecuniary gain for which there is reasonable suspicion to believe that it originates from criminal activity unless the perpetrator makes it probable to believe that its origin is legitimate (extended confiscation);
- (3) pecuniary gain originating from a criminal offence where it has been transferred to other persons free of charge or where such persons knew, could have known, or were obliged to know that the pecuniary gain originated from a criminal offence;
- (4) pecuniary gain which was obtained for another person.

Article 268, paragraph 6 of the Criminal Code sets out provisions for the confiscation of assets in the event of conviction for a money laundering criminal offence. Property, in the sense of this article of the Criminal Code, includes property rights of any kind, regardless of whether they refer to tangible or intangible goods, movable or immovable things, securities and other documents proving property rights which shall be confiscated by court decision.

In 2015, Montenegro adopted the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity (Asset Recovery Law),¹⁴⁹ which comprehensively

¹⁴⁹ Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, Official Gazette of Montenegro, no. 58/2015 and 47/2019.

envisages extended confiscation (conviction based). For the defendant to be deprived of property that is disproportionate to his legal income, it is necessary for the defendant to be convicted of one of the criminal offences listed in Article 2, paragraph 1 of the Law. This catalogue of criminal offences has been significantly expanded in relation to the number of criminal offences previously provided for in the Criminal Code and includes money laundering offences.

The Asset Recovery Law, Article 10 also sets out a special form of confiscation, non-conviction-based confiscation. This procedure can be used if the person against whom the criminal procedure has been instituted of a criminal offence referred to in Article 2, paragraph 1 of this Law dies, or when instituted proceedings cannot be continued due to the existence of circumstances which permanently preclude prosecution. Material benefits derived from criminal activities shall be confiscated under the material benefit confiscation procedure pursuant to this Law.

In case of the death of a person against whom criminal proceedings were instituted of an offence under Article 2, paragraph 1 of this Law, material benefits derived from criminal activities shall be confiscated from his successors or from the person against whom criminal procedures may not be continued due to the existence of circumstances which permanently preclude prosecution.

Material benefits derived from criminal activities may be confiscated if it is probable on the merit of evidence that instituted proceedings would have ended in a conviction had the person not died or had the circumstances permanently precluding prosecution not arisen. Montenegro is in the process of introducing non-conviction-based confiscation.

Since the Law entered into force in 2015, Montenegrin courts have issued only 14 final court decisions. Although the Special Prosecution Office launched a number of financial investigations, its effectiveness and efficiency is not at the expected level. In 2021, the Special State Prosecutor's Office opened investigations into 15 cases of criminal offences of high-level corruption, against 70 individuals and 19 legal entities.

Good practices

- The Criminal Code defines tools for the confiscation of instrumentalities and proceeds of crime as well as assets where predicate offences are committed abroad.
- The Asset Recovery Law provides for extended confiscation and to some extent non-conviction based (NCB) confiscation of assets.

Deficiencies

- There is limited freezing and confiscation of criminal proceeds, instrumentalities, and property of equivalent value being undertaken due to the lack of money laundering and asset recovery proceedings.

4.2.4 Art. 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation

The MLA Law outlines requirements and procedures for Montenegrin authorities to process legal assistance requests in criminal matters from other nations. The assistance (Article 42) provided under the MLA Law can be in the form of:

- submitting documents, written materials and other cases related to the criminal proceedings in the requesting country;
- mutual exchange of information, as well as the undertaking of individual procedural actions;
- hearing the accused, witnesses and experts including hearings through video and telephone conferences;
- crime scene investigations;
- the search of premises and persons;
- temporary seizure of items;
- secret surveillance measures;
- DNA analysis;
- temporary surrender of a person deprived of liberty in order to give testimony;
- delivering information from penal records;
- information on the judgment;
- other procedural actions.

According to Article 71 of the LPMLTF the FIU may, without request, submit data, documentation and information about persons or transactions for which there is a reason to suspect that it is money laundering and related predicate crimes or financing of terrorism that it has acquired or conducts in accordance with by this law, to the authority responsible for the prevention and detection of money laundering and related predicate criminal acts and the financing of terrorism of a foreign state with the condition of reciprocity. Montenegro can be assessed as affording other States Parties the measure of cooperation and assistance in asset recovery but through traditional instruments of MLA. There is no evidence of foreign non-conviction-based confiscation orders being enforced in Montenegro.

Mutual legal assistance in criminal matters is provided on the basis of multilateral and bilateral agreements, and if there is no international agreement or if specific issues are not regulated by agreements, domestic legislation applies. In the case when Montenegrin legislation does not define some provision accepted through an international document or convention, Article 9 of the Constitution of Montenegro stipulates that confirmed and published international treaties and generally accepted rules of international law are an integral part of the Montenegrin legal order, and that they have primacy over domestic legislation and are directly applicable when they regulate relations differently from domestic legislation. According to available information, there are no significant deficiencies between Montenegro and countries with which it is engaging via MLA. That being said, Montenegro has not had many confiscation-related cases.

Good practices

- Montenegrin legislation, at the general level, defines broad international cooperation instruments for the purpose of confiscation.

Deficiencies

- The Montenegrin MLA law does not directly stipulate provisions regarding international cooperation intended for confiscation of the proceeds of crime and its instrumentalities, including asset sharing.
- Montenegro does not have in place a system of monitoring and evaluation of the implementation of these UNCAC articles.

4.2.5 Art. 57 – The Return and Disposal of Confiscated Property

Article 114 of the Criminal Code of Montenegro sets out provisions for the protection of the injured party including in the case of a money laundering offence, or any other offence. Where the injured party has been awarded his claim for damages in criminal proceedings, the court shall order the confiscation of pecuniary gain only insofar as such pecuniary gain exceeds the adjudicated claim of the injured party.

The injured party which has been referred by the criminal court to bringing his claim for damages in a civil action may request to be reimbursed from confiscated pecuniary gain, provided that he brings a civil claim within six months from the final decision directing him to bring a civil action and under the further condition that he claims reimbursement from the confiscated pecuniary gain within three months from the final decision awarding his claim.

Additionally, any injured party who has not brought his claim for damages in the course of the criminal proceedings may request to be reimbursed from confiscated pecuniary gain provided that he instituted a civil action for the purpose of establishing his claim within three months of the date he learnt of the judgment ordering confiscation of pecuniary gain, but not later than within three years of the date of the final decision ordering confiscation of pecuniary gain and provided further that he requests, within three months of the date of decision awarding his claim for damages, to be reimbursed from the confiscated pecuniary gain.

The Asset Recovery Law defines protection of injured parties (Article 48) in the extended confiscation procedures. If a final decision was rendered in criminal proceedings on account of a crime referred to in Article 2 paragraph 1 of the Law (also money laundering offences) or in civil proceedings, to uphold the injured party's claim for damages, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit, that the claim for damages is to be settled from the confiscated material benefit if the claim for damages has not been not settled otherwise before the ruling becomes final.

Where civil proceedings are underway in view of exercising the claim for damages on account of a crime referred to in Article 2, paragraph 1 of the Law, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit that funds amounting to the claim for damages are to be set aside and kept separately or deposited onto a separate account.

Where a judgment is rendered in proceedings to uphold the claim for damages, execution shall be conducted on the funds set aside or deposited, if the claim for damages has not been settled otherwise.

Confiscation of material benefit derived from criminal activities shall not affect the rights of bona fide third parties to that property (Article 49). A *bona fide* third party may

join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final.

If the bona fide third party does not join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final, his right to seek the settlement of claims from the confiscated material benefit shall be forfeited.

According to Article 50 of the law, bona fide third parties whose claim or another right was upheld in the final judgement on confiscation of material benefit derived from criminal activities may file a request to the competent body within two months as of the date of receipt of the final judgement, for the satisfaction of their claim or for exercise of another right stemming from the confiscated property.

In accordance with International Private Law Article 141 and Article 38 of the MLA Law on Criminal Matters, the competent court in Montenegro will enforce a foreign court decision, including enforcement of the foreign court decision in regard to property in civil matters and the temporary or permanent confiscation of property obtained through criminal activity, in accordance with domestic law.

Montenegro is in the process of signing the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.¹⁵⁰ On February 2, 2023, the Montenegrin Government adopted information on the need to sign the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters with the proposal for the Convention. According to the action plan, the Convention was signed in April 2023.¹⁵¹

Asset sharing of confiscated material benefit derived from the criminal activity with other countries may be governed by an international treaty according to Article 78 of the Asset Recovery Law. All fourteen confiscation cases finalized by Montenegrin courts since the Asset Recovery Law was adopted in 2015 were related to national property (without any international aspects).¹⁵² Moreover, there is no relevant information that confiscated assets of foreign origin have ever been confiscated through criminal procedure in relation to offences established in accordance with the UNCAC.

Good practices

- The Montenegrin legal framework recognizes and defines the return and disposal of confiscated property on a substantive level.

¹⁵⁰ Hague Conference on Private International Law (HCCH, 2019), 41: Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>, accessed on: 12.12.2022.

¹⁵¹ Mina News, Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters signed, available at: <https://mina.news/vijesti-iz-crne-gore/potpisana-haska-konvencija-o-priznavanju-i-izvršenju-stranih-presuda-u-gradanskim-i-privrednim-stvarima/>, accessed on June 20, 2023.

¹⁵² Refer to the asset recovery cases mentioned in this report under section 4.5, below, for more information.

- Montenegro is in process of signing the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

Deficiencies

- There is no legal provision in place for the return and disposal of confiscated property which clearly define grounds and procedure in place for the return and disposal of confiscated property, including proceeds of crime and instrumentalities on an international level.

4.3 Statistics

Money Laundering

Reporting/Intelligence Phase	Year: 2019	Year: 2020	Year: 2021
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities: - Banks and financial institutions - Non-financial businesses and professions (NFBPs)	249 15	226 8	283 2
Number of postponement orders adopted on reported transactions	9	40	12
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	55	57	25
Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling)	8	3	2
Number of STRs sent to law enforcement and on which further analysis was made	143	236	356
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	14	14	14

Investigation Phase	Year: 2019	Year: 2020	Year: 2021
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	n/a	n/a	n/a
Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	n/a	n/a	n/a
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	n/a	n/a	2

Judicial Phase	Year: 2019	Year: 2020	Year: 2021
Number of staff dedicated full-time (or full-time equivalent) to investigating money laundering in the judiciary	n/a	n/a	n/a
Number of persons/legal entities convicted for money laundering offences	2	1	3

Number of convictions for laundering proceeds of crimes committed abroad	n/a	n/a	n/a
Number of convictions for crimes other than money laundering originating from STRs	n/a	n/a	n/a
Number of sentences by type for money laundering offences	n/a	n/a	n/a
Number of unsuspended custodial sentences by length (as principal offence, as predicate offence)	n/a	n/a	n/a

4.4 Short analysis

Statistical figures for the Reporting/Intelligence phase, which the FIU is in charge of, show an increase in communications with other state authorities and reporting entities based on STRs and other operational information shared with FIU. The quality of work in this phase has yet to be assessed through final judgment in money laundering cases.

In total, six persons have been convicted for money laundering criminal offences, or for cases in connection to another criminal offence such as organized crime in Montenegro. In the assessed period of three years, a total of three indictments were brought to court for the criminal offence of money laundering as a standalone offence with only one case/prosecution having led to a judgement (conviction).

During the same period, 97 persons have been convicted for organized crime criminal offences and 43 persons for corruption criminal offences. Based on the presented statistics it can be concluded that the Montenegrin criminal justice system does not deliver sufficient results in the fight against money laundering.¹⁵³

The reason for lack of data with regards to the value of frozen and confiscated assets in this report is the fact that Montenegro does not have an estimation methodology in place for the valuation of frozen and confiscated assets, or a genuine database on assets. The gaps in certain data in the statistical tables above attests to an incomplete system of records, i.e., failure to keep records for specific data.

4.5 Information on asset recovery case

¹⁵³ Annual reports of the Prosecutorial Council and Supreme State Prosecution Office – 2019, <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/948/2248-13307-00-72-20-9.pdf>, 2020, https://www.tuzilastvo.me/static//drtz/doc/IZVJESTAJ_O_RADU_ZA_2020_GODINU.pdf, and 2021, https://tuzilastvo.me/static//tzsv/doc/IZVJESTAJ_O_RADU_TUZILACKOG_SAVJETA_I_DRZAVNOG_TUZILASTVA_ZA_2021_GODINU.pdf, accessed on November 20, 2022.

- **The Medenica case**, involving the former President of the Supreme Court and judges¹⁵⁴

Type: Criminal procedure, high-level corruption and organized crime case
Origin of proceedings: initiated based on MLA (EUROPOL)

Current status of the proceedings: indictment confirmed (February 2023)

Problems encountered: Possible issue in regard to the impartiality of judges in relation to former colleagues.

- **The Jovanic case**, involving the President of the Commercial Court and court officials¹⁵⁵

Type: Criminal procedure, high-level corruption and organized crime case

Current status of the proceedings: indictment confirmed (February 2023) 827,655.32 Euro.

- **The Kotor case**, involving a construction company¹⁵⁶

Type: Criminal procedure of several million euros; money laundering and organized crime case

Current status of the proceedings: in the investigation phase.

- **The Marovic case**, involving the Mayor of the municipality and other officials¹⁵⁷

Type: Criminal procedure, high-level corruption and organized crime case

Current status of the proceedings: final judgment based on plea-bargain agreement; confiscated more than 13 million Euro in proceeds of crime.

- **The Moldova case**, involving two Moldovan citizens¹⁵⁸

Type: Criminal procedure, money laundering and organized crime case

¹⁵⁴ The Medenica case, published on 18 April 2022, <https://balkaninsight.com/2022/04/18/montenegro-arrests-ex-head-of-supreme-court-for-abuse-of-office/>, accessed on 20.01.2023.

¹⁵⁵ The Jovanic case, published on May 09, 2022, <https://www.rferl.org/a/montenegro-commercial-court-corruption/31841724.html>, accessed on 20.01.2023.

¹⁵⁶ The Kotor case, published on 13 September, 2022, <https://www.vijesti.me/vijesti/crna-hronika/621404/uhapsen-perovic-sumnji-se-da-je-prao-novac-za-kavcane>

¹⁵⁷ The Marovic case, published on 14 September 2016, <https://www.occrp.org/en/daily/5643-montenegro-former-president-convicted-of-corruption>, accessed on 20.01.2023.

¹⁵⁸ The Moldova case, published on October 5, 2021, <https://www.selec.org/successful-joint-action-day-conducted-by-the-moldovan-and-montenegrin-law-enforcement-authorities/>, accessed on 20.01.2023.

Current status of the proceedings: main hearing and seizure of 100 bank cards, dozens of SIM cards, nine mobile phones, two luxury vehicles worth about 100,000 Euro, about 3,000 Euro in cash, and three laptops.

The first Joint Investigation Team (JIT) of Montenegrin and Moldovan Authorities was established by Montenegrin Prosecution service.

V. Recent Developments

In June 2021, high-level government representatives from the Western Balkans adopted a Regional Roadmap on Anti-Corruption and Illicit Finance Flows to fast-track the implementation of the United Nations Convention against Corruption (UNCAC) in support of the achievement of Sustainable Development Goal 16 in the Western Balkans jurisdictions. The roadmap has an action plan to achieve three goals: preventing and countering corruption in public procurement, including in times of crises; further strengthening conflict of interest and asset declaration systems; and enhancing criminal justice responses to corruption and economic crime through the creation of a regional network of specialized prosecutors, law enforcement and financial intelligence units in the Western Balkans Jurisdictions.¹⁵⁹

Montenegro also made commitments at the Summit for Democracy held in December 2021.¹⁶⁰ The Ministry of the Interior established a new organizational unit, the Anti-Corruption Unit (JAK), which will monitor not only the income and lifestyle of officials, but also the lifestyle, income, and property of their spouses, children, and persons related to them. This Unit started operative work, but concrete results are still expected.

The government of Montenegro also unveiled the ‘Europe Now’ program,¹⁶¹ which introduced a progressive tax rate and increased the minimum wage from €250 to €450. The program, adopted by parliament in December 2021, sought to improve the living standards of citizens. However, the results of the program have been, to a certain extent, limited by inflation and have also caused challenges in ongoing budgetary financing. Namely, the program affected the revenues of municipalities, decreasing revenues in some local governments by up to 75%, as compared to February 2021.

Montenegro signed the UNCAC Coalition’s Transparency Pledge in August 2022, becoming the 33rd country voluntarily committing to a high level of transparency and civil society inclusion in the second cycle of the UNCAC implementation review.¹⁶²

Judiciary reform in Montenegro, although set as a priority by each Government, is still pending. Concerns have been expressed in relation to the lack of judicial independence and widespread reports and cases of weak integrity within the judiciary. Moreover, the consolidation of independent Judicial and Prosecutorial Councils and the legitimacy of their decisions on the recruitment and retirement of judges and prosecutors are questioned. The Judicial Council is incomplete in composition, yet still

¹⁵⁹ UNODC, RAI, Regional Anti-Corruption and Illicit Finance Roadmap for the Western Balkans Jurisdictions, Ohrid North Macedonia, June 25, 2021, available at: https://www.unodc.org/documents/southeasterneurope/AC_and_Illicit_Finance_Roadmap_Full_25.06_PDF.pdf, accessed on 06.06.2023.

¹⁶⁰ MONTENEGRO Summit for Democracy Written Commitments, available at: www.state.gov/wp-content/uploads/2022/02/MONTENEGRO-Summit-for-Democracy-Written-Commitments-English-Accessible-Finale.pdf, accessed on 20.02.2023.

¹⁶¹ Government of Montenegro, EUROPE NOW Reform program for more inclusive and more sustainable economic development of Montenegro, available at: <https://wapi.gov.me/download-preview/2ddc7031-102f-4950-bf7d-d5742783691d?version=1.0>, accessed on: 20.11.2022.

¹⁶² UNCAC Coalition, News, Montenegro signs the UNCAC Review Transparency Pledge, available at <https://uncaccoalition.org/montenegro-signs-the-uncac-review-transparency-pledge/>, accessed on 01.06.2023.

operational. The Parliament has missed several opportunities to appoint three pending lay members of the Council. The new Prosecutorial Council was promulgated in February 2022; however, its overall performance and competencies need to be further enhanced. The Supreme State Prosecutor is yet to be appointed for a full term. The acting status of this institution, has recently been extended for an additional six months. As of mid-September 2022, the Constitutional Court has been operating despite its incomplete composition. After five months, in February 2023, the Parliament of Montenegro elected three of four missing judges to the Constitutional Court. The key obstacle to judicial reform is the absence of political consensus, given that high positions in the judiciary are elected by a qualified majority. Protracted rationalization of the judicial network and the insufficient financing of judicial institutions also remain challenges.

With the adoption of the Law on Confiscation of Property Gains from Criminal Activity, which has been in force since January 2016, there has been a significant change in the legislative framework for the confiscation of property benefits gained from criminal activity. The acting government failed to complete work on the so-called “anti-mafia law,”¹⁶³ which was withdrawn from Parliament in February 2023 after sharp criticism. Although, according to the Government, the anti-mafia law would improve existing legislation, most MPs were assessed as being politically motivated in their decision. In addition to the European Union, the law has been criticized by organizations which advocate for legal solutions to treat property acquired through crime.

Numerous legislative and other initiatives to increase the confiscation of the proceeds of crime have been launched at the national and international levels, and they point to the necessity of establishing more effective models of property benefits gained from criminal activity confiscation.

¹⁶³ Popular name for Amendments to the Law on Confiscation of Property Gains from Criminal Activity.

VI. Recommendations

1. Further strengthen the independence and accountability of the Anti-Corruption Agency (ACA) and facilitate inclusive anti-corruption efforts, taking on board input from civil society, inter alia;
2. Improve public reporting on anti-corruption efforts and results, including through nation-wide consultations on anti-corruption policies and practices and greater transparency on anti-corruption measures and decisions;
3. Strengthen mechanisms for addressing the influence of politics in public hiring, including through implementation of the Public Administration Reform (PAR) Strategy measures;
4. Improve transparency and effective oversight of political financing;
5. Re-organize and enhance the asset declaration regime and ensure effective implementation of integrity plans per institution, to address long-standing integrity gaps and allow for effective detection and follow-up of all cases of breaches of professional conduct;
6. Improve company ownership transparency: undertake efforts to populate the recently established Beneficial Ownership Register with comprehensive, standardized and structured data that facilitates analysis and further use (following the Open Contracting Data Standard; improve reporting by private entities on their shareholders and beneficial owners);
7. Implement judicial independence guarantees in practice and ensure that any violations of judicial ethics and discipline in the judiciary are reported, investigated, effectively addressed and sanctioned;
8. Enhance the judiciary's accountability and professionalism, by applying the relevant constitutional and legal frameworks, in line with relevant European standards;
9. Provide support to judicial self-regulatory bodies (such as the Judicial Council, Prosecutorial Council) in assuming their roles and prerogatives and enable them to fully function according to their composition and mandate, including through the completion of pending processes of appointment of lay members of the Judicial Council;
10. Put in place additional guarantees to mitigate the risks and perceptions of undue political influence over the Judicial and Prosecutorial Councils;
11. Strengthen the implementation of anti-money laundering legislation in practice, including through further support to strengthen the FIU's operational independence and resources; enhancing national financial intelligence capacities and skills; further strengthening coordination among AML authorities, and advancing the system of AML oversight, including over non-for-profit organizations, lottery, real estate companies and other private sector entities;
12. Review the legal and operational approach to financial investigations, asset recovery, the fight against money laundering and ensure stronger mutual

understanding between courts and the prosecution on key legal concepts such as money laundering and quality of evidence;

13. Improve the track record of court decisions on money laundering, the use of financial investigations and the capacity to confiscate the proceeds of crime;
14. Foster government interaction with CSOs in the UNCAC review, by organizing an open and inclusive process to ensure that the self-assessment reflects input from various stakeholders.

VII. Annex

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