



Montenegro
Agency for Prevention of Corruption

No: 03-04-2731

Podgorica, 6 December 2024

Pursuant to Articles 82 and 83 of the Law on Prevention of Corruption ('Official Gazette of Montenegro', 54/24), acting ex officio, the Anti-Corruption Agency issues the following:

**OPINION ON THE DECREE ON CONDITIONS AND MANNER OF USE OF VEHICLES OWNED BY
MONTENEGRO**

('Official Gazette of Montenegro', 21/10, 57/11, 63/12, 17/13, 19/13, 11/15, and 10/22)

The legal framework prescribing the use and utilization of state-owned vehicles is defined by the Opinion on the decree on conditions and manner of use of vehicles owned by Montenegro. With regard to this, and taking into consideration that responsible management and use of public resources by public officials and institutions is of major significance for safeguarding the state budget and preserving the trust and integrity of institutions, the Agency has undertaken an analysis of the Decree concerned, in particular the provisions in the application of which the following have been identified: significant room for different interpretations, lack of regulation, and insufficiently developed norms. The Agency has also given recommendations to improve mechanisms for ensuring lawful and responsible management of this type of resource.

REASONING

I. PROCEDURE

The Law on Prevention of Corruption governs the competence of the Agency that, pursuant to Article 82, paragraph 1, the Agency shall:

'... gives initiatives for amending and supplementing laws, other regulations and general acts, in order to eliminate possible risks for the emergence of corruption or their harmonisation with international standards in the field of anti-corruption;

- gives opinion on draft laws and other regulations and general acts in order to harmonize them with international standards in the field of anti-corruption;

Additionally, Article 83 of the subject Law establishes that the Agency may, either on its own initiative or upon request from government bodies, companies, legal entities, entrepreneurs, or natural persons, give opinions aimed at improving prevention of corruption, reducing corruption risks, and strengthening ethics and integrity in government bodies and other legal entities. Such opinions include a corruption risks analysis, measures to eliminate the corruption risks and to prevent the corruption.

Within its Opinions, the Agency may refer to provisions of the Constitution and relevant laws, however not with a view to assessing constitutionality and legality, but rather applying and achieving the purpose of Articles 82 and 83 of the Law on Prevention of Corruption.

Taking into consideration that the Decree on conditions and manner of use of vehicles owned by Montenegro directly refers to the use of public resources, and that responsible management and use of these resources by public officials and institutions is of major significance for preserving the trust and integrity of institutions, the Agency has undertaken an analysis of the Decree concerned, in particular the provisions of the Decree in the application of which the following have been identified: significant room for different interpretations, lack of regulation, and insufficiently developed norms, which has, in practice, led to inconsistent implementation and left room for potential misuse.

Furthermore, the subject analysis of the Decree was prompted by the fact that 80 bodies, through their integrity plans, identified a risk of misuse of official vehicles, with the highest number of cases found in the judiciary (27), health institutions (22), local public enterprises (14), municipalities (5), and three government bodies (two ministries and one institute). Also, being aware of the need to unify the rules in this area, the Agency, through its annual reports on the issuance and implementation of integrity plans, recommended that local self-government units plan measures to adopt rulebooks on the conditions and manner of use of official vehicles owned by the municipality, which will define a unified model for travel orders at the municipal level (including bodies where the municipality is the majority owner), based on the Decree on the conditions and manner of use of vehicles owned by Montenegro, if no legal act has been adopted that defines the form and content of travel orders, or the conditions and manner of using vehicles owned by the municipality. Thus, this matter is and will remain a subject also to the next report on adoption and implementation of integrity plans, in order to evaluate the progress in addressing this risk.

Within the process of drafting the subject Opinion, on 27 November 2024, the Agency submitted to the Office of the Prime Minister of Montenegro and the General Secretariat of the Government of Montenegro a Draft Opinion on the Decree on the conditions and manner of use of vehicles owned by Montenegro ('Official Gazette of Montenegro', 21/10, 57/11, 63/12, 17/13, 19/13, 11/15 and 10/22), in order to familiarize themselves with the identified corruption risks in the norms of the relevant Decree, and possibly point to the valid regulations and procedures that the Agency should take into account when formulating the final conclusions regarding this matter. The Agency has not received any feedback from the above-mentioned offices within the given timeline and until the publication of this Opinion.

II. ANALYSIS OF THE DECREE ON CONDITIONS AND MANNER OF USE OF VEHICLES OWNED BY MONTENEGRO

Both the expert and general public frequently point to irregularities in the use and manner of using official vehicles, to which, as a rule, there has often been a lack of appropriate institutional response. The

suspicion that official vehicles are not being used in compliance with the legislative framework governing this area are further reinforced by media reports and complaints about their excessive use, use for private purposes, use outside working hours, illegal parking, and other misuses. Simultaneously, the question arises as to how many official vehicles the state of Montenegro actually owns, who controls their proper use, and whether it is really necessary for public sector institutions and administrations to possess such a large number of vehicles.

During the drafting of the Draft 2024 Budget Law, the Government of Montenegro reported in the Information on establishment of inter-ministerial working group to optimize the vehicle fleet management, that by the time this information has been composed, Montenegro owned over 4,000 official vehicles and noted that maintaining such a fleet requires significant costs for procuring and maintaining the state institutions fleet.

In the respective Information, it was further noted, inter alia, that there is no unified policy for the procurement and use of official vehicles and acknowledged the need to optimize, improve, and make more efficient the management of current official vehicles owned by state institutions. In the conclusions issued at the Government session held on 19 October 2023, the Ministry of Finance was given the task to form an inter-ministerial working group¹ and inform the Government of Montenegro of the activities thereof. Further details on the work, performed activities, and results of this working group are not available.

Generally speaking, the information about approximately 4,000 state-owned vehicles opens up space for a thorough analysis aimed at optimizing the fleet, particularly taking into account the procurement and associated maintenance costs, and the costs of engaging employees who manage these vehicles, which are inherent in this number of vehicles.

The abovementioned indicates that the state is aware of this issue and recognizes the importance of establishing a clear system of control and optimization as regards the use of official vehicles, taking into account all the challenges and misuses established so far, which, in addition to increasing public spending, bear much more severe consequences, such as undermining the public trust in institutions and compromising their integrity.

Official vehicles, as one of the public resources, are regarded as a common property, therefore, the state and individuals managing these resources are obliged to use them legally, guided by the principle of rationality in a manner providing for optimal results with minimum of resources and costs. Moreover, it is of public interest that public resources are not used or misused for private purposes and outside working hours, but solely in the manner prescribed by positive legal regulations.

Misuse of public resources, as a phenomenon and the protection of public resources as a concept, is also subject to international protection, and an urge to cautiously design public policies in this area. Public officials or civil servants, whether they hold public offices or perform functions stipulated by law, and at the same time handling the state resources, including official vehicles, must act in conformity with the regulations, but also with high ethical standards being prerequisites for ethical and conscientious behavior in office.

¹ <https://wapi.gov.me/download-preview/f9432f50-c80f-4711-bde1-451dff34f7a9?version=1.0>

With a view to this, Article 8 of the United Nations Convention against Corruption (Law on the Ratification of the United Nations Convention against Corruption, 'Official Gazette of Serbia and Montenegro - International Treaties, 11/2005) as an international instrument relevant for the area of prevention of corruption, which refers to the code of conduct for public officials, stipulates that:

In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system, and

Each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

Additionally, Article 17 of the Convention, concerning embezzlement, misappropriation or other diversion of property by a public official, stipulates that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Moreover, in the OECD Principles of Public Administration², it is stated that public administration bodies shall manage resources in an effective and lawful manner to achieve their goals, and that managers in the public sector are responsible for implementing a system of management and control as to ensure lawful, effective, efficient, and cost-effective management of work, property, and resources.

The respective area has also been recognized in the GRECO Third Evaluation Round, within the Second Compliance Report on Montenegro, in the part referred to the transparency of financing of political parties, and regarding the Recommendation IV, addressing the need for setting clear rules and guidelines for the use of public resources for the activities of political parties and electoral campaigns, urging the need for a proper legal framework to prevent the misuse of state powers and capacities throughout the electoral process, specifying that appointed public officials use the administrative resources at their disposal (official vehicles, communication equipment, secretarial services, etc.).³

The Decree on the conditions and manner of use of vehicles owned by Montenegro ('Official Gazette of CG', 21/10, 57/11, 63/12, 17/13, 19/13, 11/15 and 10/22) was passed as to govern the use of vehicles that considered as state property, thus providing for the rules that will safeguard responsible, efficient, and lawful use of vehicles thereof. Although the Decree is the core document for managing this public resource, there are various areas as regards its application that could be more precisely elaborated as to prevent misuse and improve the effectiveness of the application of these rules.

The Law on State Property ('Official Gazette of Montenegro, 21/9 and 40/11), as the primary legal act, governs all aspects of the management and use of state property, including vehicles. Pursuant to Article 28 of the Law, the Government, or the competent municipal authority shall determine conditions and manner of use of vehicles by virtue of special decree, and thus the Decree on the conditions and manner

² OECD (2023), The Principles of Public Administration, OECD, Paris, <https://www.sigmaweb.org/publications/Principles-of-Public-Administration-2023-edition-MNE.pdf>

³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c97b6>

of use of vehicles owned by Montenegro specifies the details on how these vehicles can be used, who can use them, and under what conditions.

Regarding Article 2 of the Decree, it stipulates what constitutes a state authority and a public service with a view to this Decree, but the Agency considers that it is necessary to detail the term of 'other services established by Montenegro' and 'other bodies and organisations exercising public powers, established by Montenegro' through a set of criteria as to prevent confusion regarding those being the subjects to application of this Decree. The criteria concerned need to clearly reflect the requirements stipulated in the provisions of the Law on State Property as to further develop and unify policy in this area, that is, to establish the principle of equality and uniformity in the use of official vehicles in the public sector.

One of the core principles of the Decree is that vehicles owned by Montenegro can only be used for official purposes, or as explicitly referred to in Article 9 of the Decree, vehicles cannot be used for private purposes, and if it is established that the responsible person used the vehicle for private purposes, the head of the authority shall revoke the authorization for use and take measures in compliance with the law.

This principle and prohibition are related to Articles 5, 6, 11, and 13 of the Decree, which are subject to consideration by the Agency in this Opinion.

Concerning Article 5 of the Decree, it specifies that vehicles are used provided that the head of the authority has determined the official need or need within the scope of the body's competence in compliance with this Decree and the authority's act, and that this act is submitted to the Government's authority responsible for financial matters. However, what has been established as a shortcoming is the definition of the grounds for the use of vehicles, that is, the definition of the terms 'official need' and 'need within the authority,' as these legal terms, instead of providing necessary clarity, could lead to various interpretations in everyday use. Additionally, a shortcoming in this Article of the Decree noted by the Agency is the insufficiently defined procedure for controlling the act submitted by the head of the body to the authority responsible for financial matters, which creates a room for misuse. Namely, Article 5, paragraph 3 of the Decree establishes the obligation for the head of the body to submit an act determining the manner of use and utilization of vehicles to the Government's authority responsible for financial matters. Submitting the act referred to in Article 5 of the Decree, without the obligation of its publication and the introduction of a systemic control, monitoring and audit fails to constitute a sufficiently strong mechanism to eliminate the potential for misuse at the earliest stage, which is why it is important to legally elaborate this competence and define the bodies responsible for its implementation.

Transparency in the distribution of vehicles, that is, the publication of the names of employees entitled to use official vehicles, the explanation of the reasons for which vehicles have been distributed, i.e., what the 'official needs' or 'needs within competence' for using this public resource are, and regular reporting on the maintenance costs and fuel consumption of vehicles, are prerequisites for responsible management of this public resource.

Additionally, Article 6 of the Decree specifies that the head of the body shall appoint the person responsible for the use of the vehicle, and that, following the prior approval from the head of the body, employees may use the vehicle for official purposes such as inspection operation, fieldwork, and general tasks (couriers, etc.), and that the responsible person shall use the vehicle in line with its intended purpose

and technical features, official needs, and needs within the body's competence, and take care of its technical and other suitability.

In order to further clarify this Article of the Decree, it is necessary to envisage a procedure for granting approval from the head of the body if the responsible person is within the meaning of this Article of the Decree and he/she uses the official vehicle without a driver.

This also relates to Article 9 of the Decree, explicitly prohibiting the use of vehicles for private purposes. Although it is provided that the head of the body shall revoke the authorization for vehicle use and take measures against the responsible person if it is established that the vehicle was used for private purposes, this Article of the Decree, in connection to Article 6, fails to detail the consequence for the head of the body where he/she is the person authorized to use the vehicle, if he/she used the vehicle without a driver and it is established that he/she used it for private purposes. It is important to foresee in what manner and by whom it will be established that the head of the body, as the authorized person, used the vehicle for private purposes and what would be the consequences for such action.

Additionally, while the provision for revocation of authorization for vehicle use, along with taking measures in compliance with the law as a penalty for the misuse of this authorization, is one form of sanction, however, it is insufficiently elaborated. Therefore, it is necessary to clearly and specifically define what types of sanctions correspond to the actions of the responsible person where it is established that the vehicle was used for private purposes. In defining the consequences of potential misuse and prescribing a more specific penal policy, one should not focus only on the damage to the state budget, although it is significant, but on the damage to the integrity of the institution where the misuse occurred, and thus to the reputation and public trust in that institution.

Article 11 of the Decree defines who is entitled to the permanent use of official vehicles. Under this provision, the following high-ranking state officials are entitled to this (the President of Montenegro, members of the Government, the President and Vice-Presidents of the Parliament, the President of the Constitutional Court, the Supreme State Prosecutor, the Special Prosecutor for the fight against organised crime, etc.). With the listed officials entitled to permanent use of official state vehicles, in line with Article 13 of the Decree, such vehicles may also be provided for the purpose of special protection of individuals based on the assessment of the body competent for security affairs.

Although Articles 11 and 13 of the Decree clearly define who is entitled to and may be entitled to permanent use of official state vehicles with or without a driver, and that, except for vehicles provided for permanent use, after completing the official duty or other task within the body's competence, official vehicles should be parked at the location determined by the body's act, there are numerous cases in practice where employees and heads of bodies, without any clear need, use vehicles continuously, leading to misuse. Therefore, it is additionally necessary for the content of the act referred to in Article 5 of the Decree to be more precisely prescribed, and besides foreseeing the obligation to submit this act to the competent government authority for financial matters, it is essential to more thoroughly specify the method of controlling the application and compliance with this act, establishing both internal and external control systems as to ensure a high degree of responsibility and prevent further misuses in managing this public resource.

Here, it is advisable to consider a stronger promotion of the existing Platform for reporting suspected misuse of official vehicles⁴, in order for the Government to demonstrate its willingness to involve the broadest circle of the public in the common protection, proper, and 'economical' management of one of the public resources. This also implies prompt and effective action upon the submitted reports as to eliminate any suspicions of illegal or unethical use of vehicles.

Regarding Article 15C of the Decree on the conditions and manner of using vehicles owned by Montenegro, stipulating that authorities can use the number of vehicles prescribed by the act of the Government of Montenegro, the issue of transparency and accessibility of this act arises. Namely, although this Article of the Decree specifies the obligation to precisely define the number of vehicles designated to specific authorities, since the relevant act is not publicly available, it creates room for uncertainty and potential misuse. Making this act public would allow citizens, the media, and civil society organizations to access details related to the number of vehicles designated to various authorities, thereby increasing transparency in the distribution and use of this public resource. It would also provide for better monitoring and control of their use, reducing the likelihood of misuse or irregularities.

Finally, as regards Article 17 of the Decree, stipulating the issuance of travel orders and control orders for the use of official vehicles, and considering that Article 43 of the Law on Financing Political Parties and Election Campaigns ('Official Gazette of Montenegro,' 3/2020 and 38/2020) mandates the seven-day publication of all issued travel orders from the day of announcement until the election day for all state authorities, administrative bodies, local government bodies, public institutions, state funds, and public companies owned or partially owned by the state or local government units, the Agency has noted a number of times that, in practice, other travel order forms are often used instead of the prescribed travel order form, which is part of the subject Decree. This may create confusion among entities covered by the Decree. Therefore, it is necessary for the authority responsible for adopting this Decree to acknowledge the mechanism as to eliminate this practice and standardize the travel order form for the use of vehicles.

Furthermore, the Decree itself needs to acknowledge the mandatory data that a travel order should contain, establish the obligation of its publication, not only from the date of announcement to the election day (as prescribed by Article 43 of the Law on Financing Political Parties and Election Campaigns), but also as a regular obligation, introduce the requirement for the publication of monthly and yearly fuel consumption for the use of official vehicles, and establish whether travel orders are issued even for vehicles permanently assigned for use. These provisions would allow for prompter identification of potential irregularities and misuses with regard to the use of vehicles, while facilitating both internal and external control over the use of official vehicles, and fuel consumption and other costs related to the use thereof.

III. CONCLUDING NOTES

Although the Decree on the conditions and manner of use of vehicles owned by Montenegro provides a framework for responsible vehicle usage within the state property, its application in practice highlights the need for additional clarifications and controls. A clearer definition of the criteria for the use of vehicles,

⁴ <https://www.gov.me/clanak/prijava-sumnje-zloupotrebe-sluzbenih-vozila>
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the specification of procedures, and the introduction of additional scrutiny mechanisms could significantly contribute to more efficient and responsible use of official vehicles and reduce the chance for misuse.

With a view to the above, it is urgent to enter the procedure of creating an appropriate legal framework in this area, and primarily, in the subject Decree:

- Identify the obligated parties, that is, specify other services established by Montenegro, and other bodies and organizations exercising public powers, as prescribed in Article 2 of the Decree, so as to unequivocally establish who the obligated parties are under the subject Decree;
- Define the terms 'official need' and 'need within competence' in Article 5 of the Decree, which, due to different interpretations and applications, may lead to misuses when determining the entitlement to use official vehicles;
- Specify the mandatory elements to be included in the act of the authority referred to in Article 5 of the Decree, in particular for uniformity, and establish the obligation to publish the act, along with defining a model for controlling its content, reviewing, and applying it, and identifying the competent authorities for implementing the responsibilities thereof;
- Envisage a procedure for assessing the need, and issuing the approval to the head of the authority if the responsible person, as defined in Article 6 of the Decree, is involved, as well as the procedure for determining whether, according to Article 9 of the Decree, the head used the official vehicle for private purposes, and more thoroughly define the penal policy, which, in addition to protecting the budget, would ultimately preserve the reputation and integrity of the institution;
- Define the obligation of publication of the Government of Montenegro's act referred to in Article 15C of the Decree, which determines the number of vehicles that authorities are entitled to use, thus increasing transparency in the distribution and use of these public resources;
- Specify the mandatory elements that a travel order should contain, introduce the obligation for its regular publication, as well as the obligation to publish fuel consumption and other costs related to the maintenance of vehicles, which would lead to greater transparency and prompter identification of potential irregularities and misuses in the use of vehicles, and facilitate both internal and external control over the use of official vehicles, and the monitoring of fuel consumption and other vehicle-related expenses,

Elimination of the identified shortcomings and strong promotion of platforms for reporting suspected misuses of official vehicles should contribute to creating synergy between competent authorities and the public in combating the misuse of official vehicles, such as the excessive use thereof, private use, use outside working hours, improper parking, and other similar forms of misuse.

A serious commitment to this area, acknowledging the importance of establishing an efficient system for controlling, monitoring, and optimizing the use of official vehicles, and consistently implementing all necessary policies and measures to ensure responsible management of public resources, will have a positive impact on Montenegro's budget and, more importantly, will contribute to increased accountability of individuals who manage public resources, ultimately leading to greater public trust in state institutions.

Rules for the distribution and use of official vehicles must be clear and specific, but also the same for all parties, which means that we must create a framework where it is clear who is entitled to use official vehicles, in what situations, and under what conditions, based on the real needs of the obligated parties,

not individuals, and in this chain, the same rules must apply to everyone, that is, there should be no privileged individuals.

In conclusion, no international standard, best practices, or recommendation will support Article 9 of the Decree, clearly stating that the vehicles owned by Montenegro cannot be used for private purposes unless the state expresses political will, real commitment, and preparedness to face misuses in this area and protect public resources and the lawful and responsible management thereof.

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