



Montenegro
Agency for Prevention of Corruption

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Pursuant to Articles 78 and 79 of the Law on Prevention of Corruption (Official Gazette of Montenegro, no. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, acting on official duty, and at the request of the Secretariat-General of the Government number 02-010/23-5979 of December 20, 2023, the Agency for Prevention of Corruption adopts:

**OPINION ON THE PROPOSAL OF DECISION ON AMENDMENTS TO THE RULES
OF PROCEDURE OF THE GOVERNMENT OF MONTENEGRO**

The Agency for Prevention of Corruption, acting ex officio and upon the request of the Secretariat-General of the Government of Montenegro, has recognized the need for conducting an anti-corruption analysis of the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro. This analysis primarily pertains to conducting preliminary control of corruption risks in the process of preparing laws and other regulations in accordance with the Ministry of Justice's regulations.

RATIONALE

I PROCEDURE

The Law on Prevention of Corruption ("Official Gazette of Montenegro", no. 53/14 and 42/17) regulates the competence of the Agency for Prevention of Corruption (hereinafter referred to as the APC/Agency) which, in accordance with Article 78 paragraph 1 of the Law:

- "...shall take the initiative to amend laws, other regulations and general acts, in order to eliminate the possible risks of corruption or to bring them in line with international standards in the field of anti-corruption;
- shall give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption;"

Article 79 of the same Law establishes that the Agency can, on its own initiative or at the request of a government body, company, legal entity, entrepreneur or natural person, give an opinion for the purpose of improving the prevention of corruption, reducing the risk of corruption and strengthening of ethics and integrity in the authorities and other legal entities, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and prevent corruption.

The normative anti-corruption assessment conducted by the Agency is primarily based on the Methodology for Assessing Corruption Risks in Legislation in Montenegro, developed in July 2017 with the assistance of international partners through the RAI Regional Program for strengthening the capacity of anti-corruption institutions and civil society in the fight against corruption and participating in the process of compliance with the UN Convention, which is implemented by the RAI Secretariat.

The methodology itself recognizes several corruption risks in norms, such as:

- Ambiguous, imprecise, and unclear norms that allow for different discretionary interpretations.
- Use of different terms in the law.
- Broad discretionary powers of decision-makers.
- Leaving the possibility for by-laws to regulate issues that must be subject to legal regulation.
- Ambiguity of words and phrases used in the regulation.
- Undefined time frames for procedures.
- Lack of transparency.
- Undefined oversight over the body implementing the law...

Such and similar corruption risks contained in the norms can cause great social damage because, depending on the case, they open the normative space for individual abuses, as well as the possibility for systemic corruption.

To monitor the challenges identified in the implementation of this competence, in November 2023, we expanded the Methodology as an exceptionally high-quality tool, particularly in the section related to procedural guidelines, through the collaborative support of UNDP within the project "Strengthening the capacity for faster accession of Montenegro to the European Union," funded by the Ministry of Foreign Affairs of Norway and implemented by the United Nations Development Program (UNDP) in collaboration with the Office for European Integration and the Secretariat-General of the Government.

As part of the aforementioned project, there was consideration for the introduction of a corruption risk assessment as a mandatory component of the legislative process. This would significantly strengthen the authority and role of the Agency in assessing corruption risks in norms, serving as a prerequisite for eliminating further systemic risks associated with corruption.

In this regard, the Agency has submitted an initiative to the Government of Montenegro for the introduction of Preliminary Control of Corruption Risks (with a list of 23 questions) as a mandatory procedure in the process of drafting legislative proposals by the Government, as well as an initiative to the Parliament of Montenegro for the introduction of Preliminary Control of Corruption Risks (with a list of 23 questions) as a mandatory procedure in the legislative proposal process by members of parliament independently or on behalf of six thousand voters, in accordance with Article 93, paragraphs 1 and 2 of the Constitution of Montenegro ("Official Gazette of Montenegro", No. 1/07 and 38/13 - Amendments I-XVI). The Agency raised this issue during the formulation of opinions on

the Draft Law on the Government of Montenegro on October 31, 2022¹, and November 9, 2023². On these occasions, it was once again emphasized that the fight against both "normative corruption" and corrupt behavior requires the synergy of all social factors, as this approach is considered the only effective response to building a society with zero tolerance for corruption and other forms of behavior that directly harm the interests of the citizens of Montenegro.

On 20 December 2023, the Secretariat-General of the Government of Montenegro submitted to the Agency the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro for opinion.

Considering that the Agency for Prevention of Corruption of Montenegro, in accordance with the implementation of its legal competencies as stipulated by the provisions of Article 78 and 79 of the Law on Prevention of Corruption ("Official Gazette of Montenegro" No. 53/14, 42/17), aims to eliminate any arbitrariness and capriciousness in the interpretation and application of regulations through analysis, and to eliminate corrupt risks from the regulations themselves, and since this is particularly significant in the context of combating "normative corruption", it has recognized the need to conduct an anti-corruption analysis of the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro.

II CORRUPTION RISK ASSESSMENT AND ANALYSIS OF THE PROPOSAL OF DECISION ON AMENDMENTS TO THE RULES OF PROCEDURE OF THE GOVERNMENT OF MONTENEGRO

In the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro, a new Article 33a is proposed, which reads:

„Article 33a

In the process of preparing laws and other regulations, the proposer is obligated to conduct a preliminary control of corruption risks (hereinafter referred to as CPL) in accordance with the Ministry of Justice's regulations.

If the proposer determines that CPL is not necessary in the preparation of a law or another regulation, they are required to provide a specific justification for such a decision.“

The Agency is of the opinion that the introduction of a Preliminary Control of Corruption Risks through amendments to the Rules of Procedure of the Government of Montenegro is extremely significant, bearing in mind that in this way a mechanism would be introduced that aims to assist the proposer of regulations in identifying potential corruption risks that a regulation may contain. Simultaneously, it provides the Agency with the opportunity to quickly detect norms containing corruption risks by examining the completed list and to

¹ chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Misljenje_na_Nacrt_zakona_o_Vladi_Crne_Gore.pdf

² chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_na_nacrt_Zakona_o_Vladi_Crne_Gore.pdf

make recommendations for their elimination. In this way, the legislative process would encompass a robust preventive anti-corruption mechanism, especially considering that norms containing corruption risks can cause significant social harm, bearing in mind that they leave normative space for individual abuses, which could ultimately lead to the occurrence of systemic corruption.

Additionally, in this regard, the Agency offers its own capacities and knowledge to assist in formulating a form for the Ministry of Justice, that would serve as the basis for conducting the aforementioned Preliminary Control of Corruption Risks in the legislative process. The Agency also suggests that an integral part of the Ministry of Justice's form related to the preliminary control of corruption risks should be a form for preparing an explanation that the proposer of regulations would complete when determining that CPL is not necessary. This approach would ensure uniformity in the assessment process of whether CPL is required and aid the proposer of regulations in conducting the specified assessment.

Furthermore, in Article 2 of the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro, it is stated in Article 40 that the proposer is obliged to submit, along with the proposal of the law, other regulation, or general act, the CPL form prepared in accordance with the Ministry of Justice's regulations, as well as the opinion of the Ministry of Justice regarding the proposer's stance on whether conducting CPL is unnecessary or if the CPL conducted by the proposer is adequate.

Also, in Article 3, it is proposed to add a new paragraph to Article 41 of the Rules of Procedure, stating that the Ministry of Justice is obliged to provide its opinion on the CPL form related to the proposal of the law or other regulation to the proposer within a period not exceeding 14 days.

Regarding Article 2 of the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro, the Agency believes that the mentioned preliminary control of corruption risks should be utilized as a sort of self-assessment tool. It is meant to assist the proposer of regulations in revisiting all the norms that generate normative corruption risks, and contribute to the development of clear and precise regulations that do not allow for corrupt and unethical practices.

In this regard, the intention of introducing a preliminary control of corruption risks should be to establish a tool that helps the proposer to, using the preliminary control of corruption risks, detect risky norms, and advance them normatively, and submit any dilemmas to the Agency for Prevention of Corruption, to form an opinion within the scope of competences from Articles 78 and 79 of the Law on Prevention of Corruption, i.e. to contribute directly to the drafting of proposals of regulations relieved of corruption risks.

In this regard, and in line with the previously stated, the opinion of the Agency is that the solution presented in Article 3 of the Proposal of Amendments to the Rules of Procedure of the Government of Montenegro is not necessary, considering that the fundamental idea and essence, when it comes to the preliminary control of corruption risks, should be the internal assessment by the proposer of regulations, with the aim of drafting and proposing the highest quality norms.

Here it should be taken into account that the Agency for Prevention of Corruption certainly carries out the anti-corruption assessment of regulations ex officio, in accordance with the legal competences.

III FINAL ASSESSMENTS

On 20 December 2023, the Secretariat-General of the Government of Montenegro submitted to the Agency the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro for opinion, which essentially refers to the implementation of preliminary control of corruption risks in the process of preparing laws and other regulations in accordance with the act of the Ministry of Justice.

The aforementioned Proposal of Decision proposes the implementation of a preliminary control of corruption risks by the proposer of the regulation, and according to the act of the Ministry of Justice, that is, the opinion of the proposer that a preliminary control of corruption risks should not be carried out, which needs to be explained separately.

The Agency is of the opinion that the introduction of a Preliminary Control of Corruption Risks through amendments to the Rules of Procedure of the Government of Montenegro is extremely significant, bearing in mind that in this way a mechanism would be introduced that aims to assist the proposer of regulations in identifying potential corruption risks that a regulation may contain. Simultaneously, it provides the Agency with the opportunity to quickly detect norms containing corruption risks by examining the completed list in order to formulate recommendations for their potential improvement.

Regarding Article 2 of the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro, the Agency believes that the mentioned preliminary control of corruption risks should be utilized as a sort of self-assessment tool. It is meant to assist the proposer of regulations to review all the norms that generate normative corruption risks, then improve such norms, and submit any dilemmas to the Agency for Prevention of Corruption, and within the scope of competences from Articles 78 and 79 of the Law on Prevention of Corruption, make opinions, i.e. contribute directly to the drafting of proposals of regulations relieved from corruption risks.

In this way, the legislative process would encompass a robust preventive anti-corruption mechanism, especially considering that norms containing corruption risks can cause significant social harm, bearing in mind that they leave normative space for individual abuses, which could ultimately lead to the occurrence of systemic corruption.

In order to formulate the form of the Ministry of Justice on the basis of which the relevant CPL would be implemented in the legislative process, the Agency makes available its own capacities and knowledge. The Agency also suggests that an integral part of the Ministry of Justice's form related to the preliminary control of corruption risks should be a form for preparing an explanation that the proposer of regulations would complete when determining that CPL is not necessary.

In this regard, the Agency considers that, including all the recommendations from this Opinion, the Proposal of Decision on Amendments to the Rules of Procedure of the Government of Montenegro should contain the following:

"In the Rules of Procedure of the Government of Montenegro ("Official Gazette of Montenegro", no. 3/12, 31/15, 48/17 and 62/18), a new article is added after article 33 which reads:

"Article 33a

In the process of preparing laws and other regulations, the proposer is obliged to conduct a preliminary control of corruption risks (hereinafter referred to as CPL) in accordance with the Ministry of Justice's regulations.

If the proposer assesses that in the process of preparing a law or other regulation, CPL should not be carried out, he is obliged to justify this in a special form, which is an integral part of the act of the Ministry of Justice from paragraph 1 of this article."

Article 2

In Article 40, paragraph 1, after paragraph 6, a new paragraph is added, which reads:

"- the CPL form, made in accordance with the act of the Ministry of Justice, as well as the assessment of the proposer that it is not necessary to carry out the CPL;"

The previous indents 7, 8 and 9 become 8, 9 and 10.

Article 3

This decision enters into force on the eighth day from the day of its publication in the "Official Gazette of Montenegro".

DIRECTOR
Jelena Perović, sgd.