



Montenegro
Agency for Prevention of Corruption

Number: 03-04-2321/2

Date: Date: 25 December, 2023

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 ex officio, and at the request of the Secretariat-General of the Government number 02-010/23-5978 dated December 20, 2023, the Agency for Prevention of Corruption adopts:

**OPINION ON THE PROPOSAL FOR A REGULATION AMENDING THE REGULATION
ON THE GOVERNMENT OF MONTENEGRO**

The Agency for Prevention of Corruption, ex officio, and acting on the request of the Secretariat-General of the Government of Montenegro, recognized the need to conduct an anti-corruption analysis of the provision that plans to introduce the integrity check of appointed persons, which is a procedure provided for in the Proposal for a Regulation Amending the Regulation on the Government of Montenegro and made recommendations in order to improve its application.

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.

On December 20, 2023, the Secretariat-General of the Government of Montenegro sent the Proposal for a Regulation Amending the Regulation on the Government of

Montenegro to the Agency for an opinion. Additionally, in the GRECO 5th Round Evaluation Report from 2022, it is said that certain positions in the cabinet are filled without public announcement. The (deputy) chief of the cabinet and special advisers to the Prime Minister are appointed and dismissed by the Government at the Prime Minister's proposal, at its own discretion, without complying with the provisions of the Law on Civil Servants and State Employees on the recruitment of civil servants. Special advisers to the Deputy Prime Minister are similarly appointed and dismissed upon the proposal of the Deputy Prime Minister. They have to pass a state exam that allows them to enter the public service. However, no ex-ante integrity check is required to be appointed. Their term ends when the prime minister's term ends, or by their resignation or dismissal. The names of all members of the cabinet and special advisers are publicly announced... GET¹ notes that the chiefs of the cabinet and special advisers to the prime minister, as well as special advisers to the deputy prime minister, are appointed at the discretion of the (deputy) prime minister, and that no integrity check is carried out before their appointment. Such integrity checks are important to prevent any conflict of interest prior to appointment, especially as they often come from the private sector and return to it after their government employment ends. Given their political role in the functioning of the state administration and their participation in the decision-making process, GET sees merit in providing appropriate integrity checks for these categories of appointed persons as well. GRECO recommends establishing rules that require integrity checks to be carried out in relation to the (deputy) chief of the cabinet, as well as appointed special advisers to the Prime Minister and the Deputy Prime Minister, as part of their employment, in order to avoid and manage possible risks of conflict of interest.

Due to GRECO's observation mentioned in the previous paragraph, it recommended in its report to establish rules that require the integrity check of the (deputy) chief of the cabinet of the prime minister, as well as the appointed special advisers of the prime minister and deputy prime minister, as part of their employment, in order to avoid and resolve possible risks of conflicts of interest (paragraph 35), and the Agency, in its Opinion on the Draft Law on the Government of Montenegro (October 31, 2022² and November 9, 2023³), recognized the need for the stated request of GRECO to be transferred into a legal norm.

Bearing in mind that the Agency for Prevention of Corruption, in accordance with the implementation of legal competences, prescribed by the provisions of Articles 78 and 79 of the Law on Prevention of Corruption ("Official Gazette of Montenegro" no. 53/14, 42/17) aims to eliminate any arbitrariness in the interpretation and application of regulations through analysis, and eliminate corruption risks from the regulation itself, it reviewed the Proposal for a Regulation Amending the Regulation on the Government of Montenegro.

¹ GET - GRECO Evaluation team

² chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Misljenje_na_Nacrt_zakona_o_Vladi_Crne_Gore.pdf

³ chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_na_nacrt_Zakona_o_Vladi_Crne_Gore.pdf

II CORRUPTION RISK ASSESSMENT AND ANALYSIS OF THE PROPOSAL OF THE REGULATION AMENDING THE REGULATION ON THE GOVERNMENT OF MONTENEGRO

In the Proposal for a Regulation amending the Regulation on the Government of Montenegro, a new Article 16a of Regulation is proposed, which reads:

“Verification of appointed persons

Article 16a

In order to appoint an adviser to the Prime Minister, the chief of the Cabinet of the Prime Minister and the deputy chief of the Cabinet of the Prime Minister, as well as an adviser to the Deputy Prime Minister, the Secretary General of the Government shall address a request to the Agency for Prevention of Corruption to check whether there are initiated and completed proceedings against the aforementioned persons due to violations of the provisions of the law governing the prevention and fight against corruption.

The Agency for Prevention of Corruption shall, within 24 hours from the moment of receipt of the request, submit data on the verification of the persons referred to in paragraph 1 of this Article.

If the Agency for Prevention of Corruption fails to submit the verification data referred to in paragraph 1 of this article within the deadline referred to in paragraph 2 of this article, it shall be considered that no proceedings have been initiated and concluded against the person referred to in paragraph 1 of this article due to the violation of the provisions of the law governing the prevention and fight against corruption.”

Bearing in mind the competences of the Agency for Prevention of Corruption, as a central anti-corruption body, which, in accordance with the Law on the Prevention of Corruption, deals with the prevention of conflicts of public and private interest, restrictions in exercising public functions, verification of reports on income and assets of public officials, acting on whistleblower reports, protection of whistleblowers and other tasks in accordance with this law, as well as tasks of control of lobbying and control of financing of political entities and election campaigns in accordance with special laws, and bearing in mind the records that the Agency keeps in accordance with its powers, the Agency's opinion is that Article 16a paragraph 1 of the Proposal for a Regulation amending the Regulation on the Government of Montenegro should be further elaborated and specified.

In this regard, the Agency's opinion is that the Secretariat-General of the Government should address the Agency for Prevention of Corruption with a request to check the persons referred to in Article 16a paragraph 1 of the Proposed Regulation by inspecting the records of public officials for whom a violation of the Law on Prevention of Corruption has been determined by a final decision, which refers to the prevention of conflicts of interest in exercising public functions, restrictions in exercising public functions, gifts, sponsorships and donations, reports on income and assets of public officials and the opinion of the Agency on the existence of threats to the public interest

that indicate the existence of corruption or violations of special laws determining the competences of the Agency.

Additionally, when it comes to the deadline for acting on the request for the submission of data, which is given in the proposal of Article 16a paragraph 2, the Agency is of the opinion that it is short, bearing in mind that the verification is carried out by inspecting the records, which are, among other things, related to the Agency's information system, so possible technical limitations in terms of access to data that are kept in digital format could require additional time. In this regard, the Agency proposes to extend the deadline for the Agency's action at the request of the Secretary General of the Government to 72 hours from the receipt of the request for the submission of data on the verification of persons referred to in paragraph 1 of this article.

The Agency sees that it is significant that in Article 16a paragraph 3 of the Proposal for a Regulation it is stated how it will be assessed when the Agency possibly fails to submit the verification data referred to in paragraph 1 of this article.

However, what is missing from Article 16a of the Proposal for a Regulation is the action of the Secretary General of the Government in relation to the submitted data from Article 16a paragraph 1 from the Agency, as well as the assessment of the data in the proposal for the appointment of the Prime Minister or Deputy Prime Minister, which they submit to the Government of Montenegro in the process of appointment of advisers to the Prime Minister, the chief of the Cabinet of the Prime Minister and the deputy chief of the Cabinet of the Prime Minister, as well as advisers to the Deputy Prime Minister.

III FINAL ASSESSMENTS

On December 20, 2023, the Secretariat-General of the Government of Montenegro sent the Proposal for a Regulation amending the Regulation on the Government of Montenegro, which refers to checking the integrity of appointed persons, to the Agency for opinion.

The aforementioned Proposal for a Regulation regulates the issue of checking the integrity of appointed persons, which was recognized in the GRECO 5th Round Evaluation Report from 2022, as well as in the opinions of the Agency on the Draft Law on the Government of Montenegro (October 31, 2022 and November 9, 2023).

In this regard, especially appreciating the importance of the amendment itself, and in order to ensure the actual implementation of the article in question of the Proposal for a Regulation, the Agency had several recommendations in relation to the article in question of the Proposal for a Regulation.

Specifically, what the Agency recognizes as important in terms of checking the adviser to the Prime Minister, the chief of the Cabinet of the Prime Minister and the deputy chief of the Cabinet of the Prime Minister, as well as the adviser to the Deputy Prime Minister, is that it should include all significant aspects of the work of the Agency in the implementation of the Law on Prevention of Corruption, as well as other special laws.

Additionally, the Agency is of the opinion that the deadline of 24 hours for the Agency to act on the request of the Secretary General of the Government is short, bearing in mind that part of the data that would be submitted at the request of the Secretary General of the Government is related to the Agency's information system, and in order to overcome potential technical limitations in terms of access to data that are kept in digital format, the Agency proposes to extend the deadline for the Agency's action on 72 hours.

Also, what the Agency sees as significant is that Article 16a of the Proposal for a Regulation prescribes the actions of the Secretary General of the Government and the Prime Minister or Deputy Prime Minister after receiving the requested data from the Agency in the procedure for appointing a person referred to in Article 16a paragraph 1 of the Proposal for a Regulation.

In this regard, and in order to ensure the actual application of the article in question of the Proposal for a Regulation, and for the effects of the verification itself to have its own "weight", the Agency considers that, including all the recommendations from this Opinion, the final Article 16a of the Proposal for the Regulation should read:

"In order to appoint an adviser to the Prime Minister, the chief of the Cabinet of the Prime Minister and the deputy chief of the Cabinet of the Prime Minister, as well as an adviser to the Deputy Prime Minister, the Secretary General of the Government shall address a request to the Agency for Prevention of Corruption to check the aforementioned persons by inspecting the records of public officials for whom a violation of the Law on Prevention of Corruption has been determined by a final decision, which refers to the prevention of conflicts of interest in exercising public functions, restrictions in exercising public functions, gifts, sponsorships and donations, reports on income and assets of public officials and the opinion of the Agency on the existence of threats to the public

interest that indicate the existence of corruption or violations of special laws determining the competences of the Agency.

The Agency for Prevention of Corruption shall, within 72 hours of receiving the request, submit data on the verification of the person referred to in paragraph 1 of this article.

If the Agency for Prevention of Corruption fails to submit the verification data referred to in paragraph 1 of this article within the deadline referred to in paragraph 2 of this article, it shall be considered that the persons for whom the request for verification was submitted to the Agency are not in the Agency's records referred to in paragraph 1 of this article.

After the Agency submits data on the verification of persons from paragraph 1 of this Article, the Secretary General of the Government shall, without delay, inform the Prime Minister or the Deputy Prime Minister of the received data from paragraph 1 of this Article.

The data obtained from paragraph 1 of this article are an integral part of the explanation of the proposal of the Prime Minister or the Deputy Prime Minister for the appointment of persons from articles 15 and 16 of this regulation."

DIRECTOR

Jelena Perović, sgd.