

Corruption in Montenegro 2007: Overview over Main Problems and Status of Reforms

Marijana Trivunovic
Vera Devine
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1. Executive Summary

Despite the impressive figures that point to a booming economy (with real GDP growth unofficially projected by the EBRD at 7% in 2007), not all is well in Montenegro. The World Bank, and other international observers, have pointed out that two of the “key challenges” that Montenegro needs to confront on its way to EU membership are “weak governance and the perceived wide prevalence of corruption.”

Having gained independence in 2006, Montenegro has nearly completed the state-building processes that have monopolised the public agenda and the attention of its decision makers for the past decade. Citizens’ and media attention is increasingly turning to governance issues, and given that reform efforts in a number of crucial areas have been underway for some years, the lack of progress is disappointing.

While reliable data on the scope and nature of corruption are difficult to come by for most countries, the little information that is available for Montenegro is not encouraging. Freedom House’s *Nations in Transit 2007* report shows a decline in the ranking on corruption from the previous two years, in large part due to the lack of transparency in the privatisation process, delays in adopting the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime, and the failure to adopt changes to the conflict of interest law. Two recent national surveys of small businesses showed that over 50 (and sometimes much higher) percent of entrepreneurs are asked for bribes by various officials.

Montenegro shares many aspects of corruption with other post-communist states: the legacy of large, non-competitive bureaucracies, underdeveloped market economy, scarcity of resources, and lack of democratic governance. However, there also exist Montenegro-specific factors that not only inform the causes and forms of corruption in the country, but also constrain other reforms: one, a relatively short experience of a state that is able to exert its administrative authority over the entire society; two, a ruling party that – as the successor of the League of Communists – has been in power, albeit with internal transformations, for 60 years; three, a small population where it is almost a statistical certainty that persons in key leadership positions will be related; and, four, the legacy of a close relationship with the larger and more developed Serbia that has marginalised certain Montenegrin institutions. A number of these conditions directly impact on political corruption, which in its many facets, presents the biggest challenge for Montenegro.

There have been a number of attempts to restrict political corruption, most notably the Law on the Prevention of Conflict of Interest that seeks to limit incompatible or multiple functions by requiring public officials to declare their assets, functions, and gifts. Unfortunately, the regime has a number of grave flaws and cannot be viewed as anything more than a first step. Dramatic modifications are needed. Attempts to regulate political party and campaign finance have had a similarly disappointing outcome. Despite the most generous subsidies to parties in the region, other state resources continue to be misused for electoral purposes.

The parliament has not yet developed into a robust oversight institution, and for the moment, the institution as a whole is not leading the fight against corruption, nor are the majority of deputies particularly interested in ethical issues. There is potential to build the parliament’s oversight capacity, but the process will be long-term.

While improved local governance has been noted by some international observers, others fail to see improved administrative functioning in most municipalities, with a number of surveys pointing to

highest administrative corruption precisely at the local level. Corruption in development also appears to play out primarily at the local level where the majority of decisions are made, especially in the coastal region.

The most serious speculations about “grand” corruption are at the central executive level in general, and with the privatisation process in particular, along with a number of sectoral development proposals such as the spatial plan and the energy strategy. Experience from other transition economies suggests that privatisation is a “one-off” issue, and that reversing privatisation contracts might be more damaging than beneficial for future investments and confidence in the economy. That said, the way in which the Montenegrin government has warded off any insight into the process despite years of legitimate public pressure is astonishing. Such practices, along with some other reactions by leading politicians that characterise legitimate criticism from NGOs as “against the country interest”, suggest that principles of democracy have not been truly embraced.

The system of taxation and tax collection has undergone the first substantial reforms; however, more needs to be done to harmonise the tax regime with EU standards. Discriminatory tax collection, tax evasion and fraud have been identified as substantial problems. Surveys confirm that corruption among tax inspectors is a serious obstacle to doing business for companies. A more decisive look at the scale of the problem is needed, and remedial measures should be designed accordingly.

Customs, too, has undergone some reform necessary to comply with EU standards. Corruption, although present, appears to be substantially lower than in neighbouring countries, and some progress has been made in tackling the problem: an ethics code has been adopted, and an integrity plan has been elaborated. There is an emphasis on repressive measures, and more needs to be done to prevent corruption in the customs. This will have to include, as elsewhere in the public service, the introduction of competitive salaries that will decrease the incentives for corruption.

Progress has also been made on the time and procedures it takes a new business to register. However, the pre-registration process, i.e. the collection of certificates and licenses, remains a serious obstacle to the development of small and medium-size enterprises. There is a lack of consolidated, readily available information for entrepreneurs-to-be on what documentation needs to be submitted, and the system suffers from too many institutions involved on the local and central levels with substantial discretionary powers. The problems have been mapped out for a number of years now, but various reform efforts have failed.

Recent changes to the public procurement law address many of the concerns with the previous system that was characterised as bureaucratic, and susceptible to non-competitive procedures. The integrity of the new decentralised system rests on the activism of bidders who have an interest in challenging non-competitive procedures. The problem is that few entrepreneurs in Montenegro have the capacity to do so, and many do not complain either because they fear negative repercussions or because they do not believe that their complaints will make a difference – a concern that is present also in other sectors.

First attempts have been made to introduce programme-based budgeting; however, due to lack of capacity and resources, progress has been slow. Initial steps have been made to introduce Public Internal Financial Control (PIFC), with measures to set up a system of internal audit in spending units. More needs to be done, including through medium and long-term measures to recruit and train appropriate staff. The overall capacity of the parliament to oversee the preparation and execution of the budget is still very low, but it is hoped that the audit reports of the recently established State Audit Institution (SAI) will be able to inform budgetary decisions and parliamentary oversight. However, in order for the SAI to play this role, it needs to be genuinely

independent. The appointment, in late 2006, of the new supreme state auditor – a person until then assuming high positions in the ruling party DPS – in a hasty procedure involving changes of legislation to make his profile fit the requirements of the function, is an alarming development in this respect, which threatens to undermine the credibility of this important institution.

There is a low level of public trust in the judiciary, and particularly the courts, in large part due to a significant backlog of cases and excessive time periods for the legal processes, but also due to a perception of high levels of political influence over the judiciary (and to an extent, the police). While a number of reform efforts have been undertaken since 2000, progress is slow, although observers note improvements in the functioning of certain courts. The prosecution is still widely distrusted, mainly due to the lack of convictions in a number of high-profile murder cases (including that of a senior police official investigating organised crime), as well as due to an apparent reluctance to initiate investigations against individuals close to the government involved in corruption scandals. A comprehensive judicial reform strategy adopted in June 2007 provides a roadmap to additional changes that would improve the independence and effectiveness of the system, but unease about an appropriate balance between independence and accountability remains.

While the law enforcement institutions' capacity to investigate and prosecute corruption and organised crime has improved through new legislation and technical means, training is still needed on the application of the new instruments, of judges in particular. The preconditions for a successful confrontation with organised crime and corruption are in place, and it will soon be time to measure success not only on the number of laws passed, but by the number of convictions achieved.

Transparency and access to information are at a lower level than they should be. While the secrecy surrounding the privatisation process has been the most egregious example of all, a number of public institutions remain reluctant to share information about the rules or their work. To be fair, the majority of institutions covered in this report are quite exemplary in their transparency and openness, but even there, information is not always well organised, out-of-use web sites have not been shut down, and search facilities are poor or non-existent, creating the impression that information cannot be found except by those who already know where it is.

The media and civil society – widely recognised as key pillars in the fight against corruption – are not yet as strong as they could be. The quality of journalism is generally rather poor with few exceptions, and while the state-owned broadcaster remains under strong political influence, there is a range of political sympathies in the private media that, at a minimum, provides diversity in low quality reporting. Only a handful of Montenegro's 3,600 registered NGOs are truly active, but among them are a few doing excellent work. NGOs have been at the forefront of the fight against corruption, and their watchdog activities appear to be beginning to reverse public distrust generated through frequent misuse of non-profits status.

The most comprehensive anti-corruption effort to date – and the likely roadmap for most future anti-corruption activities despite some flaws – is the Programme for the Fight against Corruption and Organised Crime adopted in 2005. Implementation is overseen by a high-level National Commission. The Directorate for Anti-Corruption Initiative, which has existed since 2001, provides some support to the Commission's work. Success on the implementation of the Action Plan has been mixed. While there has been progress in a few sectors, such as the customs, quite a few other areas are lagging behind, most notably conflict of interest and political party finance. Still other fields appear to have been targeted by wrong measures, and the leadership of some institutions seems not to be willing to take a serious look at what the real issues with regard to corruption are (e.g. tax administration); finally, a small number behaves as though they do not feel part of the obligations in the Action Plan, posing the question of overall ownership of the document.

Nevertheless, these are the best roadmaps available for the moment, and can be adjusted as implementation of measures proceeds and capacities grow.

This reports ends with a number of observations and recommendations:

1. It is difficult to precisely assess the quality of governance, or the extent of corruption in Montenegro, without more targeted research. *Donors should support high quality research and analysis of the mechanisms of corruption in Montenegro in order to design appropriate remedies.*
2. The government's stubborn refusal to make public privatisation-related documents leads to the conclusion that the irregularities that have occurred in the process are massive. *Donors should strongly advocate that future privatisations be as transparent as possible.*
3. Far-reaching politicisation of public institutions and the economic sphere is a cause for concern. *Donors should support original thinking about mechanisms to ensure depoliticisation of state institutions; however, given the poor track record of self-policing in bodies such as the Judicial Council, appropriate accountability measures must accompany increased independence.*
4. A number of key anti-corruption regimes is extremely poor: conflict of interest, financing of political parties, and to a lesser extent, freedom of information. *Donors should strongly advocate the revision of the legislative framework, and particularly enforcement, of new regulations.*
5. Barriers to business caused by excessive discretionary powers and red tape have been identified, but decisive reforms are missing. *Donors should support the private sector, particularly SMEs, in organising to protect their interests and encourage the implementation of systemic reforms.*
6. A new constitution is being drafted, and will likely be passed in late 2007. *Donors should advocate incorporating extensive provisions on separation of powers and institutional accountability.*
7. The aspirations for EU membership are clear, and they should be used for advancing the political will for reform. But these reforms must be sustainable and in-depth. *Donors must make clear that Potemkin-like institutions and superficial measures do not count as progress, and deterioration of institutions such as the State Audit Institution must be reversed.*
8. The Programme for the Fight against Corruption and Organised Crime is a good basic roadmap for anti-corruption efforts. *Donors should support the programme's implementation and improvement, including the development and implementation of local-level strategies and action plans.*
9. Size does matter. Human resources are limited, and institutions will suffer from small size, which can sometimes be better addressed by a more centralised system. *Donors should consider these limitations in project design, including in consolidating their assistance structures rather than creating new ones or recruiting new staff, as this would contribute to drawing even more scarce human resources away from where they might be needed in the public administration.*
10. Competitiveness is essential to Montenegro's future success. While family ties may still be strong, attitudes about the "traditional way of doing business" are changing. *Donors should support efforts to capture the shift of attitudes and encourage the public to resist perpetuating myths.*
11. Civil servants and citizens who wish to resist and report corruption need to be protected. *Donors should support whistleblower protection initiatives, including from the loss of livelihood.*
12. A growing number of young people resent being outside of the networks in which decisions are taken, and therefore have a stake in seeing the rules of the game changed. *Projects should try to build on this, specifically targeting the young.*
14. There is a lack of information on legislation, rights and procedures, both for state officials and the general public. *Educational efforts are still needed and should continue to be supported.*

15. The role of independent watchdogs such as NGOs and media is extremely important in monitoring the reform process. *Provide technical expertise and encourage public debate on strategic development decisions such as sectoral development policies and related concessions.*

16. The international community has been quite tolerant of the deficiencies in Montenegro's governance during the state-building process, but this process is now nearly complete. *While being mindful of the structural and historical constraints that impact the pace of reforms, moving forward, donors need to take a more critical stance on the delays in delivering reforms. Not doing so should not be viewed as "doing a favour" either to the Montenegrin government or its citizens.*

2. Introduction

This report was commissioned by the Swedish International Development Cooperation Agency (Sida) to provide an analysis of corruption and the progress of anti-corruption activities in Montenegro, with the objective of identifying priority areas and opportunities for potential future reform efforts. As there is little existing research and analysis on this issue, Sida is supporting this study both as a part of its strategic learning, planning, and programming, as well as for use both by donors partners and relevant national stakeholders.

Sida recognises corruption as an obstacle to democratic stability, the rule of law and social and economic development in South Eastern Europe, and gives correspondingly a high priority to corruption issues in Swedish development cooperation with this region. The fight against corruption is seen as one of the principal means that will enable the poor to improve their living conditions, as well as a condition for achieving equitable and sustainable reforms that help countries' integration into European structures.

Montenegro is a small state of approximately 650,000 inhabitants,¹ gaining independence in 2006 after 15 years of a joint state with Serbia. In the 1990s, during the wars of Yugoslav succession and its aftermath, Montenegro's economy was damaged by economic sanctions, which also gave rise to extensive smuggling and other organised crime. Montenegrin society became deeply divided over the split with Milošević in 1997 between the part of the population that identifies itself as Serb (and has dominantly supported the joint state with Serbia and the Milošević regime) and the part that identifies itself as Montenegrin, and has largely supported the state's independence. (National minorities – Bosniaks/Muslims, Albanians, Croats, Roma, which account for approx 25% of the population – have also generally favoured independence.) Until 2006, the majority of questions relating to governance reforms and economic development have been subsumed by the debate over independence and Serb vs. Montenegrin identity. With the question of statehood finally resolved, citizens' (and media) attention is increasingly turning to governance issues. The final major symbolic questions will be addressed by the new constitution, which is anticipated to be adopted by the end of 2007.

This means that now is actually a propitious time to work on governance issues in Montenegro, as there are no other key state building activities that can be effectively used to justify the lack of progress on matters that improve the lives of Montenegro's citizens.

In many ways, Montenegro is doing better than many have predicted, particularly with regard to its economic indicators: real GDP growth is projected to be 7% in 2007. Foreign Direct Investment – mainly a result of the privatisation of state-owned enterprises – has massively grown in the past years: from US\$ 63 million in 2004 to an anticipated US\$ 650 million in 2007. GDP per capita has more than doubled since 2001 (when it was US\$ 1,688), to 3,426 in 2006²; unemployment is at 11.96% – compared with 32.7% in 2000.³

Approval ratings of the ruling Democratic Party of Socialists (DPS) are high, explained in part also by the euphoria caused by Montenegro having made the peaceful transition to independence, and

¹ See Government of Montenegro's website at www.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=70.

² According to data not yet published by EBRD.

³ See "Unemployment rate falls below 12%," *New Europe-The European Weekly*, 25.8.2007 at www.neurope.eu/view_news.php?id=76861.

the step forward the government made by the signing the Stabilisation and Association Agreement with the European Union in 2007.

The government of Montenegro is riding on a wave of approval by important organisations such as the World Bank, which recently lauded the progress made.⁴ But the World Bank, as other international observers, also points out that two of the “key challenges” that Montenegro needs to confront on its way to EU membership are “weak governance and the perceived wide prevalence of corruption.”⁵ Although the Stabilisation and Association Agreement with the EU has been initialled in March 2007, after the massive enlargement in recent years, the EU is not likely to endorse any shortcuts to membership for Western Balkan states, including Montenegro, nor hand out good marks to aspirant countries without merit. This has been made clear in the 2006 Progress Report⁶ by the European Commission (EC), which has been very critical with regards to the results in the fight against organised crime and corruption in Montenegro to date.

Fighting corruption requires a long-term, sustained effort, but also genuine political will by the top leadership to seriously tackle it. In Montenegro today, the government has embraced the goal of European Union membership. In this context, it has adopted a Programme for the Fight against Corruption and Organised Crime (hereafter: AC Programme),⁷ and an Action Plan⁸ with short and medium-term measures to implement the Program. However, the results to date of the implementation of the Action Plan, as well as numerous other previous reforms, appear to be mixed, at best.

For the purposes of this report, we define corruption as *any transaction between private and public sector actors through which collective goods are illegitimately converted into private interests, payoffs and other benefits.*

While it is beyond the scope of this report to engage in an extensive discussion of the theoretical frameworks underpinning anti-corruption approaches, this assessment is informed by the premise that the unique national historical and political context impact reform processes in any given country. The aim is to provide a qualitative analysis, supported with data to the extent available, in order to describe not only the current status of governance but also elucidate the structural and political factors that have, and will continue, to impact and constrain future reform efforts.

This paper therefore begins with a brief discussion of the specific national context, and the historic and structural factors that impact reform efforts in a number of sectors and reappear as “recurrent themes” in reviewing past and future challenges. Key sectors are then treated individually in some detail, with a discussion of the government’s anti-corruption programme – which can be viewed as a roadmap for future support to the fight against corruption – rounding off the analysis. The paper ends with a summary of key observations and recommendations for future reform efforts.

Assessing the current state of corruption in Montenegro, and the status of existing reform efforts is a considerable challenge. One of the main obstacles has been the scarcity of data and previous

⁴See “World Bank hails Montenegro’s ‘Amazing Progress’,” RFE/RL *Newsline*, 27.7.2007 at www.rferl.org/newsline/2007/07/4-SEE/see-270707.asp.

⁵ See World Bank, “Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1,” 3.11.2006, p. I, at www.gom.cg.yu/files/1165507662.pdf.

⁶ European Commission, *Montenegro 2006 Progress Report*, SEC (2006) 1388, Brussels, 8.11.2006, at http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/mn_sec_1388_en.pdf.

⁷ Government of Montenegro/Ministry of Internal Affairs, “Programme for the Fight against Corruption and Organised Crime” (“*Program borbe protiv korupcije i organizovanog kriminala*”) at www.gom.cg.yu/files/1124287629.doc.

⁸ Government of Montenegro/Ministry of Internal Affairs, “Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime” (“*Akcioni plan za sprovođenje programa borbe protiv korupcije i organizovanog kriminala*”) at www.gom.cg.yu/files/1157383512.doc.

research and analysis, on one hand, and a preponderance of unconfirmed rumours and allegations, on the other. Further, while most public institutions now have their own websites, many of the key documents for each sector are not available, or difficult to locate. The issue of reliability of data received from some interview partners and in written statements/reports should also be highlighted: the authors were more than once confronted with discrepancies, which was an added difficulty. To the knowledge of the authors, no previous attempt has been made to describe, in a comprehensive way, the different facets of corruption in Montenegro. As the first such effort, this report should be considered a starting point for further analysis and research.

The authors wish to thank Sida staff for their suggestions and information. Additional sincere thanks go to the individuals who have taken the time from their schedules to speak, correspond or otherwise consult with the authors during their research. Any errors or omissions are the sole responsibility of the authors.

3. Overview and Context

3.1 Data, Perceptions, and Experience of Corruption

Survey data on and other analysis of corruption in Montenegro is still relatively scarce – until 2006, the most important international surveys have tended to provide aggregate data for Serbia *and* Montenegro, making it therefore difficult to extrapolate statements on trends and patterns for Montenegro.

An exception has been the Freedom House annual publication *Nations in Transit*, which has, since 2005, dedicated a separate analysis including corruption to Montenegro. The recently published 2007 report rates the situation with regards to corruption – with 5.50 on a scale where 1 represents the highest possible, and 7 the lowest possible rating – as worse than in 2005 and 2006 (with ratings of 5.25 respectively). This lower rating has been attributed to the lack of political will of the government, manifested in its failure to render the privatisation process more transparent, delays in adopting the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime (hereafter: AC Action Plan), and the failure to adopt changes to the Law on Conflict of Interest.⁹

The EBRD-World Bank Business Environment and Enterprise Performance Survey (hereafter: BEEPS) – a repeat survey carried out in 2002 and 2005 in transition countries in Central, South Eastern, and Eastern Europe and the NIS – has tried to capture trends in obstacles to doing business, including corruption, faced by companies. Although only a very limited number of Montenegrin companies participated in the 2002 and 2005 surveys,¹⁰ some trends might be cautiously extrapolated for Montenegro. In 2005, more firms reported that corruption was a problem in doing business than in 2002: while in 2002, around 30% of companies had made this statement, the percentage had increased, in 2005, to 50%. Companies also perceived the judiciary to be more of a problem in 2005 (53%) than in 2002 (38%). There was a steep increase in the frequency of bribes reported by firms: while in 2002, 17% of firms had said that they were frequently asked for unofficial payments, this figure had risen to 32% in the 2005 survey. At the same time, the bribe tax (i.e. the annual share of revenues paid in bribes) declined compared to 2002, indicating that companies had to pay more often, but smaller amounts. Bribes were reported to be frequent in public procurement, fire and building inspections, customs, taxes, and public services (telephone and electricity services).¹¹

From the private sector perspective, two national surveys, using a bigger sample of firms, have complemented the EBRD-World Bank BEEPS' findings about corruption in the process of doing business in Montenegro.

First, a recent survey by the Montenegrin Employers Federation (*Unija Poslodavaca Crne Gore*) found that 58% of employers polled felt that corruption at the local government-level was a problem

⁹ See Lisa McLean, "Montenegro," Freedom House, *Nations in Transit 2007*, p. 303 at www.freedomhouse.hu/images/fdh_galleries/NIT2007/nt-montenegro-proof-ii.pdf.

¹⁰ The 2002 sample covered 20 Montenegrin firms out of 250 for the whole of Serbia and Montenegro, while the 2005 sample included 18 Montenegrin firms out of a total of 300 for the whole of Serbia and Montenegro. See World Bank "Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1," p.7.

¹¹ *Ibid.*, and James H. Anderson and Cheryl W. Gray, *Anticorruption in Transition 3. Who is Succeeding... and Why?*, The International Bank for Reconstruction and Development/The World Bank, 2006, p. 15 at <http://siteresources.worldbank.org/INTECA/Resources/ACT3.pdf>.

for their doing business, and 22% of respondents felt that corruption was the greatest obstacle to the growth of the economy. 52.36% of respondents were convinced that it was important to make unofficial payments to local officials in order to get things done, and 57% of respondents felt it was important to give presents to tax and other inspectors.¹²

Second, the results of a 2005 survey of the NGO Group for Changes¹³ (*Grupa za promjene*) entitled *The Problem of Corruption in Doing Business of Small and Medium-Size Enterprises in Montenegro* give an insight into what businesspeople commonly understand by corruption – abuse of political office, requests for kick-backs, and nepotism, etc. – with manipulation with data on VAT and income tax, requests for non-pecuniary gifts, private travel on company expenses, the use of company equipment for private purposes, the purchase or sale of stolen goods is not understood to be corruption. The survey also points to regional differences in corruption in Montenegro. 80% of companies on the coast reported that bribes had been requested “often or always” by inspectors and the financial police; in the North, 58% responded to the same question that they were “rarely or never” asked for bribes. In the coastal region, 75% of respondents reported that the local authorities were asking “often or always” for bribes, an experience that was shared by 57% in the central region, while 43% stated that bribes were “rarely or never” asked of them.¹⁴

The Montenegrin branch of the National Democratic Institute (NDI) started, in February 2007, baseline surveys on a range of issues of importance for the public, including on perceptions of the performance of the government and the administration, the perceived impact of reform initiatives, etc. The baseline surveys are planned to be continued throughout 2007. In NDI’s most recent survey, conducted at the end of May/beginning of June 2007, 25% of respondents stated that they believe the government should do more to fight corruption and organised crime, while 31% felt that establishing equality before the law should be a priority of the government. More than half of the respondents felt that the biggest obstacle to building strong institutions was the fact that incompetent staff was occupying key positions in the government, which they had been allocated on the basis of party allegiances and family connections. Trust in government institutions is below 50%, and newly established institutions (those dealing with money-laundering, anti-corruption initiatives, conflict of interest, and public procurement are singled out by the survey) were ranging lower than established institutions such as the courts, the police, and the customs. Asked about which structure was most likely to be able to have an impact on corruption, 28% felt that NGOs had the biggest potential for resolving the problem (as compared to 10% each for the police, the Prosecutor General, and the courts).¹⁵

3.2 Historic and Structural Factors

Many aspects of corruption in Montenegro are common to all post-communist states, above all the legacy of large, non-competitive bureaucracies, an underdeveloped market economy, scarcity of resources, lack of a system of checks and balances and other attributes of democratic governance in general. However, Montenegro-specific factors need to be understood in order to properly assess the

¹² See Montenegrin Employers Federation, “Rezultati ankete UPCG” (Results of a survey by MEF) in Montenegrin, at www.upcg.cg.yu/Dogadjaji_details.asp?ysID=290. The 2006 survey was funded in the framework of a project financed by the European Agency for Reconstruction (EAR).

¹³ In July 2006, the NGO reconstituted itself into the political party Movement for Changes (*Pokret za promjene*), which is, with 11 seats since the 2006 parliamentary elections, the second strongest opposition party in the Montenegrin parliament.

¹⁴ See Grupa za promjene “Rezultati istraživanja: Problem korupcije u poslovanju malih i srednjih preduzeća u Crnoj Gori” (*Results of the Research: the Problem of Corruption in Doing Business of Small and Medium-Size Enterprises in Montenegro*), pp. 4-13. Copy of the research results provided to one of the authors by UNDP Montenegro office.

¹⁵ See NDI Montenegro, “Key Findings. Baseline Poll–February 2007,” Podgorica: NDI, 2007, in English, at www.accessdemocracy.org/library/2128_mn_focusgroups_030907.pdf.

causes and structure of corruption in Montenegro today, and to develop appropriate anti-corruption remedies. A number of contextual factors discussed below impact not only the fight against corruption, but also the overall process of reform.

Great care must be taken in interpreting today's reality through the lens of historical experience or structural factors. For example, there is little evidence that historically strong tribal/clan bonds still play a prominent role in political, social, and economic relationships. On the contrary, people who nominally belong to the same clan can be deeply divided on political issues, with the recent question of independence being the most conflictual issue of all. Nevertheless, there are certain historical factors that do impact Montenegrin society today.

One, a centralised public administration and other attributes of modern statehood are relatively recent. Mountainous geography has delayed the evolution of the Montenegrin state as an effective system of governance: it has rather existed as a weak supra-structure over strong traditional tribal groups governed by informal rules. In effect, it is only with the emergence of communist rule after 1945 that the state became the primary unit of governance in Montenegro. As a consequence, informal relationship and rules, and an informal way of "doing business" has not yet become completely displaced. In a country the size of Montenegro, such a way of transacting is moreover practically feasible.

Two, the same party has *de facto* been in power for 60 years. While two key transformations have taken place – first in the anti-bureaucratic revolution of 1989-90, and second, following the break with Milošević in 1997¹⁶ – today's Democratic Party of Socialists (*Demokratska Partija Socijalista*, DPS) remains the legal successor of the Montenegrin branch of the League of Communists of Yugoslavia, and has as such inherited its assets and, arguably, some practices.

¹⁶ The anti-bureaucratic revolution of 1989-90 consisted primarily of purges of the pro-Yugoslav leadership in 1989 in favour of more pro-Serbian cadres, rather than reforms: the party competed in first multi-party elections in 1990 under the name of League of Communists of Montenegro, changing the name to Democratic Party of Socialists only in 1991. The second transformation occurred with the break with Milošević in 1997 and a split within the party. The then-party leader, Momir Bulatović, left the DPS to form a new party – the Socialist People's Party (*Socijalistička Narodna Partija*, SNP) – while Milo Đukanović assumed DPS party leadership. For a more detailed discussion of Montenegro's history and political development, see Florian Bieber (ed), *Montenegro in Transition. Problems of Statehood and Identity*, Baden-Baden: SEER & Nomos, 2003, at www.boeckler.de/pdf/p_seer_montenegro.pdf.

Box 1:

During a parliamentary session in late July 2007, a question was raised about the Montenegrin government renting its 3,077 square meter premises from DPS on the basis of a contract dating from 1993, with the monthly rent of € 40,000 (i.e. € 480,000 *per annum*).

There is some lack of clarity whether this is lawful, with critics arguing that according to the Law on State Property (*Zakon o državnoj imovini*), the government had been obliged to make an inventory of all such property and begin a procedure of transferring it into state ownership. The defence rests on the argument that the contract was made before the Law on State Property was passed in 1999, and there is further uncertainty as to what extent the Law on Assets of Former Socio-Political Organisations (*Zakon o imovini bivših društveno-političkih organizacija*) may also apply. The final legal interpretation and outcome is pending.¹⁷

DPS ownership of the building in question also explains why, unlike the opposition, the DPS party offices are in the same building as the Montenegrin government.

The continuity between DPS and the League of Communists further implies a certain correspondence in the associations, if not practices, of a one-party state. During communism, the party *was* the state, and many joined the party in order to gain access to positions and privileges. Without a fundamental break with the past and a radical restructuring, there is reason to believe that the distinction between the ruling party and the state remains unclear, state and ruling party interests remain conflated, and the incentives for joining or supporting a party remain unchanged. Some observers argue that the beginnings of a new transformation are discernable, however, with the resignation Milo Đukanović as Prime Minister in the fall of 2006, and the emergence of new DPS leaders (Prime Minister and two Deputy Prime Ministers) who are widely regarded as energetic and uncompromised.

Three, Montenegro is a small country, with a population of 650,000 inhabitants. In such a context, family relationships are bound to be present even in a fully competitive system of recruitment.

Box 2:

In April 2007, the Montenegrin independent weekly *Monitor*¹⁸ reported on the family relationships of the key positions within the judiciary, as follows:

The wife of the state President Filip Vujanović, Svetlana Vujanović, is a judge of the Appellate Court. The President's brother Dejan Vujanović is the Chairman of the Bar Association of Montenegro. The President's brother-in-law (wife's brother) Rajko Božović is a prosecutor of the Bar Association.

The Special Prosecutor for Organised Crime Stojanka Radović is the sister-in-law of Miraš Radović, the Minister of Justice, and the *kum*¹⁹ of the Supreme State Prosecutor Vesna Medenica.

¹⁷ See D.M, "Vlada daje DPS-u pola miliona eura za kiriju" (Government gives DPS half a million Euro for rent), *Vijesti*, 31.7.2007, www.vijesti.cg.yu/arhiva.php?akcija=vijest&id=243281.

¹⁸ Veseljko Koprivica, "Porodična manufaktura" (Family manufacture), *Monitor* No. 862, www.monitor.cg.yu/ARHIVA/a_862_05.html.

These family relationships among leadership positions must not be construed as nepotistic and corrupt *per definition*. In a society as small as Montenegro, it is not only plausible but statistically *probable* that a few well-to-do families will have produced well-educated successful offspring, who, through studying and working in the same institutions may form long-lasting friendships and enter into marriages. This is an inescapable fact in Montenegro, but does result in a very small elite and a close interrelationship between political and economic power that calls for a more considered and in some ways more rigorous approach to conflict of interest regulation.

The small size also implies a relatively small public administration, with correspondingly small state institutions. This limitation has consequences for institutional development, as a small institution is much more likely to be crippled by a turnover of key staff members, without a large number of managers ready to step in and replace the departure of a colleague.

Constraints imposed by size also appear, for example, in arrangements necessary for the implementation of a meaningful witness protection programme (discussed in more detail in section 8.4.1), which necessitates witness relocation to other countries in the region in order to assure sufficient anonymity.

Four, the legacy of historic close relationship with Serbia, in particular after 1992 within the context of the Federal Republic of Yugoslavia (renamed in 2003 the State Union of Serbia and Montenegro), holds at least two relevant consequences. First, Serbian and Montenegrin political and economic elites as well as a number of criminal groups are closely connected, which means that many of the problems connected with these groups will have a cross-border dimension. Second, Montenegro as the junior partner in the federation (and in the Socialist Federative Republic of Yugoslavia before that) was marginalized in comparison to the political, administrative, and economic centre of Serbia.

As a result, we notice, for example, a scarcity of Montenegro-specific statistic in governance data discussed in the previous section. A bias toward Serbia can also be observed in the proportions of allocation of donor funding to Serbia versus Montenegro, or the fact that donors largely operated Montenegro programmes out of Belgrade offices. Even a year after independence, a number of diplomatic representations in Podgorica do not issue visas, obliging Montenegrins to travel to Belgrade for consular services. Most critically for understanding the process of reforms, however, the development of public institutions, from universities to the statistical office, suffered as a consequence of the most qualified cadres seeking positions with counterpart institutions in Belgrade. In that respect, Montenegro has been suffering from a brain drain to Serbia for decades.

¹⁹ *Kum* and *kuma* are the masculine and feminine designations for individuals related through an important traditional form of kinship common throughout the Balkans called *kumstvo*, which binds families through the act of witnessing weddings (equivalent to Best Man/Maid of Honour in the Anglo-American tradition) or christenings (equivalent to Godfather/Godmother).

4. Political Corruption

Politicisation, or political influence, is nearly universally viewed as the most serious form of corruption that permeates all aspects of public and economic life in Montenegro. In the current context, the discussion extends beyond the term's most common usage as an equivalent for "grand corruption," although that aspect is also relevant, particularly in context of privatisation (section 5.1, below). Political corruption in Montenegro is most present in the form of political influence over the entirety of the administrative and economic processes in the state. Key aspects are discussed in some detail below.

Box 3: Key Manifestations

Nepotism and Protectionism

Family and other social networks play a role in obtaining high level positions in the economic and political life in all societies, even the largest and most competitive democracies. In a country the size of Montenegro, the role of these networks is particularly dominant. Nepotism is often cited as the most common form of corruption in Montenegro. However, there are no quantitative or comprehensive qualitative analyses of this practice.

Accumulation of Functions/Concentration of Power

Holding of more than one (public) function is problematic from an anti-corruption perspective in several respects: one, it can serve as a clientelistic system of rewards for party loyalists; two, it can create a situation where there is a conflict of interest among the demands of the various positions, particularly if one or more of the functions are related to political or business interests; three, it can permit the concentration of power among few individuals, facilitating state capture; and four, in a country as small as Montenegro, there is already a dominance of a small elite that stifles competition.

4.1 Conflict of Interest

Two relevant laws attempt to prevent the above forms of corruption: the Law on Conflict of Interest (*Zakon o konfliktu interesa*),²⁰ adopted in June 2004, and, less explicitly, the Law on Civil Servants and State Employees (*Zakon o državnim službenicima i namještenicima*),²¹ adopted in April 2004.

The Law on Conflict of Interest introduces the concept of conflict of interest and restricts the number of function a public official can hold. It requires public officials to make public declarations of assets and functions, and provides rules on acceptance and declaration of gifts.

The law is quite poor in several important respects. The definition of public official is incomplete, based only on the criterion of election or appointment, rather than function, leaving out certain important civil service positions that are filled through regular recruitment procedures. A number of concepts is imprecise, allowing for contradictory interpretations, including the definition of what

²⁰ Available in Montenegrin at www.konfliktinteresa.cg.yu/regulativa/zakon.htm.

²¹ Available in English at www.uzk.cg.yu/eng/aboutus/legislation/doc/law/law-on-civil-servants-and-state-employees.doc and in Montenegrin at www.uzk.cg.yu/onama/propisi/doc/zakoni/zakon-o-dsluzbenicima-i-namjestenicima-sa-dopunama.doc.

constitutes a public function. Further, there are no thresholds stated for assets to be declared, and the rules allow public officials to serve on Boards of Directors of state or majority state-owned agencies and enterprises and to receive compensation for it. Post-employment restrictions are likewise missing, and adequate sanctions are entirely lacking.²²

Box 4:

The NGO Network of the Affirmation of the Non-Governmental Sector (MANS) has repeatedly challenged the implementation of conflict of interest rules. A number of cases involved officials holding additional functions contrary to law. Rulings on these questions reveal a high level of discretion in the interpretation of the concept of public official:

The President of the Administrative Court was ruled permitted to serve as President of the Republic Electoral Commission, as the latter is a function in a “technical/expert body” and furthermore not a full-time “professional” function. On the other hand, a member of the Privatisation Council was ruled prohibited because of the “importance of the function.”

The Law on Civil Servants cannot be seen as supplementing the gaps, as neither it nor the December 2005 Code of Ethics for Civil Servants and State Employees (*Etički kodeks državnih službenika i namještenika*)²³ address conflict of interest issues adequately. In fact, the Code of Ethics explicitly permits gifts that represent “customary hospitality” (item 13) despite emerging evidence that such gifts are no longer commonly considered voluntary nor a matter of gratitude or hospitality (see section 5.2). While a Human Resources Management Authority (*Uprava za kadrove*)²⁴ was set up in 2004 as part of the Strategy of the Public Administration Reform, a truly competitive system of recruitment is far from being firmly in place.

The body overseeing the implementation of the law is the Commission for Determining Conflict of Interest (*Komisija za utvrđivanje konflikta interesa*),²⁵ established in July 2004, but becoming operational only in early 2005. The competencies of the Commission include producing the forms for income and asset declarations; keeping registers of income, property/assets, and gifts of public officials; carrying out the procedure for deciding on the existence of a conflict of interest; and, as necessary, making recommendations for dismissal of officials for breaches of obligations imposed by the Conflict of Interest Law. The Commission has a legal obligation to initiate procedures upon identifying breaches, and also on the basis of citizens’ reports/complaints. It does not, however, assess the veracity of the declarations.

The Commission is composed of a President and 4 additional members, appointed by parliament for a renewable term of 5 years. Commission members are not prohibited from membership in political parties or elective bodies such as local parliaments, and the question of their political independence has been called into question. At the time of this assessment, the Commission was staffed by 7

²² Analyses of the existing law and its shortcomings, as well as recommendations for improvement, are included in the Commission’s Annual Report. See in Montenegrin “Zaključna razmatranja,” *Izveštaj o radu Komisije za utvrđivanje konflikta interesa za 2006. godinu*. (“Concluding Considerations,” *Report on the Work of the Commission for Determining Conflict of Interest for 2006*) at www.konfliktinteresa.cg.yu/programi/IZVESTAJ%202006.htm and more extensively in The Monitoring Center (CEMI), *Manual on Conflict of Interest of Public Officials*, Podgorica, 2006, at www.cemi.cg.yu/publikacije/download/prirucnik_o_konfliktu_interesa.pdf.

²³ Available in Montenegrin at www.upravazakadrove.cg.yu/onama/propisi/doc/ppropisi/Eticki-kodeks.doc.

²⁴ www.uzk.cg.yu

²⁵ www.konfliktinteresa.cg.yu

professional and administrative staff, anticipating one additional staff member in 2007. The Commission's budget was € 103,350 in 2005, just over € 166,000 for 2006, but €157,000 for 2007. Salaries are not particularly competitive.

The Commission has, in co-operation with the NGO Centre for Monitoring (CEMI) published and distributed to public officials a manual for complying with conflict of interest rules, and has conducted a number of trainings on the regulatory provisions and officials' obligations therein. It has also developed a programme of training, educational and outreach activities, and is actively engaged in fundraising for those activities.²⁶ While the Commission has noted shortcomings in the conflict of interest regime, and has reported to the public prosecutors 4 cases of "illegally obtained assets" gained from functions held in contravention of the law,²⁷ it is not viewed as an overly activist body, and a number of its decisions have been publicly criticised as politically biased by the NGO MANS.

The strongest sanction available under the current regime is a non-binding but public recommendation for dismissal of the public official issued by the Commission for Determining Conflict of Interest in cases of failure to submit the asset declaration, failure to correct incomplete declarations or other breaches of rules, or in actual situations of conflict of interest. It is important to note that such recommendations are meaningless in case of public officials who are directly elected by Montenegrin citizens and cannot be dismissed by a superior.

The shortcomings of the system have been repeatedly highlighted by a number of international organisations, including the OSCE and the Council of Europe, and noted in both the GRECO 2006 Evaluation Report²⁸ and the European Commission's 2006 Progress Report. Despite these recommendations, in July 2006, the Montenegrin parliament failed to pass a new draft law, or amend the existing one.

With such a deficient regulatory framework in place, it is perhaps no surprise that compliance with the rules is low. In its 2006 report, the Commission noted that 6% of state-level and 38% of local/municipal level officials are in violation of the conflict of interest rules, and these are almost exclusively elected (vs. appointed) officials. Recommendations for dismissal are not respected by the authorities, especially at the municipal level; however, quite a number has corrected the problematic situation. Further, public warnings are not always perceived as damaging: in a conversation with one of the authors, the Commission President cited a case when an opposition politician claimed that the effect was to improve his "rating" among his constituency! He further attributed non-compliance with a troubling lack of awareness of public officials of their legal obligations, and the misperception that conflict of interest regulations are in fact measures to determine the origin of assets (a fear which is perhaps even more problematic).

Educational measures to promote the purpose and obligations under the conflict of interest rules do appear to be needed, not only with regard to public officials, but other segments of society. Journalists are only slowly becoming familiar with the law, but their reporting largely consists of transmitting challenges submitted to the Commission and its decisions, rather than any investigative work that leads to new reports to the Commission. The Commission in addition recognises the need for further education of its own members and staff.

²⁶ The programme proposal is available to interested potential donors upon request.

²⁷ Notices were forwarded to the public prosecutor in December 2006, and the cases still in progress. The text of the notices is available in Montenegrin at www.konfliktinteresa.cg.yu/rjesenja/TUZIIOC.htm.

²⁸ Council of Europe/GRECO, *Evaluation Report on the Republic of Montenegro*, Greco Eval I-II Rep (2005) 4E, Strasbourg, 13 October 2006, at [www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-2\(2005\)4_Montenegro_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-2(2005)4_Montenegro_EN.pdf).

On the positive side, the searchable register of public officials' assets, public functions, and gifts is public and available on the Commission's web site.²⁹ Accessing the web site is highly entertaining, although it does raise some doubt as to the veracity of the declarations, with a number of government officials wearing suits that cost more than the stated value of their assets. The available information is beginning to be accessed by NGO activists and journalists, but much more could be done to put public pressure on officials to properly disclose their assets.

A new law regulating conflict of interest is under discussion, but it will not reach the public agenda before the new constitution is adopted. Therefore, there exists an important opportunity for international donors to engage in a public discussion about how to most effectively regulate conflict of interest, given the specific challenges imposed by Montenegro's size.

4.2 Financing of Political Parties and Electoral Campaigns

While questions of financing of political parties have been regulated by law since the introduction of multiparty democracy,³⁰ the current rules have been set by the Law on Financing of Political Parties (*Zakon o finansiranju političkih partija*)³¹ passed in 2004, and amended in May 2005.

In brief, the current law prohibits certain sources of funds for parties; determines permitted types of expenditure; establishes an extensive system of state subsidies which provides funds for both the ordinary activities of political parties already represented in parliament or local councils, and for the electoral campaigns of registered participants; imposes a general obligation on parties to disclose their income and spending; and defines sanctions for violations of provisions of the Law.

While there are a number of difficulties with the law – including those relating to the dominance of state subsidies and the criteria for their distribution, illogical restrictions on private contributions to political parties, insufficient definition and regulation of election campaign expenditure, and contradictory disclosure requirements – the central problem nevertheless lies in the completely inadequate provisions for their control and enforcement.³²

There has been a heated debate among political parties over the initial law and its amendments, but the conflict had been primarily directed to questions of equal access to funds by all electoral contestants, including non-parliamentary parties. In fact, in June 2006, at the initiative of a national NGO in co-operation with the Directorate for Anti-Corruption Initiative, the Constitutional Court reversed certain amendments introduced in 2005 on the grounds of creating unequal status for political parties that do not have parliamentary status. However, there has been very little interest in the effective implementation of the law, and numerous breaches of its provisions are committed by nearly all political parties to a certain extent, with little consequence.³³

²⁹ www.konfliktinteresa.cg.yu/funkcioneri/EvidencijaFun.php

³⁰ For a brief history of political party finance regulation, see CEMI, *Financing Political Parties in Montenegro: Report for year 2005*, Podgorica, 2005, pp. 21-35, at www.cemi.cg.yu/publikacije/download/finansiranjepolpartija.pdf.

³¹ Available in Montenegrin at www.gom.cg.yu/files/1187683267.pdf.

³² For a detailed analysis of the existing regulations, see Quentin Reed, *Assessment of Regulation of Political Party Finance in Montenegro and Recommendations for Changes in the Legal Framework*, Council of Europe PACO-Impact Technical Paper PC-TC (2006)21, available upon request from the Council of Europe.

³³ CEMI filed a request to the State Prosecutor to start an investigation procedure against political parties that failed to financial reports for the 2005 municipal election campaign. At the time of writing of this analysis, no visible measures had been taken.

Box 5:

According to the NGO CEMI, “although opposition parties often complained [about the] much better position of the governing party, none of them initiated the question of financial dealings’ control. The basic characteristic of this process is a ‘pact of non-aggression’ between political parties i.e. non-interference related to financial questions.”³⁴

Failure to comply with disclosure requirements is the most common form of disrespect of the law, although the government has also been criticised for attempts to deny state funds for particular campaigns in contravention of the law.³⁵ Lack of transparency has also been noted with the Republic Electoral Commission and local electoral commissions, bodies mandated to oversee the law’s implementation. In response, CEMI has led a civic effort to increase transparency of the system. Using freedom of information provisions, they have actively sought to obtain party finance declarations, and have posted them on a public searchable database on their web site.³⁶

While state funding to political parties is the most generous in the region, it is estimated that it still falls short of covering all campaign and operational expenses and is supplemented by private donations. Poor regulation of this issue, coupled with the lack of effective oversight and enforcement, makes it impossible to know much about the actual flows of private financing to political parties, and potential corruption occurring through these relationships. As elsewhere in the region, no studies on the actual financing of political parties and electoral campaigns exist. Informed observers, however, maintain that it is largely informal and not declared in official forms.

Box 6:

Informed observers cite numerous instances of informal campaign funding practices. One such assertion involves activities surrounding the independence referendum campaign in May 2006, where party members allegedly approached businesses, informally asking them to contribute in-kind, for example through sponsoring air tickets for diaspora voters.

It is unlikely that any written records of these or similar transactions would exist, as there is no other documented evidence to support these assertions.

4.2.1 Misuse of state resources

Misuse of state resources for the financing of political parties and election campaigns³⁷ is likewise a serious concern, particularly in view of the incomplete transfer of the assets of the League of Communists to the state, as noted in text box 1 above. While Article 7 of the law prohibits the

³⁴ CEMI, *Financing Political Parties in Montenegro: Report for year 2005*, p. 16.

³⁵ In preparation for the autumn parliamentary and local elections in 2006, the Prime Minister and Minister of Finance announced that the competing parties would not receive state campaign financing because budgeted funds had been spent on the referendum campaign. After a public outcry, the government reversed its decision.

³⁶ www.transparentnost.cg.yu/Pretraga/Kampanje.php

³⁷ For a discussion of a misuse of state resources, in particular budgetary, institutional, and coercive resources, see *Monitoring Election Campaign Finance: A Handbook for NGOs*, New York: Open Society Institute, 2005 at www.justiceinitiative.org/db/resource2?res_id=102367.

donations from public institutions and enterprises, and institutions and enterprises that receive state funding, the lack of oversight and control mechanisms opens quite a wide space for abuse.

Budget resources

A number of questionable budgetary expenditures preceding and during the campaign for the independence referendum in 2006 has been noted by Freedom House's *Nations in Transit* Report for Montenegro for 2006: "the government's largesse was in full swing in the run-up to the referendum, providing subsidised credits for housing and small and medium-sized enterprises, livestock premiums, and salary increases for police, customs, and other state employees."³⁸

Box 7:

The CEMI monitoring report on the financing of the independence referendum captures campaign-related advertising by a number of governmental agencies, including the Development Fund of the Republic of Montenegro, the municipality of Podgorica, the government of Montenegro, the Directorate for the Development of Small and Medium-Sized Enterprises, and the Customs Administration.³⁹

As the actual content of these advertisements has not been analysed in the study, it cannot be determined whether any of these state bodies actively campaigned for or against independence. Nevertheless, even if the content simply urged citizens to exercise their democratic rights (a "neutral" get-out-the-vote message), it begs the question of whether agencies such as the Development Fund or the Customs Administration should be involved in electoral issues at all.

Coercive resources

Coercive resources include the police and other law enforcement institutions, and any bodies with direct coercive powers, ranging from customs to intelligence agencies. Coercive resources may be used to intimidate, harass, obstruct, or even eliminate political opponents.

The state-owned enterprise Port of Bar (*Luka Bar*) terminated its contract with the candidate for mayor of the newly-formed opposition party Movement for Change (*Pokret za Promjene*, PzP) in the municipality of Bar, claiming that his employment contract had expired in early 2004. The candidate claimed that his dismissal was punishment, and the OSCE/ODIHR noted that "questions remain about the timing of the decision."

In another problematically timed event, the police questioned PzP leader Nebojša Medojević about tax evasion based on an anonymous tip three days before the election.⁴⁰

4.2.2 Vote buying

During the campaign for the independence referendum, the "no" campaign made a number of accusations of pressure and vote buying. The most vivid of these was the March 2006 videotape showing individuals offering to pay a €1,500 electric bill for a "yes" vote at an illegally taped

³⁸ Freedom House, p. 313.

³⁹ See in particular section 2.2 and tables on pp. 27-31. The Monitoring Centre CEMI, *Monitoring finansiranja referendumске kampanje (Monitoring the Financing of the Referendum Campaign)*, Podgorica, 2006, available in Montenegrin at www.cemi.cg.yu/publikacije/download/frk.pdf.

⁴⁰ *Nations in Transit*, p. 315.

private meeting. Allegations of a setup followed, but in an uncharacteristically swift court procedure, two DPS activists were convicted and sentenced to 8 and 10 months in prison for offering to pay a bill in exchange for a vote, while the videographer was sentenced to 10 months in prison.⁴¹ Allegations of vote buying have been persistent in Montenegro for years, but 2006 was the first time it was documented by international election observers.⁴² The practice is cause for serious concern.

4.3 Local Self-Government

Corruption at the local level appears to be a significant problem. The available survey data, discussed in more detail in section 3.1 above, shows that 58% of business respondents believe that corruption is widespread among local officials, and 52.36% feel that it is necessary to make unofficial payments to representatives of the local authorities in order to do business at the local level, while only 3.38% of respondents felt that the local administration poses no obstacles to the development of the company.⁴³

Box 8:

*A great deal of corruption relating to real estate purchases and construction plays out at the local level. In a 2005 study – *Corruption in Spatial Planning and Development* – the NGO MANS has outlined a number of opportunities for corruption in the process and presented a number of case studies where corruption is strongly suspected.⁴⁴*

A comprehensive plan for the reform of local self-government – predicated above all on the principle of decentralisation – was outlined in the 2003 Strategy of the Public Administration Reform in Montenegro (*Strategija Upravne Reforme Crne Gore 2002–2009*).⁴⁵ A significant step in the decentralisation process began in July 2003 with the passage of the Law on Local Self-Government (*Zakon o lokalnoj samoupravi*)⁴⁶, and the Law on Local Self-Government Financing (*Zakon o finansiranju lokalne samouprave*)⁴⁷ that entered into force in January 2004. Now, each of the 21 municipal governments adopts its own budget and plans for development, construction, urban planning, capital improvement, and environmental development, and has responsibility for social service delivery, communal services, and public transport. Most municipalities, especially those in the much poorer north, operate with limited financial resources and bloated bureaucracies.⁴⁸

Capacities of local government administrations are low in general, and there is a considerable challenge in coping with the additional responsibilities imposed by decentralisation. Effective implementation of a number of laws, including the Law on Public Procurement and Freedom of Information, among others, is greatly hampered by the shortcomings of municipal administrations.

⁴¹ *Ibid*, p. 313.

⁴² OSCE/ODIHR, “Republic of Montenegro Referendum on State-Status in Montenegro 21 May 2006” Final Report, at www.osce.org/item/20077.html.

⁴³ The 2007 results of the repeat survey conducted among 114 member companies by the Montenegrin Employers Federation.

⁴⁴ Vanja Čalović, *Corruption in Spatial Planning and Development*, MANS, Podgorica, 2005, at www.mans.cg.yu/korupcija/publication/publication_corruption.htm.

⁴⁵ Available in Montenegrin at www.gom.cg.yu/files/1063023752.pdf.

⁴⁶ Available in Montenegrin at www.gom.cg.yu/files/1059742068.doc.

⁴⁷ Available in Montenegrin at www.gom.cg.yu/files/1084888918.doc.

⁴⁸ *Nations in Transit*, p 322.

Some international observers nevertheless see some improvements in the quality of governance at the local level. The Freedom House *Nations in Transit* report for 2006 notes a “new crop of mayors [that] appears to be committed to delivering improved services to citizens.” It also notes an improvement in local party politics, with politicians having managed “to overcome party divisions, and in municipalities with divided governments, there appear to be none of the decision-making obstructions such as those seen previously in the northern tourist municipality of Žabljak, where local government did not function for nearly two years.”⁴⁹

The report attributes this advance to the 2005 amendments to the Law on Local Self-Government, which transferred the power of appointing the city manager from the municipal assembly to the mayor. As the city manager has the mandate to appoint the rest of the city administration, and the mayor the power to dissolve the assembly if it did not make decisions within its sphere of responsibilities, the mayor’s power has greatly increased. Despite intense criticism at the time by the opposition for “practically putting 80 percent of the authority in the hands of the mayor,” the report contends that the amendment may have contributed to more responsible politics in 2006.⁵⁰

No information is available on the potentially greater political influence over the public administration or aspects of economic life – and increased corruption – by political parties whose candidates won these more powerful mayoral positions. On the contrary, the Freedom House report maintains that “the new class of mayors from both opposition and ruling parties exhibits a greater sense of responsibility....Both sides understand that citizens closely follow municipal management and will harshly judge those who do not deliver.”⁵¹ This view is contradicted by findings of a survey by the Montenegrin Employers Federation (section 5.4), which finds that entrepreneurs face severe problems with regards to corruption, quality of service delivery, and red tape, precisely at the local level.

The AC Action Plan defines a single general responsibility for local governments: that they, together with NGOs, develop local anti-corruption action plans with measures not included in the national programme, an obligation that echoes GRECO recommendations. The First Report on the Realisation of Measures from the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime (hereafter: the First AC Progress Report)⁵² concludes that the measures have not been implemented on the basis of non-receipt of reports by the municipalities (through the Union of Municipalities of Montenegro). The authors of the Progress Report were seemingly unaware that a draft Programme for Fighting Corruption and Organized Crime within Local Self-Government and an action plan were in fact being drafted by an inter-agency team led by the Police Administration, with some technical support from the Council of Europe. While the draft text of the programme was not publicly available at the time of writing this report, Council of Europe expert assessments to date point to a number of shortcomings in the first version of the programme and its implementation plan that need to be addressed in the final document. In brief, the draft is said not to be based on a real needs and situation assessment, and has been prepared without the prescribed public consultation. As a result of the former, it was difficult to determine whether the objectives or measures represent adequate responses to the actual needs. Further, timeframes for implementation, entities who would be implementing the specific measures, the financial resources required, and a mechanism for monitoring and evaluating progress were not

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p. 323.

⁵¹ *Ibid.*, p. 324.

⁵² See Government of Montenegro/National Commission for Monitoring of the Realisation of the Action Plan for Implementation of the Program for Fight against Corruption and Organized Crime, “First Report on the Realisation of Measures from the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime,” p.34 at www.vlada.cg.yu/eng/antikorup/index.php?akcija=vijesti&id=25152.

defined.⁵³ Flawed as the initial version may be, the elaboration and implementation of such a programme should be supported, and the incorporation of expert recommendations strongly encouraged.

4.4 Parliament

While corruption scandals involving members of parliament (MPs) may not be as prevalent as those involving executive branch officials where power is in fact concentrated, the Montenegrin parliament has not been at the forefront of the fight against corruption. In fact, the parliament has voted against a number of legislative changes that would strengthen anti-corruption efforts, including a draft law on conflict of interest in July 2006, changes to the Criminal Procedure Code that would permit the use of special investigative means (e.g. surveillance) for suspected corruption crimes, or a reduction in the scope of their immunities. In addition, the parliament approved changes to the law on the State Audit Institution that are widely seen to degrade the independence and effectiveness of the institution (see section 6.3).

Furthermore, the parliament has refused to lift the immunity of a number of officials under investigation for corruption. The notable examples include Dragan Šoć who was, as Minister of Justice in 2001, under investigation for violating public procurement regulations; Vesna Perović, opposition representative who was in 2004 under investigation of extorting a € 1 million “donation” from a Russian/Montenegrin firm as part of a real estate purchase deal with a municipality where her political party dominated; and, former Health Minister Miodrag Pavličić, also under investigation in 2004 for violating procurement rules.⁵⁴ In general, interest in integrity issues appears to be quite low.

Box 9:

Among its parliamentary activities, in early 2007, the National Democratic Institute (NDI) organised a study trip to the US that included a visit to the Maryland General Assembly (state parliament) and its Ethics Committee. While the initial reactions by Montenegrin MPs were enthusiastic – resulting in NDI translating and distributing the Maryland parliamentary Ethics Manual⁵⁵ – a follow-up roundtable on ethics in Podgorica, with the Chairman of the Maryland Ethics Committee as a guest, was attended by only a handful of MPs, not even all the deputies who had taken part in the US visit.

Being a member of parliament is not a full-time professional position, necessitating engagement elsewhere to supplement a deputy’s income. This aspect has been the primary argument for permitting MPs to serve as members on Boards under conflict of interest rules. A number of international organisations recommend professionalisation of the position with remuneration to reflect the expanded scope of engagement, not only to restrict the possibility of conflict of interest, but also to promote a more effective parliament.

There are a number of challenges in the way of the parliament becoming a robust representative body, as well as an effective oversight mechanism for the executive branch of government. Most importantly, the influence of political parties is quite strong, and can be seen in the ruling parties

⁵³ Expert comments available upon request from the Council of Europe.

⁵⁴ See Zoran Radulović, “Reporter’s Notebook: Republic of Montenegro,” *Global Integrity, 2006 Country Reports*, at www.globalintegrity.org/reports/2006/MONTENEGRO/notebook.cfm.

⁵⁵ Available in Montenegrin at www.ndicrnagora.org/files/EthichsManualFinal.pdf?mod_download_id=238.

repeatedly scheduling urgent parliamentary sittings for dubious reasons in order to satisfy the executive's last-minute political priorities.

Box 10:

The 2006 Nations in Transit report notes the widely-shared perception that the 2006 Law on Amnesty, which reduced all but the most serious prison sentences by 25 %, was rushed for adoption before the September 2006 parliamentary elections because of a pre-referendum promise to prisoners to get them to vote "yes."⁵⁶

There are also visible efforts to enforce party discipline through demands for a repeated open vote in two cases where the outcome of the original vote had contradicted the position of the government.⁵⁷ Nevertheless, some basic conditions for fostering parliamentary independence exist. While Montenegro's single-constituency proportional representation election system undermines to an extent direct accountability to voters, the law obliges election contestants (parties and groups of citizens) to allocate won seats to candidates in the top 50% of their electoral list in the order they appear on the list. Deputies "own" their mandates, and in a case of conflict between an MP and the party, the MP cannot be stripped of the mandate by the party leadership, which provides some space for independent thinking and action.

Furthermore, new Rules of Procedure (*Poslovník*)⁵⁸ adopted in July 2006, open other opportunities. There is now a requirement that the deputy chair of a committee be from the opposition if the chair is from the governing majority (and vice versa). Such an arrangement should lead to more opposition committee chairs and a more active role of the opposition, in general. Special sessions for MP questions of government, and a special "prime minister's hour" that must be held once every two months, have also been introduced, although time will be needed until these new mechanisms become more than a formality.

Box 11:

Some international observers believe that parliamentary sittings held in November and December 2006 demonstrated that the new rules are having an impact in moving legislative discussion to substantive issues in the setting of committees: the Committee for Budget, Economy, and Finance held two five-hour sessions on the 2007 budget and even invited NGOs to participate in the debate and offer their commentary – a first in Montenegro.⁵⁹

The new opposition appears eager to use the instruments of control provided in the new Rules of Procedure and even urge that these instruments be codified into the new Constitution. Deputies from the recently formed party Movement for Changes have already used the instrument of interpellation to review the much suspected privatisation process (see section 5.1). But several of these instruments require approval of a parliamentary majority, and their reach is therefore limited.

Many recent laws require state institutions to report to the parliament, with the prosecutor and police, for example, reporting to the Committee on Security and Defence (*Odbor za bezbjednost i*

⁵⁶ *Nations in Transit*, endnote 12, p. 331.

⁵⁷ *Ibid.*, p. 310.

⁵⁸ Available in Montenegrin at www.skupstina.cg.yu/files/downloads/Poslovník%20Skupstine.doc.

⁵⁹ *Nations in Transit*, endnote 11, p. 331.

odbranu). A recent NDI needs assessment⁶⁰ has a number of recommendations on increasing the oversight potential of the parliament, including the promulgation of a special law on parliamentary control over security services and explicit definitions of which services parliament exercises control and what that control implies, among other issues. A number of recommendations were also made with regard to establishing an effective budget and public finance committee.⁶¹

Of course, the development of parliamentary oversight is also hampered by objective material limitations. For one, there are not enough professional, administrative and technical personnel within the parliamentary service. As elsewhere in the public service, it is difficult to recruit qualified new individuals due to low salaries and poor working conditions. Second, there are constraints with the physical facilities: presidents of committees lack office space, and there is frequently no appropriate space for meetings. Overall, a great deal more time and resources will be needed in order to transform the parliament into a vibrant oversight institution, but initial small steps can be observed.

Box 12: Independent Institutions: Ombudsman

The Ombudsman institution (Zaštitnik ljudskih prava i sloboda)⁶² was established in 2003 and has now been in operation for 4 years. It is a small institution (20–21 staff, compared to 40 in Croatia or 80 in Macedonia) with modest capacities, which does not permit specialisation on specific forms of violations that are being reported.

The institution appears to be slowly raising its profile as a citizens' defender. The European Commission notes improved cooperation between the Ombudsman and the Ministry of Interior, with appropriate disciplinary or criminal measures taken in each of the 13 cases involving ill-treatment that referred to the Ministry.⁶³ The Ombudsman also confirms that state institutions are increasingly implementing his recommendations, with the rate of compliance now standing at some 80%.

One of the obstacles to becoming a more forceful actor in the fight against corruption is the fact that the vast majority of persons making complaints (some 1,200 annually) wish to remain anonymous; some clients do not even wish to have the complaint recorded in written form. Time will be needed to change this frame of mind. For the time being, at least with regard to corruption, the Ombudsman is not likely to emerge as the institution that encourages and effectively channels citizens' reports.

⁶⁰ NDI, *New Challenges for a New Mandate – Analysis and Recommendations for a Strategy to Develop a Key Pillar of Montenegro's Democracy: the Parliament of the Republic of Montenegro*, Podgorica, August 2006, www.accessdemocracy.org/library/2078_yum_finalmonteneg_100106.pdf.

⁶¹ *Ibid.*, pp. 19-20.

⁶² www.ombudsman.cg.yu

⁶³ European Commission, *Montenegro 2006 Progress Report*, p. 12.

5. Corruption in the Process of Doing Business

5.1 Privatisation

The process of privatisation in Montenegro has, for years, been marred by massive corruption allegations, voiced by non-governmental organisations, opposition parties, and the media. The government has reacted to these allegations with an appalling disregard for the legitimate interests the citizens take in the process. Requests for insight into the documentation of completed privatisations, made in particular by the NGO MANS⁶⁴ under the Law on Freedom of Access to Information, were often initially refused by institutions who claimed not to be competent for such requests, demonstrating a disconcerting lack of knowledge about the legal framework they are supposed to operate in. Once the refusal was appealed to the courts, and the institutions were ordered to provide the information, the requests were still denied on the grounds of being “business secrets.” After additional appeals, MANS was granted information in a certain number of cases.

Box 13:

When MANS was finally formally granted access to privatisation files containing information on the composition of the members of the tender commissions in a number of privatisation deals, they continued to be obstructed in a number of ways: for example, by insisting that documentation be viewed in the respective agency's premises, with time available to do so being very limited; copies of the documents are not being made available on the grounds of the agency claiming not to have sufficient technical equipment (copy machines etc.); the institution delaying the scheduling of an appointment⁶⁵ for no clear reason; and restrictions on taking notes.⁶⁶

Against the background of MANS' Sisyphean efforts, the sometimes farcical ways in which these efforts are routinely being warded off are all the more unsettling. This makes it difficult to conclude anything other than that those in charge for past privatisations have a massive interest in information not becoming public.

⁶⁴ MANS has published a compendium of documents tracking the organisation's requests under the Freedom of Access to Information legislation, the responses from the authorities, and the legal rulings on these responses. See Vanja Čalović, Milena Deletić, *Behind the Closed Door – Free Access to Privatisation Information: Case Study Aluminium Plant Podgorica*, 2006.

⁶⁵ In one case, MANS had to make 46 written requests before an appointment at the Agency for Economic Restructuring and Foreign Investment was finally granted. See *Behind the Closed Door*, pp. 55-67.

⁶⁶ *Ibid.*

Box 14:

In light of the secrecy in which the process is shrouded, it is difficult to even speculate what might have preceded the various privatisation deals. What seems clear, though, is that there have been frequent and blatant breaches of conflict of interest provisions. The NGO MANS has repeatedly and publicly highlighted instances in which members of the Privatisation Council had obvious conflicts of interest. In a press statement of September 2006, for example, it is pointed out that the prosecution had started an investigation against Veselin Vukotić, Vice-President of the Privatisation Council (and close ally of now ex-Prime Minister Đukanović), on substantiated suspicions of abuse of public office in the process of hiring a consultant for the privatisation of Jugopetrol. The other person against whom allegations were made was Branko Vujović, the Director of the Agency for Restructuring. Both remained in their functions, despite these allegations and an investigation underway. The investigation did not yield any results.⁶⁷

The post-privatisation process, likewise, has been marred by scandals, with new owners of companies not fulfilling the contractual obligations regarding the investments into the companies they purchased, as well as regarding the social programs, the exploitation of concessions, the protection of minority shareholders' interests, and the protection of the environment (all of which form part of the privatisation contract).

An interpellation by a group of opposition politicians in spring 2007 requesting a parliamentary debate about the privatisation process (quoted below in more detail) yielded a reply, in writing, from the government on the allegations made. However, in absence of any possibility to independently verify the documentation quoted by external groups, the credibility of the reply is rather questionable.

Some of the outstanding key strategic privatisation deals have, for the moment, been put on hold. This concerns, for example, the planned privatisation of the power plant (which generates one-third of Montenegro's electricity) and coal mine in Pljevlja.⁶⁸ International observers offer three possible explanations: 1) the authorities have understood that selling the companies to the best bidder – in the case of the Pljevlja power plant and coal mine this is the En Plus Group of Russian oligarch Oleg Deripaska who also owns the Podgorica Aluminium Plant – would bring major parts of the economy and key infrastructure into the ownership of one single owner; 2) a principle shift away from the neo-liberal approach of complete privatisation; and 3) those in charge of – behind the scenes – sealing the deal are unsatisfied with the amount of kick-backs to them.

At least two of the three explanations are probably supported by a number of arguments.

First, the post-privatisation problems linked with the allegedly largely unfulfilled investment programme of the Podgorica Aluminium Plant (*Kombinat Aluminijuma Podgorica*, KAP)⁶⁹ – he largest industrial company in Montenegro accounting for 20% of the GDP and keeping between 900 and 1100 smaller companies in business⁷⁰ – probably makes it difficult to justify another sale to the

⁶⁷ See in Montenegrin MANS' press statement "Problem korupcije u Crnoj Gori se marginalizuje" (The problem of corruption in Montenegro is being marginalised), 6.9.2006, at www.mans.cg.yu/MANS/press/2006/septembar2006/06.htm.

⁶⁸ See "Montenegrin Parliament Votes to Halt Energy Privatisation," RFE/RL *Newsline*, Vol. 11, No. 108, Part II, 13.6.2007 at www.rferl.org/newsline/2007/06/4-SEE/see-130607.asp.

⁶⁹ Details of the contract have been made public largely as a result of public pressure by MANS in March 2007.

⁷⁰ See "Der russische Herr der Schwarzen Berge" (The Russian Lord of the Black Mountains), *Der Standard*, 10.7.2007.

En Plus Group.⁷¹ Also, through shares in STRABAG, which in the beginning of 2007 bought Montenegro's biggest building company Crnagoraput, Deripaska is now also part of the country's building business (estimations put the volume of road building to be carried out in the years to come at €2.8 billion).⁷² There appear to be problems in making the new owner of KAP comply with his contractual obligations, which might forebode potential future problems.

Second, the already quoted baseline survey conducted by the National Democratic Institute shows that 76% of respondents are against the privatisation of the Pljevlja power plant and coal mine, and 79% believes that the state should have key infrastructure under its control.⁷³ This might coincide with a shift in thinking in the government.

The third option mentioned above – that of insufficient kick-backs for key persons in the process – is based on unconfirmed rumours. Certainly, there are conflicts inside the ruling coalition on the course of the privatisation process;⁷⁴ however, a detailed assessment of such an explanation is outside the scope of this report.

In addition, speculations have abounded over the years on who Deripaska's business partners are. Observers say that they might include a number of Montenegrin businesspeople who have benefited from the war and who are now trying to bring back in a legal way assets from countries such as Cyprus (a mechanism known, for example, from the privatisation process in Serbia).

It is unfortunate that the big international financial organisations have taken – throughout the region – a very pragmatic approach to the privatisation process, basically promoting a radical approach to get loss-making companies off the state budget. Organisations such as MANS are aware that once everything has been privatised, it might be difficult, if not impossible, to review or reverse any of the murky deals, and the public will have left no other option than to accept the new circumstances.

Technically and legally, the privatisation process in Montenegro is governed by a number of laws (some of which experts say are severely outdated), including the Law on the Transformation of Ownership and Management (*Zakon o svojinjskoj i upravljačkoj transformaciji*)⁷⁵ and the Law on the Privatisation of the Economy (*Zakon o privatizaciji privrede*).⁷⁶ Privatisation can take place through public auction, public tender or public offer.

The Privatisation Council (*Savjet za privatizaciju*), established by the Law on Privatisation, is appointed by the government in order to “administer, control and ensure the implementation of the privatisation.” To that end, the Council has executive authorities; its work is funded through the state budget. Privatisation is being carried out in accordance with annual plans, which are adopted on the recommendations by the Council; the plans are public.⁷⁷ The terms of reference of the

⁷¹ En Plus Group pledges to invest €195.4 million in the Pljevlja power station, and €78.7 million in the Pljevlja coal mine, but its investment stipulated in the privatisation contract in the case of the Aluminium plant have become subject of substantial criticism. The refusal, to date, to sell both companies to the En Plus Group has, however, been caused by its reluctance to revise the sale contract of the Aluminium plant “[...] under which the Russian-owned smelter receives subsidised electricity from Montenegro's state power company, Elektroprivreda Crne Gore (EPCG). EPCG wants to avoid buying power from the Russian-owned Pljevlja plant at a higher price than it supplies KAP [...]” See: “Country Report Montenegro,” The Economist Intelligence Unit, January 2007, p. 15.

⁷² See “Der russische Herr der Schwarzen Berge.”

⁷³ See NDI, “Key Findings. Baseline Poll–February 2007,” p.32.

⁷⁴ See “Montenegrin Parliament Votes to Halt Energy Privatisation.”

⁷⁵ A list of relevant laws is provided on the website of the Agency for Economic Restructuring and Foreign Investment, without, however, providing the texts or the links to the relevant laws. See for the list in Montenegrin www.agencijacg.org/pocetna/htm, and in English www.agencijacg.org/englishver/homepage/htm.

⁷⁶ Available in Montenegrin at www.scmn.cg.yu/dokumenta/zakoni/Zakon%20o%20privatizaciji%20privrede.doc.

⁷⁷ The 2007 Privatisation Plan (*Plan Privatizacije za 2007.godinu*) can be found in English at www.agencijacg.org/englishver/homepage.htm and in Montenegrin at www.agencijacg.org/pocetna.htm.

Council are defined by the Decision on the Scope of Work and the Composition of the Privatisation Council (*Odluka o djelokrugu i sastavu Savjeta za privatizaciju*).⁷⁸; The Council is responsible, *inter alia*, for nominating the members of the Tender Commission (or the Auction Commission), adopting the report of the Tender Commission on the outcome of a tender, and deciding on the merit of appeals during a tender procedure. The Council represents the interests of the Republic of Montenegro, and is accountable to the government. The Council is composed of a president, a deputy president, members of the Council (the number of which is established by appointment), and a secretary, all of which are appointed by the government. The tenure for all except the secretary is four years with the possibility of renewal. Article 4 of the Decision puts limitations on the compatibility of Council members' and their close relatives' functions in the Council and their potential economic interests: members are not to have any business interest in the enterprise to be privatised – a provision that is known to have been violated in the past.

Box 15:

*Veselin Vukotić, Head of the Privatisation Council, is, for example, member of the executive board of the to-be-privatised 'Plantaže' wine factory (the privatisation of which has been put on hold).*⁷⁹

The Centre for Transformation and Privatisation of the Montenegrin Agency for Economic Restructuring and Foreign Investment (*Agencija Crne Gore za prestrukturiranje privrede i strana ulaganja*)⁸⁰ controls each privatisation procedure, including the monitoring of the compliance with the privatisation contract. The Centre has four departments, as follows: a) department for estimation, transformation and privatisation; b) department for organisational transformation and quality system, c) department for the valorisation of spatial potentials of the Republic and processing of data, and d) department for specialized consultancy questions at the disposal of the Privatisation Council. Formally, the Agency accepts complaints with regards to corruption in the privatisation process. An information leaflet on the Agency's website stipulates that a complainant has to, *inter alia*, identify which part of the legislation he/she feels has been violated in order to fully comply with the procedure. From the above it is clear that it is actually almost impossible to make such a complaint given the fact that all privatisation documents are closed to the public. Possibly in recognition of the problem, by decision of 10 May 2007, a Commission has been formed which deals with complaints submitted by citizens in relation to the privatisation process.⁸¹ The Commission is headed by the Minister of Justice, and its members are from the three funds through which privatisation contracts are being done the Development Fund (*Fond za razvoj Crne Gore*)⁸²; the Republican Fund for Pension and Invalidity Insurance (*Republički Zavod penzijskog i invalidskog osiguranja*);⁸³ and the Employment Bureau (*Zavod za zapošljavanje Crne Gore*),⁸⁴ the Chamber of Commerce (*Privredna komora Crne Gore*),⁸⁵ the Council of the Association of Trade Unions (*Vijeće saveza sindikata Crne Gore*),⁸⁶ the Montenegrin Employers Federation, and independent advisors from the Ministry for Health, Work and Social Care and the Ministry of

⁷⁸ See in Montenegrin the Decision at www.agencijacg.org/odluke/odluke%20o%20djelokrugu%20i%20sastavu2007.pdf.

⁷⁹ See, in Montenegrin, www.montenegroberza.com/ProspektPLAP.htm.

⁸⁰ www.agencijacg.org

⁸¹ See Odluka o obrazovanju Komisije za razmatranje prigovora, pritužbi, predloga i sugestija građana na proces privatizacije (Decision on the Formation of a Commission for the Review of Reservations, Complaints and Suggestions by Citizens Concerning the Privatisation Process), available in Montenegrin at www.agencijacg.org/odluke/odluke_o_prigovorima_prituzbama.pdf.

⁸² www.fzrcg.cg.yu

⁸³ The fund does not appear to have an own site.

⁸⁴ www.zzz.cg.yu

⁸⁵ www.pkcg.org/set.php

⁸⁶ www.sssc.cg.yu

Finance. However, the specific terms of reference, scope and methodology of work, and the authorities of the Commission are not defined by the Decision. It stands to anticipate that the composition of the Commission – which, to the authors’ knowledge, has yet to convene for its first meeting – is such that it is unlikely to review, in an unbiased way, or criticise any of the complaints that might be addressed to it, given that the majority of the members would be expected to challenge the work of their superiors.

The Privatisation Council has had a number of obligations under the AC Action Plan. These ranged from measures to be undertaken to control conflicts of interest, the opening of an internet site of the Council, the implementation of the Law on Free Access to Information, etc. The First AC Progress Report on the fulfilment of these obligations is, however, bordering on the grotesque and begs the question whether those who prepared the report have made the effort to double-check and question the submissions from the Council. The report states that the Council has set up its own internet presentation on the site of the Agency for Restructuring. It is, however, not clear where this site is supposed to be – the only section that deals with the Council is the provision of the text of the Decision establishing the Scope of Work and Composition of the Privatisation Council. Further, the First AC Progress Report considers the measure on elimination of discretionary powers of the Agency for Restructuring fulfilled on the basis of the Agency reporting that it has no such powers. Further, the Agency points out that there is a way of reporting corruption in the privatisation (see above), but that there have been no such complaints. The latter points again to the problem mentioned elsewhere in this report, namely that it is probably not adequate to expect that complaints will be addressed to the structure that is alleged to be part of the problem. The measures as they stand, and the reporting on their implementation, however, is nothing more than window-dressing.

5.2 Taxation and Tax Collection

Although not in a systematic fashion, some of the surveys noted in section 3.1 provide indications on the spread of corruption in the area of taxation and tax collection. The already quoted survey by the Montenegrin Employers Federation, published in July 2007, finds that 57% of the employers captured by the survey believe that it is important to give gifts to tax inspectors at the municipal level. The survey also finds that 97.28% of respondents believe stronger measures are necessary to tackle the problem of the black market/illegal work, i.e. *de facto* that of tax evasion tolerated by the authorities. And while respondents in the Group for Changes’ survey on corruption in the SME sector do not associate tax evasion of the value-added tax and of income taxes with corruption, the findings indicate that this is a frequent practice among companies. The survey offers as a possible explanation the fact that entrepreneurs feel the system of taxation to be unjust, a view supported by the findings of the Employers Federation survey in which 49% of respondents state that taxes and fees at the local level are neither fair nor proportionate.⁸⁷

⁸⁷ This view is supported by scholars who find that there is an inverse correlation between perceived levels of corruption and tax morale, i.e. where corruption is perceived high, tax morale is low. See Benno Torgler, “Tax Morale, Trust and Corruption: Empirical Evidence from Transition Countries,” CREMA Working Paper No. 2004-05, at www.crema-research.ch/papers/2004-05.pdf.

Box 16:

Other sources suggest that tax evasion is common, and the fact that it is practised seems well known. An interpellation, filed by 38 members of parliament in spring 2007 to review the privatisation process, makes strong accusations against a number of owners of recently privatised enterprises: "Because of the insufficiently developed institutional framework and the lack of resources in the responsible governmental institutions (Ministry of Finance, revenue administrations, police, commercial court, etc.) as a rule, and taking advantage of the systemic weaknesses and the lack of political will in the government, the new owners have dressed up financial records and the recorded profit (Jugopetrol, Telekom, KAP, and others). In this way, the state budget has suffered substantial losses due to unpaid taxes on company profits [...]. The companies have recorded non-existing losses, so that they could then, in the following years, through book-keeping use the recorded profit to cover their non-existing losses".⁸⁸

While it is not known whether these allegations can be substantiated, they would almost certainly trigger a financial investigation by the responsible authorities in Western countries where tax inspections and tax police rely heavily on hints and tip-offs by outsiders..

The area of taxation has undergone significant reforms in recent years, and legislation has been partly (VAT and excise duties) brought in line with the EU *acquis communautaire*.⁸⁹ The European Commission, in its 2006 Progress Report, notes that substantial reforms are still ahead to fully align the Montenegrin tax system in order to fulfil the obligations under the Stabilisation and Partnership Agreement. Currently, taxes are collected in a discriminatory way, and more efforts were needed to reinforce the fight against corruption in this field. More importantly for the topic at hand, the Commission is concerned about the "problem of fraud in the area of excise duties, including smuggling [...]" and the fact that "[r]isk analysis has not been fully implemented."⁹⁰

The Department of Public Revenues of Montenegro (*Poreska Uprava*),⁹¹ a central agency of the Ministry of Finance, has been included in the AC Programme, and in the AC Action Plan through a number of specific measures. A telephone hotline for the reporting of corruption cases has been opened at the Department of Public Revenues. To date, however, no single complaint has been received that involved corruption cases. The Department's Unit for Internal Control was to be strengthened through intensified training of its staff, the elaboration of Rules of Procedure of the Work of the Internal Control, and through the preparation of reports, every six months, about the internal controls carried out. Whilst this set of measures has been implemented, the report also found not a single case of corruption. Also, implementing a measure of the AC Action Plan, the Ministry of Finance appointed a special external Supervisor of the work of the Department of Public

⁸⁸ See "Interpelacija za pretresanje pitanja o vođenju unutrašnje politike Vlade Republike Crne Gore u oblasti privatizacije" (Interpellation for a thorough review of questions concerning the internal politics of the government of Montenegro in the area of privatisation), p. 7 in Montenegrin at www.skupstina.cg.yu/files/cetvrta_sjednica/13_aterpelacija_pzp_iz_oblasti_privatizacije.doc. Translation by the authors of the original document in Montenegrin.

⁸⁹ A list of the changes in the area of taxation and customs that took place from 1 January 2003 to 1 August 2006 numbers 20 laws, of which 10 new ones and 10 laws amending/changing existing laws, three draft laws submitted to parliament, and 35 by-laws, see, "Pregled poreskih i carinskih propisa koji su doneseni u periodu od 1. Januara 2003.-1. Avgusta 2006. godine" (Overview over tax and customs rules which were adopted in the period from 1 January 2003 to 1 August 2006) in Montenegrin, at www.vlada.cg.yu/minfin/vijesti.php?akcija=vijesti&id=15870.

⁹⁰ See European Commission, *Montenegro 2006 Progress Report*, p. 25. Advice on risk analysis has been provided in the framework of the EU's CAFAO programme.

⁹¹ The English version of the Department of Public Revenues can be found at www.vlada.cg.yu/eng/djp/, the Montenegrin version at www.poreskauprava.vlada.cg.yu.

Revenues, who is supposed to report, every six months, about his work; the report is to be published on the website of the Ministry of Finance and the Department of Public Revenues. While the supervisor was appointed, no report appears to have been issued so far; at least, none is available on the website for public access.

An Ethics Code for Officials Employed in the Department of Public Revenues (*Etički kodeks službenika uposlenih u Poreskoj upravi*)⁹² was adopted in November 2006. The Code identifies, *inter alia*, situations and circumstances that could lead to conflicts of interest, and specifies the responses to such situations. Breach of the conflict of interest provisions is considered to be a grave disciplinary offence for which sanctions can vary from a fine of up to 30% of the monthly salary to dismissal from duty. A specific article (article 8) is dedicated to the receipt of gifts: while the acceptance of gifts by the Department of Public Revenues' staff and their closer family is banned by the Code, an exemption from these provisions concerns "gifts of lower market value and such [gifts] that represent customary hospitality."⁹³ While the problem of gifts is being discussed in the section on the Law on Conflict of Interest, it should also be pointed out that in the survey by the Employers Federation, 57% of respondents felt that giving gifts to tax and other inspectors was necessary in order to do business; the question was asked in the set of question that concerned the spread of corruption in their municipality, i.e., it was understood that giving gifts was a form of corruption – the fact that respondents felt that it was a precondition for their working also seems to suggest a problem, rather than an interpretation of gifts as a sign of gratitude.

The Code contains a number of provisions that, without closer analysis, seem to be out of the remit of such a document, and which appear to primarily concern rules and procedures of work (such as the prohibition of smoking and making coffee in the premises, and of carrying weapons and small arms into the office). The Code of Ethics is, according to its Article 26, to be distributed to all offices of the Department of Public Revenues, where it is to be made public. The Code does not contain any provisions on a body inside the Department that would guide staff on the provisions of the Code. Judging from a meeting with the Head of the Unit for Internal Control, no specific trainings have been undertaken to acquaint tax inspectors on the provisions of the Code.

The AC Action Plan further stipulated rotation of tax inspectors as a measure against corruption; to an extent, rotation has been practised, in a limited form, for some time. Namely, during the summer period, tax inspectors from other regions of Montenegro are routinely being deployed to the tourist hotspots on the coast to reinforce the capacities at the local level; this does not, however, seem to fall under what had been the idea of this measure, which, as a result seems not to have been implemented.

Progress has been made on the automatization of the tax procedures through the introduction of a single data base, and training of officials has taken place. While Memoranda of Understanding to facilitate co-operation between the Department of Public Revenues, the Police, and the Prosecutor General's Office have been signed, the access to the single database as foreseen in the AC Action Plan has not, yet, been established. According to the Department of Public Revenues, not a single suspicious case has been forwarded to the Financial Police.

The measures foreseen in the AC Action Plan primarily target the central level Department of Public Revenues. As has been noted elsewhere, the Action Plan failed to address measures to be undertaken at the local level, including with regards to municipal tax inspectors (municipalities impose and collect taxes through their own inspectors). An anti-corruption strategy for the local

⁹² See in Montenegrin, Vlada Republike Crne Gore, Poreska uprava, "Etički kodeks službenika uposlenih u Poreskoj upravi," 20.11.2006 at www.gom.cg.yu/print.php?id=17238&jezik=1.

⁹³ The same applies for all civil servants. The problem is also noted above in the section 4.1 on conflict of interest.

self-government is currently drafted, and it will be a major disappointment if it fails to address what seem to be substantial problems in the tax collection at that level. The above mentioned July 2007 survey by the Employers Federation clearly highlighted that there is a serious problem; it is not clear to what extent respondents made a clear distinction between the municipal level tax inspectors and the tax inspectors of the Ministry of Finances' branch offices in the different municipalities. The view expressed by almost all respondents in the survey that illegal business was a serious problem should, however, also be reason for concern by the Department of Public Revenues: a hard look has to be taken at who is turning a blind eye to businesses that are not registered and, thus, evade taxes. The Agenda for Economic Reform of Montenegro 2002–2007 had also highlighted the need to create, inside the Department for Public Revenues, “a unit that would deal with the discovery of and search for those not submitting tax return forms.”⁹⁴ No official information has been available on the status of implementation of this measure. Other concerns raised by the Employers Federation survey, namely that of double standards, are echoed by the European Commission in its Progress Report, and are directly attributed to corruption.

It stands therefore to argue that the measures identified in the AC Action Plan might need to be reconsidered if the Department of Public Revenues is indeed to make some serious progress on this. First, as had been recommended by Council of Europe experts at the early stages of drafting the Programme of the Fight against Corruption and Organised Crime, a strategy and appropriate measures have to be designed in knowledge of incentives, patterns and manifestations of corruption in the specific sector. Carrying out research to understand the forms and opportunities for corruption was one of the obligations for the Department of Public Revenues contained in the AC Action Plan; this obligation, to date, has not been fulfilled.

The absence of any case of corruption being reported to the newly established hotline does, quite simply, not mean that there is no corruption. It might, however, mean that the measure might not be appropriate. In the above mentioned survey by the Group for Changes, 31% of entrepreneurs captured stated that they were not willing to report corruption, partly because of fear of negative consequences; 39% stated that they would be willing to report if they were convinced that their report would be treated completely anonymously.⁹⁵ The survey did not capture who, in case of willingness to report, complainants would be ready to report to. So, to assume that a telephone hotline against corruption at the Department of Public Revenues itself will necessarily yield a lot of responses might be a bit naive at best. The absence of any such calls can not be taken as proof of the absence of corruption, either, nor can the absence of a single suspicious case having been forwarded to the financial police.⁹⁶ Questions as to the criteria according to which cases have to be forwarded to the police have not yielded any convincing answers from the Department of Public Revenues staff. While the analysis of the Ethics Code of the Department of Public Revenues would be subject of a separate study, measures should be intensified for implementing ethics provisions through compulsory training encompassing all of the approximately 800 tax inspectors, through the establishment of structures inside the different tax offices to offer case-to-case guidance on how to interpret ethics provisions, and through public outreach to make taxpayers aware of the limitations the Code puts on tax inspectors.

The government's Action Plan for the Implementation of the Recommendations in the European Partnership, adopted in May 2007, points to another gap that might currently pose a corruption risk:

⁹⁴ See Vlada Republike Crne Gore, “Agenda ekonomskih reformi u Crnoj Gori 2002–2007” (Government of Montenegro, “Agenda of Economic Reforms in Montenegro 2002–2007”), p. 65, in Montenegrin at www.vlada.cg.yu/biblioteka/1114173857.pdf.

⁹⁵ Grupa za promjene “Rezultati istraživanja,” p. 23.

⁹⁶ This information was provided during a meeting of one of the authors with officials of the Department for Public Revenues, and was confirmed during two other meetings. However, the Action Plan progress report cites two cases having been forwarded by the Department to the financial police.

the plan specifies the need for increasing the qualifications of the Department's staff, including basic computer skills.⁹⁷ A written request to the Department for Public Revenues asking, *inter alia*, specifically about the mechanisms in place to carry out training on recently adopted changes to tax legislation yielded no reply to this specific question; by analogy (and in absence of any official information), experience from other countries in the region suggests that a low level of knowledge of new legal provisions provides substantial scope for corruption. Finally, salaries of those employed in the Department of Public Revenues need to be raised to cut incentives for corruption.

5.3 Customs Administration

In 2006, a survey was carried out with the objective to assess the level of corruption in the Montenegrin customs, and in particular, with an emphasis to capture progress over the past couple of years. The survey was carried out with financial support from the World Bank and conducted by the Podgorica-based Centre for Entrepreneurship and Economic Development (*Centar za preduzetništvo i ekonomski razvoj*, CEED), a private sector consultancy company. The survey involved three border crossings (Tivat airport, the port of Bar, Debeli Brijeg) and three customs terminals (Podgorica, Nikšić, Bijelo Polje) and covered a cross-section of 154 companies, based on criteria of business volume and the number of customs declarations.

The results of the survey were overwhelmingly positive, which critics have attributed to the fact that the questionnaires were administered by customs officers themselves. This is difficult to verify, as the survey documentation and results, including the methodology of the survey, are not publicly available on the internet. Nevertheless, the contractor, CEED, is co-owned by Veselin Vukotić, a personality extremely close to the government; while it might be taking this too far to suspect that the results might have been dressed up or the methodology adapted in such a way as to make the customs administration look good, the question of impartiality of results does arise. Some 92% of respondents are reported to have felt being correctly treated by the customs officers, 78% of respondents stated that the customs procedure was efficient, and 54% of respondents stated that the procedures were being carried out faster than in 2002. The customs service had, according to 34% of respondents, changed most of all services present at border crossings. Asked about corruption, 46% of respondents believed corruption to be on a low or very low level, while 5.2% stated that they considered it to be very high; 10.4% of respondents refused to answer this question. 22.7% of respondents admitted to having given bribes, the amount of which ranged from €5 to €100; more than a third of those that had bribed had given less than €10, 25% gave up to €5.

These relatively low amounts of bribes seem to correlate with the fact that – compared to other countries in the region (such as Bosnia-Herzegovina), where posts are reported to be “sold” by the top leadership of the Ministry of Finance – there is a shortage of applicants for customs stations, indicating that financially, working at the customs is not as “lucrative” as one might think, and that the amounts changing hands are relatively small.

A telephone hotline, in operation since January 2005 and primarily aiming to encourage citizens to report cases of suspected smuggling, resulted in 53 calls, 4 of which were complaints about the work of customs officers. Looking at the problems described in a policy paper by the Agency for the Development of Small and Medium-Size Enterprises on barriers to business, it appears that there are remaining issues with regards to discretionary powers of customs officials, and the adequate sanctioning of abuse of these powers. Further, the absence of a possibility for external

⁹⁷ See Vlada Republike Crne Gore “Akcioni plan za implementaciju preporuka Evropskog partnerstva” (Government of Montenegro, “Action Plan for the Implementation of the recommendations of the European Partnership”), May 2007, p. 47, in Montenegro at www.vlada.cg.yu/minunutr/vijesti.php?akcija=vijesti&id=12153.

control of the customs to date is highlighted as an area that needs improvement, as is the fact that there is insufficient co-ordination between the tax and customs authorities.⁹⁸

The reform of the customs regime is one of the priorities under the European Partnership.⁹⁹ The European Commission's 2006 Progress Report acknowledges some progress made, in particular with the majority of customs legislation having been brought in line with the *acquis communautaire*. The Commission stresses some progress in the adoption of simplified procedures, the introduction of risk analysis, and the fight against corruption, while also urging continued efforts in order to comply with EU standards.¹⁰⁰ The Customs Law¹⁰¹ (*Zakon o Carinskoj službi*) defines the responsibilities of the customs administration. In 2003, a Unit for Internal Control (*Odjelenje za unutrašnju kontrolu*) was formed. As stipulated in the Rules of the Internal Organisation and Systematisation of the Customs Administration of Montenegro (*Pravilnik o unutrašnjoj organizaciji i sistematizaciji Uprave carina Crne Gore*), it reports to the Director of the Customs Administration, and suggests adequate measures to him. The Unit for Internal Control is in charge of controlling the officers' work's adherence to the law, is carrying out fraud risk assessments, and is in charge of conducting initial investigations into illegal and negligent work of customs officers. Investigations are carried out using information being supplied from outside the customs administration, but also from other departments, such as the Joint Team for the Control of the Proper Application of Procedures (*Objedinjeni kontrolni tim za pravilne primjene carinskih propisa*), the Unit for the Fight against Smuggling (*Odjelenje za suzbijanje krijumčarenja*), and the Information Branch (*Odsjek za obavještajni rad*). Since the beginning of 2007, 16 investigations have been conducted, 7 of which resulted in recommendations for disciplinary measures.¹⁰² Decisions are taken by the Disciplinary Commission of the Customs Administration (*Disciplinska komisija Uprave carina*), while the actual sanctions are issued by the Director. Sanctions can be of financial nature (up to 30% of the officer's salary for grave misconduct) or even dismissal from duty. During the first 5 months of 2007, 4 officers were dismissed (compared to one dismissal for the same period in 2006).

According to the First AC Progress Report, the Customs Administration has been successful in implementing a number of measures. The customs administration practices a regular rotation of staff. An Ethics Code was adopted, as well as an integrity plan, and a telephone hotline to report cases of corruption and smuggling has been in operation for some time; on the website of the Customs Administration, a special section has been dedicated to the fight against corruption. Unfortunately, it is difficult to assess the merits of these policy documents, or to get an insight into the anti-corruption program, as the website is not up-to-date: the link to the anti-corruption section is empty, and it is not clear where to find the Ethics Code or the integrity plan – it certainly is not given high visibility on the site. Likewise, the survey on corruption in the customs, which has been widely quoted, is not on the address provided in the First AC Progress Report, making it difficult to make any sort of assessment. While one is inclined to attribute these lapses to a lack of resources

⁹⁸ Vlada Republike Crne Gore/Direkcija za razvoj malih i srednjih preduzeća, "Eliminisanje biznis barijera. Radna verzija 3.0" (Government of Montenegro/Agency for the Development of Small and Medium-Sized Enterprises, "Elimination of Business Barriers. Working version 3.0"), November 2006, p. 74. Document submitted to one of the authors by the SME Agency.

⁹⁹ In 2006, a total of 425,081 customs declarations were processed, representing an increase to the previous year of 27%. Electronic customs declarations were introduced in May 2006, and 65% of all declarations are now submitted in this way. In 2006, the collection of customs duties and tax increased by 41% compared to 2005, and the total revenue collected by the customs is now at €365,4 million, making up a total of 68,7% of the entire Montenegrin customs revenue. Data received from the Montenegrin office of CAFAO.

¹⁰⁰ See European Commission, *Montenegro 2006 Progress Report*, p. 25.

¹⁰¹ The English version of the law can be found at www.gom.cg.yu/files/1165594951.doc; the Montenegrin version appears not to be on the site. The Law was adopted in 2003 and has been amended in 2005.

¹⁰² According to the Head of the Unit for Internal Control of the Main Customs Administration; information submitted in writing to one of the experts in July 2007.

and awareness of the importance of public outreach to maintain and up-date the website, it is certainly an opportunity lost to raise the profile and reputation of the Customs Administration in the fight against corruption. Beyond the immediate topic of corruption, it would also be valuable in order to increase transparency and openness – both in the Customs Administration and the Department of Public Revenues – to publish organigrammes providing an overview over the internal structures in both administrations.

The Customs Administration's Unit for Internal Control has been the recipient of various technical assistance projects since its establishment in 2003. The regional World Bank-led Trade and Transport Facilitation in South-eastern Europe (TTSE)¹⁰³ project has focused on the reduction of corruption risks at border crossings. In the framework of the project, the Customs Administration was assisted in the application of the World Customs Organisation's (WCO) guidelines on increasing integrity, including in the conduction of a self-assessment. The results of the self-assessment were the basis for the elaboration and adoption, in October 2004, of an Action Plan for the Development of Integrity in the Customs Service of Montenegro (*Akcioni plan za razvoj integriteta u carinskoj službi Crne Gore*).¹⁰⁴ The objective of the Action Plan is the implementation of procedures and standards to increase integrity and minimise the risks of corruption in the customs administration. Among the objectives of this Action Plan is the computerisation of all customs procedures,¹⁰⁵ which has been facilitated by various donors, such as the UK and the EC. As with other key documents, these papers appear not to be publicly accessible.

The Customs Administration faces the same challenges as other parts of the public administration: in particular the low salaries – at approx. € 320 the lowest in the entire region, including Albania – of its 543 staff is likely to perpetuate incentives for corruption.

The Customs Administration pointed out that the fight against corruption is currently primarily focussing on repressive measures, as work on prevention and education that could lead to an increase in standards of customs officers cannot be conducted due to the lack of financial and other resources. A project by the EU Customs and Fiscal Assistance Office (CAFAO) on the development and implementation of a Programme for the Fight against Corruption and Increasing Integrity (*Program borbe protiv korupcije i razvoja integriteta*)¹⁰⁶ with the Unit for Internal Control will commence in September 2007, but given that CAFAO is phasing out its operations, it will provide limited, if valuable assistance.

5.4 Licensing

A new Law on Enterprises (*Zakon o privrednim društvima*) has reduced the duration and complexity of the registration process for businesses significantly. For example, for the registration of a limited liability company, it takes now 3 instead of the previous 45 days (putting Montenegro ahead of other countries of the region), and the costs have come down from approx. € 3,600 to €1, while the previously 38 steps have been reduced to 4, thereby significantly simplifying the process.¹⁰⁷

¹⁰³ For more detail on the programme, see www.ttfse.org.

¹⁰⁴ It has not been possible to verify in which way the measures in this Action Plan relate to those in the Action Plan for the implementation of the Program for the Fight against Corruption and Organised Crime (a specific question had been submitted, in writing, to the Customs Department, but yielded no reply).

¹⁰⁵ Some of the disciplinary investigations mentioned above are likely to concern the refusal of some staff to use the computers.

¹⁰⁶ See Government of Montenegro, "Action Plan for the Implementation of the recommendations of the European Partnership," p. 45.

¹⁰⁷ See "Elimination of Business Barriers. Working version 3.0," p. 32.

However, the real problem is that of the process *preceding* the registration, i.e., the process of obtaining licenses, permits and certificates. This process can take anywhere between 1 week and 6 months. Both local and central level authorities are involved in issuing licenses and certificates, but no clear rules and consolidated information exist on what a local business precisely needs, how many licenses and certificates are required, and from which parts of the administration. The 2007 results of the already quoted survey conducted among 114 member companies by the Montenegrin Employers Federation also captured the unpredictability and lack of precise information on the number and duration of the process for licenses and certificates. 65.9% of respondents could not give an estimate on how long the pre-registration process (collection of licenses and certificates prior to registration of the company) would take; 75.6% were unable to estimate the time necessary to get a building permit. Further concerns were raised over the lack of transparency and access to necessary information at the local level.

Box 17:

A 2006 study of the Agency for the Development of Small and Medium-Size Enterprises¹⁰⁸ of barriers to the development of business points out that: "In order to receive a work permit, it is necessary to obtain at least 13 documents, not including the need to instigate similar compulsory processes with other institutions. However, the chain does not stop here, because for each of these documents it is necessary to approach additional institutions, which creates a labyrinth in which orientation is difficult." It also cites instances of an "entrepreneurial twilight zone": almost 250 documents are necessary in order to obtain permission to open a mill, while in the building industry, there are examples showing that time required to collect all documents necessary for the building of business premises constitutes 52% of the time necessary to build the actual object, and all permits cost 15% of the market value of the object."¹⁰⁹

The problems related to obtaining certificates and licenses, i.e. the pre-registration process, and the impact this has on economic development and competitiveness have been known for many years.¹¹⁰ The evaluation in the framework of the Council of Europe's GRECO contained a recommendation to Montenegro to "limit licenses and permits to those that are indispensable; ensuring a reasonable time-frame for obtaining licenses and permits; and to encourage the compilation and editing – by the competent authorities – of guidelines for civil servants handling licenses and permits as well as for the general public."¹¹¹

A multitude of attempts have been made to reform the process. In spring 2004, a Working Group under the leadership of the Agency for the Development of Small and Medium-Size Enterprises was tasked to elaborate, in a joint effort with representatives of the Ministry of Economy and USAID, a draft Law on the Issuance of Permits for the Conduction of Business (*Nacrt Zakona o izdavanju odobrenja i saglasnosti za obavljanje djelatnosti*) that would have simplified the process of obtaining licenses and certificates needed to start up a business to one month. The final draft – adopted by the Working Group in July 2005 – incorporated views of a range of stakeholders, including private sector groups. The draft law foresaw: a) a clear definition of deadlines on the local level ranging from 3 to 7 days according to the type of business, and a maximum of 30 days for

¹⁰⁸ www.nasme.cg.yu

¹⁰⁹ "Elimination of Business Barriers. Working version 3.0," p. 127.

¹¹⁰ See, for example, the full results of a 2003 Business Environment Report carried out by USAID, which are available at www.visit-ceed.org.

¹¹¹ See GRECO, *Evaluation Report on the Republic of Montenegro*, p. 32.

licenses to be submitted by the central level; in case that the authorities failed to comply with these deadlines, it would automatically be assumed that the permit had been issued; b) a ceiling was put on the cost for obtaining permits, which were no longer to exceed the real costs; c) the introduction of a One-Stop-Shop system would reduce the counterparts at the local level for entrepreneurs-to-be to one, and d) the introduction of a central registry for work permits, which would be administered in a centralised fashion. The draft law was rejected on the grounds of it being illegal and unconstitutional to assume that that silence of the administration could be interpreted as a positive reply. Instead, a Working Group composed of representatives of the Ministry of Economy, the Ministry of Tourism, and the Ministry for the Protection of the Environment and Spatial Planning, in co-operation with the Ministry of Justice and the respective parts of the local administrations were to elaborate new guidance on the process of permits and licenses, including building permits. This, however, has not happened to date.

A USAID project tried, at the local level, to introduce One-Stop-Shops to cut the number of local administrations an entrepreneur-to-be would have to approach in order to obtain all necessary licenses and certificates, with limited success. Other donor initiatives, such as that of the European Agency for Reconstruction to facilitate the removal of business barriers were not embraced by the government.

It is difficult to get final clarity over what causes the resistance to these reforms – all the more that the problems have been well known for some time, and are mapped out in the government’s own policy documents. The government’s programme on Economic Policy of Montenegro in 2007 (*Ekonomska politika Crne Gore za 2007*), for example, lists the “support to business development and private entrepreneurial initiative” and “the elimination of business barriers, in particular at the local level” as two of the main tasks.¹¹² A Programme for the Elimination of Business Barriers for the Development of Entrepreneurship of Montenegro (*Program za eliminisanje barijera za razvoj preduzetništva u Crnoj Gori*) and an Action Plan for the Elimination of Business Barriers (*Akcioni plan za eliminisanje biznis barijera*) were supposed to be drafted, but little progress has been made so far. The 2007–2010 Government’s Strategy for the Development of Small and Medium-Size Enterprises (*Strategija razvoja malih i srednjih preduzeća*) also lists the main directions of policy reforms necessary to reduce discretion and arbitrariness, and to introduce transparency into the process of doing business, including recommendations on the simplification of the pre-registration procedures at the local and central level, a reform of the system of inspections, and a number of measures to increase transparency and efficiency in the customs and tax administrations. Finally, the need to limit discretion and increase transparency is part of the 2006 Strategy for the Facilitation of Foreign Direct Investments (*Strategija podsticanja stranih direktnih investicija Crne Gore*).¹¹³

One of the explanations for the lack of progress offered by counterparts is that the majority of licenses and certificates are being issued at the local level, where the resistance to a profound reform of the process is accordingly the most persistent, and where cutting down on the number of documents and procedures would mean to give up substantial discretionary powers. Relevant measures should certainly be introduced as part of the anti-corruption strategy for the self-government level.

¹¹² See Vlada Crne Gore, “Ekonomska politika Crne Gore za 2007. godinu” (Government of Montenegro, “Economic Policy of Montenegro for 2007”), p.4, in Montenegrin at www.gom.cg.yu/files/1167054478.doc.

¹¹³ Available in Montenegrin, p. 15, at www.gom.cg.yu/files/117067686.doc.

Box 18: Inspectorates

With regards to inspectorates, 39.5% of respondents of the Employers Federation survey believe that local inspectors do not behave professionally. 57% of respondents believe that it is necessary to give presents to municipal-level tax and other inspectors.¹¹⁴ A policy paper on business barriers, drafted by the Agency for Small and Medium-Size Enterprises, maps out the structural reasons that facilitate arbitrariness and discretion in the work of inspectors. First, there appears to be an overlap of inspections at the national and the local levels; second, no clearly established criteria exist according to which businesses are being inspected, and third, co-ordination between the different inspectorates is weak, leading to substantial uncertainty and disturbances for companies, and creating opportunities for corruption.¹¹⁵ A Law on Inspection Control (*Zakon o inspekcijском nadzoru*)¹¹⁶, developed in the framework of the EAR's support to the Public Administration Reform Strategy, has apparently not had much influence on the situation.

5.5 Public Procurement System

Until 2006, the public procurement regime was widely criticised by domestic and international observers as not in line with a number of EU directives, and as “stiff, costly, time-consuming, bureaucratic and inflexible... [allowing] too freely for the application of non-competitive procedures.”¹¹⁷ The new Public Procurement Law (*Zakon o javnim nabavkama*),¹¹⁸ adopted in July 2006, addresses some important gaps, such as sanctions for both contracting entities/responsible persons *and* bidders, and there is a more clearly spelled out set of definitions of procedures and procurement methods. Transparency has been improved, and there is recourse for bidders that wish to challenge the procedures and decisions.

The system is highly decentralised, with procurements carried out by authorised officials with each contracting authority, i.e. national government institutions, municipal governments and other large state (-funded) institutions. Each contracting authority is responsible for providing an annual procurement plan for procurements in excess of € 100,000, and for appointing authorised public procurement officials¹¹⁹ responsible for preparing and administering the public procurement tender.

A centralised administrative body – Directorate for Public Procurement (*Direkcija za javne nabavke*)¹²⁰ – plays a coordinating role in the system. Its responsibilities include the preparation of legislation, standardised forms, and other procurement regulations; monitoring and reviewing the implementation and performance of the system, and notifying relevant authorities on cases of violations; giving prior approval to contracting authorities for non-competitive procedures; participating in staff training in public procurement activities; providing for centralised publication for invitations to tender and award decisions; providing informational services to contracting authorities and bidders on public procurement regulations; initiating the development of electronic

¹¹⁴ The Montenegrin Employers Federation is currently working on a specific survey trying to capture the precise nature of this, and other, statements from the survey.

¹¹⁵ See “Elimination of Business Barriers. Working version 3.0,” p. 115.

¹¹⁶ Available in Montenegrin at www.uzk.cg.yu/publikacije/dokumenti/zakon-o-drzavnoj-upravi-i-inspekcijском-nadzoru.pdf.

¹¹⁷ OECD/Sigma, “Montenegro Public Procurement Assessment June 2006,” p. 4 at www.sigmaxweb.org/dataoecd/18/56/37739619.pdf.

¹¹⁸ Available in Montenegrin at www.nabavka.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=182.

¹¹⁹ The most recent list of authorised public procurement officials published at the time of writing this assessment puts the number of persons at 180.

¹²⁰ www.djn.vlada.cg.yu

procurement and communication practices; collecting information from contracting authorities and submitting to the government annual public procurement reports.

Bids are publicly opened by a (minimum) 3 member Commission for Opening and Evaluation of Tenders (*Komisija za otvaranje i vrednovanje ponuda*) at each contracting entity, which is formed on an *ad hoc* basis at the time of initiating the public procurement procedure. Its mandate is to, *inter alia*, ensure that the tender documents are prepared in accordance with the needs of the contracting authority and provisions of the law, offer explanations of the text and tender documents, carry out the public opening of tenders, evaluate the conformity of received tenders with requirements specified in the tender documents, perform inspection, evaluation and comparison of received tenders, and propose to the contracting authority the award of contract to the bidders whose tenders have been evaluated by the largest number of points. The ultimate decision on the contract award, however, is taken by the contracting entity's authorized staff person or body.

Challenges to the procedure, at any phase of the process, are directed to the state Commission for Control of Public Procurement Procedure (*Komisija za kontrolu postupka javnih nabavki*)¹²¹ – hereinafter the State Procurement Commission. The Commission is formally independent and autonomous. Its 3 members, however, are appointed by the government at the proposals of the Ministry of Justice, Ministry of Finance and the Community of Municipalities. They can also, at the same time, hold other functions, which can bring into question both their independence, and their ability to attend Commission meetings frequently and examine complaints addressed to the Commission on a timely basis. The Commission is atypical for bodies of its type in that its decisions are binding and it has the authority to annul tenders it finds irregular. Its decisions can be appealed to the Administrative Court, however, in a regular administrative process. No such processes have been initiated as of the date of writing this report.

The integrity of the system rests on the premise that control will be carried out by participants in the system bidders who have a personal interest in ensuring that procedures are fair and competitive. Bidders who believe that the process has been compromised can lodge complaints first with the contracting authority, and if not satisfied, with the State Procurement Commission, and, if still dissatisfied, to the Administrative Court. This model puts the burden of responsibility on the bidder, and requires a high degree of knowledge and capacity of the bidder in order to operate effectively. It makes particularly difficult for control of integrity of the pre-tendering process, where it is the exclusive authority of the contracting authorities to define the terms of the conditions of a tender, which can be biased in favour of a particular bidder.

The effectiveness of system is also predicated on high levels of administrative capacity of the contracting entities. One of the major current weaknesses in the system lies precisely in the lack of capacity not only by the bidders, but also by public procurement officials, as well as other actors in the system. A CARDS funded project “Capacity Building of Public Procurement Commission” currently underway and due to complete in October 2007, addresses precisely this concern by providing training to public procurement officials, potential bidders, and other participants in the procurement process, and through the assignment of an international public procurement expert to advise and assist in the development of additional tools, such as a Handbook for Bidders. However, additional capacity building, particularly increase in technical expertise is necessary also in terms of additional staff, both with the State Procurement Commission and the Directorate.

The information dissemination and training needs will continue beyond the duration of this project, however, as the starting point for many of the participants in the process is quite low. Time (and repetition) is needed to fully entrench some basic concepts such as the benefits of principles of

¹²¹ www.nabavka.vlada.cg.yu

competitiveness that are the cornerstone of modern procurement systems, and which are fundamentally different from the usual way of doing business. Additional support will also be necessary to encourage bidders to assume a more proactive role, particularly with regard to bringing challenges to procurement proceedings. Observers report that bidders are often reluctant to complain due to fear of reprisals, particularly in the form of being blacklisted and barred from future competitions. This frame of mind needs to be transformed.

Furthermore, there is a need to devote additional attention to the risks of corruption in other phases of the procurement process, particularly in the contracting phase, which is especially prone to manipulation through annexes to contracts that allow for additional “unforeseen” costs, and to the effectiveness of the sanctions mechanisms. A comprehensive study of the entire procurement system, including the contract execution phase, would be extremely useful in identifying opportunities for corruption beyond the public procurement institutions as such. Such an analysis might be made in late 2008 or later, giving some time for the system to become more fully operational.

The AC Action Plan foresees a number of measures relating to public procurement, to be implemented by the Human Resources Management Authority, the State Procurement Commission, and the Directorate for Public Procurement. These include measures to increase responsible staff’s knowledge of the provisions of the new law, the elaboration of a manual on public procurement mentioned above, the elaboration of a comparative analysis of procurement practices in the Balkans, the opening of a telephone hotline for the public to report complaints, the coordination with the responsible authorities in cases of suspicion of corruption, the introduction of an electronic system as foreseen in the law, IT training, and the elaboration of a report on irregularities discovered in the public procurement process. The First AC Progress Report finds that most of the measures have not been completed. Some training has taken place, and the preparation of the public procurement manual is underway. Other measures have not been carried out due to a lack of funding, while the telephone hotline has not been instituted on the grounds that there is no legal basis in the Law for it (raising the question on how the measure was designed in the first place).¹²² Many of the gaps are likely to be addressed by a new project currently being designed for submission for IPA funds.¹²³ Further donor interest could be guided by the tasks defined in the AC Action Plan, with the caveat that it is incomplete and that other needs exist, particularly the knowledge/capacity gap of the central bodies, and the risk assessments of opportunities for corruption in the procurement system as a whole.

5.6 Development policies

5.6.1 Spatial Planning

The debate surrounding the draft Spatial Plan for the Republic of Montenegro until 2020, underway during the writing of this analysis, illustrates a number of concerns relating to the influence on decision makers by foreign (and domestic) investors on the management of irreplaceable public goods such as natural resources. Civil society and media fear that the principal beneficiaries of the proposed solutions are existing powerful business interests, who will profit at the expense of

¹²² See “First Report on the Realisation of Measures from the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime,” p.80.

¹²³ The IPA project is currently planned to focus on further information dissemination and training, as well as the introduction of e-procurement, which, provided adequate funding is secured, is envisioned to become operational by 2010. Decisions on IPA funding are anticipated by the EAR in October 2007.

broader sustainable development objectives, a concern confirmed by international experts who have assessed the draft.¹²⁴

Current concerns are informed, in large part, by a history of questionable development permissions, including, for example, on the island of Sveti Nikola near Budva, known as “Hawaii.” Construction permission was granted, then revoked, to the former owner and developer of the land Nenad Đorđević, a Serbian businessman and a close friend and party colleague of the wife of the former Serbian president Slobodan Milošević. The land was later purchased by Stanko Subotić “Cane,” another “controversial businessman” from Serbia, and extensive development permission was granted (contrary to previous spatial plans for the area) to Subotić and business partners that include the son of Svetozar Marović, one of the leading figures of DPS and former president of Serbia and Montenegro.¹²⁵

The timing of the decision on construction was unlucky in that it was closely followed by the June 2007 indictment of Subotić by the Serbian Special Prosecutor for Organised Crime for cigarette smuggling in the mid- to late-1990s.¹²⁶]

5.6.2 Energy sector

Similar misgivings exist with regards to the energy sector (as well as the forestry sector, although no conclusive studies have been completed to date). The key concerns involve the business practices, to date, of the national energy company Elektroprivreda Crne Gore (EPCG),¹²⁷ and the governmental energy strategy that proposes, among other measures, the construction of a series of dams with uncertain long-term economic benefits and serious ecological consequences.

Suspicious exist that EPCG energy management deliberately creates conditions favorable to the state’s principal energy supplier, the UK-registered Energy Financing Team (EFT) led by the Serbian businessman Vuk Hamović. One such management decision was the recent EPCG failure to outbid EFT in the purchase of Bosnian electricity surplus (which ETF then resells to Montenegro at a profit margin).¹²⁸ In December 2007, EPCG Board of Directors decided that EFT would remain the country’s largest supplier for 2008, providing over 80% of the projected electricity needs.¹²⁹

These suspicions are warranted insofar as similar concerns with ETF business practices and national business partners have been raised in recent years elsewhere in the region. In 2003 in Bosnia and Hercegovina, a special investigation ordered by the High Representative Paddy Ashdown revealed massive fraud and mismanagement in the Republika Srpska’s electricity company to the substantial benefit of ETF.¹³⁰ Investigations (still ongoing) were also launched by the UK Serious Fraud Office, and USAID.¹³¹

¹²⁴ See Garret Tankosić Kelly, UNDP Resident Representative “Statement on Montenegro draft Spatial Plan” at <http://www2.undp.org.yu/montenegro/ee/reports/Statement%20on%20Draft%20Montenegro%20Spatial%20Plan%20until%202020%20-%20June%202007.pdf>

¹²⁵ Branka Plamenac, “Canetu, kopno i more” (To Cane, the land and the sea), *Monitor*, no. 865, at www.monitor.cg.yu/ARHIVA/a_865_01.html.

¹²⁶ “Eight arrested in cigarette smuggling bust,” *B92 News*, 6.6.2007, at www.b92.net/eng/news/societyarticle.php?yyyy=2007&mm=06&dd=06&nav_category=113&nav_id=41641.

¹²⁷ www.epcg.cg.yu

¹²⁸ “EPCG u kandžama Hamovića” (*EPCG in the Clutches of Hamović*), *Vijesti*, 13.09.07. at

¹²⁹ “Hamović i Lazarević glavni dobavljači” (Hamović and Lazarević principal suppliers), *Vijesti*, 5.12.2007, at <http://www.vijesti.cg.yu/arhiva.php?akcija=vijest&id=255118>.

¹³⁰ “Audit Uncovers Corruption, Mismanagement in RS Electricity Company,” *Southeast European Times*, 26.02.2003, , at www.setimes.com/cocoon/setimes/xhtml/hr/features/setimes/newsbriefs/2003/02/030226-IVAN-002.

¹³¹ In one of the many interesting developments of this story, former US special envoy to the region, Robert Gelbard, was retained as consultant by EFT defense team. See “Fraud Office looks into British energy firm’s role in Balkans,” *The Guardian*, 15.02.2005 at www.guardian.co.uk/business/2005/feb/15/freedomofinformation.politics.

In Serbia in 2004 a parliamentary committee reviewed the business practices the national electrical company Elektroprivreda Srbije (EPS) after the minister of energy Kori Udovički alleged that, *inter alia*, the company had consistently underestimated energy consumption needs in order to create the conditions for emergency purchases during the winter months under sharply higher prices and profit margins for the supplier, EFT.¹³² While the parliamentary inquiry yielded no results at the time, in July 2007, Serbian police brought forth criminal charges against the management of EPS for damaging the public purse in the amount of nearly 13 million USD.¹³³ The charges designate as the beneficiaries of these transactions EFT and another energy supplier led by EFT principal Vuk Hamović and business partner Vojin Lazarević (former advisor to Montenegrin President Filip Vujanović).

Concerns over the energy sector strategy more broadly begin with the nature of energy deficits in Montenegro. The national shortages are due, in part, to significant energy needs of *Kombinat Aluminijska Podgorica*, which accounts for nearly one-third of total electricity consumption in the country and receives significant state electricity subsidies negotiated as part of the privatization agreement. Among other concerns, critics of the draft strategy suspect that the sectoral decisions to date have been made primarily in the interest of the business lobbies contrary to the public interest, and continue to be so motivated.

Considering the concerns with corruption in the energy sector throughout the region, the vulnerability to corruption in natural resource exploitation in general, the lack of transparency of a number of decisions on privatization and concessions made to date, and the repeated patterns of interest among decision-makers in the energy sector in particular, considerable vigilance is needed to assure that moving forward, the rationale for major development decisions is clear, well justified, scrutinized in public debate, and fully in the public interest.

5.7 Corruption and the International Presence

While corruption among international donors does not appear to be a serious concern, some suspicions exist with a lack of transparency and unclear criteria for (consistently) supporting particular grantees. However, there have been no public cases of corruption among the donor community as such.

It is the presence of foreign investors that is more troubling. Russian businesspeople are viewed with particular suspicion as to the origin of the money; however, the recent anti-money laundering provisions address many of the concerns there. The greater worry lies with the possible payments to officials to permit foreign investors to build on lands that should be protected in the public interest, such as the Adriatic coast or the national parks in the Tara mountains.

There are also reports that foreign business, or even individual purchasers of real estate, may be routinely paying bribes to expedite administrative procedures that are entirely legal, but slow (“grease money”). This boosts the demand side of the problem, particularly in the coastal municipalities that have seen a tremendous increase in west European, in addition to Russian, holiday house purchasers.

¹³²“Anketni odbor za ispitivanje trgovine strujom nastavio rad” (Committee for investigating electricity trade continues work), *B92 News* 10.03.2004, at http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=10&nav_category=9&nav_id=134816.

¹³³ “Prijave u EPS-u zbog EFT-ja” (Charges against EPS because of EFT), *B92 News*, 25.07. 2007, at http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=07&dd=25&nav_category=120&nav_id=256729

6. Public Financial Management

6.1 Budget Preparation and Execution

A Budget Law (*Zakon o budžetu*)¹³⁴ that provides for budget formulation and budget execution was adopted in 2001. The budget is prepared by the government starting in July each year; the proposal is submitted to parliament in November. There is little time for parliamentary discussion on the proposal, and the capacities of the parliamentary Budget Commission to scrutinise the budget prior to the discussions is very limited. The Budget Law extends to the government budget and the municipal budgets, there are three extra-budgetary funds (health, pensions, employment), the control of which is, according to the Budget Law, with the Ministry of Finance.

According to the OECD's Sigma program, "[the budget] law as it currently stands is not compatible with the circumstances in Montenegro as initially it was not developed to meet the specific needs of the country and it also does not reflect recent developments – including the fact that there is no legal basis for strategic planning, the Medium-Term Expenditure Framework (MTEF) or programme budgeting."¹³⁵

Considerable efforts have been made to implement program-based budgeting in recent years through technical assistance projects (primarily led by USAID), the introduction of which by 2008, had been one of the priorities of the government in its Economic Reform Agenda 2002–2007.¹³⁶ Given a lack of human and technical resources, this timeline had to be adjusted.¹³⁷ It has been pointed out, for example by the World Bank, that in order to implement program-based budgeting, decisions will need to be taken now that will have a medium to long-term impact on the amount and profile of staff dealing with budget examination: "In the future budget examiners will need to be able to engage in discussions with line ministries about programme objectives and the cost-effectiveness of specific programs [...]. In addition, staff in the line ministries who prepare the budget need to change their skill sets – instead of viewing budget preparation as an administrative task prepared by administrative staff of the ministry, it should be intertwined with ministries strategic planning processes."¹³⁸

In accordance with the Budget Law, the Treasury (*Državni trezor*)¹³⁹ in charge of, *inter alia*, cash and debt management, was established in 2002. The European Agency for Reconstruction facilitated the development of a hardware system to which now almost all spending units at central level are connected (municipalities are not yet linked to it). This system is now being connected to the Revenue and Expenditure Entry System (developed under the auspices of USAID) which is supporting the budget preparation process. The annual Law on the Execution of the Budget is being presented to the parliament at the same time as the proposal for the following year's budget.

¹³⁴ Available in Montenegrin at www.gom.cg.yu/print.php?id=3288&jezik=1. The Law has been amended since.

¹³⁵ See OECD/Sigma, "Montenegro Public Expenditure Management Assessment June 2006," p. 2, at www.sigmaweb.org/dataoecd/18/53/37739539.pdf.

¹³⁶ See Government of Montenegro, "Agenda of Economic Reforms in Montenegro 2002–2007," p. 70.

¹³⁷ According to the "Report on the Review of Programme Budgeting in Montenegro and Strategy for Future Implementation," adopted in July 2007, provided to one of the experts by the USAID contractor of the Programme for Consolidating Economic Policy Reform in Montenegro, BearingPoint.

¹³⁸ See World Bank "Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1," p. 61.

¹³⁹ For a more detailed description of the role of the treasury, in Montenegro, see the Ministry of Finance's site at www.vlada.cg.yu/minfin/vijesti.php?akcija=vijesti&id=5965.

However, capacity constraints of the parliament (noted in section 4.4) extend also to the analysis of budget execution.

Sigma identified a “general lack of transparency, mainly concerning the scope and coverage of the budget as well as the budgeting process”¹⁴⁰ as a point for future development. This lack of transparency included the fact that foreign funding such as external grants should, according to the Budget Law, be part of the annual budget. In practice, however, Sigma estimates that this is the case only for 50% of the funds, caused by poor donor co-ordination and the lack of an institution with an overview of the inflow of foreign funding. The lack of control over commitments is a further concern, and the World Bank states that “[t]he absence of commitment recording could be a result of limitations in SAP [the hardware used] or a conscious policy decision.”¹⁴¹ Sigma also laments the fact that relevant reforms in the area of public expenditure management are poorly co-ordinated in general, a view echoed by some implementers on the ground.

6.2 Internal Audit¹⁴²

The 2001 Budget Law provides also for the internal control, accounting and auditing of the budget; the 2001 Treasury Directions (*Uputstvo o radu trezora*)¹⁴³ set out the legal framework of financial control. There is no law on internal audit, and internal audit is established by the Rulebook on the Internal Structure and Organisation of the Ministry of Finance¹⁴⁴ of September 2006. This Rulebook establishes the Internal Audit Sector (*Sektor za internu reviziju*)¹⁴⁵ in the Ministry of Finance. In 2004, an Internal Audit Charter and an Internal Audit Manual¹⁴⁶ set out the framework for internal audit and provided guidance on good audit practices, including audit requirements and procedures.

The Treasury Directions establish the principle of functional independence (i.e. that one and the same official can not be in charge of authorisation, execution and control of expenditures). Since 2003, one of the Deputy Ministers of Finance is the Head of the Internal Audit Unit within the Ministry of Finance. With the assistance of USAID, an audit team was set up, which foresees 10 staff (three posts are currently vacant). This unit is responsible for internal audit in the Ministry of Finance, other ministries, spending units, and municipalities. Also, some other spending units have established internal audit units (the Customs Administration and the Pension Fund) and more such units are planned in other organisations/structures, which is a good development towards genuine internal control (as the current set-up is more an external function carried out by the Ministry of Finance).

Internal audit is being carried out according to a strategic plan covering a period of three years, which forms the basis for the respective annual audits. The plan takes into account risk areas, applying the criteria of staff, budget and scope of activity; it covers all auditable units in the Ministry of Finance, extra-budgetary funds, spending units, and municipalities.

The OECD/Sigma report seems to suggest strong leadership at the senior level of the Ministry of Finance driving the reforms. A Policy Paper on Public Internal Financial Control (PIFC) has been

¹⁴⁰ See OECD/SIGMA, “Montenegro Public Expenditure Management Assessment June 2006,” p. 2.

¹⁴¹ World Bank “Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1,” p. 64.

¹⁴² Information in this section is heavily drawn from the OECD/Sigma paper “Montenegro Public Internal Financial Control Assessment June 2006” at www.sigmaxweb.org/dataoecd/18/54/37739560.pdf.

¹⁴³ See the Treasury Directions (*Uputstvo o Radu Trezora*) in Montenegrin at www.vlada.cg.yu/minfin/vijesti.php?akcija=vijesti&id=3287.

¹⁴⁴ It has not been possible to find the document on the internet. August 2007.

¹⁴⁵ For a description of the responsibilities of the Sector for Internal Audit, see, in Montenegrin only, www.gom.cg.yu/print.php?id=59628&jezik=1.

¹⁴⁶ It has not been possible to find the document on the internet. August 2007.

drafted, yet needs to be reviewed and finalised, including a medium and long-term strategy for developing a sustainable financial control environment, strengthening the internal audit system, and establishing functionally independent internal audit (currently, this is not ensured, as the Deputy Minister of Finance in charge of internal audit can, *de facto*, also assume executive functions).¹⁴⁷ There is also a need to enshrine the principles of internal audit in a Law on Internal Audit. Increasing the capacity to carry out internal audit beyond the Ministry of Finance to include line ministries, through systematic recruitment and training of younger staff will also be crucial.¹⁴⁸

6.3 External Audit: State Audit Institution (SAI)

The Law on the State Audit Institution (*Zakon o državnoj revizorskoj instituciji*),¹⁴⁹ elaborated with the help of the German GTZ, was adopted in spring 2004, and has since been amended in December 2006). Rules of Procedure¹⁵⁰ (also supported by GTZ) regulate the work of the SAI.

The SAI reports to the parliament (and the institution audited), but the need to enshrine the SAI's independence in the new Constitution has been pointed out repeatedly; this is also a necessary precondition for the SAI's compliance with INTOSAI and EURSAI standards. The SAI "audits the authorities, budget-users managing the budget and property of the state and local self-government units as well as the Central Bank of Montenegro and other legal entities in which the state holds a share."¹⁵¹ The SAI submits an annual report – the financial statement on the republic's budget (*Izveštaj o reviziji Završnog računa budžeta Republike Crne Gore*) – in October each year, and the parliament has an obligation to consider the annual report prior to approving the budget for the next year. Audits of the budget have been carried out for 2005 and 2006 (albeit with delays); the 2005 report is on the SAI's website.¹⁵² So far, the budgets of two municipalities have been audited, as well as the (extra-budgetary) health fund. To date, only financial audits have been carried out, although the SAI can also do performance audits. In the framework of advancing the programme budgeting approach, the SAI is planned to start training on performance audits in 2008; from 2009, it is to carry out the first performance audits of selected budget users and will, as of 2011, carry out regular performance audits as part of a performance audit schedule.

The SAI is composed of a Senate (currently with a membership of 4), headed by a president. The Senate is appointed by the parliament; the parliament also appoints the president of the Senate from among its members. The president of the Senate is elected for a period of 9 years, and his/her term of president cannot be extended beyond that time; upon expiry of the 9-year period, the president becomes an "ordinary" member of the Senate, whose tenure is permanent. A member of the Senate cannot hold any other professional duty, nor can he/she be a member of parliament, or member of any political party or body of a political party. This has led, in 2006, to the resignation of the first president of the SAI, who also held a post at the University of Podgorica.

¹⁴⁷ Although efforts have been made to ascertain the status of the introduction of the PIFC, no more detailed information was available at the time of writing.

¹⁴⁸ See World Bank "Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1," p. 64.

¹⁴⁹ The 2004 version of the law is available in English at www.dri.cg.yu/podaci/Zakoni/Engleski/Law.pdf and in Montenegrin at www.dri.cg.yu/podaci/Zakoni/Crnogorski/ZakonDRI.pdf. The amended version appears not to be on the website.

¹⁵⁰ The English language version is available at www.dri.cg.yu/podaci/Zakoni/Engleski/Procedure.pdf, the Montenegrin version at www.dri.cg.yu/Zakoni/Crnogorski/PoslovnikiDRI.pdf.

¹⁵¹ See OECD/Sigma "Montenegro External Audit Assessment June 2006," p. 2 at [www.sigmaweb.org/ dataocd/30/52/37739505.pdf](http://www.sigmaweb.org/dataocd/30/52/37739505.pdf).

¹⁵² The reports – although not all (the audit report of the health fund is, for example, not yet on the site) – are available in Montenegrin at www.dri.cg.yu/index.php?lang=cg&action=revizije.

The president of the Senate is responsible for, *inter alia*, the distribution of tasks, suggestions for specific audits, and the consolidation the annual audit plans (which are to be adopted by the 10 January for the current year) and the annual reports.

The Senate is in charge of defining the strategic directions of the work of the SAI; it also decides on extra-ordinary audits (i.e. not covered by the annual audit plan), confirms the budget for the institution (which is then being submitted to parliament for approval), and ensures the application of equal standards for the conduction of audits.

Each member of the Senate is in charge of a sector (department). The sectors – anticipated to grow from the current 3 to 5 – are led by a head of sector and staffed by state auditors [currently 13, but projected to be 35], who are in charge of preparing and participating in the field work according to the audit plan.

Instructions for the Methodology of Work of the State Audit Institution¹⁵³ establish, *inter alia*, an obligation of the SAI to co-operate with the office of the State Prosecutor, upon the request of the Supreme State Prosecutor; the SAI can also share information with law enforcement agencies if, as the result of the audits, it deems necessary to do so. To strengthen the capacity of the SAI for effective co-operation with the State Prosecutor has been one of the recommendations from the evaluation Montenegro has undergone in the framework of the Council of Europe's GRECO.¹⁵⁴

The SAI had a promising start, particularly due to the technical assistance by GTZ. The quality of the first financial audits of the government budget have been lauded for comprehensiveness, level of detail and clarity, leaving hope that they could serve as a good basis for parliamentarians to fulfil their oversight role and to scrutinise future budget proposals.¹⁵⁵ It remains to be seen to which extent the reports of the SAI will be taken into account for future budgeting decisions.

However, the State Audit Institution is plagued by a number of difficulties that will need to be addressed. First, the salary of the state auditors is, at around € 300, not competitive enough to attract qualified personnel (members of the Senate and the president of the Senate receive more than this, though). Second, there is a shortage of state auditors, given that this profession did not exist in the past. Third, there is a continued need for training of those working in the SAI. SAI representatives themselves are approaching donors with requests for funding of a regional school for state auditors, which the government of Montenegro is apparently ready to host in Cetinje. However, according to international experts, there appear to be more pressing needs to be addressed in order to genuinely develop the capacity of the national SAI in the first place.

More importantly, the independence of this important institution is also in danger of being eroded. In December 2006, Miroslav Ivanišević was appointed as the new president of the Senate. Until his appointment, Mr. Ivanišević – who has also previously held the post of Minister of Finance – was member of the presidency and member of parliament of the ruling DPS. His appointment was a foregone conclusion, and had been announced in the media¹⁵⁶ prior to the session of parliament that had to approve the nomination. What is more, the Law on the State Audit Institution had to be changed so that Mr. Ivanišević would qualify for the post, and the changes were approved at the very same parliamentary session during which his actual appointment took place. While experts have confirmed that the quality of the first audit reports issued during Mr. Ivanišević's tenure was

¹⁵³ Available in Montenegrin at www.dri.cg.yu/index.php?lang=cg&action=zakoni, and in English at www.dri.cg.yu/podaci/Zakoni/Engleski/Methodology.pdf.

¹⁵⁴ See GRECO, *Evaluation Report on the Republic of Montenegro*.

¹⁵⁵ See World Bank "Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1," p. 65.

¹⁵⁶ See "Ivanišević kontrolise ministre" (Ivanišević will control ministers), *Vijesti* 18.12.2006, at www.vijesti.cg.yu/naslovna.php?akcija=advview&id=221912.

very high, there are also concerns that his proximity to the DPS will have an impact on the annual audit plans, i.e. on the selection of entities to be audited, and that the impartiality of the reports will ultimately be compromised.

7. Service Delivery

7.1 Health

Information on corruption in the health sector is rather scarce. The World Bank 2006 Public Expenditure and Institutional Review of Montenegro names financial sustainability, equity in access and insufficient governance of the sector as some of the challenges facing the health care system. While the Health Insurance Fund finances most of the health care service delivery, “an unknown share is paid for out-of-pocket funds through private sources.”¹⁵⁷ The 2006 Global Integrity Country Report states that “[m]edical patients must ‘treat’ the doctor before any treatment, regardless of health insurance. Special care during childbirth costs 42,000 dinars (\$US636), while surgeons get 42,000 dinars to 126,000 dinars (US\$636 to US\$1,900) for more complicated operations. Sometimes a bribe is necessary just to get a bed in a hospital room.”¹⁵⁸ The same report also pointed out that two former Ministers of Health have been charged with violating the Law on Public procurement and for the misuse of international donations. The State Audit Institution carried out a financial audit of the extra-budgetary health fund in 2006; the report is not yet public, but it is said that the auditors did not uncover any irregularities that might have been caused by corruption. The Directorate for Anti-Corruption Initiative is planning, with funding from UNDP, to carry out, in the near future, a research into the causes and patterns of corruption in the health care system. The World Bank has, since 2004 (and expected to last until 2009), carried out a project aiming to introduce reforms and to build capacities in the delivery of primary health care in Montenegro.¹⁵⁹

7.2 Education

There is no specific data available on corruption in the education sector, although the already above quoted 2006 Global Integrity Country Report states that “[i]n the education system, grades are bought and sold.”¹⁶⁰ The Directorate for Anti-Corruption Initiative is planning, with funding from UNDP, to carry out in the near future a research into corruption in the education sector. A World Bank project, to last until 2009, is addressing more structural issues to reform the primary and secondary education systems.¹⁶¹

¹⁵⁷ See World Bank, “Republic of Montenegro: Public Expenditure and Institutional Review. Volume 1,” p. 17.

¹⁵⁸ See “Reporter’s Notebook: Republic of Montenegro,” Global Integrity, *2006 Country Reports*.

¹⁵⁹ See press release “World Bank approves US\$12 Million Credit in Support of Health in Serbia and Montenegro,” Washington, 8.6.2004 at <http://lnweb18.worldbank.org/eca/eca.nsf/General/3A0A27D683EBCAF785256EAF00514618?OpenDocument> and <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=3339535&menuPK=3339610&Projectid=P082223>.

¹⁶⁰ “Reporter’s Notebook: Republic of Montenegro,” Global Integrity, *2006 Country Reports*.

¹⁶¹ See for more information on the project <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=3339535&menuPK=3339610&Projectid=P084597>.

8. Justice System

In the context of the fight against corruption, the justice system needs to be examined from two perspectives: one, to determine the level of corruption within the system itself, and two, to evaluate the system's capacity to effectively fight against corruption and organised crime. These two matters will be addressed in separate sections below.

8.1 Courts

There is a low level of public trust in the judiciary, and particularly the courts, in large part due to a significant backlog of cases and excessive time periods for the legal processes, but also due to a perception of high levels of political influence over the judiciary.

Judicial reform has been on the reform agenda in Montenegro since 2000 within the framework of the Judicial System Reform Project 2000–2005, with a primary emphasis on the reform of the court system which has been appallingly inefficient and laden with backlogs. During this period, priority was placed on developing a modern and democratic normative framework, and more than 20 relevant laws have been drafted and passed, including the 2002 Law on Courts (*Zakon o sudovima*)¹⁶² that redefined the system to consist of 15 Basic Courts for crimes with a maximum sentence of 10 years, 2 High Courts for more serious crimes and for appeals from the basic courts, 2 Commercial Courts, an Administrative Court, an Appellate Court that hears high court appeals when the latter operates as a first instance court, the Supreme Court, which deals with questions of law referred to it, and the Constitutional Court. The system employs a total of 258 judges plus 5 Supreme Court justices.¹⁶³

A Judicial Training Centre, JTC (*Centar za edukaciju nosilaca pravosudne funkcije*)¹⁶⁴ was established in 2000, with the aim of training judges (initially called the Judges' Training Centre/*Centar za obuku sudija*), but its mandate broadened to include prosecutors and other judicial professions with the adoption of the Law on Judicial Education (*Zakon o edukaciji u pravosudnim organima*) in January 2007. The JTC holds a great deal of potential, but suffers from a lack of funding and human capacities typical to a number of state institutions.¹⁶⁵ Nevertheless, all future training of judges and prosecutors is foreseen to take place through the JTC, and as such it is intended to play a crucial role in the implementation of the judicial reform. It will require additional financial and technical support in order to effectively fulfil its mandate.

Other major changes in the system have included the introduction of Appellate and Administrative Courts, mediation practices in the basic courts, introduction of modern case-management techniques, as well as much-appreciated renovation of a number of court buildings and other upgrades of infrastructure, including computerisation and other methods to increase efficiency,

¹⁶² Available in Montenegrin at www.gom.cg.yu/files/1059741524.doc.

¹⁶³ List of judges as of January 2007, posted on the web site of the Judicial Training Center, www.coscg.org/test/Editor/assets/sudije%20u%20CG-jan.07..doc.

¹⁶⁴ www.coscg.org; formerly the Centre for Training of Judges, established in 2000 through Montenegro Government Reform project initiated in 1998. The founding agencies were the Montenegrin Ministry of Justice, Association of Judges of Montenegro, the Foundation Open Society Institute together with COLPI (Constitutional and Legislative Policy Institute) from Budapest, and the American Bar Association-Central and Eastern European Law Initiative (ABA-CEELI).

¹⁶⁵ At the time of the writing of this report, the work of the JTC was greatly impaired due to personnel changes (Executive Director was on family leave, and it was difficult to find an adequate replacement.). Typical of small organisations, the functioning greatly depended on the drive and the capacity of the director.

accessibility, and transparency.¹⁶⁶ Under its capacity development programme, the UNDP has assigned a staff person and an expert to the Ministry of Justice to assist in the reform process.

The 2002 Law on Courts also attempted to strengthen the independence and accountability of the judiciary through the creation of a Judicial Council (*Sudski savjet*) as the body responsible, *inter alia*, for selection of and disciplinary proceedings against judges (Section/Chapter VII, Articles 75–82).¹⁶⁷ The Council is composed of a President and 10 members appointed for 4-year terms, with the President of the Supreme Court *ex officio* serving as the President of the Council. The parliament appoints the remaining members (6 judges, 2 law faculty professors, and 2 reputable legal experts) on the nomination of the Supreme Court, the Law Faculty, and the Lawyers Association.

Under the current system, judges are recommended for appointment by the Judicial Council but it is the parliament that actually appoints them. A system common throughout the region, it has been criticised by international observers for allowing excessive political influence on judges, with strong recommendations that appointments and dismissals be done by the Council alone. While acknowledging “some progress in terms of continuous strengthening of the judiciary,” the European Commission explicitly notes the risk of politicisation in “the parliament’s involvement in personnel management in the judiciary [which] raises serious concerns for the independence of the judicial system. There is a clear risk of political interference in appointments and dismissals.”¹⁶⁸

Certainly, political influence on all aspects of governance is a matter of concern in Montenegro, but in the case of the Judicial Council, there are also valid concerns that such a solution leaves the fate of the judiciary to a body made up of people from a very tight circle (see text box 2 on the family relationship among some of the highest members of the judiciary), which cannot police itself and needs some form of outside control. In fact, this is one of the key debates taking place with regard to the new Constitution.

Box 20:

*Concerns about the accountability of the Judicial Council are illustrated by the fiasco surrounding the Council’s reappointment in December 2006, when the parliament failed to vote on the nominees. In this process, no effort was made to enlighten the public or the parliament about the merits of the nominated candidates. There were no stated criteria, and nominating meetings were not open to the public. The Judicial Council failed to create public confidence with professional and transparent procedures.*¹⁶⁹

Furthermore, despite the existence of the Judicial Council, the broad acknowledgment of poor performance of judges, and a great deal of public criticism – not to mention the emphasis on integrity dictated by the anti-corruption program – decisive sanctions for poor performance are missing. In 2006, for example, presidents of the various courts responsible for initiating disciplinary

¹⁶⁶ Notable among these is USAID Montenegro Justice Sector Reform Project (2003-2006) implemented by Checchi and Company Consulting.

¹⁶⁷ Disciplinary measures against judges who damage the standing of the profession include a disciplinary notice, warning, or a 20% salary reduction for a 6-month period. Proposals for a disciplinary investigation can be initiated by the president of the relevant court, president of the immediate higher court, and the president of the Supreme Court. The proceedings are conducted by the Disciplinary Council of the Judicial Council.

¹⁶⁸ European Commission, *Montenegro 2006 Progress Report*.

¹⁶⁹ *Nations in Transit*, p. 326

proceedings against judges proposed the dismissal of only two judges for “unskilled and unscrupulous” work.¹⁷⁰

In addition, the Judicial Council’s Administrative Office – a body established to provide technical support – was embarrassed by a number of incidents indicating, at best, incompetence, culminating in the December 2006 arrest of a former employee for embezzling €190,000. A number of other staff, including the director of the Administrative Office and a judge was implicated in the scandal.¹⁷¹

Progress on ethics issues and transparency appears slow. A judges’ Code of Ethics had not yet been adopted at the time of writing this analysis, and while a Citizens’ Complaints Office (*Kancelarija za prijem i pritužbe građana*) is said to have been established at the Supreme Court, there are no visible announcements of this measure on state institutions’ web presentations, nor does the Supreme Court have a web presence at all.¹⁷²

Despite these discouraging examples, observers do note progress on several fronts. The Basic Court of Podgorica and the Administrative Court are frequently cited as examples of how the system can be transformed under good leadership and adequate technical support. The budget for the court system has been increased by 51% in 2007, which suggests some increase in the political will to intensify judiciary reform as part of the requirements of the European partnership.

The next phase of reform is defined in a new Judicial Reform Strategy spanning the period of 2007–2012 (*Strategija reforme pravosudja, 2007–2012*),¹⁷³ adopted by the Montenegrin government in June 2007. The new strategy is broadly consistent with the obligations set by the AC Action Plan, and aims to consolidate previous efforts and introduce the final structural adjustments. It proposes measures to explicitly increase independence of judges and prosecutors through the introduction of clear and unambiguous rules for the appointment, promotion, and disciplinary measures (which also needs to be adequately reflected in the new Montenegrin constitution) and strengthening of the role of the Judicial and Prosecutorial Councils in the respective processes, as well as a redefinition of the role of the prosecution so that it would no longer act as attorney for the state in property and legal matters, and it would assume the leading role in criminal investigation (a more extensive discussion of the Prosecution can be found in the next section). There is also a great deal of emphasis on information and public outreach measures, and improvements of efficiency that could increase public trust in the judiciary. Extensive trainings for judges and prosecutors in implementing new regulations are also prominently featured. This will be as important as measures to insure independence, as there exists a widespread perception that the levels of competence among judges is quite low, particularly with regard to ruling on cases of organised and economic crime and corruption. More competitive salaries that would halt the defection of the most qualified judges to private law practices is another key measure. An Action Plan is being drafted with the support of the UNDP, and it is foreseen to be completed by the end of 2007.

The Judicial Reform Strategy, taken together with the Anti-Corruption Programme, provides a solid road map for future judicial reform, although additional accent should be placed on the question of accountability of the judicial governing bodies. At the time of writing this report, USAID was preparing an evaluation of past programs which should contain an assessment of current situation and future needs, which should present yet another useful prism for prioritising future donor

¹⁷⁰ *Ibid*, p. 325.

¹⁷¹ *Ibid*.

¹⁷² The Constitutional Court has a web presence and there is a USAID-sponsored web site of the Courts of Republic of Montenegro (www.sudovi.cg.yu), but guidance on filing complaints is not present, including on the latter site’s FAQ section.

¹⁷³ Available in Montenegrin at www.gom.cg.yu/files/1183364296.doc.

assistance to judicial reform. For the moment, there appear to be sufficient donor resources from donors in judicial reform, which includes the World Bank, Sida, Canadian Cida, and other bilateral donors. Nevertheless, as the tasks ahead are numerous and demanding, continued support will be needed.

8.2 Prosecution

In Montenegro, there exists a widely-shared negative public view of the prosecution, due largely to a perceived reluctance to investigate state officials involved in corruption scandals and the failure to successfully prosecute a number of high profile, organised crime-related murders.

Box 21:

On December 28, 2006, the only suspect in the 2004 murder of a Dan journalist was released after the court ruled the prosecutor had not proved the case against the suspect. This long-awaited conclusion of this two-year trial was a disappointment to many. After the dust settled, the public was left wondering whether it is the courts, the prosecutors, or the police who are at fault. The prosecution has appealed the decision to the high court.¹⁷⁴

Throughout the region, prosecutors tend to receive a disproportionate share of the blame for the failure of criminal investigations. There are objective reasons for a lack of results by a prosecutor's office. Quality of other links in the criminal justice system – the police and courts – are essential in the success of prosecutions. The Montenegrin State Prosecutor has voiced a great deal of disapproval about the work of the courts. In the 2004 and 2005 reports, the Supreme State Prosecutor criticised the courts for their lengthy investigations and trials, poor decisions, and inadequate sentences. While the relations and communications with the police had improved, the report notes that 47 percent of the 4,933 requests for investigations remained unresolved by the end of 2005: "The data on the number of unresolved investigations leads to the conclusion that in 2005 the courts were behind schedule, even though there were 10.8 percent fewer unresolved investigations compared with 2004. Investigations require quick and efficient processing because from that depends the quality of the gathered evidence and the outcome of the case."¹⁷⁵

Legal constraints further impede effective prosecution of corruption and organised crime. One is the lack of possibility of using special investigative means (see section 8.4 on capacity to combat organised crime and corruption, below); the other, the current legal status of the prosecutor, which, like in most other post-socialist states, divides responsibility with the institution of the Investigative Judge. A fundamental change to the role of the prosecution is envisioned through the Judicial Reform Strategy, which will place the prosecutor in the lead of the investigative process. Amendments to the Criminal Procedure Code will be required in order to make this possible, and these are anticipated by the end of 2007. However, the preparation of prosecutors for this new role is a longer-term process, and it is anticipated that the new system will require a minimum of 1–2 years to become operational. When it changes its role, the number of staff will need to be doubled. There appears to be recognition of the resources needed to begin preparing the service for this challenge in the increase in budget of the state prosecutor by more than 50 % in 2007.¹⁷⁶

¹⁷⁴ *Nations in Transit*, p. 325

¹⁷⁵ *Ibid*, p. 324.

¹⁷⁶ *Ibid*, p. 306.

Despite these objective reasons, there is still a troubling perception of the prosecution's reluctance to initiate investigations, particularly of individuals who may be close to the ruling party. The Supreme State Prosecutor has in particular been a frequent target of media criticism, including insinuations about her integrity.

Box 22:

Montenegrin media frequently criticise the Supreme State Prosecutor Vesna Medenica for failing to bring charges in a number of high-profile organised crime and economic crime cases. Occasionally, questions are also raised about her living above her means, for example, regarding her being able to afford payments for an expensive "status" jeep with the relatively modest salary of the Supreme State Prosecutor.¹⁷⁷

The risk of political influence cannot be downplayed in a setting where it so prevalent in all spheres of public and economic life, and where the existing institutional safeguards appear inadequate. The Law on the State Prosecutor (*Zakon o državnom tužiocu*),¹⁷⁸ which entered into force in December 2003, sets out the current framework for the functioning of the prosecutorial services. Prosecutors and deputy prosecutors are appointed by the parliament, at the recommendation of the Prosecutors Council for a renewable term of 5 years. The 11 member Prosecutors Council is appointed by parliament based on the nominations for 10 slots by the Law Faculty, the Bar Association, Ombudsman, and the Minister of Justice, with the Supreme State Prosecutor the *ex officio* President of the Council. International observers unanimously recommend that the process of selection and appointment of prosecutors be removed from parliament and remitted exclusively to the Prosecutors Council to reduce the possibility of political influence. However, that imperative must be counterbalanced with appropriate accountability provisions, as concerns about the "closed ranks" of the profession, similar to those voiced with regard to the Judicial Council above also apply with regard to the prosecution. Self-policing has not yielded any disciplinary measures at the time of writing this assessment despite an existence of a Code of Ethics, various instructions, as well as rules of procedure that instruct prosecutors even on appropriate off-duty behaviour – which the managers ("higher" prosecutors in charge of "lower" prosecutors) are responsible for monitoring.

The State Prosecutor is subject to parliamentary oversight, which includes an annual report to the parliament. If the parliament can grow into an effective oversight institution, this may be sufficient to address the above concerns, but that time has not yet arrived, and other mechanisms should be considered. In a conversation with one of the authors, the Supreme State Prosecutor suggested that exempting prosecutors from immunity, except for functional immunity, may be an appropriate additional step. Perhaps, provided it is weighed against the possibility of misuse that could result in more potential for political pressure, not less.

Obligations set by the AC Programme regarding the State Prosecutor in greatest part focus on the institution's capacity to combat corruption and organised crime, which is addressed in some detail in section 8.4 below. Measures to promote integrity include an increase in salaries (which has been done but not at a level deemed completely satisfactory by prosecutors) and the adoption of a Code of Ethics,¹⁷⁹ undertaken in November 2006.

¹⁷⁷ Milka Tadić Mijović, "Porodična tužiteljica" (Family prosecutor), *Monitor* No. 872, www.monitor.cg.yu/ARHIVA/a_872_02.html.

¹⁷⁸ Available in English at www.tuzilastvosc.cg.yu/dokumenti/law%20on%20state%20prosecutor.pdf and in Montenegrin at www.gom.cg.yu/files/1075209436.doc.

¹⁷⁹ Available in Montenegrin at www.tuzilastvosc.cg.yu/dokumenti/E%20T%20I%20C%20K%20I%20%20%20%20K%20O%20D%20E%20K%20S.pdf

While increased transparency is often a way to increase accountability of state institutions, in the case of prosecutorial services this mechanism is not entirely applicable. There is a need for confidentiality of ongoing investigations, not only to ensure their effectiveness, but also to protect the human rights of suspects who must be treated as innocent until proven guilty in a court of law. Similarly, as prosecutors do not provide a direct service to citizens, citizens' complaints cannot be used as an indicator of integrity. The Montenegrin State Prosecutor is more transparent than many of its counterparts in the region: the institution has a web presence¹⁸⁰ that clearly posts relevant laws and annual reports, although more can always be done, particularly with regard to educating citizens about the prosecution's role in the criminal justice system, considering the extensive negative public perceptions. .

Continued assistance in increasing the capacities of the service in view of the challenging process of transformation into the leading institution in the investigative phase, should remain a donor priority.

8.3 Police

Police in Montenegro shares a similar history with its Serbian counterparts during the early years of the wars of Yugoslav succession, with regard to tolerating, or even participating, in smuggling and other criminal activities that were rife during the 1990s, particularly cigarette smuggling that provided critical resources for Montenegro's survivals during the years of international isolation under UN sanctions, and continued for most of the 1990s. As a result, the Montenegrin police have a historic working relationship with smugglers and other organised crime actors that are difficult to quickly and completely uproot. In contrast to Serbia, however, as the Montenegrin government gradually distanced itself from Milošević, the police force was purged (both voluntarily and not) of pro-Milošević/pro-Serbia cadres. As the standoff between the republics escalated, and the population of Montenegro grew sharply divided between pro-Milošević vs. pro-Đukanović segments (which threatened to escalate into violence in the late 1990s, particularly during the 1999 NATO bombing) the police was expanded and groomed into an informal Montenegrin army that could assume that role in case of civil strife, or external aggression by Serbia.¹⁸¹ As a result, the Montenegrin police remained heavily politicised, *per definition* Democratic Party of Socialists/Đukanović loyalists, hired on the basis of political allegiance and family ties, rather than any professional qualifications or competence.

Police reform that would begin to decriminalise, professionalise, and depoliticise the police began in 2001. The OSCE took the early lead in this process, but a number of important additional resources have come in since. A strategic Vision Document on police reform was adopted April 2005, and a new Law on Police (*Zakon o policiji*)¹⁸² was passed at the same time.

The Montenegrin police have instituted some formal structural reforms that are largely absent from many other police organisations in the region. For example, the new police law separated the Police Administration from the Ministry of Interior, and defined the position of the Police Director (as opposed to the Minister of Interior) as a professional, rather than political, function. Similarly, Montenegro's police service is one of the rare to have established a Strategic Planning Unit. A decree on the Police Academy was adopted in March 2006, and the body became operational in

¹⁸⁰ www.tuzilastvoscg.cg.yu

¹⁸¹ For additional background information, see Željko Šević and Duško Bakrač, "Police Reform in the Republic of Montenegro," *Transforming Police in Central and Eastern Europe*, in Marina Caparini and Otwin Marinen (eds.), Münster: LIT Verlag, 2004, pp. 239-263.

¹⁸² Available in Montenegro at www.upravapolicije.vlada.cg.yu/vijesti.php?akcija=vijesti&id=12571.

September 2006. Considerable investment has been made to upgrade the capacities to investigate organised crime and corruption (more detail in section 8.4).

The AC Action Plan imposed a number of specific requirements relating to police integrity and accountability. These include:

- application of the Code of Police Ethics (initially adopted in 2003, and updated in January 2006)¹⁸³ and the effective functioning of the Ethics Board (*Etički odbor*) composed of 7 members, of which 3 are not employed by the police;
- introduction and advertisement on the central and local level of procedures for reporting police corruption;
- establishment of objective recruitment criteria;
- reorganisation, human resource capacity-building, and equipment provision to the Department for Internal Control (*Odjeljenje za unutrašnju kontrolu rada policije*);
- formation of a unit for oversight of the police administration; and,
- annual analyses of causes and forms of corruption within the police.

According to the First AC Progress Report for the period September 2006–May 2007:

- the Ethics Committee examined 7 cases of possible violations, all of which were forwarded to the responsible disciplinary prosecutor until the end of March 2007;
- there had been 1 criminal procedure initiated against a police officer for accepting a bribe;
- new recruitment criteria were not elaborated, as the existing procedures – public advertisements and recruitment procedure through the Human Resources Management Authority – appeared to satisfy the stated requirements;
- a Sector for Security and Protection Tasks and Oversight (*Sektor za bezbjednosno-zaštitne poslove i nadzor*) has been formed, which includes a unit for complaints, reports, and second-instance procedures and oversight of the police (*Odsjek za pritužbe, predstavke i drugostepeni postupak i nadzor policije*); and,
- the Department for Internal Control was reorganized for a total of 23 employees divided in 3 sectors: lawfulness in carrying out police duties (4 persons), lawfulness of the application of authorities (3 persons in the central office in Podgorica and 7 in regional centres), intelligence and internal investigations (6 persons), along with 1 analyst and 1 IT specialist. At the time of the report, the Department was staffed with 13 employees, but training had not taken place nor was necessary equipment provided due to a shortage of office space.

A study of the causes and forms of corruption within the police had not been undertaken *per se*, but the Police Administration claims that such analysis is carried out continuously in the processing of identified disciplinary and other violations. The definition of procedures for reporting police corruption had also not been elaborated.

The progress may appear considerable, but informed observers feel that impact is still a long way off. For example, Internal Inspection still exists largely only on paper, lacking knowledge and equipment to carry out its functions. The police organisation is still hierarchical, and decision-making needs to be fundamentally decentralised to give more autonomy to the local units if any real change in the way the police operate is to take hold. The institution is also still significantly overstaffed and dominated by middle-management from the previous era. Salaries remain low, and there is a difficulty in recruiting qualified people,¹⁸⁴ while the recruitment process has in fact not been fully professionalised. Politicisation likewise remains a concern.

¹⁸³ Available in Montenegrin at www.upravapolicije.vlada.cg.yu/vijesti.php?akcija=vijesti&id=12592.

¹⁸⁴ The exception to this appears to be traffic police; informed observers claim that there is significant interest in these posts.

Box 23:

The Police Director was widely criticised for making a visit to campaign headquarters of a political party during the local elections in 2005, giving rise to a debate on whether current provisions are adequate in preventing politicisation of the service.¹⁸⁵

External oversight exists both in the forms of a parliamentary committee, which is becoming increasingly active, and a Council for the Civilian Control of Police (*Savjet za građansku kontrolu rada policije*), whose 5 members are appointed by parliament for 5 year terms at the recommendation of the Bar Association, the Medical Chamber of Montenegro, the Lawyers Association, the University and human rights NGOs,¹⁸⁶ and to which the police are obligated to provide all information requested.

The Council is a good example of the discrepancy between the image on paper vs. the reality on the ground. The Council lacks even the basic working conditions: limited office space has been made available in parliament and occasional use of meeting rooms. In the first draft of the state budget for 2007, the Council was not assigned any funding for its functioning. Further, threats made on the life of one of the Council members, human rights activist Aleksandar Zeković who had publicly condemned a number of cases of police misconduct and other serious violations of human rights,¹⁸⁷ were dismissed by the Police Director as “unserious” and a proper investigation was never undertaken.

Transparency is also far from ideal, and some of the key documents, such as the Vision document or internal regulation codes providing for the terms of reference of the Ethics Board or the newly-created Sector for Security and Protection Tasks and Oversight (*Sektor za bezbjednosno-zaštitne poslove i nadzor*) are not to be found on the web site. Annual reports are not available, although there does not appear to be a resistance to sharing information *per se*, as witnessed in the extensive reporting on the implementation of the AC Programme. Additional support is necessary to help transform such reporting into a habit and move it a step further toward publicly presenting the results of their work as a matter of routine. Continued efforts are also needed to empower local police units, and accountability needs to be further strengthened.

8.4 Capacities to Combat Organised Crime and Corruption:

Organised crime remains a source of serious concern in Montenegro, where it is almost exclusively international in character, with the country serving as a transit point. The most serious forms are trafficking in narcotics, cigarettes, arms, and human beings, with Montenegro being both a country of transit and destination for trafficking victims due to demand arising, in part, from the tourist industry.

The Programme for the Fight against Corruption and Organised Crime, unsurprisingly, focuses on the repressive capacities in this area.

¹⁸⁵ See for example “Zaštita građana od zloupotreba policije” (Protection of citizens from misuse of the police), *Danas*, 16.1.2006, www.danas.co.yu/20060116/hronika1.html.

¹⁸⁶ Law on Police, Article 93.

¹⁸⁷ See for example the statement on the incident by the NGO Centre for Civic Education at www.cgo.cg.yu/en/press/CCE%20State%20must%20protect%20Aleksandar%20Sasa%20Zekovic.pdf.

8.4.1 Legal Framework

The legal framework for combating organised crime (and corruption) is becoming increasingly in line with international standards and GRECO recommendations. There is intensive work underway reported in some detail in the First AC Progress Report on preparation of changes to the criminal code and the criminal procedure code providing for confiscation of assets obtained through criminal activity and allowing for the use of special investigative means (SIMs) for corruption crimes (previously permitted only for crimes that carry the minimum penalty of 10 years of prison). Adoption of the new Criminal Procedure Code is expected in fall 2007. A Law on International Legal Assistance in Criminal Matters is also being drafted, while the Law on Criminal Liability of Legal Persons was adopted in December 2006 and has entered into force as of January 2007. A law on whistleblower protection has not been drafted, with the First Progress Report suggesting confusion over which body is responsible for the process. A law on witness protection exists; a ministerial commission for the implementation of the Witness Protection Programme, and a Protection Unit have been established, but the implementation poses additional challenges: considering Montenegro's size and close-knit communities, relocation of protected witnesses needs to be to another country in the region, which requires extensive international arrangements that have not yet been secured. A number of other laws are also reported being reviewed, including some of the key measures for preventing corruption such as the Law on Conflict of Interest and Law on Political Party Finance.

There is also an initiative underway under the auspices of UNDP to undertake an analysis of the compliance of the national legal framework with the requirements set by the UN Convention Against Corruption (UNCAC). While progress on some fronts is slow, as indicated elsewhere in this analysis, overall, on the legislative front, there appears to be considerable progress.

The next challenge is to provide training on new legal instruments, including the use of SIMs, undercover agents, and protected witnesses for all branches in law enforcement, including courts. Lack of knowledge on new laws and techniques is repeatedly cited as the most serious obstacle to effectively investigating and prosecution crime and corruption (concerns with political influence noted above notwithstanding).

8.4.2 Anti-Money Laundering Regime

The “follow-the-money” approach can be a useful method for identifying corruption, with the actual crimes generally being difficult to detect at the time they are committed. Proceeds of corruption and organized crime can be identified when they enter the financial system, however, when an effective anti-money laundering regime is in place.

Montenegro established the Administration for the Prevention of Money Laundering, APML (*Uprava za sprječavanje pranja novca*)¹⁸⁸ in December 2003. The Law on the Prevention of Money Laundering (*Zakon o sprječavanju pranja novca*),¹⁸⁹ passed in October 2003 and amended¹⁹⁰ in March 2005, requires financial institutions to declare all financial transactions exceeding €15,000 as well as all “suspicious” transaction to the APML. In addition to banks, the list of those obliged to report on suspicious transactions was expanded to include attorneys-at-law and currency exchange offices. The US Treasury has been a key partner in developing the capacities of the APML, providing training and equipping the APML office. The APML was admitted to the Egmont Group in June 2005.

¹⁸⁸ www.gom.cg.yu/aspn.

¹⁸⁹ Available in Montenegrin at www.gom.cg.yu/files/1147855872.doc.

¹⁹⁰ Amendments to the Law on the Prevention of Money Laundering (*Zakon o izmjenama i dopunama Zakona o sprječavanju pranja novca*) is available in Montenegrin at www.gom.cg.yu/files/1147856680.doc.

A database for collecting and analysis data on financial transactions has been set up, with additional analytic refinements still under development. The APML has progressed in developing guidelines on what should be considered as a suspicious transaction, but it needs to further extend the scope of monitoring of financial transactions beyond the banking system, especially in relation to real estate sales and “inward investment.”¹⁹¹ One of the reasons for the lack of progress noted in the First AC Progress report is the delay in forming and staffing a new monitoring unit. Additional improvements to the Law on Prevention of Money Laundering are also under consideration.

8.4.3 Police

A special unit for the fight against organised crime was formed in February 2003. A considerable amount of investment and support had been made in the form of equipment provision and training of these investigators, but more continues to be needed, especially with regard to financial investigations. A Sida project that strengthened intelligence and analysis capacities is viewed as particularly valuable in its attempt to change the relationship between the prosecutors and police, and move Montenegrin police toward an agreement with Europol. Such an agreement will be an important indicator of success; for the moment, there is a lack of trust from Europol, exacerbated by poor flow of information across borders. Montenegro has, however, become a member of Interpol in 2006.

8.4.4 Prosecution

Within the State Prosecutor’s office, there exists a Special Unit for Organised Crime, headed by a Special Prosecutor, and including one deputy prosecutor focusing on corruption. There are a total of 3 operational prosecutors in the Special Unit, and this appears to be enough for the time being, with the Special Prosecutor reporting in an interview with one of the authors that no cases were late and no deadlines were missed. Members of this Special Unit have received training, but more is needed, particularly with increasingly complex investigations relating to economic crime and corruption. The prosecutor’s office has designed a project describing training needs and outlining a programme of cooperation with US authorities on the development of an information system and cooperation with the Croatian Administration for Combating Corruption and Organised Crime (USKOK); this has been presented to the Council of Europe, US agencies, and the OSCE. There is also confidence that support will also be coming through the EU IPA funds to support the challenging transformation of the State Prosecutor into the leading investigative institution as foreseen in the Judicial Reform Strategy, discussed above.

8.4.5 Courts

There are repeated suggestions that the Courts are the weakest link in the system, lacking specialized knowledge for ruling on cases of organised crime and corruption. There is no special court for organised crime and corruption, and arguably there is no need for it in a system as small as Montenegro’s. Nevertheless, there is recognition that some form of development and concentration of capacities is needed, which will be undertaken within the larger framework of judicial reform.

The training of judges is greatly hampered by the lack of functioning of the Judicial Training Centre, noted above in section 8.1. While personnel issues, i.e. recruitment of an Executive Director, are the first priority, ongoing financial support will also be needed for conducting trainings, as state resources appear to be inadequate.

¹⁹¹ European Commission, *Montenegro 2006 Progress Report*, p. 38.

8.4.6 Inter-Agency Cooperation

Cooperation among the various services – police, prosecution, customs, tax authorities, and the anti-money laundering unit – is improving, with memoranda of cooperation signed, for example, between the prosecution and the tax administration and will shortly be done between the prosecution and customs.¹⁹² Each of the services is nearing the completion of electronic databases that will facilitate the analysis and exchange of information. While the databases will not be completely unified (as different services track cases according to different criteria, e.g. number of criminal acts for the police vs. number of persons committing criminal acts for the prosecution), they will likely become fully networked within the next year. There is confidence that this database will prove a considerable asset, particularly in the work of the prosecution.

The APML also reports that cooperation with law enforcement is very good, but the European Commission warns that “coordination and exchange of information between the [APML] and law enforcement bodies as well as tax authorities needs to be substantially upgraded in order to tackle money laundering concerns in Montenegro.”¹⁹³ Similar recommendations have been also made by GRECO, and while inter-agency cooperation may not be entirely satisfactory, there are indications that international advice is being heeded and efforts in the right direction are being made.

8.4.7 International Cooperation

Considering the international character of organised crime in Montenegro, international cooperation is perhaps the most important element in efforts to combat it. A number of formal agreements have been made with counterparts in the countries in the region and beyond (e.g. the Supreme State Prosecutor has signed bilateral agreements with the prosecution services in Russia and Ukraine). The Police Administration has likewise recently entered into cooperation protocols signed with Austria, Belgium, Kosovo/UNMIK, and Romania. Montenegro is a member of Interpol and aspires to closer cooperation with EUROPOL. The Customs Administration likewise has bilateral agreements with counterparts in the region, as well as Belarus, Moldova, and Ukraine, and negotiations are underway with neighbouring Albania, Bosnia and Herzegovina, Croatia, and Kosovo on protocols for joint tracking of excise goods.¹⁹⁴

Lack of the knowledge of English has been noted by international observers as one of the key obstacles to effective international cooperation, which results in collaboration with regional counterparts being much more effective. However, the real indicator of effectiveness of cooperation will come through monitoring the progress on a number of high-profile international investigations, including a cigarette-smuggling investigation recently initiated in Serbia against a close associate of the top Montenegrin political leadership, Stanko Subotić “Cane” (see text box 19).

¹⁹² See “First Report on the Realisation of Measures from the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime,” p. 87.

¹⁹³ European Commission, *Montenegro 2006 Progress Report*, p. 38.

¹⁹⁴ For details, see “First Report on the Realisation of Measures from the Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime.”

9. Transparency and Watchdogs

9.1 Transparency and Access to Information

The Law on Free Access to Information (*Zakon o slobodnom pristupu informacijama*)¹⁹⁵ was passed in 2005, but secondary legislation outlining specifics of implementation is still pending. The Ministry of Culture, Sports and Media is the institution responsible for the implementation of the law, and is working on unified instructions to public institutions. However, neither the Ministry, the Directorate for Anti-Corruption Initiative, nor the Ombudsman has the law posted on their web sites, and it is difficult to find it in electronic form in general. However, most government agencies have prominently posted on their web pages instructions (*vodič*) for accessing information of public importance, including the contact information for the official responsible for freedom of information (FOI) requests. Some notable exceptions include the Ministry of Defence, the Ministry for Environmental Protection and Physical Planning [spatial planning], and the Directorate for Anti-Corruption Initiative.

International organisations have supported a number of initiatives to help implement the law, including trainings of civil servants, starting with central government bodies. Among others, the OSCE has planned trainings for the police and the judiciary through the Human Resources Management Authority, which also strengthens cooperation between the police and the prosecution.

Non-governmental organisations have by far done the most to promote freedom of information. The NGO MANS has been very active in testing the implementation of FOI regulation through the range of available administrative and legal remedies. They have followed non-responsiveness of the public administration bodies with complaints addressed to the Administrative Court, with mixed results. The Administrative Court had ruled against MANS requests in a number of cases, but major victories were won when challenges were followed through to the Supreme Court, which has annulled several of the Administrative Court decisions. The process appears to have served to set important legal precedents which have helped shape Administrative Court rulings afterward. It is one of the rare instances in the region where litigation as a mechanism to realise citizens' rights seems to have helped to set norms through judicial practice, as well as promoting public awareness on freedom of information. However, litigation cannot remain as the principal means to ensure access to information. Court cases last 6 months on average, and the procedure for raising legal challenges, as set out in the Law on Administrative Procedure, is far too complicated for ordinary citizens. At the time of writing this assessment, only one legal challenge had been mounted by an "ordinary citizen."

The Association of Young Journalists was one of the first organisations to tackle the question, and they were one of the drafters of the freedom of information law. They have undertaken an initiative to broadly monitor and test the implementation of the law across the public sector, and a number of outreach and education activities. Efforts also include the creation of a database of government institutions' instructions for access to information on a dedicated web site.¹⁹⁶

One of the key problems with the implementation of the law is that the rules specify only on-the-spot review (*uvid*) of the information, but not explicitly the reproduction of the materials. MANS

¹⁹⁵ Unofficial English translation is available at www.slobodanpristup.com/spi/index.php?option=com_content&task=view&id=29&Itemid=36; Montenegrin language version is available at www.mans.cg.yu/FAI/zakoni/Zakon_o_SPI.pdf.

¹⁹⁶ www.slobodanpristup.com

has, in fact, had considerable difficulties with some authorities preventing them from reproducing information, even by reading out loud and tape recording the content of specific documents (see text box 13). As there is no unified price list for the charges of reproducing (photocopying, scanning and e-mailing, or other) documents, others have, on the other hand, permitted reproduction at a very high cost (e.g. Municipality of Podgorica charging €1,000 for photocopying a certain number of documents). The Administrative Court has been silent on the issue to date.

Many international observers believe that the principal challenge lies with the limited capacity of the administration, as obligations under the freedom of information rules stand in addition to other responsibilities they may have. Legislative gaps, such as a Law on State Secrets and a Data Protection Act and a Law on the Protection of Personal Data contribute to a lack of clarity on the application of the law, but nevertheless, norms are slowly being established through practice.

Nevertheless, more work remains to be done in order to achieve a satisfactory level of transparency. A great deal of information is not actually available on the agencies' web sites. Many government bodies that have enormous influence in some of the key economic decisions do not have an internet presence at all (e.g. Privatisation Council or the Commission for Concessions). Information that government agencies do readily provide on their web pages tends to be poorly organised, and there are countless instances of old web sites not being shut down when government agencies move to a new web site. This carelessness creates much confusion, which actually reduces transparency.

9.2 Media

The Law on Media (*Zakon o medijima*)¹⁹⁷ that entered into force in May 2003 provides the legal basis for an environment that fosters independent and pluralistic media. The OSCE positively evaluates the existing legal framework, and there is a vibrant and diverse media scene despite Montenegro's very small market.

The vast majority of the media are private, with the daily *Pobjeda* in the process of privatisation, and the daily *Vijesti* co-owned by the state and the German WAZ Group. WAZ and Serbian Pink are the largest foreign investors in the Montenegrin media market. Nevertheless, even private media are far from being seen as independent and unbiased.

The quality of reporting in both electronic and print media is very poor in general, with the weekly *Monitor*, daily *Vijesti*, and *Radio Antena M* (which is also an internet news source), among the few exceptions. There is still much to be done before the media can play a constructive and reliable watchdog role. Corruption of individual journalists is seen as far less of an issue than poor capacity, and a strengthening of journalists' skills remains a priority.

Proper investigative journalism in Montenegro is limited not only by a shortage of skills, but also due to limited resources of most media organisations. While journalists do appear to be increasingly using freedom of information provisions and beginning to address corruption issues, access to information and reliable facts remains difficult, and few people are willing to make statements on the record due to a fear of reprisals (not necessarily in the form of physical violence, but rather as a threat to jobs and livelihood of individuals who dare to challenge the powerful). The 2006 *Nations in Transit* report notes that "investigative pieces sometimes result in anonymous threats, lawsuits, or personal verbal attacks in public, although there were no cases of physical assaults on investigative journalists in 2006."¹⁹⁸ The same could not be said for 2007, however. A serious physical assault did take place during the writing of this assessment, with one of the editors of the independent daily

¹⁹⁷ Available in Montenegrin at www.rtcg.org/referendum/regulativa/zakon_o_medijima.pdf.

¹⁹⁸ *Nations in Transit*, p. 321

Vijesti, Željko Ivanović, attacked and severely beaten as he was leaving the newspaper's 10th anniversary celebration on 1 September 2007.

There exist a number of initiatives to promote professionalisation and performance of Montenegrin journalists. All existing journalist associations in Montenegro, at the initiative of the Media Institute, have adopted a unified Code of Conduct (*Kodeks Novinara Crne Gore*)¹⁹⁹, whose implementation is monitored by the Journalists' Self-Regulatory Body (*Novinarsko samoregulatorno tijelo*), formed in 2003 and composed of representatives of journalist associations. Despite some progress, the body is still seen as in embryonic form, primarily as it does not incorporate all major print and broadcast media in Montenegro, which reduces its influence. For example, the second largest circulation daily *Dan* refuses to take part in any self-regulation effort.²⁰⁰

The state-owned broadcaster Radio Television of Montenegro (*Radio Televizija Crne Gore*, RTCG)²⁰¹ is in the process of transformation to a public service, but this is a complicated and difficult task. Among other problems, it involves a considerable downsizing of the staff, which will have significant social impact, especially in a small country such as Montenegro. The politicisation of this body remains a serious concern. While its statutes provide for an 11-member supervisory Council nominated primarily by the civil sector, it has far from provided leadership on building a reputable public service. The Council has not adopted or made public an RTCG financial report since 2004, and it does not publish reports about its work, as required by law. Its sessions are closed to the public more often than not. Furthermore, the Council president attended a pre-election political event and sat in the front row, while two other Council members are government appointees on the boards of public institutions, which is against the spirit of the Law on Public Broadcasting.²⁰²

Box 24:

In February 2006, representatives of the NGO sector and journalist associations accused two nominees of having misused the law by creating NGOs simply to nominate themselves to the Council. While both nominees denied the charges, one argued that "no one was bothered when other individuals, who were reproached for conflicts of interest, previous and ongoing connections with political parties or other power centres, were elected to the council." The parliament delayed its vote on the question, and the two nominees ultimately quietly withdrew their names.

In a further twist, when the NGO sector nominated its representative to the Council in late 2006, the parliament rejected the nomination, stating that the individual was close to one of the opposition parties and would essentially represent that party on the Council. The NGO community was outraged and claimed that the law gives the parliament the right to confirm appointments to the council, not to reject nominees.²⁰³ The situation had not been resolved at the time of writing this report.

The OSCE intends to undertake an assessment of the Law on the Public Broadcaster in the fall of 2007, which should result in useful recommendations on how to assist in the difficult transformation of RTCG into a true public service.

¹⁹⁹ Available in Montenegro at www.mminstitute.org/kodex.php.

²⁰⁰ *Nations in Transit*, endnote 34, p. 332.

²⁰¹ www.rtcg.org

²⁰² *Nations in Transit*, p. 321.

²⁰³ *Ibid*, pp. 320-322.

9.3 Civil Society

The 1999 Law on NGOs is extremely liberal, defining no reasons for denying registration and giving very few details about revoking registration. As a result, Montenegro has more than 3,600 registered NGOs, the majority of which either does not function or are small businesses, since the profit of economic activities of NGOs currently is tax-exempt as long as it does not exceed €4,000 and is used to further the statutory goals of the organisation.²⁰⁴ No more than 200 NGOs in Montenegro can be considered part of the genuine civil society category, and only a handful is truly active.

There has been a lack of public trust in NGOs in part due to the small-business misuse mentioned above, but there are other reasons, too. Many NGOs are also vehicles for additional contracts of people close to the government, and there have been numerous examples, also noted in this report, of NGO status being abused to gain access to government bodies' councils or other positions.

Box 25:

In a state with underdeveloped public institutions such as Montenegro, there also exist examples of NGOs playing a detrimental role to the public sector capacity development. The Statistical Office of Montenegro (MONSTAT) is a case in point. Impaired by weak capacity and poor management, MONSTAT continues to lose the competition with the Institute for Strategic Studies and Prognoses (ISSP) even on projects that should, per definition, be carried out by state institutions, such as official economic statistics for the country. By contrast, the ISSP, established in 1999 by Veselin Vukotić (mentioned throughout this report), is receiving a number of the most important contracts both by donor agencies and the Montenegrin government.

The government sets aside some financial resources for non-governmental organisations. Part of the funding is a direct line item in the republic budget that is distributed through the parliament, and another part is disbursed through the Ministry of Culture and the Ministry of Tourism. Local governments also provide funds to NGOs. The process for distributing parliamentary funds is subject to great controversy. NGOs eligible for funding are those that deal with human rights, democracy, civil sector development, European integration, social activities, ecology, culture, and education. A parliamentary commission holds a competition every year to select those that will receive funding, but there are no defined criteria for decision making. In many cases, the commission provides much less than the requested amount without any clear indication of what part of the project the commission wishes to fund. Finally, there is no system to monitor the expenditure of funds or any reporting requirements. Clearly, the risk of political bias and embezzlement in such a system is significant.

²⁰⁴ *Ibid*, endnote 29, p. 332.

Box 26:

*In 2006, there was a great deal of public criticism of the responsible parliamentary commission for giving funds to two organisations whose leaders were DPS candidates for municipal councillors and found other instances of NGO connections with ruling parties. After years of constant controversy and discord between civil society and the government, a coalition of the most active NGOs (ultimately 120 of them) – Cooperation Toward the Goal – was formed in August 2006 to address, *inter alia*, the lack of a clear structure for financing NGOs from public funds.*

The coalition produced a draft system for financing NGOs from public funds, and an NGO code of conduct, and these documents are to be approved at a national NGO conference in spring 2007, but full implementation of some measures may require legislative changes.²⁰⁵

Despite the problems, NGOs have made an important contribution to the democratisation process in Montenegro, particularly on human rights issues. NGOs are also at the forefront of the fight against corruption in Montenegro, although more capacity building is needed so that NGOs can consistently produce highest quality research and analysis. This is particularly important for anti-corruption issues, where getting some things wrong carries the risk of completely undermining an organization's credibility. The most prominent ones on corruption issues include MANS and the Association of Young Journalists, who have made remarkable impact on promoting the implementation of the freedom of information law; MANS and Centre for Monitoring (CEMI) keep high visibility on conflict of interest issues, and CEMI is the only organisation working on political party finance questions.

MANS' Executive Director is also member of the National Commission for the Implementation of the Programme for the Fight against Corruption and Organised Crime (hereafter: National Commission). Through her membership in the Commission, she was also to co-ordinate the work of other NGOs on corruption and to feed information back into the Commission. However, it has been difficult to solicit any such input, despite MANS' actively reaching out to other organisations on the issue. The Directorate for Anti-Corruption Initiative has, as a result, launched a public invitation for NGOs to submit reports on the implementation of relevant activities in the framework of the AC Action Plan; however, only one such submission was registered by mid-June 2007.²⁰⁶

It is difficult to find people to work for NGOs such as MANS. There is a perceived risk, not so much a physical threat as consequences for future employment of the activists themselves, and their extended family members. MANS' Executive Director has been threatened, and she has counteracted by bringing the issue to the public. There is some consensus in Montenegro that going to the media is the only really effective form of protection.

In addition, there is a great deal of suspicion that everyone is motivated by political ambitions and a thirst for power. An example is the transformation of one of the most vocal anti-corruption activists, the NGO Group for Changes, into a political party, Movement for Changes. Similar suspicions now surround the head of the most active NGO, MANS, whose Executive Director was designated in a

²⁰⁵ *Ibid*, pp. 318-319.

²⁰⁶ The Directorate for Anti-Corruption Initiative intended to feed submissions by NGOs into the First Report on the Realisation of Measures from the Action Plan; the deadline was 15 June 2007, see in Montenegrin www.antikorup.vlada.cg.yu/vijesti.php?akcija=vijesti&id=24659.

June 2007 poll as the most popular public figure in Montenegro.²⁰⁷ At the same time, such positive public responses give reason for optimism that NGOs can be the catalysts for greater public interest, and possibly participation in, the fight against corruption.

A capacity building programme for NGO anti-corruption activities that was jointly funded by Rockefeller Brothers Fund, Charles Stewart Mott Foundation, and UNDP will end in 2007. Despite this, the authors did not form the impression that funding for NGO activities for anti-corruption, in their current relatively limited scope, is a problem for the time being. However, continued donor support to NGOs will be an essential aspect of promoting the fight against corruption in Montenegro.

²⁰⁷ CEDEM, "Political Public Opinion in Montenegro," June 2007, available in English at www.cedem.cg.yu/opolls/images/CEDEM_June07.pdf.

10. Dedicated Anti-Corruption Programme

10.1 International Obligations

Since gaining independence in 2006, Montenegro has joined a number of international organisations, such as the United Nations, the Council of Europe, and the OSCE. The legal personality of the State Union of Serbia and Montenegro has been inherited by Serbia, but Montenegro has become party to a number of international instruments and is in the course of signing and ratifying others.

United Nations

Montenegro has ratified the United Nations Convention against Corruption (UNCAC)²⁰⁸ in October 2006. The Directorate for Anti-Corruption Initiative is, according to the AC Action Plan, in charge of analysing the compliance of the Montenegrin legal framework with the provisions set out in UNCAC. UNDP has made available resources to provide an in-depth analysis of the Criminal Code, the Criminal Procedure Code, the Law on Freedom of Access to Information, the Public Procurement Law, and the Conflict of Interest Law. The analysis is to commence in 2007, and will be carried out by an expert of the United Nations Office on Drugs and Crime (UNODC).

Council of Europe

Montenegro is the newest Member State of the Council of Europe – it joined the organisation in May 2007. For the topic at hand, the following instruments are relevant: Montenegro has signed or acceded to the Criminal Law Convention on Corruption, the European Convention on Mutual Assistance in Criminal Matters, and the Additional Protocol thereto; and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Montenegro has signed, but not yet ratified, the Council's Civil Law Convention on Corruption, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Additional Protocol to the Criminal Law Convention against Corruption has been neither signed nor ratified.²⁰⁹

Montenegro has been subject to a joint first and second evaluation round in the framework of the Council of Europe's Group of States against Corruption (GRECO) with the Evaluation Report adopted at the GRECO Plenary Session in October 2006; Montenegro is expected to report on the implementation of the 24 recommendations issued by GRECO by 31 May 2008.²¹⁰

Stability Pact Anti-Corruption Initiative (SPAI)

Montenegro has participated in the Anti-Corruption Initiative of the Stability Pact for South-eastern Europe²¹¹ since its initiation in 2000. The previous director of the Directorate for Anti-Corruption Initiative, since 2004 also headed the Regional Office²¹² of the SPAI in Sarajevo. As pointed out

²⁰⁸ The Convention can be found at www.unodc.org/unodc/en/crime_convention_corruption.html.

²⁰⁹ The Conventions can be found at the Council of Europe Treaty Office's website at <http://conventions.coe.int>.

²¹⁰ See GRECO, *Evaluation Report on the Republic of Montenegro*.

²¹¹ See the Stability Pact's website at www.stabilitypact.org.

²¹² See the Regional Office's website at www.spai-rslo.org/en.

elsewhere, the SPAI has been crucial in putting the issue of corruption on the political agenda of the countries in the region – this is probably its main achievement. However, value added of the SPAI’s activities has been less clear against the background of countries’ aspirations to join the European Union and, linked to these aspirations, to comply with Council of Europe standards in the fight against corruption. It is questionable whether Montenegro, with its limited resources, should continue to give the same priority as in the past to this initiative,²¹³ and whether it is not more sensible to focus on concrete domestic tasks at hand.

10.2 Programme for the Fight against Corruption and Organised Crime

Having been in the drafting process since 2003, the Programme for the Fight against Organised Crime and Corruption (*Program borbe protiv korupcije i organizovanog kriminala*)²¹⁴ was adopted by the government on 28 July 2005. The Program’s rationale is that corruption represents an impediment to foreign investment and, therefore, economic development, and undermines reforms needed to accomplish the transition process. Poverty, as well as political instability, is seen as a factor contributing to corruption (rather than being caused by it). The stated ambition of the Program, elaborated “in co-operation with the NGO sector,” was to “become part of a broad social plan and a widely accepted system of measures and activities for fighting corruption and organised crime.”²¹⁵

The Programme is organised along 7 sections (5 of which contain also a short paragraph on priorities) as follows:

- an “Introduction,” providing the document’s general rationale;
- an “Analysis of the Current Situation,” providing a definition of corruption that includes the private sector, and results from various surveys and opinion polls, and statistical information available of criminal offences that contain elements of corruption, and such with elements of organised crime; the section also provides a breakdown of existing provisions of the Criminal Code relevant for the fight against organised crime and corruption;
- a section on “The Political Obligation to Act,” highlighting the crucial importance of political will for the successful fight against corruption and organised crime, and giving high priority to the establishment of networks that include a broad range of stakeholders such as civil society and NGOs;
- a section listing the “International Obligations” to be fulfilled, including the relevant international conventions and standards, as well as obligations under regional initiatives such as the Stability Pact Anti-Corruption Initiative (SPAI), and giving priority to achieving obligations stemming from the Stabilisation and Association process and membership in the Council of Europe’s instruments;
- a section on “General Objectives,” in brief subsections outlining the need to effectively prosecute corruption and organised crime, to adopt effective measures for the prevention of corruption (with priorities established for the prevention of corruption in the judiciary), the necessity of the public, NGO’s, and the media participation in the fight against corruption, and the need for the establishment of “effective governance” and budgetary control

²¹³ The Programme for the Fight against Corruption and Organised Crime and the Action Plan, for example, provide for measures to implement the Declaration of 10 Common Actions to Curb Corruption in South-eastern Europe (which can be found, for information, at www.spai-rslo.org/en). It is questionable whether this declaration adds anything to existing obligations other than another layer of reporting.

²¹⁴ Available in English at www.gom.cg.yu/files/1125055411.doc and in Montenegrin at www.gom.cg.yu/files/1124287629.doc.

²¹⁵ See Programme for the Fight against Corruption and Organised Crime, p. 5.

- (stipulating legislation such as the Law on the Budget, the Law on Public Procurement, the Law on the State Audit Institution, and the Law on the Financing of Political Parties);
- a section on “Specific Measures,” providing more detail on the four directions of the previous section, and adding a part on “Effective Implementation of the Law and Measures linked to Special Control Institutions”;
 - a section that provides the mechanisms through which the Programme will be monitored and implemented, namely that a single body is to be formed to lead the oversight of the process of implementation; an inter-institutional team would be formed whose task would be the “organisation and co-ordination, synchronisation of the activities throughout the Republic of Montenegro, the administration of resources made available for the implementation of the Program, the establishing of priorities, the dynamics and deadlines for the implementation and measuring of achieved results.”²¹⁶

While stressing the fact that resources for its implementation have to be made available from the state budget (although not stipulating how much the implementation of the Programme is estimated to cost), the Programme has been written partly having in mind the need for foreign technical assistance and the document serving as a basis for fundraising with donors.

The adoption of the Programme was widely covered in the national media, and was subject of the first international conference, in October 2005, on the topic of corruption in Montenegro, organised in a joint effort of the NGO MANS, UNDP, the Montenegrin government, and the Council of Europe’s Sida-funded PACO Impact project. A further objective of the conference was also to put additional pressure on the government to follow suit with the elaboration and adoption of an Action Plan.²¹⁷

PACO Impact had also provided technical assistance through experts’ advice during various stages of the drafting process of the Programme itself,²¹⁸ and the subsequent operational-level Action Plan (see below). This assistance has substantially raised the profile of both the Programme and the Action Plan: while neither document was, as often heard, officially “endorsed” by the Council of Europe,²¹⁹ the Council of Europe involvement has been the ultimate sign of approval for those that were involved in the drafting process[es], and has certainly facilitated the adoption of both policy papers. While this is, of course, positive, it is also worthwhile highlighting that not all of the concerns raised by the Council of Europe experts were taken into account (while many were, however) in the final versions of the documents. This is an entirely legitimate right of the government, but it also puts the level of Council of Europe “endorsement” of the Programme and the Action Plan into context. Concerns raised, for example, were the need for the final Programme to contain a thorough and honest analysis of the mechanisms and incentives for corruption in Montenegro, and taking such an analysis as the starting point for the measures to remedy the situation, and the recommendation to thoroughly cost the implementation of the Programme and Action Plan.

²¹⁶ *Ibid*, p. 45.

²¹⁷ The conference material can be found on MANS’ website at www.mans.cg.yu/ACConference.htm.

²¹⁸ See, for example, Kristina Hemon and Goran Klemenčić, “PACO Impact Expert Opinion on the Draft Programme for Combating Corruption and Organised Crime,” January 2004, at [www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/paco/paco-impact/PC-TP\(2004\)44.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/paco/paco-impact/PC-TP(2004)44.pdf), or Bertrand de Speville, “PACO Impact Expert Opinion on Issues and practical implementation of a national anti-corruption programme: methods of measuring its progress,” December 2004, at www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/paco/paco-impact/PACO_Impact_TP.asp.

²¹⁹ This is not working practice of the Council of Europe.

10.3 Action Plan for the Implementation of the Programme for the Fight against Corruption and Organised Crime

Following the adoption of the Program, the government tasked the Ministry of Interior²²⁰ to form a Commission (*Komisija za izradu Akcionog plana za sprovođenje Programa borbe protiv korupcije i organizovanog kriminala*) which would draft an Action Plan spelling out the different measures needed in order to implement the Program. The Commission was chaired by the Head of the Police Department for the Fight against Organised Crime, and co-chaired by a senior inspector of the same police department, an advisor to the Minister of Justice, and the co-ordinator of the NGO MANS; the Commission further included an Assistant Minister for Culture and Media, an advisor to the Minister of Finance, the Head of the Department for Internal and International Co-operation of the Department for Money Laundering, an independent advisor to the then Ministry for Economic International Relations and European Integration, a deputy State Prosecutor General, a judge from the Podgorica Basic Court, and an independent advisor to the Ministry of Foreign Affairs; the secretary of the Commission came from the Directorate for Anti-Corruption Initiative. The Commission met up to three times a week from January 2006 to March 2006, and completed its work at the end of March; the plan was adopted by the government in late August 2006.

The AC Action Plan²²¹ covers the period from 2006 to 2008 (the Programme itself does not specify the timeframe over which it is supposed to be implemented), and follows, in table (matrix) form the structure of the Program, providing for detailed measures against each of the Program's sections, including information on the responsible institution in charge, the deadline for the implementation of the measures, indicators of success, risk factors, and an indication of the source of funding (without, however, providing a cost estimate). Specific attention is given to measures needed to fulfil the obligations stemming from the European Partnership and those from international obligations.

While maybe not as intensive as desirable, and maybe too late in the process to have a decisive impact, the Action Plan did undergo at least *some* public consultation. The Montenegrin Employers Federation, for example, used the opportunity in a follow-up to a roundtable to provide input into the Action Plan from the private sector perspective. Its submission highlighted one critical weakness of the plan – the lack of the coherency of its measures with ongoing reforms and deadlines already set by other strategic policy documents.²²²

10.4 National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime

The implementation of the Action Plan is overseen by the high-level National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime (*Nacionalna komisija za implementaciju Akcionog plana za sprovođenje Programa borbe protiv korupcije i organizovanog kriminala*), which was established by a decision of the government of 15 February 2007²²³ (i.e. with a substantial delay, as this was supposed to happen within the month following the adoption of the Action Plan), which nominated the members of the

²²⁰ The choice of the Ministry of Interior as the lead institution in this process seems natural given that the Programme encompasses both corruption and organised crime issues.

²²¹ Available in Montenegrin at www.gom.cg.yu/files/1157383512.doc.

²²² Written suggestions on the draft Action Plan by the Employers Federation given in hardcopy to one of the experts.

²²³ See “Odluka o formiranju Nacionalne komisije za praćenje implementacije Akcionog plana za sprovođenje Programa borbe protiv korupcije i organizovanog kriminala” (Decision on establishing the National Commission for Monitoring the Action Plan for Implementation of the Programme for the Fight against Corruption and Organized Crime), available in English at www.gom.cg.yu/files/1186062102.doc and in Montenegrin at www.gom.cg.yu/files/1186062098.doc.

Commission, and also defined the terms of reference for the Commission's work. The Commission is chaired by the Deputy Prime Minister for European Integration, the Commission's other 11 members include the Minister of Interior and Public Administration, the Minister of Finance, the Minister of Justice, the president of the Supreme Court, the State Prosecutor General, two members of parliament, the Head of the Police, the Head of the Police Department for the Fight Against Economic Crime, the Director of the Directorate for Anti-Corruption Initiative, and an NGO representative.

The Commission meets four times a year; its first session was held on 16 March 2007, during which it adopted Rules of Procedure (*Poslovnik o radu Nacionalne komisije za implementaciju Akcionog plana za sprovođenje Programa borbe protiv korupcije i organizovanog kriminala*)²²⁴ and the plan of work until the end of 2007. The session also adopted the standard format of the monthly reports to be submitted to the Commission by the 30 institutions covered by the Programme and Action Plan, the template is published on the website of the Directorate for Anti-Corruption Initiative.²²⁵ The reports are then analysed and prepared for submission to the Commission, by an "Expert Body" consisting of representatives of the Police, the Directorate for Anti-Corruption Initiative, the Ministry of Justice, the Prosecutor General and the Cabinet of the Deputy Prime Minister for European Integration.

The first "monthly" report submitted by institutions covered the period from September 2006 until March 2007, while subsequent reports started to cover monthly activities and progress. On the basis of the first three reports submitted, a First Progress Report²²⁶ was adopted at the second meeting of the Commission in July 2007. It was presented to the public on 11 July 2007;²²⁷ the report has been adopted by the government and will now be submitted to various parliamentary committees.

The report contains statistics of the level of implementation of the measures of the Action Plan (according to the report, 69 of the 280 measures were implemented, corresponding to 25% of achievement), an assessment of, and specific recommendations on the individual measures and to the agencies in charge of carrying them out. There are also a number of general recommendations, including the need for better co-operation of all agencies that would result in the fulfilment of the reporting requirements; the need for bringing the Action Plan up-to-date, including adjusting the timelines, clarification of the roles and responsibilities of some of the agencies, and cutting the reporting requirement for agencies down to once every three months; and a greater emphasis on work with the local administrations, and business associations and the private sector.

There has been some criticism about the work of the National Commission. A substantial concern is that the members of the Commission who are representing the government, the Supreme Court and the Prosecutor General's Office are, *de facto*, being asked to assess and, if necessary, to criticise the work of their respective ministries and institutions, which carries the risk of undermining the credibility of the entire exercise. While the fact that the majority of the 12 members of the Commission are very senior could also be an advantage, it is questionable in how much detail, from a practical point of view, they really can assess the quality of the work done implementing the multitude of measures under the Action Plan. This then, in turn, puts a lot of responsibility and authority on the work of the "Expert Body," which is in charge of collecting, screening and

²²⁴ The Rules of Procedure available in English at www.gom.cg.yu/files/1186062381.doc and in Montenegrin at www.gom.cg.yu/files/1186062377.doc.

²²⁵ Montenegrin language version of the template available at www.gom.cg.yu/files/1184847030.doc.

²²⁶ Available in English at www.gom.cg.yu/files/1186144468.doc and in Montenegrin at www.vlada.cg/biblioteka/1184254299.doc.

²²⁷ See Nebojša Redžić, "Crna Gora – Prvi izvještaj o realizaciji programa borbe protiv korupcije i organizovanog kriminala" (Montenegro – First Report on the Implementation of the Programme for the Fight against Corruption and Organised Crime), *Voice of America*, 11.7.2007 at www.voanews.com/serbian/2007-07-11-voa6.cfm.

analysing the monthly (in the future, quarterly) reports submitted by the agencies/institutions, and for preparing the findings for the inclusion in the reports to be adopted by the Commission. The reports are not being submitted to the individual members of the Commission, nor are they are not published on any web site.

Box 27:

The quality of the Commission's First Report has been criticised for superficiality²²⁸ and incorrectness. The NGO MANS – which has since the adoption of the Action Plan in August 2006 monitored its implementation, primarily through making use of the Law on Free Access to Information – has been one of the more vocal critics of the First Report. It published its own analysis of the level of implementation²²⁹ and arrived at a verdict that is less convinced about the success so far. This criticism is certainly in part justified: MANS has tried to independently verify the validity of some of the measures implemented, and has had to conclude that a number of documents said to be adopted or passed are not publicly available, making it difficult to verify the merits of the implementation. Criticism is also legitimate given the fact that a substantial number of measures are in delay – caused, in part, by the parliamentary elections that were held in autumn 2006 and which held up legislative activity.

The Deputy Prime Minister, who is the Head of the National Commission, has reacted in a somewhat frantic way, sending a counter-statement to the MANS report via e-mail to an extensive list of local and international recipients. While it is encouraging to see that the report of an NGO such as MANS has the potential to cause substantial nervousness in the government, the statement was also alarming in that some basic concepts of democracy seemed not to be well understood. It is the legitimate right and role of NGOs to act as watchdogs and to criticise the government, and to portray this as “against the country interest” is out of order. After a reaction from MANS to her e-mail to the same distribution list, in a statement published on the government's website, she provided an “explanation” (not, however, the text of her initial letter), the following day, that should be seen as toning down the initial statement.²³⁰

It must be said that the quality of the First Report *is* mixed – as described in the relevant sections, some of the submissions from the relevant agencies seem to have gone completely unchallenged, and have thus undermined the exercise. However, it should also be conceded that the report does contain quite a number of critical observations, and that it is, at least in part, an honest attempt at a comprehensive analysis and stock-taking of measures implemented. It remains to be seen to what extent the recommendations contained in the report will be implemented in the months to come.

The problem might partly lie on an entirely different level. What is crucially missing from the Program, the Action Plan, and the First Report is a clear link between the measures undertaken and to-be-undertaken, and their actual impact on levels of corruption. This echoes the criticism that had

²²⁸ *Ibid.*

²²⁹ See Batrić Krvavac, “Izvještaj o sprovođenju Akcionog plana za borbu protiv korupcije i organizovanog kriminala. Septembar 2006–Maj 2007” (Report on the implementation of the Action Plan for the Fight against Corruption and Organised Crime). At the time of writing, the report was not yet available at MANS' website (www.mans.cg.yu).

²³⁰ See in Montenegrin Deputy Prime Minister Đurović's statement of 3.8.2007 at www.vlada.cg.yu/vijesti.php?akcija=vijesti&id=25173.

been, *inter alia*, voiced by the Council of Europe experts during the drafting stages of the Program, namely that greater emphasis needs to be put on a thorough analysis of the incentives and mechanisms of corruption at present. This, in turn, might allow capturing the *real* progress made, and maybe the design and identification of more suitable follow-up measures and policies, rather than a ticking off of measures [this argument is being elaborated above (section 5.2) on the example of corruption in the Department of Public Revenues].

The lack of resources, too, is a recurring concern. As the First Report indicates, a number of measures were not implemented by agencies due to the lack of means. Yet, it is still unclear what financial amounts are in question. The question also concerns the resources available to support the work of the National Commission, on which no information had been available at the time of writing of the report.

Whether the National Commission will be judged by the Council of Europe's GRECO as fulfilling its recommendation to Montenegro to ensure the "efficient monitoring of the implementation of the anti-corruption programme through a specialized independent anti-corruption body with sufficient resources"²³¹ remains to be seen.

10.5 Directorate for Anti-Corruption Initiative

The Directorate for Anti-Corruption Initiative exists since 2001. Initially, the Directorate was the liaison between national and international counterparts, and in charge of co-operation with international organisations. A decree of the government of July 2004 on the Organisation and Functioning of the Public Administration (*Akt o unutrašnjoj organizaciji i sistematizaciji organa državne uprave*)²³² re-confirmed the mandate for the Directorate, which was also put under the supervision of the Ministry of Finance. Recommendations in the framework of the Sida-funded PACO Impact project emphasised the need to increase the independence of the Directorate, and to shift its accountability obligations away from the government to the parliament; however, no information is available as to what steps have been undertaken in this direction.

The Directorate's tasks are to "undertake promotional and preventive activities aimed at effectively combating corruption; working closely with the government towards adoption and implementation of European and international standards and instruments relevant to anti-corruption; enhancing transparency in business and financial operations; performing other activities that arise from Montenegro's membership in the Stability Pact for South-Eastern Europe (SPA) and other international organisations and institutions"; further, the Directorate is to be the interface between the citizens and the respective government institutions for complaints or information about corruption; and is to carry out any other tasks delegated to it by the relevant authorities.²³³

The Directorate provided the secretariat for the inter-institutional team drafting the Action Plan, and has now assumed responsibilities in the framework of the "Expert Body" assisting the National Commission for the Implementation of the Action Plan of the Programme for the Fight against Corruption. However, the Terms of Reference for this expert body are not available.

So far, the Directorate has worked mainly with 5 staff; thanks to external contributions (mainly through the Sida-funded PACO Impact project, and the OSCE), the Directorate was able to

²³¹ See GRECO, *Evaluation Report on the Republic of Montenegro*, p. 32.

²³² Article 18. Available in Montenegrin at www.uzk.cg.yu/publikacije/dokumenti/zakon-o-drzavnoj-upravi-i-inspekcijskom-nadzoru.pdf.

²³³ See Council of Europe PACO Impact Project document "Anti-corruption services in South-eastern Europe/Policy Advising and Coordination Bodies," PC-TC (2006) 15.7.2006, p. 38, available upon request from the Council of Europe.

temporarily employ an additional person. The Director of the Directorate is also the head of the Montenegrin delegation to the Council of Europe's Group of States against Corruption (GRECO). An internal revision of the organisational structure of the Directorate, in particular in light of the increased workload due to the Directorate's involvement in monitoring the implementation of the Action Plan, foresees an increase of staff to 10 by 2008 (a recommendation to this end was included in the First Report on the Implementation of the Action Plan). This will also require an increase in the Agency's budget which has been, in 2005, € 62,006.36, in 2006 € 73,551.05, in 2007 126,252.00 and should, in 2008, be between € 120,000 and € 130,000.

Past activities of the Directorate have included, in 2006, the organisation of a public awareness campaign (through billboards and other media), and the establishment of a telephone hotline for citizens to lodge complaints and to receive advice on legal and institutional remedies for corruption. In 2007, there has also been, in co-operation with the Ministry of Education and Media, a series of public lectures addressing university students in Podgorica and Nikšić – a first for representatives of a government agency to pro-actively reach out to the public; these educational activities are planned to be continued in the future. The Directorate also recently conducted a corruption survey, but at the time of writing this report, it was still in the process of analysing its results.

In addition to the ongoing involvement in the monitoring of the Action Plan, the Directorate is currently applying for substantial funding from the European Commission through IPA funds, and has discussed, with UNDP/UNODC, the funding for conducting research into corruption in the education and health sectors and for an in-depth analysis of the compliance of the Criminal Code, the Criminal Procedure Code, the Law on Conflict of Interest, the Law on Free Access to Information, and the Law on Public Procurement with the standards set out in the United Nations Convention against Corruption. This will enable the agency to fulfil at least part of its obligations under the Action Plan, which includes providing recommendations on the harmonisation of national legislation with international standards, and carrying out analyses and research into patterns of corruption.

The Directorate is up against a relatively ambiguous reputation. Trust by citizens is low, but this might be primarily attributable to the fact that the Directorate is seen as a “new” institution, into which respondents of the NDI survey had little confidence across the board.²³⁴ Criticism has been caused by the overall aura of opacity surrounding the institution: the absence of a clear mandate/mission statement/Terms of Reference, and, connected to this, by frequent accusations of the Directorate having been created to provide a position for a person close to the government, exacerbated by the low level of visible actual activity of the Directorate. The Directorate, in turn, has successfully argued that due to limited resources it was unable to engage in more activities. Grievances (coming from both inside the public administration and from the NGO sector) seem also have been caused by the fact that staff of the Directorate had the opportunity to travel extensively to all relevant international *fora* and events, while staff of other agencies felt that it was them who had to do the actual, day-to-day grinding technical work.

Another problem is how the Directorate sets its priorities. There is the impression that, at least in part, the path of least resistance is being chosen. Research into patterns of corruption in the health and education system might, from the perspective of the ordinary citizen, seem to be a good idea. However, there has been a recent audit of the health fund which appears not to have revealed any major irregularities; here, as in the education sector, the problems appear to be part of a bigger structural problem that is in the course of being addressed through projects by the World Bank. It would seem that there are more pressing topics at hand, as revealed in some of the surveys carried

²³⁴ See [NDI](#), “Key Findings. Baseline Poll–February 2007.”

out recently, and the choice of health and education could be seen as shying away from the really difficult themes.

Despite this, the Directorate has the potential to increasingly grow into a genuinely positive player in its own right in the fight against corruption in Montenegro. The above mentioned public outreach work, carried out by the staff of the Directorate themselves, is one case in point. There is intensified fundraising going on, the priorities for which are, at least partly, set by the Action Plan. The core staff of the Directorate has been involved in anti-corruption work for a substantial number of years now, and has been supported through capacity-building measures by a number of international organisations (Council of Europe, UNDP, OSCE etc.), which is certainly something that should be built upon for future activities.

11. Observations and Recommendations:

1. Little is known with absolute certainty about how politics and institutions function in practice, and few benchmarks exist to monitor their performance over time. There is a notable scarcity of independent quality research and analysis on one hand, and a great deal of impressions and speculations, on the other. The authors have frequently confronted opposing but equally plausible assessments of particular institutions or processes, which makes it hard to reach definitive conclusions. Yet without this information, it is difficult to design appropriate anti-corruption policies.

Recommendation:

Donors should support additional sector-specific research and analysis of corruption, including helping national institutions develop the capacity to benchmark their performance. It is also advisable to shift the emphasis from only measuring corruption to looking more at broader government performance; this means essentially moving away from detecting wrongdoing towards rewarding efficiency, transparency, and accountability.

Care should be taken, however, to provide adequate technical assistance for state institutions that lack the experience to analyse and monitor their performance (e.g. by encouraging cooperation with academic institutions or NGOs, or supporting engagement of foreign experts, if necessary).

2. While for most sectors, the performance score is somewhere in the middle, the most problematic areas tend to stand out. The government's stubborn refusal to open privatisation files leaves little space for any other conclusion than that the irregularities that have occurred in the process are massive, and that revealing them would probably come at a high political price.

Recommendation:

While it might be unrealistic, and even not advisable, to re-open the privatisation contracts of the past, donors should, wherever possible, advocate for the remainder of the process to be as transparent and possible.

3. Far-reaching politicisation of public institutions and the economic sphere is a cause for concern. Montenegro's specific historical and contextual factors require an effort beyond the application of conventional wisdom on institutional independence. Original thinking is needed about mechanisms to ensure depoliticisation of state institutions, but given the concerns about certain institutions' ability to police themselves, carefully weighing independence against accountability.

Recommendation:

Support new efforts by a wide range of stakeholders about depoliticisation and institutional accountability.

4. A number of key anti-corruption regimes is extremely poor: the conflict of interest regime, financing of political parties and electoral campaigns, and to a lesser extent, freedom of information provisions. Deficiencies in these areas have been pointed out clearly in the past

years by the European Commission, the Council of Europe, and others. However, little effort seems to have been made to bring the laws and their application in line with European standards. Dramatic reform is urgently needed.

Recommendation:

Donors and other international partners should strongly advocate the revision the legislative framework, and particularly enforcement, of conflict of interest and political party/campaign finance provisions, as well as the shortcomings in the enforcement of the freedom of information law. An investment should be made to support a considered discussion on the appropriate norms and the mechanisms for implementation of conflict of interest rules, taking into account the constraints of Montenegro's size and other contextual factors identified in this assessment.

5. Barriers to business – caused by excessive discretionary powers at the local level, the lack of a proactive information outreach policy to entrepreneurs resulting in substantial legal uncertainty, and red tape – have been pointed out for many years, but decisive reforms have been missing.

Recommendation:

There are a lot of opportunities for the provision of technical assistance that would assist the development of the private sector in Montenegro. This ranges from helping local authorities to reach out to entrepreneurs, to sharing lessons learned for the start-up of business and increasing the skills of entrepreneurs-to-be. Private sector interest groups need continued support to effectively organise and lobby for their interests. However, the government should also be reminded that it is time to make progress on more systemic reforms, and that the parameters of these reforms have been set out in past years.

6. A new constitution is being drafted, and will likely be passed in late 2007.

Recommendation:

Donors should advise on incorporating the provisions to assure a separation of powers, depoliticisation, and accountability of state institutions, with particular attention to the justice sector. .

7. The aspirations of the government to bring Montenegro to the European Union are clear. The ultimate objective has to be that Montenegrins do not only have laws, structures and institutions that, from the outside, resemble those of a European Union member state. Citizens must believe that these laws, structures and institutions are equal for everybody, safeguarding their rights and offering redress. Given that many reforms to date have been on the surface at best, and that some of the frameworks created on outside pressure have been a farce in their day-to-day work, this process will take a long time. Nevertheless, small steps, and a long-term perspective will lead to a gradual erosion of the capture of the state by the ruling party.

Recommendation:

Montenegro's EU aspirations should be used as the main instrument for advancing the political will for reform. The government's European rhetoric should be matched with holding it accountable for implementing genuine reform. Donors should make clear, where possible, that they are ready to take an in-depth look into the quality of the reforms as reported by the

government. For example, the direction in which the new State Audit Institution is moving is alarming, and these concerns should be voiced.

8. For the topic at hand, the Programme for the Fight against Corruption and Organised Crime and the Action Plan for its implementation – despite the deficiencies of both policy documents – should be one of the frameworks for the identification of technical assistance needs. The First Report on the Realisation of the Measures of the Action Plan should serve as a good basis to discuss possible interventions. An Anti-Corruption Action Plan for the local government was also being drafted at the time of writing this assessment, which will, when completed, provide an overview of opportunities to support the fight against corruption at the municipal level.

Recommendation:

Support to the implementation of the Programme for the Fight against Corruption and Organised Crime could be threefold: 1) through support of the Directorate for Anti-Corruption Initiative to strengthen their knowledge and capacity to carry out genuine monitoring of the implementation, including the adjustment of the plan in terms of measures, deadlines, and realistic and measurable success indicators; 2) through helping the Directorate for Anti-Corruption Initiative to gain a better understanding of the mechanisms of corruption in Montenegro through funding of research and analysis, but insisting that it not shy away from “difficult” areas; 3) through funding of assistance to measures of the respective agencies identified in the Action Plan, in those areas where donors can add value and has a track record of providing successful assistance. Earmark funds for supporting municipal-level reforms anticipated in the forthcoming local government anti-corruption programme.

9. In assisting Montenegro, donors will be confronted with a few dilemmas, the obvious one being that size does matter. Montenegro will inevitably have close family-business ties, and conflict of interest will almost inevitably always exist. The human resources will be limited, and institutions will suffer from small size. This affects the organisation of institutions, and it may be more practical to have a more centralised system, in fact.

Recommendation:

Technical assistance projects should, *consider these limitations in project design, including in consolidating their assistance structures rather than creating new ones or recruiting new staff, as this would contribute to drawing even more scarce human resources away from where they might be needed in the public administration.*

10. However strong family ties are, assigning posts, be it in the public or in the private sector, through these ties poses a risk to Montenegro’s competitiveness, as considerations other than merit are put first. While the way things are “traditionally” done in Montenegro might help to understand the country better, donors should not fall into the trap of accepting lack of progress on the grounds that “this is how we do things.” If Montenegro wants to be a member of the European Union, and competitive on the global level, the country *will* have to change, no matter how strong traditions are.

Recommendation:

Assist Montenegrin authorities to understand that competitiveness is essential to its future success. Support and publicise research on shifting attitudes away from the “traditional” ways of doing business to debunk these myths. There are encouraging indications that the young people of Montenegro want a more competitive system, while surveys of small business

indicate that gifts representing “conventional hospitality” are perceived as nothing more than corruption. This means that there is some ground already laid for consistently promoting merit over ties.

- 11.** Application of the laws and new procedures is also necessary to protect decent civil servants. The current disrespect for the law at the top level of political leadership is discouraging to civil servants who try to do an honest job. They might feel at the mercy of, and even instrumentalised by politicians, and do fear negative consequences should they dare to strictly comply with the legal and regulatory framework.

Recommendation:

Support whistleblower protection initiatives.

- 12.** There appears to be a growing number of young people who feel increasingly disenchanted with being outside of the networks in which decisions are taken, suggesting some potential of people who want to see the rules of the game changed.

Recommendation:

Projects should try to build on this, and there might be arguments in favour of projects specifically targeting the young, even if outside the narrower scope of corruption/anti-corruption work.

- 13.** Ordinary citizens need to be encouraged to exercise the rights provided to them by law. For the moment, many feel that their voice does not count, and even if they reported cases of abuse and corruption, nothing would happen anyway; even worse, they might suffer negative consequences.

Recommendation:

Support the design and implementation of effective mechanism to encourage and protect citizens wishing to report corruption, particularly in the form of loss of livelihood.

- 14.** The scarcity of information on the functioning of institutions, on legislation, procedures, rights and obligations, is omnipresent. Much more education does genuinely appear to be needed on many types of rules, both for state officials and general public.

Recommendation:

State institutions should be held to a higher standard of transparency. Initiatives/projects should be supported – both of NGOs and parts of the administration, such as those dealing with facilitating business development – that try to educate citizens/stakeholders on their rights (and responsibilities) and facilitate the access to the administration.

- 15.** The role of independent watchdogs – NGOs and the media – is extremely important in monitoring the reform process. Through these activities, they are gradually changing public opinion as to the new standards of behaviour and social norms.

Recommendation:

Scrutinize (and support national watchdogs in doing so) strategic development decisions such as sectoral development policies and related concessions and foster public debate on the merits of proposed policies. As many of these issues require significant technical expertise, provide independent expert evaluations of the sectors in question to augment national governmental and non-governmental policy analysis capacities.

16. The international community has been quite tolerant of the deficiencies in Montenegro's governance during the state-building process. With that process now nearly complete, time has come to decisively address governance shortcomings.

Recommendation:

Fighting corruption is a long-term prospect, and there are no quick fixes. That said, and being mindful of the structural and historical constraints that impact the pace of reforms, moving forward donors need to take a more critical stance on the delays in delivering reforms. Not doing so should not be viewed as "doing a favour" either to the Montenegrin government or its citizens, who deserve a competitive and well-governed state.

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SUMMARY

This report was commissioned by the Swedish International Development Cooperation Agency (Sida) to provide an analysis of corruption and the progress of anti-corruption activities in Montenegro, with the objective of identifying priority areas and opportunities for potential future reform efforts. As there is little existing research and analysis on this issue, Sida is supporting this study both as a part of its strategic learning, planning, and programming, as well as for use both by donors partners and relevant national stakeholders.

The aim is to provide a qualitative analysis, supported with data to the extent available, in order to describe not only the current status of governance but also elucidate the structural and political factors that have, and will continue, to impact and constrain future reform efforts. Key sectors are then treated individually in some detail, with a discussion of the government's anti-corruption programme—which can be viewed as a roadmap for future support to the fight against corruption—rounding off the analysis. The paper ends with a summary of key observations and recommendations for future reform efforts.

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