

**EXPERT REPORT ON A PEER REVIEW MISSION ON FINANCING POLITICAL PARTIES, WHISTLE-BLOWING AND
CONFLICT OF INTERESTS**

PODGORICA, 05/06/2017 – 09/06/2017

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As an expert, I have contributed to the Peer Review on financing political parties, whistle-blowing and conflict of interests in Montenegro, Podgorica, with an aim to assess the legislative and institutional framework in the area of prevention of corruption, the capacities of the Agency of the Prevention of Corruption (hereinafter the Agency), its working methods and its initial results, in particular in the core areas of its mandate by the Agency. Under the Terms of References, I had to check:

1. The Agency for Prevention of Corruption

- 1.1 Internal organization, staffing level and operational capacities,
- 1.2 Training of staff,
- 1.3 Budget,
- 1.4 Strategic planning,
- 1.5 Working methods, procedures and decision-making,
- 1.6 Equipment and IT solutions,
- 1.7 Analytical and policy activities in the area of prevention of corruption,
- 1.8 Inter-institutional cooperation and information exchange (including access to databases)
 - Cooperation with the Parliament, state administration bodies, regulatory bodies, and others
- 1.9 Legal framework,
- 1.10 Proactive work of the Agency

2. Council of the Agency

- 2.1 Appointment, integrity and work of Council Members,

3. Performance in main areas of Agency

- 3.1 Prevention of conflict of interest in the exercise of public function and restrictions in the exercise of public functions,
- 3.2 Gifts, sponsorships and donations,
- 3.3 Reports on income and assets by public officials,
- 3.4 Integrity plans,
- 3.5 Misdemeanor procedures.

Before going into the substance, the expert would like to thank the Montenegro authorities (Agency), NGOs and all others who contributed and prepared the Peer-review mission, for the meetings held as well as for the documents sent prior to and during the mission.

As an expert I was also part of previous peer review missions to Podgorica and that is why I will compare current state of play with the previous one. This will assist to identify progress made by Montenegro in the fighting and preventing the corruption in Montenegro in last few years.

1. THE AGENCY FOR PREVENTION OF CORRUPTION

Agency for the Prevention of Corruption begun with its work on 1.1.2016 as an independent and autonomous state institution. The Agency is responsible for implementation of measures for prevention of conflict of public and private interest, restrictions in the exercise of public functions, collecting and checking the reports on assets and income of public officials, receiving and acting upon whistleblower reports, protecting whistleblowers, and other issues of importance to the prevention and suppression of corruption, in accordance with the Law on Prevention of Corruption (hereinafter LPC). The Agency is also responsible for implementation of the Law on financing of political

entities and election campaigns (hereinafter LFPEEC) and the Law on Lobbying (hereinafter LL). It also gives opinion on draft laws and conducts research in the field of anti-corruption.

All acts necessary for the implementation of the Agency's competences were adopted – Council of the Agency adopted 11 by-laws, and the Director of the Agency also issued 20 internal acts within the competence of the Agency.

The Agency has two bodies: a) Director of the Agency who represent and manage the Agency and b) The Council of the Agency (hereinafter the Council).

1.1 Internal organization, staffing level and operational capacities

The Agency staff can be “divided” in three groups: a) staff from previous Commission for the Prevention of Conflict of interest (hereinafter CPCI), b) staff from previous Directorate for Anti-corruption Initiative (hereinafter DACI) and c) newly employed personnel.

According to the Act on Systemization¹ of the Agency there are 60 working positions available out of which currently 54 are fulfilled, 1 person is under the recruitment and 6 still vacant. [According to the information provided by the Agency, five vacancies have been announced since the beginning of the year of which four have been filled to date, notably one Adviser in the Section for Prevention of Conflict of interests of public officials, one Senior Adviser in the Section for Education, Research, Campaigns and Analytics, one Adviser in the Department for Human Resources and Legal Matters, and one Senior Adviser in the Department for Financial Affairs.]

According to the current Organizational Chart the agency has following divisions and Departments:

- a) Executive
 - Director
 - Director’s Advisor
- b) Council of the Agency
 - 5 members
 - Secretary of the Council of the agency
- c) Division for the implementation of measures of control of financing of political entities and election campaigns
 - Department for prevention of conflict of interest of public officials
 - Department for verification of information from the statements of income and assets of public officials
 - Department for implementation of control measures in financing of political entities and election campaigns
 - Department for initiating misdemeanor proceedings and issuing misdemeanor warrants
- d) Division for prevention of corruption, integrity, lobbying and implementation of international standards
 - Department for integrity and lobbying
 - Department for prevention of corruption, monitoring of legislation and opinions on anti-corruption regulations
 - Department for acting on reports of whistleblowers and whistleblower protection
 - Department for Education, Research Campaigns and Analytics
- e) Department of international cooperation and standards
- f) Department of Information technology
- g) Department of human resources and legal issues
- h) Department for Financial Affairs

¹ Act where it is stated how many employees institution should have in total and with what kind of profession.

Each and every department and division has its manager (the head), experts (advisors) and additional officers where needed (secretaries, archivist, etc.). **All together there are 12 heads in entire Agency. However, heads are not only managers but are also personnel who work on the substance.** Meaning – besides being expert and working on the substance, they have also managerial role (just to know who gives orders and organizes the work within department). ***This solution in practical terms is very efficient since they do not lose experts and human resources who must work “in the field”.***

Director of the Agency also forms interdepartmental groups - special working groups for the implementation of different aims. One of such example was formed group of 23 persons in 2016 who were working on different issues regarding financing the political parties. ***I assess such organizational solutions as good proactive approach of management.***

Having in mind above mentioned information regarding departments I need to express small negative finding: during the meeting with the Department for verification of information from the statements of income and assets of public officials they mentioned that they indeed have done approx. 1440 verifications (checks) of assets declaration, but unfortunately only approx. 400 have gone through in-depth cross-check analysis². The reason was that they run out of time (the year 2016 ended). ***I recommend that they reorganize this department (for verification of information from the statements of income and assets of public officials) and try to recruit 1 or 2 persons more - the work on in-depth cross-check of assets declarations is very demanding and time consuming.***

To conclude, in general I asses this organization as efficient and properly organized. What is more, I also assess the number of all personnel, for time being, as sufficient for current workload (with the small exception of Department for assets declaration).

1.2 Training of staff

The staff of the Agency had and still has some national (more or less Human Resources Administration of MNE and Public Administration Academy of MNE) and international opportunities for different educations and trainings. Especially I need to point out that during the first 6 months of the work of the Agency international expert Bećir Kećanović (former advisor to the president of the Slovenian Commission for the Prevention of Corruption) helped with different kind of assistance to director, members of Council and other Agency's personnel. Besides, strengthening of HR capacities will be / is provided through different international projects, for example: IPA 2014 Twinning project regards support to the implementation of measures of integrity; Horizontal facility of the EU and the Council of Europe for the Western Balkans and Turkey; Regional program of RAI, which aims to strengthen the institutional capacity to fight against corruption, with emphasis on risk assessment and analysis of regulations, etc.

The Agency itself has also allocated some finances for further trainings and educations of personnel. ***However, some personnel mentioned that they would like to be more educated abroad since in Montenegro nothing new can be learned. Personnel do not have many possibilities to travel to other countries on a study visits to explore and find more about other best practices. Since best practices and proper education can be obtained only in other – similar and comparative – countries and international organizations I would like to recommend that Agency (director) consider ensuring more financial means for this purpose.***

Moreover, during the meeting with the different persons working within the Agency I identified that staff has more knowledge and understanding of the basic terms as before - in previous times within CPCI. ***I assess the gained expertise and knowledge of personnel of the Agency as a major step forward in more efficient and objective work of the Agency.***

1.3 Budget

² With the term »in-depth cross-check analysis« I mean the check where everything is checked including checks for possible illicit enrichment (cross-check with all relevant databases, analysis of bank details etc.)

According to Article 95 of the LPC, funds for the operation of the Agency shall be provided in the budget of Montenegro which may not amount to less than 0.2% of the current state budget. Having this in mind the Agency had its first budget in amount of 1.541.713,54 €, but after the decision of Government 153.945,08 € was transmitted to the Office for Asset Management. Since the independence and autonomous is also conditioned with proper and own budget **this transmission could represent realistic threat to the Agency**. But after examining this issue during the meetings with the financial officer of the Agency I found that those finances (153.945,08 €) were basically for the Agency's current premises³. **Besides, director and others stated that current and planned amount of budget represent sufficient financial means for the efficient work of the Agency.**

To conclude, defining the minimum of the budget within the LPC represents good solution for the smooth and efficient work of the Agency. I identified this as another step forward since the previous work conditions and level of budget of CPCI and DACI.

1.4 Strategic planning

I found already in my first mission in Podgorica few years ago that country organizes its work with strict and formal strategies and action plans with all necessary deadlines and responsible institutions / persons. Fortunately this trend is still very notable and present - also in the work of the Agency. The main strategic documents currently valid are National strategic plan for the prevention of corruption, Action plan for chapter 23 and Operational document for areas of particular risks⁴ (integrated in Action plan for Chapter 23). For the implementation and coordination of both documents, Agency's personnel are also included - they are responsible for the measures regard anti-corruption issues. **The work is done without special critics and backward steps.**

It must be noted too, that Agency has also its annual plans: Work plan for 2016 and Work plan for 2017. When analyzing the work plan for 2017 it seems at the first look that it has very general aims with no concrete indicators. However, after reading it carefully, each aim (total 13 measures – aims) has many indicators (79 performance indicators) according to which implementation of aims for 2017 will be assessed and controlled. The aims are defined in 4 time frames: first, second, third and fourth quartile. With this regard the Agency issues quartile report about implementation of the aims / measures and publishes such reports on its web site.

One of the important strategic documents is also Annual report of the work of the Agency for 2016. The annual report is important since it includes also identified challenges, pros and cons and recommendations for the future how to minimize threats and negative issues. **However, it should be more detailed** – please see that in following part of my report.

To conclude, Agency's work is properly planned with realistic aims and deadlines. I have no further comments or recommendations with this regard.

1.5 Working methods, procedures and decision-making

According to what I hear and noticed, all input documents (letters, reports, declarations, etc.) go through the archive⁵, after which they are scanned and recorded in the electronic filing system (**Case management system**). The archive officer then electronically forwards the scanned item to the head of the department to whom it relates and at the same time copies a copy of the document to the counselor of the director who brings all the submitted files to

³ Current premises of the Agency are well equipped, spacy and modern. As such gives to the employee friendly atmosphere. However, if Agency will expand its personnel in future, premises will not be sufficient any more.

⁴ Covered areas of particular risks: health care, education, urban development, local government, public procurement, police and privatization.

⁵ Special department where documents are scanned, recorded and sent to competent persons.

the director for getting acquainted. After that the files in final stage are distributed by the heads of department to the responsible persons to work on them. When an official finished with the work on the case, s/he submits it to the head for approval. If everything is well done and prepared then the document is signed by a servant, as well as by a head of department (as some sort of control over the work of servant) – they both sign it on the left side of document. After this the document goes to the deputy director who, if everything is ok, signs it (of course if not ok, the deputy director returns it to completion). If the case is complicated then there are oral consultations with the director, or within smaller collegium. After the document is final, it is dispatched to the archive for scanning and recording to archive (and sent to competent institution, etc.).

Besides, I need to point out also, that system is not so strictly centralized (the director as final person who adopts documents), since heads of departments can also sign some documents (depends on authorization from the director).

Having in mind all mentioned, I do not have any special comments with such system. Important is that the Case management system, distribution of work and procedure regards working on cases now works properly and no special issues were identified. It is even more important that in previous years CPCI did not have so developed system as it is currently.

What is more, I need to outline also following issues regards analyzing individual cases of possible violations of LPC:

1.6 Article 34 defines that Agency must request the public official to submit a written response to the allegations. **The law does not prescribe when exactly this should be done.** Personnel who are working on allegations said that in practice they request for such written response right after receiving the signal (allegations). **In this manner I would suggest that personnel re-thinks that practice and try to seek written requests on allegations from public official at the final stage of the case due to the following reasons:** when Agency receives report / signal that something went wrong / that public official misused his powers, etc. normally Agency is the only institution and subject who has such information (besides whistle-blower) - meaning: the suspect does not know about allegations. When informing him/her about allegations, he/she may obstruct procedure, destroy "evidences", hide or transfer sth. to other persons etc. In this manner **I recommend that Agency considers to change practice of informing the suspect person in the way that Agency first (after receiving signal) collect necessary information from other sources / institutions / databases and after clearing the case (to know what is all about) and gathered information they will request the "accused person" for his written response.** This would be more efficient and secure approach towards collecting all evidences, data etc. **Equipment and IT solutions**

One of the most impressive things which I identified during the mission to Podgorica was Agency's IT system and its IT equipment. IT personnel explained that Agency has its own electronic and computer system, its own server (which is very important for gathering and analyzing necessary data and information). In this way Agency is not dependent on out-sourced institution / persons. For taking care of IT system there are three IT experts employed in the Agency for full-time.

Besides mentioned, the Agency has:

- Electronic Case Management System (ECMS) – already explained above,
 - o CSM also makes easily to search for items by various filters and more importantly it allows making different kind of statistics (also analytical tool).
- Register of all public officials,
 - o In previous practice of CPCI it was identified following:
 - register was filled by hand, what represented possibility of mistakes and such system was very time-consuming.

- person / institution – including data on received signals, violations, misdemeanor procedures, decision, opinions, integrity plans, etc.),
 - Automatically system will show graphically changes in assets through the years / within each year of all public officials,
 - Automatisation of detection of possible violations of public officials,
 - Comparison real risks (data on signals, violations, etc.) with identified risks in Integrity plans which will enable the Agency to assess whether Integrity plans includes all necessary risks and if Integrity plans were done in proper and efficient way,
 - Better and more efficient analytical tools for statistical reasons and identifying risks in country / institutions etc.
 - ***I assess such plans as realistic and easily reachable since their system and registers and connectivity with databases enables all that. This is a huge progress which was made in last year in Montenegro.***
- Special IT modules for:
 - Assets declaration system,
 - Gifts, sponsorships and donations,
 - Misdemeanor and administration procedures,
 - Financing political parties and election campaigns,
 - Lobbying,
 - Whistle-blowers (protection),
 - Reporting corruption cases,
 - Integrity plans

To conclude, I was simply positively surprised about mentioned IT system and approaches and steps taken by the Agency.

1.7 Analytical and policy activities in the area of prevention of corruption

Agency's representatives informed us about following issues regards analytical and policy activities in the area of prevention of corruption:

- Public opinion survey "Public attitudes on the issue of corruption and familiarity with the work of the Agency," was done in 2016. In this study Agency asked not only for citizens' perception of corruption but also whether citizens know Agency, its work and competences. The survey not only showed results of public opinion but also identified some recommendations and measures for the future work of the Agency. Some of the results:
 - more than 70% of citizens have heard of the Agency, and of those who have heard of the Agency, 86.1% said they knew what this authority dealt with,
 - nearly two-thirds of the population (65.4%) claims to have confidence in the work of the Agency while almost 70% of the population estimates that the Agency contributed to the overall fight against corruption in Montenegro,
 - more than 70% of respondents believe that the campaign "Not a cent for bribe" encourages citizens in combating corruption, and the Agency is in first place when it comes to the institution to which citizens report corruption.
- Analytical systems:
 - cross-checking assets declarations (more about that in the chapter regards assets declarations),
 - Mediatoolkit.com which identifies different keywords in real time in all electronic news, newspapers, etc. For time being they check only following keyword "Agencija za sprečavanje korupcije" (Agency for the prevention of corruption). **In this manner I need to recommend to the Agency that they should expand number of keywords, at least to add following: conflict of**

interest, incompatibility, whistle-blower and lobbying. With that they could more effectively identify some possible “problems” or “cases” and start working on them on self-initiation basis.

- Analysis of all integrity plans (more about that in the chapter regarding Integrity).
- Communication strategy:
 - Agency prepared communication strategy for following three years, which was done with the assistance of Council of Europe. Currently they are preparing an Action plan for implementation the strategy – the goal is to be done by July 2017. Main goals of the strategy / action plan are to inform other institutions about the obligations defined by LPC, LFPPEC and LL, informing the citizens about institutes / competences of the Agency and cooperation with media.
- Communication with citizens is organized on following basis:
 - Distribution of flyers, media campaigns, TV spots, billboards, posters etc,
 - Education for schools (high schools),
 - Anticorruption campaign: “Ni centa za mito”.

I can assess their work in the area of analytical and policy activities as proper and well done. I have no further recommendations.

1.8 Inter-institutional cooperation and information exchange (including access to databases)

I divided this chapter on areas / subjects of cooperation but only on those which were described during the meetings with representatives of different institutions / subjects as follows:

- Cooperation with NGO:
 - Director of Agency explained that they are inviting all NGO’s who are accredited for prevention of corruption and similar issues to come to Agency’s and Council’s sessions. Those sessions are in general open to public. Director also asked in written manner to sign agreements on cooperation. 3 such agreements (with three NGOs) were signed so far.
 - In general manner (director’s opinion) the cooperation is proper, however they (NGO) are very critical about work of the Agency (their expectation is very high – possible to optimistic and realistic).
 - There is one NGO⁷ which is always problematic – in last year they filled approx. 2300 signals on possible corruption (those signals were not grounded) in connection to financing political parties and electoral campaigns. These signals blocked work of the Agency a lot.
 - NGO’s stated that they are not satisfied with the cooperation of Agency, especially regards limitations to come to their sessions. They have stated that at the beginning of the work of the Agency, they were very open for NGO’s and media to be present in its sessions but later, they “closed their doors” – they adopted new rules which allegedly closed the sessions. I asked about this issue the members of the Council and they replied that so far they had 64 sessions, and only 5 of them were closed to the public. At the beginning they were working in the premises of the Parliament (in that time new premises were not yet ready for the Agency) and they were very limited with the space. Besides, Parliament had its own special rules on cooperation with the public. These were the only reasons they could not have many persons in the room during the sessions. After May 2016 they are open to public, the only condition that they have is that the cooperation should be constructive and that NGOs prior the sessions inform Council about the reasons for visiting sessions.
 - ***In this respect I do not see special criticism or negative issues regards cooperation.*** For sure Council and Director of the Agency needs positive constructive debate and they need to be

⁷ Director of this NGO is also a member Agency's Council.

careful about data protection, so I fully support that some sessions should be closed – but only if there are grounded reasons. Besides, after reading the minutes of sessions it can be noticed that sessions were open for public.

- Opinions of NGOs about work of the Agency
 - o During the mission to Podgorica we had possibility to talk with the representatives of different NGO societies. They were very negative about work of the Agency, for example:
 - Assumption that Director and 4 members of the Council are actively connected to politics,
 - Agency reported huge number of concluded cases, but unfortunately there were only low level officials under the “investigation”,
 - Huge number of verified assets declarations, but checks were done only by comparison to databases and nothing more (no in-depth analysis, no analysis of illegal enrichments, no comparisons regards movement of level of assets and incomes (changes of assets) between different years, etc.),
 - Agency is not proactive,
 - Integrity plans are not made public,
 - Agency is not enough present in the media; if Agency goes to the media, they do in on Friday, hoping no one can see the information,
 - Sanctions are not effective and high enough; the average sanction was about 250 EUR, but law states that minimum fine is 500 EUR,
 - No received signals and no cases regards conflict of interest (only incompatibility of functions). ***Since allegations are quite serious, I will comment and assess them in following text of my report where I will make my assessment of Agency’s work regards different institutes (conflict of interest, incompatibilities, assets declarations, etc.).***

- Cooperation between Director of the Agency and Agency’s Council
 - o Opinion of the Agency:
 - I have asked director about possible pressures by Council on his work, and he stated that at the beginning Council wanted to adopt a bylaw with the aim to enlarge its competences, but director was against and decision was not adopted. ***No other “critics” about cooperation was mentioned or identified.***
 - Agency has currently under the process of the case of a Member of Council (Vanja Čalović, NGO representative) who allegedly did not meet all conditions to be appointed as a member of Council. Agency already sent decision about violation to the Council for further proceedings. ***I recommend to European Commission to follow-up this procedure, due to the possible negative effect on reputation.***
 - o Opinions of the members of the Council:
 - On the other hand, members of a Council did not have any special observations or “criticisms” with this regard. They assess work of the Agency as efficient and successful. Members adopt(ed) all proposed acts / analysis / reports without special comments or worries.

- Cooperation with other bodies and institutions, especially police and prosecution services
 - o It was identified that such cooperation exists on daily basis and that employees of the Agency do not have any special comments on that. ***However, it seems that dialogue is more present from police and prosecution services towards the Agency and not so much vice versa. Meaning: Agency receives lots***

of demands and requests for documents / data about public officials from police and prosecution, but the Agency does not have so many cases or other information to share with police / prosecution. The reason, as explained by the employees, is that Agency did not identify possible criminal acts during their work. After examining the annual report we can see, that only 10 cases were sent to the prosecution and 18 cases to other competent institutions.

- ***To conclude, it seems that cooperation exists but for more precise evaluation of its quality we need to have more in-depth insight (to receive also information from other institutions).***

- Cooperation with international organizations and foreign countries

- With this regard we were informed that Agency is a focal point for all relevant international organization and they communicate with them when needed. I asked them whether they had any cases where they would need to ask for bank details or real estate information in foreign countries. **Till now, no such cases were identified.** They pointed out that they probably are not able to seek and ask for this information since they have no competences abroad.

- ***In this manner I would recommend to Montenegro, if they have such cases, use the UNCAC convention which defines in Article 60 and Article 61 obligations for state parties to exchange information between them.***

- Cooperation with media

- During the meeting with NGO we found that ***Agency is not enough present in the media and its cooperation with them is not sufficient.*** Since the presence of anti-corruption agencies in media and in society all over the world is very important I checked this issue in more detailed manner. What I found out is that they give 95% all of their decisions, documents and information on their web-site. ***So basically everything is publically available but unfortunately it is hard to find information. The web site is nice but it is not user friendly enough. Besides, The Agency does not have often proper press conferences to inform public about important findings, analysis and its proactivity. The problem is that the results of the Agency are in my opinion very good ones, but unfortunately this is not well presented amongst the public.*** For example: Agency had many proactive projects (they open many cases on their own initiation; they made good analysis of assets declarations with the aim to identify possible incompatibilities of functions, they have done analysis of all Integrity plans, they have very good analytic platform, etc.) but no special press conferences were made about that. ***Such self-promotion is needed in Montenegro, since citizens and other civil organizations expect a lot from the Agency.*** What is more, the Agency prepared annual report regards its work in 2016 and there is also lack of concrete and proper visibility / promotion of information about proactive approach of the agency.

Unfortunately lack of proper organized media campaigns / reports / notifications about self-promotion negatively affected on the Agency's reputation. I urgently recommend to the Agency to prepare and up-date communication strategy for cooperation with media and to be more proactive and loud in media campaigns and press conferences, especially regards their successes and proactive approaches and good results.

- Access to different databases which are needed to cross-check assets declarations

The Agency verifies and compares the data in its possession with the data from various electronic databases. Since January 2017, the Agency has a special system (ESB platform) that allows access to electronic databases of other bodies directly from the information system of the Agency and in real time.

Electronic exchange and comparison of data in real time is done with:

- Ministry of Interior (data on movable property - passenger and cargo vehicles, motorcycles and weapon),
- Tax Administration (information on all taxable incomes of public officials and members of the households, wages and incomes on all basis);
- Central Registry of Business Entities (data on the shares in the companies, advocacy powers and responsibilities in the management);
- Real Estate Directorate (data about the owners of real estate, charges and restrictions, basis of acquisition, year of entry);
- By the end of the first quarter of 2017 electronic exchange and verification of data in real time will be established also with the Commission for the securities with whom is currently performed exchange of data on holders of rights of ownership of securities, bonds and other stocks and shares and shares in legal entities available to the Central Depository The Agency.

- The electronic data exchange with the State Audit Institution, the Public Procurement Office and the Ministry of Transport, is planned, which will be further discussed with these institutions.
- The Agency also does not have access to the Registry of criminal records and National Gazette (this is needed if Agency wants to have up-dated register of all public officials).

The Agency has access to information on bank accounts and accounts of other financial institutions only with a written consent of public officials and civil servants (information system of the Agency is not connected to the electronic databases of banks). In 2016 consent to access to their accounts was given by 3.250 (73%) of public officials and 938 (76%) of civil servants. ***With this regard the Agency is blocked to do proper in-depth analysis of assets declarations and possible changes in wealth of the public officials who do not give the written consent to the Agency. In this manner I strongly recommend to the Montenegro to amend LPC in a way that Agency will have free access to bank accounts / details of public officials and their family members.*** Having access to such data enables the Agency to perform its proper and efficient work regards controlling assets declaration. In need to point out that in 2016 the Agency carried out verifications at all commercial banks in Montenegro for “only” 361 public officials and concluded that public officials over whom it carried out verifications (all judges, prosecutors, deputies and ministers who agreed reported cash transactions) that are identical as the data registered in their property records. ***However, the problem still exist when the Agency will need to check officials who did not agreed for the accession to their bank details.***

If I compare accession to different databases from previous times (CPCI) ***I can find out that situation has improved a lot.*** Back in CPCI times they had for example only one digital certificate to access to the Ministry of interior’s database – this certificate was installed on the CPCI’s president’s computer. In practice that meant that employer who needed to check if public official has a car he/she had to wait for available computer. What was more – employees of CPCI had to check all data separately in different databases. The cross-check was not possible at the same time and in real time. ***Now this is done almost in automatic manner. ESB platform enables that all cross-checks are done in one place, on all computers without special procedures and efforts. System enables synchronized view – to easily check accordance of the declared data.***

- Cooperation with misdemeanor courts

In the times of the CPCI it was found and grounded that misdemeanor procedures were not effective and system represented long way from effective, proportionate and dissuasive sanctions. The previous Law on the prevention of conflict of interest defined the minimum fine of 300 EUR (now 500 EUR), **but in practice in the majority of cases written warnings were imposed instead of fines.** The reason why there were such minor sanctions was, according

to the comments of the CPCI's representatives and the president of the Misdemeanor Council, the possibility of the Misdemeanor court (judges) to impose such sanctions due to mitigating circumstances (the seriousness of the offense, nature of consequences, health and financial reasons, etc.) - such mitigating circumstances are possible according to the Law on the misdemeanor procedures. ***Unfortunately a consequence of such legal framework and practice was that sanctions did not have any preventive effect.***

Contrary to compared times, now the situation is a little better: the new LPC defines much higher sanctions (minimal sanction is now 500 EUR (before 300 EUR). The courts unfortunately have more or less the same practice (imposing sanctions below the minimum), but the average sanction is, due to the higher sanctions, higher than before (approx. 250 EUR). What is getting better nowadays is also that in cases where the Agency appealed against the first instance decisions of the Misdemeanor court or where the first instance courts find that public officials are not guilty or they ruled milder sentences, second instance courts – Misdemeanor Council in most of the cases, reversed such first instance decisions and issued fines⁸. What is more, hearings and communication with Misdemeanor courts is now, as employees of the Agency mentioned, better – employees can also join the hearings in the courts what makes them possible to “influence” the judge to increase sanctions – fines. ***I asses as a major step forward also the actions of the Agency which now demands / suggest to the courts to take (confiscate) illegal enrichments (for example – if person was in incompatibility his/her “salary” / compensations were illegally gained). In 2017 they had already 5 such cases, 1 ruling is concluded and benefit was “confiscated”.***

To conclude, I assess all efforts and actions by the Agency (and of misdemeanor courts) as a major step forward – system is now more efficient as it was before. However, my recommendation would again be (as was in the last mission) that Agency considers issuing misdemeanor orders. Such idea was given to me two years ago from the president of the Misdemeanor Council.

1.9 Legal framework

During the meeting with the Agency's employees and Council's members we discussed also about possible negative issues in current LPC. The most critical issues which were identified by the employees themselves (and I agree with all of them) were following examples:

- Article 12 defines that a public official may not be a president or member of the management body or supervisory board, executive director, member of management of public companies, public institutions or other legal persons. The problem here is that term “member of a management of ...” is not defined and in practice this represents difficulties.
- Article 12 para 2 does not include above mentioned “members of a management” and it should.
- Law does not give powers to the Agency to receive bank details without limitations.
- To expand the definition of public officials.
- Subsidiarity of the LPC.
 - o The Agency is not only responsible to seek and analyze conflict of interest / incompatibilities regulated by the LPC but also if other laws regulate it (conflict of interest/incompatibility). In this manner the employees also apply other laws. On one hand this is a very good practice but on the other hand this makes the work of the Agency very hard since employees need firstly to identify possible law which regulates conflict of interest / incompatibility or not. So far they identified 28

⁸ Unfortunately I need to point out that I did not get statistical data on the number of cases appealed and the outcome of the appeals.

laws which have such regulations. What is more, they check also Ethical codes if regulations on conflict of interest / incompatibilities exist.

Members of Council explained too, that they ordered to the Director of the Agency to appoint working group which will analyze the LPC with the aim to identify loopholes, uncertainties, undefined terms, missing issues etc. and to draft amendments to it.

Besides, Twinning project MN 14 IPA JH 01 16 regarding integrity issues started in May 2017 and will last for 18 months. One of the objectives of this project is to assess efficiency of LPC and efficiency of implementation of LPC with the aim to identify possible loopholes and other negative parts of the LPC and to prepare amendments.

I analyzed the whole LPC – attached to this report is LPC with my comments, recommendations and thoughts.

1.10 Proactive approach of the Agency

One of the measures according to which we assess successfulness and effectiveness of anti-corruption institutions all over the world is how proactive they are – e.g. how many cases they open on their own initiation, how many project / analysis were done etc.

During the meeting with representatives of the Agency I found following proactive approaches:

- On the request of the Agency, Tax administration filtered (and used data from Central register of citizens) all public officials and their family members who earned any kind of extra / additional finances which were taxed (as for being members of some boards, additional contract work, etc.). In that way Agency received number of possible violation of the LPC (LPC defines restrictions for public officials for receiving extra financial means). In this manner the Agency could and can also in future automatically identify possible violations, and that is something very important and effective. With such work Agency is showing to officials that it is not worth violating the law due to the automatized identification of violation.
- Agency opened 20 cases on its own initiation by cross-checking information about different working bodies and information about public officials who are members in such working bodies. According to this, the agency controlled 3 things: if public official declared information that he/she is member of working group, if this additional function is payed or not and whether functions are compatible or not.
- Agency initiated 11 procedures for determining the existence of threats to the public interest that indicates the existence of corruption ex officio.
- Agency opened 49 cases where assets and incomes changed in the value more than 5000 EUR.
- Etc.

I can say that Agency had done many proactive projects and opened on its own initiation many cases. In this manner I assess its proactivity on high level.

2. COUNCIL OF THE AGENCY

One of the bodies of the Agency is Council of the Agency. It has 5 members who were elected by the Parliament on the proposal of the working body responsible for anti-corruption affairs. The Council has more or less advisory role towards the director / Agency and adopts documents on the proposal of director. Its competences are:

- Announce a competition for the selection of director of the Agency, appoint and dismiss the director of the Agency;
- Adopt:
 - Statute and the Act on internal organization and jobs classification of the Agency,
 - Annual work plan of the Agency,
 - Proposal for the budget and statement of accounts,
 - Rules governing the work of the Agency and the rules for the preparation and implementation of Integrity Plans,
 - Rules of Procedure of the Council,
- Takes initiatives for improving the work of the Agency to the director of the Agency;
- On the proposal of the director of the Agency, submit an Annual report on work of the Agency;
- Verify data from reports on income and assets of director of the Agency and
- Perform other duties prescribed by the Statute of the Agency.

The Council holds meetings which are open to public, however representatives of the civil sector have to submit a request to be invited to attend the Council's sessions.

I have no further comments or recommendations on the work of the Council, however I have some issues regards reputation of the Council. As we heard and identify there were many proceedings concerning Council members, for example:

- Proceeding regarding member of the Agency Council, Radule ŽURIĆ is completed. As a reminder, the former Commission for Prevention of Conflict of Interest, in December 2015, decided that the Radule Žurić violated the Law on conflict of interest, because as a state auditor he performed the function of a member of the Council of APC. The Administrative Court, pursuant to the lawsuit against Žurić in December 2016 issued a judgment annulling the decision KSSI as illegal.
- The case relating to the member of the Council Bojan Obrenović was not in connection to his membership in the Council of APC. Basic Court in Podgorica overturned the decision of the Agency for protection of personal data and the free access to information on employment termination of Obrenović and ordered the Agency to allow him to return to work and performing his job as the Director of this institution. Procedure is still pending.
- Director of the Agency in several sessions of the Council expressed doubts about the eligibility for election of one member of Council to the function. As a reason he stated that at the time of the election, she did not have ten years of service with high education, which was one of the three cumulative conditions for appointment to the post. As a response to these statements, MANS in September 2016 addressed to the Agency a request for initiating proceedings to establish whether Vanja Čalović's appointment was in accordance with the Law on Prevention of Corruption. In January 2017, MANS sent an urgent letter, and later submitted a Lawsuit to the Administrative Court because of the silence of the Administration. The Court has asked the Agency for a statement on the allegations. In response to the Lawsuit, the Agency on 9 February 2017, provided an explanation of the reasons for failure to comply with the request. Case is still pending.

All such cases and allegations are affecting the reputation of the Council and at the same time of the Agency. In those cases we need to wait until final decisions are taken.

3. PERFORMANCE IN MAIN AREAS OF AGENCY

3.1 Prevention of conflict of interest in the exercise of public function and restrictions in the exercise of public functions

LPC defines a) prevention of conflict of interest in the exercise of public functions and obliges public officials to declare written statements of conflict of interest and b) restrictions in the exercise of public function which includes restrictions on performance of other public affairs, c) transfer of management rights in companies, d) limiting exercise of managerial and other functions in companies and exercise of public functions in public companies and public institutions. Amongst that law prescribes obligation of public officials to resign if needed, limits contracts on services and business cooperation and regulates restrictions upon termination of public function (revolving doors). ***Such legal framework I assess as proper and sufficient enough.***

Agency has for controlling and implementing such regulations special Department for the prevention of conflict of interest of public officials which has 3 employees.

When I have started to ask about cases of conflict of interest, the situation – replies from the representative of conflict of interest – were the same as in previous peer review from 2015: I was receiving the replies about incompatibilities and other restrictions of public officials and not about conflict of interests which is defined and regulated in Article 7 and 8 of the LPC (officials who do not exclude themselves from the procedures / send their written notifications about conflict of interest). However, after mentioning this, situation changed and I received proper replies. At the end of the day, ***I need to assess that now employees understands the concept of conflict of interest, but due to the lack of such cases in practices and numerous of incompatibilities (where also private interest has key role) they use term conflict of interest also for incompatibilities.***

Article 8, Paragraph 4 of the LPC defines that authority where official declared his private interest must request the opinion of the Agency – official cannot do anything until the Agency brings the opinion. In practice there were only 3 such cases. Even worse, there was not even one case regards Article 8 paragraph 6 of the LPC, which defines that authority must put decisions out of the force if official acted in conflict of interest. Representative of the Agency does not have objective explanation why there are no such cases but believes that this is because people are not aware of such obligations / regulations. ***In this manner I recommend raising awareness amongst public officials and citizens about different situations of conflict of interests, what does conflict of interest represent and how to recognize it.***

Agency issued in 2016 **185 written opinions:**

- 91 cases regards Article 12, paragraph 2 (restrictions in exercising of public functions in public companies and public institutions)
 - o public officials who violated this provision were the most often councilors,
- 27 cases regards status of public official (if person is public official or not),
 - o Majority of cases were in local communities,
- 24 cases for Article 12, paragraph 5 (restrictions in acquiring incomes or other compensation),
- 18 cases regards Article 9 (incompatibilities of functions),
- 12 for Article 7 (conflict of interest),
- 3 cases for Article 8 (informing other participants in written manner regards conflict of interest),
- etc.

We can see that Agency mainly works on cases regarding incompatibilities, ***other issues are not covered at all***. Such conclusion again confirms my upper recommendation about raising awareness. ***What is more, above mentioned legal opinions are unfortunately not publically available. I found this very problematic since opinions, as I had chance to review them, are very well prepared and could, if publically available on Agency's web site, provide for added value in raising awareness. I recommend to the Agency to find a way to anonymize those opinions and put them on the website.***

Statistics:

- After giving 185 opinions (which are obligatory for public officials / institutions) and opened administrative procedures the agency issued 224 decisions amongst which 75 public officials resigned from their functions, and the authorities suspended 26 public officials. ***In my opinion, for the country with 600.000 citizens, such number is quite big. This means that Agency implements anti-corruption regulations properly.***
- Agency also answered (replies which are not binding) to 106 questions about different issues concerning conflict of interest and incompatibilities of functions.
- Besides given opinions, the Agency also worked on 63 administrative procedures (7 were opened based on received signals, 8 were opened based on Agency work regards giving opinions and 48⁹ cases were opened on self-initiation basis) out of which 58 cases are already concluded¹⁰.

In addition, during the meeting with NGOs we heard lots of negative critics that Agency is not proactive – that the Agency does not open cases on self-initiation basis following media articles – media allegations. NOGs presented me some most important articles / news on possible conflict of interests / incompatibilities which, on their opinion, Agency has not checked them. ***After I presented these cases to the Agency I found that Agency checked them all and in majority of cases Agency found no violations.***

I assess the number of concluded cases and especially cases opened on self-initiation as higher than in previous times, and in this manner I can see the progress. However, numbers are not the most important criteria in evaluating the effectiveness of the work of the Agency. ***One additional criteria is also what kind of public officials were “investigated” and sanctioned at the end of the day.*** I have requested from the Agency to prepare me the ten most often “investigated” public officials. Those are the followings (from the most often to the rarest):

1. Members of the management boards at the local administration level,
2. Members of the administrative committee at the state level,
3. Directors of public institutions (schools),
4. Local municipality's members,
5. Members of the councils of public institutions,
6. The members of the municipal election commissions,
7. Deputy members of the municipal election commissions,
8. Members of tourist's organizations,
9. Advisors to Vice Presidents of the Montenegrin Parliament and
10. The Directors of business entities.

We can see that Agency investigated only low-level public officials. The reasons were not identified. I recommend to the European Commission following this issue in the future. Higher the number of high-ranking officials

⁹ Those 48 cases were opened due to the proactive approach of the Agency: they cross-checked the data which are available in different databases.

¹⁰ In 2017 (1.1.2017 – 10.5.2017) 29 administrative procedures were opened and 25 already closed. The Agency received also 13 demands for the opinion.

investigated will be, the higher will be reputation of the Agency. I recommend to the Agency to focuses more on the high-profile public officials.

Some other negative issues with regard conflict of interest / incompatibilities:

- Since Agency has efficient analytical tool and proper insight in different databases ***I found strange that Agency worked only on 2 cases so far regards Article 14 of the LPC*** (prohibition of making contracts and business between authority where officials performs his functions and company or other legal person in which the public official and person related to him have a private interest). Identification of such violations could be done (with the assistance of Tax administration) by cross-checking data from above mentioned databases. **I recommend Agency to consider running such analysis.**
- Agency is not the institution which would be responsible and competent to control conflict of interest in whole country for all public officials. For example, Agency cannot run procedures regards conflict of interests within the public procurements, due to special law (law on public procurement) defines other control body (Administration for public procurements / Commission for control of public procurements as second instance). ***Such decentralized system could lead to different approaches, different practices and different "rules" for one thing (conflict of interest). I recommend considering having one centralized system with one competent body which could in general sense control the implementation of conflict of interest regulations).***

3.2 Gifts, sponsorships and donations

a) Gifts

According to the LPC public officials may not accept money, securities or precious metal in connection with the exercise of public function, regardless of their value, however officials can accept protocol and appropriate (***word appropriate is used in official English version of the LPC, but it is not proper word, in Europe and worldwide the right word is "occasional"***) gifts. Appropriate gift is defined as a gift to the value of € 50. If, within a year, a public official receives more than one appropriate gift from the same donor, the total value of such gifts may not exceed the amount of € 50, and if a public official receives gifts from several donors in this period, the value of such gifts may not exceed € 100. The LPC defines also that such prohibitions also apply to married and common-law spouses and children of public officials if they live in the same household. If officials receive gifts above the threshold (and s/he could not refuse it) than such gift shall become state property. Besides, such gifts must be recorded in special register. ***I can assess the regulation on gifts as proper in line with European standards and best practices and I have no further comments.***

In practice we could see that officials are not declaring appropriate (occasional) gifts but only protocol gifts. In register they have total 96 registered information of received gifts – 18 occasional gifts, 72 protocol gifts and 6 which could not be refused (and became state property). What is the reason for so small number of occasional gifts we did not receive information. Besides, the Agency did not have any case regards improper gifts or similar. **In this regard I recommend to Agency to raise awareness amongst citizens and officials regards prohibition and rules for receiving the gifts.**

b) Donations and sponsorships

LPC regulates also restrictions on receiving donations¹¹ and sponsorships¹². With this regard, a public official may not conclude a sponsorship agreement or receive donations in his own name or in the name of the authority in which he performs a public function, which affect or could affect the legality, objectivity and impartiality of work of the authority. An authority shall, by the end of March of the current year for the previous year, submit the Agency with a written report on received sponsorships and donations, with a copy of the documentation related to these sponsorships or donations. The Agency keeps a register of sponsorships and donations. ***I assess the mentioned restrictions and regulations as proper and well written – I do not have any further comments or recommendations.***

In practice we can see that in 2016 Agency has received information on 72 sponsorships and 254 donations. ***There were no violations.***

Common issues for gifts, sponsorships and donations:

- I need to point out one more thing which is important and makes system even more efficient: all forms and registers are in **electronic forms**. That means that public officials and public institutions declare received gifts, donations or sponsorships in electronic form – via internet and all data goes automatically to the proper registers.
- There is **only one person** in Agency who is responsible for gifts, sponsorships and donations.
- Control is done in the way that employee analyses and checks in details complete documentation on donations and sponsorships was carried out. There were some cases that Agency asked for additional explanation, **however no violations were found.**

3.3 Reports on income and assets by public officials

In accordance to the new Rulebook on internal organization from January 2017, two new departments are established in the Agency, one of them is the Department for verification of income and assets of public officials and civil servants with prescribed obligation to submit reports on income and assets. This department has 4 employees, one head and 3 experts. ***According to the huge number of assets declarations and time consuming analysis I can assess there is not enough personnel in this department. This was confirmed also by employees who said that they could not cross-check all planned assets declarations in time (for 2016). I recommend to have at least one or two more persons who will work on the substance (tracing illicit enrichments, cross-checks the assets and incomes, etc.).***

All public officials must submit to the Agency a Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household on following occasions:

- within 30 days of assuming the function,
- once a year, by the end of March of the current year for the previous year;
- in the case of changes of assets of more than € 5,000, within 30 days of the date of change;
- at the request of the Agency,
- in the case of termination of public function, within 30 days of termination of the function,

¹¹ Donation means the transfer without charge or unencumbered transfer of certain material or non-material goods, movable or immovable property to authorities.

¹² Sponsorship means the transfer of certain material or non-material goods, movable or immovable property or other services to the authorities in exchange for oral or written references or advertising a sponsor's logo or the sponsor's product logo or other services.

- two years after termination of the function.

I find these obligations proper and in line with international recommendations and best practices.

Report (assets declarations), which must be declared in prepared electronic form and in writing, shall contain following assets and incomes:

- Personal data of a public official and family household,
- Data about the public function exercised,
- Data on assets and income of the public official and family household, especially on:
 - Ownership rights over immovable assets and lease rights over immovable assets for a term exceeding one year, in the country and abroad;
 - Ownership rights over movable assets whose value exceeds € 5,000, or that are required to be registered with the competent authorities (motor vehicles, vessels, aircrafts, etc.);
 - Ownership rights over the immovable and movable assets of a company, institution or other legal person owned or established by the public official;
 - Deposits in banks and other financial institutions in the country and abroad;
 - Stocks and shares in a legal person or other securities;
 - Cash in the amount exceeding € 5,000;
 - Rights arising from copyrights, patent and similar rights, intellectual and industrial property;
 - Debt (principal, interest and repayment) and receivables;
 - Sources and amount of income from the exercise of scientific, educational, cultural, artistic and sports activities;
- Membership in the management bodies and supervisory boards of public companies, public institutions and other legal persons with a share of capital owned by the state or municipality, as well as in scientific, educational, cultural, artistic, humanitarian, sports or similar associations.

Although assets declaration contains proper information, there is one critical point: for the purpose of verification of the data from the Report, a public official **may** give consent to the Agency for access to data on bank accounts and accounts of other financial institutions, in accordance with the law governing banking operations. Agency already had problems with not receiving written consents and due to that Agency could not have done in-depth analysis of assets and incomes of public officials. In this manner **I recommend to removing possibility for public official to decide whether to give or not a written consent but instead of that change law governing banking operations to define that Agency will be one of the institutions which can receive bank details for the purpose of cross-checking assets declarations without the need for written consent by the official in question.**

All data from public officials is kept in special registry. What is more, all data from the Register is published on the website of the Agency, except for information relating to:

- Personal information, except the names and surnames;
- Address of immovable assets;
- Children of public officials under the age of 16;
- Alimony and other income or payments on the basis of social and child welfare.

All these data are easy to find on Agency's web site. I found this obligations and practice well done. I have no further recommendations.

Process of verifying data from assets declarations

According to the LPC, the Agency verifies the data from the Reports by comparing these data with the data collected on the assets and income of public officials from authorities and legal persons who hold such data. In this regard Agency has already prepared and set up special platform ESB and all databases from competent institutions (the institutions which possess necessary information) are gathered there. I have already described and explained this system above in my report.

In general they have three levels / systems of control:

a) Software control

- This is the first control of declared data. The Electronic form for declaring assets and incomes is done in the way that it checks whether something is not filled or it is filled in the wrong way. If public official does not know how and what to fill, form gives tips and help in real time and in very efficient way.
- When the form is filled public official firstly submits the data online. Then, s/he needs to print and sign it and sent it to the Agency. The electronic and printed form have the same bar code which enables matching both forms when received by the Agency.
- If both forms are the same, system verifies data and synchronize it with previous declared data (if there was already some declaration from this public official) and computer pop-ups red flags whether something is different as before / as first declared data.
 - i. For example, if official gives different name of his/her function, than computer asks Agency's employee which function is "primary" (the right one) function.

b) Administrative control

- This is the second control which is about checking the accuracy of declared data – if electronic version is the same as printed one, if signed, dated, etc. This is completed for every received statement without exception.

c) In-depth (full check) analysis:

- In-depth analysis enables to find out if submitted data corresponds to actual data and seeking for illicit enrichment and origin of assets and incomes,
- This analysis is done according to the **annual plan**. This annual plan is based on special methodology which represent a written decision of the Agency that they will check assets and income declaration following priority order (decreasing order from the most important ones to less):
 - i. State public officials (president, Prime Minister, President of Parliament, Members of Parliament and Members of Government),
 - ii. Local public officials ((vice) presidents of local administrations, (vice) presidents of local governments, etc.),
 - iii. Public officials whose function was terminated,
 - iv. Public officials who needs to declare assets one year after the termination of their functions,
 - v. Public officials who did not declare accurate and complete data in their report,
 - vi. Public officials who reported the change of data declared in the report that exceeds EUR 5000,
 - vii. Judges and prosecutors.
 - This is the first Annual plan for 2017) which contains also choosing officials on random sample - they filter officials on alphabet order and take each 10th person from each category of public officials. **I assess this "up-dated" methodology with random sample as major step forward in making controls more objective.**

- Based on this Methodology, Agency adopted Annual plan of checks of assets declarations of public officials for 2016 and 2017. For 2016 Agency had plan to check 1440. At the end of the year statistical data was following:
 - i. A total number of 1,473 reports of public officials were verified as well as 174 reports of civil servants. By initial verification, irregularities were found at 49 public officials and 25 civil servants (for reporting inaccurate and incomplete information).
 - ii. Consent to access bank accounts gave 3,250 (73%) of public officials and 938 (76%) of civil servants.

According to the so huge number (1473 + 174) of in-depth analysis of assets declaration I needed to check this practice little bit closer. I found out that all 1473 + 174 officials (their assets and incomes) gone under software and administrative control, but only at 361 persons Agency checked also incomes / finances within bank accounts. **For the rest of persons (1473 + 174 – 361 = 1286) the time run out! That simply means that Agency was, is and will be able to do real in-depth control only for approx. 400 persons per year. And this is objective number and plan. The most important in this area is that Agency does not perform “records” in numbers but “records” in in-depth analysis. It is better to plan only 300 persons per year and that those are checked in proper and in-depth way (seeking for illicit enrichment, movement of assets, searching for origins of assets, etc.). I recommend to the Agency that employees do not try to beat the “numbers” regards administrative and software control, but try to make as much detailed in-depth controls of officials on random sample as possible, where they should include: searching for illicit enrichments, changes/movements of assets and incomes, identifying origins of incomes / assets, cross-checks with all possible databases, etc. I also recommend that Agency is careful how they are presenting statistical data – the information that they have checked in-depth 1473 + 174 officials is not accurate, since they have done “only” 361 officials.**

What is more, I found out that Agency cannot cross-check movement of assets and incomes of individual official since this is the first year after LPC was adopted and in this manner the Agency cannot compare previous assets declaration of officials. That means that 2016 was starting point for Agency to control and analyses declared assets and incomes. This unfortunately is a major critical point – law should state that Agency can use previous assets declaration with the aim to identify possible changes in assets etc.

What is also interesting is that, they will soon not need to check assets declarations, changes of incomes and assets etc. manually since ESB platform will make this possible - computer will do also such checks.

What is also well done is that Agency checks also assets and incomes (assets declarations) of public officials’ family members.

They had also 49 cases where they have analyzed and asked about origins of assets and incomes. This was done in proactive manner: firstly they filtered assets declarations by declarations where public officials declared changes in their assets and incomes for more than 5000 EUR. They have identified 49 such declarations and changes. In this manner they have asked officials to explain and send the proof of origins of such changes (more than 5000). In all cases they have sent proper “evidences” from where and how they have obtained such assets / incomes.

In previous times it was critical issue that CPCI after identifying that public official did not declare accurate and complete declaration ask him/her to correct the mistakes. Meaning, with letting public official to correct his/her mistakes CPCI did not sanction him/her / start with the misdemeanor procedure. **However, now the situation is not the same anymore.** According to the explanation of employees, Agency does not start with the misdemeanor

procedure if there are grammatical mistakes. But if there are other »mistakes« Agency is not asking to correct mistakes but starts with administrative procedures immediately. ***I assess this as a step forward to more efficient system of sanctioning and controlling accuracy of assets declarations.***

The most common errors which were identified in submitted assets declarations are shown in the table below:

Nature of errors	Number of errors in 2016	Number of errors in 2015
Without PIN	0	83
Without address	0	11
Without mentioning function, date of beginning and termination of function	0	9
Without signature	0	8
Declared data was not accurate	0	206
Failure to timely submitting the declarations	240	
Other (bad hand-writing, misspellings, etc.)	/	135

We can see that electronic forms helps – officials do not skip or miss demanded space in forms to be filled. Also e-form eliminated other errors – bad handwriting, misspellings etc.

ESB platform for checking assets declarations:

In this point I need also to describe the efficiency of the ESB platform which makes possible in very efficient way cross-checks of data from report and data from databases. This is done in following way:

Control of income and assets of official's starts with the search of the official, where the official can check different issues. Red flag are displayed even before running controls. It means that computer itself notices some errors or important issues. When the officer sees the red flag, electronic control starts to compare all the data from property records with data obtained from other institutions.

Step 1. The red flag with passing over red flag can be seen on pc tackle the case. In this case is to the **performance of other public functions**, as shown in Fig.

Funkcioner	Bar kod	Broj predmeta	Pod kontrolom	Aktuelan	Datum skeniranja	Verifikovan	Državni službenik	Datum podnošenja	Aktivnosti
FRJ	0200005772166	014-08-A-02-01-4-4521-16	Ne	Ne	12.04.2016	Da	Da	30.03.2016	[Red Flag]
BOŠA	0200006883168	014-08-A-02-01-4-5260-16	Ne	Ne	13.04.2016	Da	Ne	30.03.2016	[Red Flag]
DVAK	0200005078169	014-08-A-02-01-4-3546-16	Ne	Ne	11.04.2016	Da	Ne	29.03.2016	[Red Flag]
linka	0200004565165	014-08-A-02-01-4-3267-16	Ne	Ne	07.04.2016	Da	Ne	28.03.2016	[Red Flag]
ro	0200004221160	014-08-A-02-01-4-5052-16	Ne	Ne	14.04.2016	Da	Ne	28.03.2016	[Red Flag]

Step 2 Entering the asset card of the same officials will look at what is marked where the system has found a violation.

Naziv funkcije/djelatnosti	Izvor prihoda	Mjesečni prihod			Ukupan godišnji prihod	Period obavljanja djelatnosti		Akcije
		Vrsta mjesečnog prihoda	Mjeseci kada je ostvaren	Neto iznos		Datum početka	Datum prestanka	
Član - Stručni tim za realizaciju projekta rekonstrukcije bazena u Rikšiću	Ostalo	Drugi prihod	April Maj Jun Jul Avgust Septembar	500	3000.00	01.04.2015	-	⚠
Član - Stručni tim za praćenje realizacije projekta izgradnje restorana na Crnom jezeru	Država	Drugi prihod	Augst Septembar Oktobar Novembar Decembar	400	2000.00	01.08.2015	31.12.2015	⚠
Član - Tenderska komisija	Država	Drugi prihod	Septembar	55	55.00	01.08.2015	30.08.2015	⚠
predsjednik - Konkursna komisija	Država	Drugi prihod	Januar Februar Mart	640	1920.00	01.12.2014	01.03.2015	⚠

Case 1 – running electronically offense

Naziv oblasti	Datum *	Moguće kršenje zakona *	Komentar	Ukupan godišnji prihod	Period obavljanja djelatnosti		Akcije
					Datum početka	Datum prestanka	
014-08-A-02-01-4-2862-16	28.01.2014	150		1800.00	28.01.2014	-	⚠

Case 2 - Control

Additional control is carried out through a separate module in the information system where there is a possibility of comparing property cards handed over by an official, where, for example, an asset or a comparison of each property card will be monitored, in particular with the data obtained through the ESB platform from other institutions.

There are two ways of comparing this:

- comparison of the current report and the previous year's report,
- comparing the data from the report that the official has provided with the data from the databases of other state authorities, through the ESB platform.

Case 2.1 - comparing the property of two assets declaration (from 2016 and 2017), where system shows income reported in these years.

2016
2017

Kontrola prihoda i imovine - Izmena

Zatvaranje

Izveštaj za kontrolu (Izmena podataka u izveštaju nije moguća)

Izveštaj za poređenje | 2016-12-02

Naziv funkcije/djelatnosti	Izvor prihoda	Mjesečni prihod	Ukupan godišnji prihod	Period obavljanja djelatnosti	Akcije
Nije pronađen nijedan rezultat					
Ukupno: 0.00					

3.2 Prihodi na osnovu članstva u radnim telima

Naziv funkcije/djelatnosti	Izvor prihoda	Mjesečni prihod	Ukupan godišnji prihod	Period obavljanja djelatnosti	Akcije
Nije pronađen nijedan rezultat					
Ukupno: 0.00					

3.3 Prihodi, premije i dobiti na osnovu drugog posla, djelatnosti, aktivnosti, rente ili drugih izvora

Naziv djelatnosti / izvor prihoda	Privredno društvo, ustanova, organizacija, samostalna djelatnost, slobodna profesija	Mjesečni prihod	Ukupan godišnji prihod	Akcije
Osnovna plata	Privredna društva	Vrsta mjesečnog prihoda Osnovna plata	Mjeseci kada je ostvaren Oktobar	Neto iznos 193
Ukupno: 193.00				

3.4 Prihodi na osnovu članstva u organima upravljanja naučnih, nastavnih, kulturnih, umjetničkih, humanitarnih, sportskih ili sličnih udruženja

Naziv udruženja	Naziv organa upravljanja i nadzornog organa	Status	Mjesečni prihod	Ukupan godišnji prihod	Akcije
Nije pronađen nijedan rezultat					
Ukupno: 0.00					

3.5 Prihodi na osnovu autorskih, patentiranih i ostalih prava intelektualne svojine

Vrsta prava	Mjesečni prihod	Ukupan godišnji prihod	Akcije
Nije pronađen nijedan rezultat			
Ukupno: 0.00			

Sinhronizovani pregled

Izveštaj za poređenje | 2017-03-31 | Imovinski karton

Naziv funkcije/djelatnosti	Izvor prihoda	Mjesečni prihod	Ukupan godišnji prihod	Period obavljanja djelatnosti	Akcije
Poslanik - Skupština Crne Gore	Država	Vrsta mjesečnog prihoda Osnovna plata	Mjeseci kada je ostvaren Novembar	Neto iznos 1332.85	1332.85 07.11.2016 -
Poslanik - Skupština Crne Gore	Država	Vrsta mjesečnog prihoda Osnovna plata	Mjeseci kada je ostvaren Decembar	Neto iznos 1529.4	1529.40 07.11.2016 -
Ukupno: 2862.25					

3.2 Prihodi na osnovu članstva u radnim telima

Naziv funkcije/djelatnosti	Izvor prihoda	Mjesečni prihod	Ukupan godišnji prihod	Period obavljanja djelatnosti	Akcije
Nije pronađen nijedan rezultat					
Ukupno: 0.00					

3.3 Prihodi, premije i dobiti na osnovu drugog posla, djelatnosti, aktivnosti, rente ili drugih izvora

Naziv djelatnosti / izvor prihoda	Privredno društvo, ustanova, organizacija, samostalna djelatnost, slobodna profesija	Mjesečni prihod	Ukupan godišnji prihod	Akcije
Projektant - dizajner	Privredna društva	Vrsta mjesečnog prihoda Osnovna plata	Mjeseci kada je ostvaren Januar Februar Mart April Maj Jun Jul Avgust Septembar Oktobar	Neto iznos 193
				1930.00
Ukupno: 1930.00				

A further control is carried out through a special module in the information system in which there is a possibility of comparison of property records submitted by the official, where, for example, accompanied with an increase of the property or the property of each card in comparison with the data obtained in particular by means of the ESB platform from other institutions.

Case 2.2.1

Comparison of data from assets declaration that the official has provided with the data from vehicle database the Ministry of internal affairs, through the ESB. On this example, we can see on the left property card the data that the official has provided to the Agency, and on the right there are data on the vehicle of official from the Ministry of internal affairs vehicle database. On the right side we can see that platform ESB provides red marked data – that is the data the official has not provided.

Data received from officials – vehicle ownership

VIOLATION!!!

Lični podaci		Članovi porodice		Javna funkcija koju vrši javni funkcioner		Prihodi		Imovina		Ostalo	
4.1 Nepokretna imovina u zemlji i inostranstvu											
Opština	Katastarska opština	Broj objekta (broj/podbroj)	Broj posebnog dijela (broj zgrade)	Broj posebnog dijela (PD)	Vrsta, Struktura, Površina	Adresa, Mjesto, Država	Prava, Vlasnički udeo	Osnov sticanja	Nosilac prava (vlasnik/zakupac)	Godina sticanja	Akcije
Nije pronađen nijedan rezultat											
4.2 Pokretna imovina za koje je potrebna registracija											
Kategorija	Marka/Vrsta/Tip	Godina proizvodnje	Godina prve registracije	Osnov sticanja	Registarski broj	Ime i prezime vlasnika/zakupca	Akcije				
Motorna vozila	SsangYong rexton	2003		Kupovina	BPB8936	Količ Dženan					
Motorna vozila	Fiat Scudo	2004		Kupovina	BPB8590	Količ Dženan					
4.3 Ostala pokretna imovina čija vrijednost prelazi 5000 €											
Vrsta stvari	Osnova sticanja	Ime i prezime vlasnika	Detaljni opis	Procenjena tržišna vrijednost	Akcije						
Nije pronađen nijedan rezultat											
4.4 Gotovi novac u iznosu većem od 5000 €											
Vrijednost	Iznos Valuta	Ime i prezime vlasnika	Akcije								
Nije pronađen nijedan rezultat											

Data - vehicle data base from Ministry of internal affairs

Lični podaci		Članovi porodice		Javna funkcija koju vrši javni funkcioner		Prihodi		Imovina		Ostalo	
4.1 Nepokretna imovina u zemlji i inostranstvu											
Opština	Katastarska opština	Broj lista nepokretnosti/posjedovnog lista	Broj objekta (broj zgrade)	Broj posebnog dijela (PD)	Vrsta, Struktura, Površina	Adresa, Mjesto, Država	Prava, Vlasnički udeo	Osnov sticanja	Nosilac prava (vlasnik/zakupac)	Datum sticanja	Akcije
Nije pronađen nijedan rezultat											
4.2 Pokretna imovina za koje je potrebna registracija											
Kategorija	Vrsta/Marka/Tip	God. proiz./Prve /Poslednje reg.	Osnov sticanja	Registarski broj	Ime i prezime vlasnika/zakupca						
Motorna vozila	PUTNIČKI AUTOMOBIL SSANGYONG REXTON II 5 186HPA/T	2007 / 05-06-2007 / 14-03-2017		BPB8525	Količ Dženan						
Motorna vozila	TERETNO VOZILO CITROEN BERLINGO 1.9 D	2002 / 09-10-2008 / 23-06-2010		BPAR671	Količ Dženan						
Motorna vozila	PUTNIČKI AUTOMOBIL FIAT 220	2004 / 19-05-2015 / 25-05-2017		BPB8590	Količ Dženan						
Motorna vozila	PUTNIČKI AUTOMOBIL SSANG YONG REXTON 2.9 TD	2003 / 04-11-2015 / 07-12-2016		BPB8936	Količ Dženan						
4.3 Ostala pokretna imovina čija vrijednost prelazi 5000 €											
Vrsta stvari	Osnova sticanja	Ime i prezime vlasnika	Detaljni opis	Procenjena tržišna vrijednost							
Nije pronađen nijedan rezultat											
4.4 Gotovi novac u iznosu većem od 5000 €											
Iznos	Valuta	Ime i prezime vlasnika									

Case 2.2.2 :

Comparison of data from property card that the official has provided, with the data from the Real estate database, through the ESB. On this example, we can see on the left property card with the data that the official has provided to the Agency, and on the right there is a data on the real estate ownership of official from the Real estate authority database. On the right side there is a red marked data that the official has not provided.

Data received from officials – Real estate ownership

VIOLATION!!!

Lični podaci		Članovi porodice		Javna funkcija koju vrši javni funkcioner		Prihodi		Imovina		Ostalo	
4.1 Nepokretna imovina u zemlji i inostranstvu											
Opština	Katastarska opština	Broj objekta (broj/podbroj)	Broj posebnog dijela (broj zgrade)	Broj posebnog dijela (PD)	Vrsta, Struktura, Površina	Adresa, Mjesto, Država	Prava, Vlasnički udeo	Osnov sticanja	Nosilac prava (vlasnik/zakupac)	Godina sticanja	Akcije
					Stan, 75 m2		100,00	Kupovina		1990	
4.2 Pokretna imovina za koje je potrebna registracija											
Kategorija	Marka/Vrsta/Tip	Godina proizvodnje	Godina prve registracije	Osnov sticanja	Registarski broj	Ime i prezime vlasnika/zakupca	Akcije				
Motorna vozila	VW Golf	2003		Kupovina	BD AS 776						
4.3 Ostala pokretna imovina čija vrijednost prelazi 5000 €											
Vrsta stvari	Osnova sticanja	Ime i prezime vlasnika	Detaljni opis	Procenjena tržišna vrijednost	Akcije						
Nije pronađen nijedan rezultat											
4.4 Gotovi novac u iznosu većem od 5000 €											

Data - from Real estate authority database

VIOLATION!!!

Real estate that is not reported to the Agency

Lični podaci		Članovi porodice		Javna funkcija koju vrši javni funkcioner		Prihodi		Imovina		Ostalo	
4.1 Nepokretna imovina u zemlji i inostranstvu											
Opština	Katastarska opština	Broj objekta (broj/podbroj)	Broj posebnog dijela (broj zgrade)	Broj posebnog dijela (PD)	Vrsta, Struktura, Površina	Adresa, Mjesto, Država	Prava, Vlasnički udeo	Osnov sticanja	Nosilac prava (vlasnik/zakupac)	Godina sticanja	Akcije
Bijelo Polje	BLIŠKOVO	105	04 / 0	0	Parcela, zadržak 5. klase, 3513	Bare, Crna Gora	Susvojina, Više Osnova		BLIŠKOVO, 1/5		
Bijelo Polje	BLIŠKOVO	205	045 / 0	0	Parcela, zadržak 5. klase, 3128	Bare, Crna Gora	Susvojina, Više Osnova		BLIŠKOVO, 1/5		
Bijelo Polje	BLIŠKOVO	205	04 / 0	0	Parcela, zadržak 5. klase, 2004	Bare, Crna Gora	Susvojina, Više Osnova		BLIŠKOVO, 1/5		
Bijelo Polje	BLIŠKOVO	105	47 / 0	0	Parcela, zadržak 5. klase, 26009	Bare, Crna Gora	Susvojina, Više Osnova		BLIŠKOVO, 1/5		
Bijelo Polje	BLIŠKOVO	200	043 / 0	0	Parcela, zadržak 5. klase, 3137	Bare, Crna Gora	Susvojina, Više Osnova		BLIŠKOVO, 3/30		
Bijelo Polje	BLIŠKOVO	182	791 / 0	0	Parcela, zadržak 6. klase, 34013	Bare, Crna Gora	Svojina, Nasljede		BLIŠKOVO, 1/1		
Bijelo Polje	BLIŠKOVO	182	792 / 0	0	Parcela, zadržak 6. klase, 3516	Bare, Crna Gora	Svojina, Nasljede		BLIŠKOVO, 1/1		

Case 2.2.3:

Comparison of data from property card that the official has provided with the data from the CRPS. On this example, we can see the left property card with the data that the official has provided to the Agency, and on the right there is a data on the share ownership of other legal entities of official from the CRPS database (Central register of business entities). On the right side there is red marked data that the official has not provided.

Data received from officials – Share owned by other legal entities

Data – share owned by other legal entities – from CRPS database

VIOLATION!!!

Legal entities ownership that is not reported to the Agency

ESB subsystem

It is possible to directly access the ESB subsystem, which is further possible to check the history of a vehicle by registration number.

ESB ASK Moduli sistema ▾

Ručno pozivanje servisa

Imovinski karton

Istorija vozila

Istorija vozila

Poziva web servis /api/v1/MUP/vozilo koji prikazuje podatke o istoriji vozila vlasnicima i registracijama na osnovu važeće registrarske oznake.

Registrarski broj * :

Generiši istoriju vozila

Result of any search shows the date, name of the owner and his personal identification number

ESB ASK Moduli sistema ▾

Ručno pozivanje servisa

Imovinski karton

Istorija vozila

Istorija vozila

Datum i vrijeme generisanja: 30-01-2017 8:35

Registracija vozila: PGEL290

Godina proizvodnje: 2005

Marka/Vrsta/Tip: RENAULT PUTNIČKI AUTOMOBIL MEGANE 1,5 DCI

Aktuelni vlasnik: Srđan Damjanović

JMBG (PIB) aktuelnog vlasnika: 0608987210565

Napomena: Istorija vozila je generisan na osnovu dostupnih podataka u MUP-u. Prikazani podatci su aktuelni podaci dostupni u trenutku pokretanja izveštaja.

Poruke:

- Uspješana pretraga vozila u MUP-u po registraciji
- Uspješana pretraga istorije vozila u MUP-u

Istorija vozila			
Registracija	Datum registracije	JMBG (PIB) vlasnika	Naziv vlasnika
PGEL290	08-03-2013	2602992215019	Biljana Marković
PGEL290	28-03-2014	0608987210565	Srđan Damjanović
PGEL290	03-04-2015	0608987210565	Srđan Damjanović

DATA PROTECTION - ESB

The admin module of the ESB application providing info , with **users** of the information system requested some information and **when**, even when it **received** data, because of protection of personal data.

ID	URI	Korisnik	App Korisnik	Status	Vrijeme Upita	Vrijeme Odgovora
364	/api/v1/MUP/vozilo/MKaa482	srđjan.damjanovic	—	OK	01/30/2017 8:47 a.m.	01/30/2017 8:47 a.m.
363	/api/v1/MUP/vozilo/MKAB482	srđjan.damjanovic	—	OK	01/30/2017 8:46 a.m.	01/30/2017 8:46 a.m.
362	/api/v1/MUP/vozilo/MKAA591	srđjan.damjanovic	—	OK	01/30/2017 8:45 a.m.	01/30/2017 8:45 a.m.
361	/api/v1/MUP/vozilo/MKAA482	srđjan.damjanovic	—	OK	01/30/2017 8:44 a.m.	01/30/2017 8:44 a.m.
360	/api/v1/MUP/vozilo/POEL290	srđjan.damjanovic	—	OK	01/30/2017 8:35 a.m.	01/30/2017 8:35 a.m.
359	/api/v1/MUP/vozilo/POEL290	—	—	FAIL	01/30/2017 8:35 a.m.	01/30/2017 8:35 a.m.
358	/api/v1/ASK/ImovinskiKarton/0608987210565	srđjan.damjanovic	—	OK	01/30/2017 8:29 a.m.	01/30/2017 8:29 a.m.
357	/api/v1/ASK/ImovinskiKarton/2706956283016	srđjan.damjanovic	—	OK	01/30/2017 8:24 a.m.	01/30/2017 8:24 a.m.
356	/api/v1/ASK/ImovinskiKarton/2706956283016	—	—	FAIL	01/30/2017 8:24 a.m.	01/30/2017 8:24 a.m.

The system owns also a lot of modules that are not presented, for example:

- Register of public officials,
- Register of gifts,
- Register of sponsorship,
- Register of donation,
- Register of lobbyists,
- Offense proceedings,
- Administrative proceedings,
- Dossier of officials,
- DMS,
- eArchive,
- whistleblower case system.

When I saw this system working in practice I was absolutely positively astonished. This ESB platform makes cross-checks very efficient and fast. System is also very user friendly and guarantees also high security demands. I found this system as a one of the best practices across the Europe which enables automatically identifying red flags – possible violations with regard to assets declarations. What is more, agency's IT specialists are also preparing update of this system which will show increase / decrease of assets and incomes of each and every public officials. When this will be done, Agency will be able to identify red flags also regards illicit enrichments.

3.4 Integrity plans

LPC defines obligation that each and every public sector authority must adopt an Integrity Plan containing measures to prevent and eliminate opportunities for the emergence and development of corruption and providing confidence of citizens in their work (hereinafter: Integrity Plan). **It is the risk assessment management tool which has its roots in international ISO standards and best practices.** Also the obliged content (an assessment of exposure of an authority to corruption and other forms of violation of integrity, a description of jobs and activities that are particularly susceptible to corruption and other forms of violation of integrity, types of risks of corruption and other forms of violation of integrity, existing control measures, preventive measures for reducing the risk of corruption and other forms of violation of integrity and the deadlines for their implementation and information on the person responsible for the preparation and implementation of the Integrity Plan) which is defined in the LPC follows the standards and other best practices. ***The system itself has good basis in the law and bylaw with some exceptions. For example: the law does not define the term “authority”, Agency cannot know in each and every moment which institution is obliged to adopt Integrity plans, law does not define that Integrity plans must be sent to the Agency in electronic form, etc.***

When the LPC was adopted, Agency has prepared templates / models of Integrity plan: for health sector institutions, social affairs institutions, local municipalities and general model (for the ministries etc.). ***Models were prepared to help the institutions to prepare efficient and better Integrity plans. Besides, Agency also prepared two questionnaires’ – one for state institutions and one for local institutions. Questionnaires were prepared to help institutions how to identify risks and counter measures etc. I can assess this assistance of the Agency as proper step towards the institutions – however, such assistance could also lead to more passive approach of the institutions.*** For example: if institutions have model according to which they prepare Integrity plans, then they could just follow points in the model and nothing more. Such assistance has its pros and cons and it is on the agency how to “control” this matter in practice.

Statistics: In 2016 Agency received total of 665 integrity plans, and 669 authorities appointed the managers of integrity. The Agency made so far already 64 recommendations on draft of submitted integrity plans for the purpose of their improvement. Officials of the Department of integrity and lobbying carried out 510 consultations with the authorities regarding making of integrity plans, 16 trainings and 26 working meetings were held. In 2016 there were already 56 misdemeanor procedures due to the institutions did not prepared and sent Integrity plans to the Agency. ***I can assess that Agency has done already huge job with regard to the Integrity plans.***

What is more, the Agency has prepared a report on the adopted integrity plans in 2016, which contains a sector analysis of integrity plans. Meaning, totally of 665 integrity plans, which were adopted last year, **were analyzed** and classified in 10 sectors: 1. Justice, 2. Education 2. Health care 4. Social and child protection, 5. Culture 6. Public administration and other state bodies, 7. Local self-government units, 8. Public services whose founder and majority owner is the State, 9. Public services whose founder and majority owner are municipalities, and 10. Independent and regulatory bodies. Most of the sectors were divided into subsectors in respect to be able to formulate appropriate recommendations. The report of the analysis is part of annual report of the Agency for 2016. To be able to do this, Agency asked all institutions to send Integrity plans in electronic form.

Such analysis was done manually – Agency’s employees have recorded indicators / issues in Microsoft Excel sheet and after that they could filter and prepared statistical and substantive report. In this manner following results were gained:

- they have analyzed not only statistical indicators but also quality of the Integrity plans and if risks and counter-measures were identified in proper way,
- 331 Integrity plans were returned to the institutions to prepare and adopt Integrity plans again,
- they have identified the most common risks in each sector – where are the problems, where possibility of corruption and other violations is the most possible, and according to that, they could recommend competent state institutions how to overcome those risks,
- they have identified the most common risks on state level,
- they have identified many recommendations for institutions and other competent authorities.

Agency's plan for the near future is to have special platform also for Integrity plans (currently they are already testing the system) and electronic system for sending the Integrity plans. When this platform will be finished, Department for Integrity could easily filter and compare different institutions and risks within the institution, and what else – they could be able to control and measure how institutions overcome the risks etc.

I can assess the legislative framework and its implementation in practice as satisfactory and well done. I do not have any further comments on the work regards that.

3.5 Misdemeanor procedures

In 2016 Agency imposed a total of € 105,352 fines for violations of the Law on Prevention of Corruption and the Law on financing of political parties and election campaigns. **I need to say that this number is awesome for such small country with approx. 600.000 inhabitants.** If I can compare, for example, in Slovenia, which has 2 MIO inhabitants, Commission for the Prevention of Corruption imposed a total 18.140 EUR fines¹³ for violations of the Law on Integrity and Prevention of Corruption in 2016.

Agency's Department of misdemeanor proceedings filed in total 807 requests for initiating misdemeanor proceedings in 2016. Of these, 435 requests were submitted for violating provisions of the Law on financing of political entities and electoral campaigns, and 372 for violation of the provisions of the Law on Prevention of Corruption.

Detailed statistics of requests for misdemeanor procedures:

	Not submitting assets declarations	Proactive project – analysis of additional financial gains	Analysis of assets declarations: not accurate and wrong data in assets declarations	Other procedures for made violations in 2015
Number of requests for initiating misdemeanor procedures against public officials	272	49	40	356

¹³ Source: Annual Report of the Commission for the Prevention of corruption for 2016. Available at: <https://www.kpk-rs.si/sl/komisija/letna-porocila>

Number of concluded cases in 2016	212	34	24	356
Number of issued fines	141	24	11	161
Number of written warning	39	4	6	64
Total value of issued fines	38.270 EUR	6.965 EUR	2.570	35.032
Average fine issued:	<u>271 EUR</u>	<u>290 EUR</u>	<u>234 EUR</u>	<u>218 EUR</u>

According to the above mentioned information, ***we can identify that average fine which was imposed to the public official for violating anti-corruption provision was 253 EUR, although the law prescribes the fines ranging from 500 EUR to 2000 EUR. That simply means that misdemeanor system in Montenegro is not effective since imposed penalties are mild, below the legal minimum¹⁴ and not enough to dissuade public officials from violating anti-corruption laws in Montenegro. I recommend to the Montenegro to consider this very critical issue regards not-effective sanctioning system.***

What is more, the Law on the Misdemeanor procedures defines in Articles 50 and 51 that nobody can obtain benefit acquired with the misdemeanor and that such benefit must be confiscated. ***Agency should initiate confiscation of property by initiating misdemeanor proceedings, however such cases remains very low (5 in 2017 and no information for 2016). I recommend to the Agency to be more active in this area and try to initiate the confiscation of illegal property in every case where possible. I recommend also to the European Commission to follow up on this issue in future.***

However, we must be very clear that even though current system is not-effective, we can still see the improvements and progress since the previous times (time of CPCI):

- fines prescribed by the Law on the prevention of corruption are now bigger and that also means that average imposed fine is bigger than before,
- Given the circumstances of individual proceedings, the Agency lodges lots of complaints against the decision of the Courts of appeal to the High Court for offenses for sentencing below the legal minimum respectively warnings;
- Amount of fines for offenses related to the conflict of interest initiated by the competent department of the Agency in 2016 amounted to € 82,837, which is considerably more than in 2015, when it amounted to € 50,045;
- In 2016 there were fewer requests for initiation of offence proceedings than in 2015, and the amounts of fines in 2016 were higher than in 2015;

I can agree that this means that ***penal policy of the courts is stricter and that public officials more respects the law***, as evidenced by the decreased number of warnings imposed on public officials, which in 2016 was 117, while in 2015, was 166.

¹⁴ However this is according to the courts practices and considering mitigate circumstances.

CONCLUSION

In very short terms I would like to point out that **situation in the manner of legislative framework and implementation in practice in Montenegro in the area of anti-corruption is better and I can identify significant progress in comparison with the previous years.** Montenegro has now for the first time a very good Law on the Prevention of Corruption (which is in line with international standards, conventions and best practices) and independent and autonomous anti-corruption state institution (Agency for the Prevention of Corruption) with proper human resources, premises and financial, organizational and IT resources.

Especially I need to point out interesting, efficient and promising IT system which enables automatization of identification of violations, very good connectivity with other databases and cross-checks of assets declarations in real time using special so-called ESB platform. Platform will shortly be up-dated with all necessary modules (for integrity plans, register of public officials and institutions, etc.) with the aim to have all data and information (internal and external) available with one click on public official or institution. With this regard I can find Agency's IT solution as a best practice which should present a role model for other countries.

The second issues which represent a huge progress comparing with previous years is the proactive approach of the Agency. Namely, the agency has done on self-initiation basis many projects with the aim to identify possible violations of the Law on the Prevention of Corruption, for example: identification of incompatibilities, restrictions or receiving additional finances and public threats, cross-checked and search for origins of the public official's assets and incomes, analysis of all Integrity plans, etc. With such steps Agency is showing to the public its proactivity and that violations can be easily identified.

What is more, in comparison with the anti-corruption system before the Agency was established, there are many other improvements and steps forward in more efficient prevention of corruption, for example: higher level of knowledge and expertise of Agency's personnel, defined minimum budget for Agency, working Case management system, electronic forms for different institutes (assets declaration, gifts, sponsorships, etc.), stricter sanctions and higher numbers in statistics.

However, there are still some discrepancies and critical issues, for example:

- lack of Agency's personnel in main fields, especially within department for assets declarations,
- lack of possibilities for education of Agency's personnel (especially abroad),
- weak cooperation with public and media (Agency should promote in best possible manner its good results, proactive projects and crucial findings about violations),
- Agency cannot obtain bank details from banks without public officials' written consents,
- misdemeanor procedures are still not effective and system represented long way from effective, proportionate and dissuasive sanctions,
- not user-friendly web site of the Agency,
- reducing reputation of the Agency due to the integrity issues of the members of Council and allegedly connection with the politics,
- lack of high profile cases (statistics shows that Agency investigated in majority only low level officials),
- subsidiarity of the LPC (decentralized system of conflict of interest and incompatibilities),
- cross-check movements of assets and incomes of individual official cannot be done for the period before 2016 (Agency started with work on 1.1.2016) – prohibition of retroactive use of laws (LPC),
- inefficient system for identifying public officials and authorities which are obliged to prepare and adopt integrity plans (Agency must manually check Official Gazette to identify new public officials and institutions).

In this manner I identified following main recommendations and considerations for the future:

- to reorganize Department for verification of information from the statements of income and assets of public officials and try to recruit 1 or 2 persons more since the work of in-depth cross-check of assets declarations is very demanding and time consuming,
- to consider ensuring more financial means for education of Agency's personnel abroad,
- to consider changing "investigation" practice and try to seek written requests on allegations from public official at the final stage of the case and not at the starting point for the sake of protection of evidences,
- to expand number of keywords within "Mediatoolkit" since Agency currently can search media articles and publications only with one key word ("Agencija za sprečavanje korupcije" – Agency for the Prevention of Corruption) – they could at least add following keywords: conflict of interest, incompatibility, whistleblower and lobbying,
- to consider issuing misdemeanor orders,
- to consider using the UNCAC convention regards collecting of information regards assets and incomes in foreign countries,
- to prepare and up-date communication strategy for cooperation with media and to be more proactive and loud in media campaigns and press conferences, especially as regards Agency's successes, proactive approaches and good results,
- to amend LPC in a way that Agency will have free access to bank accounts / details of public officials and their family members,
- to make Agency's opinion publically available using anonymisation of such documents,
- to focus more on high profile officials,
- to consider having one centralized system for conflict of interest and incompatibilities with one competent body which could in general (national) level control the implementation of such system,
- to raise awareness amongst citizens and officials regards prohibition and rules for receiving the gifts and conflict of interest,
- change annual plans in the way that Agency will not try to beat the "numbers" regards administrative and software control of assets declarations, but to try to make as much detailed in-depth controls of officials on random sample as possible, including searching for illicit enrichments, changes/movements of assets and incomes, identifying origins of incomes / assets, cross-checks with all possible databases, etc.,
- to consider solving ineffective sanctioning system.