REPORT
ON
FINANCING OF POLITICAL PARTIES
AND ELECTION CAMPAIGNS IN MONTENEGRO

PEER-REVIEW MISSION

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TABLE OF CONTENTS

1. INTRODUCTION

This Report analyses the system of financing of political parties and election campaign financing in Montenegro. The assessment has been prepared on the basis of implementation of the new legislation adopted by the Country.

In January 2015, the ***Law on Financing of Political Entities and Election Campaign*** (hereinafter: *The Law*) came into force. One year later, in January 2016, another law entered into force: the ***Law on Prevention of Corruption***, which established the ***Agency for Prevention of Corruption*** (hereinafter: *Agency*), taking over the control from the *Directorate for Anti-Corruption Initiatives* and the *Commission for the Prevention of Conflicts of Interest*.

A comprehensive overview of the state of play and assessment of the Montenegro's performance regarding control of financing of political parties and elections campaigns so far, with particular focus on the work of the ***Department for Implementing Control Measures Funding of Political Parties and Election Campaigns*** (hereinafter: *Department*) of the Agency, is also included in this Report.

In addition, the Report provides guidance and recommendations, which may assist Montenegrin stakeholders to further improve the capacities and performance of the Agency in the area of financing of political entities and election campaigns.

The Report organizes the assessment of the financing of political parties and election campaigns in terms of:

- Legislative framework
- Working methods
- Internal and legal procedures
- Capacities and general performance
- Recommendations for further improvement.

The present report also refers to the following:

1. Legal framework of political parties and election campaign financing:
   a) ***Law on Prevention of Corruption***, in force since 1 January 2016
   b) ***Law on Financing of Political Entities and Election Campaigns*** (hereinafter: *The Law*), in force since 1 January 2015
   c) ***Law on Election of Councillors and Representatives*** (hereinafter: *Election Law*)
   d) ***By-laws***:
      i. ***Instruction*** *on content of the report* ***on contributions from legal and natural persons*** *to political entities in the course of election campaign*

ii. ***Instruction*** *on the form for the report* ***on origin, amount and structure of funds collected and spent*** *from public and private sources in the election campaign* ***for election of member of parliament and councillors***

iii. ***Instruction on*** *the manner and* ***procedure for reporting and resolving complains*** *filed in the course of the election campaign*

iv. ***Rulebook on the manner of exercising control*** *of political entities and control and supervision during election campaign*

v. ***Rules on*** *the manner of* ***accounting and reporting on in-kind contributions*** *to political entities*

2. Other documentation (evaluation reports, recommendations, reviews, etc.)
   a) Report of the Council of Europe Group of States Against Corruption (GRECO - 3rd Round Evaluation)
   b) Montenegro Parliamentary Elections 2016, OSCE/ODIHR Election Observation Mission Final Report, January 2017
   c) Report on Implementation of Action Plan for Chapter 23, MANS, February 2017
   d) Recommendations for Improvements of Work of Agency for Prevention of Corruption through the Review of Conclusions published in the report on the control over parliament elections, Andelija Lučič, Dragan Koprivica, January 2017
   e) Facts and Prejudices. Financing of non-governmental organisations and political parties from public funds. Centre for Civic Education (CCE), 2016
   f) Agency's Report on supervision conducted on election campaign during Parliamentary election and municipal elections held in October 2016
   g) Work plan of the Agency for prevention of corruption for 2017, Agency for Prevention of Corruption, February 2017
   h) An Overview of information on activities of the agency for prevention of corruption for the European Commission

3. Meetings held in Montenegro (5-9 June 2017) with:
   a) The Agency,
   b) Employees involved in control of political entities and election campaign finance in the Agency,
   c) The Council of the Agency,
   d) The State Audit Institution,
   e) The Representative of the Council of Europe,
   f) Non-Governmental Organization (*CeMI, MANS, CDT, Institut Alternativa*).

The main findings of the peer review can be summarized as follows:

It has to be admitted that *The Law* contains many ambiguities and *The Law* as a whole appears very illogical and inconsistent with regard to many aspects. In particular, this results in difficulties in application and control of its implementation.

The schemes on how the amount of public financing is calculated, how the limit on spending is determined, as well the system of reporting, appear particularly complex. These aspects add uncertainty and ambiguity amongst Montenegrin authorities who apply *The Law*. Not to mention the lack of public understanding of funding mechanisms, awareness of transparent allocation and use of public resources, as well as the real cost of the election campaign.

The provisions of *The Law* are clear neither to the Agency (as supervising institution) nor to the participants in the elections and public. On the contrary, and according to the criteria of good legislation, the regulation should be clear and undisputed-by those who are associated with it.

There are many complaints (mainly from the civil society's stakeholders) towards the Agency, in terms of quantity and quality of its work. Nevertheless, it should be admitted that the Agency could not meet all the demands (in other words, to satisfy every expectation - even those that touch interests) because of many ambiguities in the overall regulation of this area.

The main identified issues are:

1. ***The Law* misses a section on Definitions and clear terminology**, such as "election campaign", "election campaign period", "authorities/bodies", "legal entity" "contributors", "responsible person", "tasks of the responsible person", "liability of the responsible person"… only to mention some. Wherever a definition/description of some terms appears in *The Law*, it is often poor.

2. **The day of calling for elections coincides with the day of the start of the election campaign and at the same time the day of submitting of the list of candidates comes later and is too close to election day** (this results in the absence of any period of preparation before the official start of the campaign).

3. ***The Law* does not determine** at all:

- when the election account should be opened
- when the responsible person should be designed/appointed
- when a political entity becomes participant of the election campaign

4. The **division between incomes / expenses for regular activities and for election campaign** is problematic.

5. **Contribution from legal entities especially as in-kind contributions** is objectively a problem rather than problematic.

6. *The Law* is considered / used as a tool in solving the problems that are encountered in the **state/municipal authorities regarding the misuse of their funds**.

7. **Transparency/publicity of published information** available for the society is voluminous and it is difficult for a reader easily arrive to the full conclusions/to the main figures.

8. The **Agency/employees are not skilled in presentation/public speaking**.

9. The quantity of information received by the Agency appears to have brought the Agency to **simply check the formal submission of documentation and relevant content rather than to check the veracity of the figures**.

10. **The Agency**, as supervising institution, **is not empowered to impose sanctions**.

The first year of the Agency's work has been a serious challenge and an opportunity to test the new legislation in practice.

Great results were expected from the Agency during the first year of operations, since 4 Municipal (2016 and 2017) and 2016 Parliamentary elections were held. The lack of good experience and a number of uncertainties in *The Law* have not allowed the achievement of adequate results, yet.

As last, the expert feels to thank the Montenegro authorities (the Agency, the Council of the Agency, the State Audit Institution) and the European Commission for the preparation of the peer-review mission, the meetings held and for the follow-up documents sent prior to and after the end of the mission.

2. AGENCY AND IMPLEMENTATION OF MEASURES TO CONTROL THE FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS

The Agency is a newly established independent State Institution that began operating on 1st January 2016, pursuant to the Law on Prevention of Corruption. The Agency supersedes the ***Directorate for Anti-Corruption Initiatives*** and the ***Commission for the Prevention of Conflicts of Interest***.

It should be admitted that the first year of the Agency's work has been a serious challenge and an opportunity to test the new legislation in practice.

The Agency is responsible for the implementation of a set of anti-corruption laws among which there is the ***Law on Financing of Political Parties and Election Campaigns***. *The Law* on Prevention of Corruption states that *the Agency shall carry out activities of control of lobbying and control of the financing of political entities and election campaigns, in accordance with a special law* (Article 4 Paragraph 3) In addition, Article 4 Paragraph 3 states that *the work of the Agency shall be public*.

According to the organizational chart (source: Work plan of the Agency for prevention of corruption for 2017, Agency for Prevention of Corruption, February 2017) the control on financing of political parties and election campaigns is one of the main function of the Agency.

2.1 ORGANIZATIONAL SCHEME

The ***Control on financing of political parties and election campaigns*** falls among tasks of ***the Department for prevention of conflict interest and control financing political entities and election campaigns.***

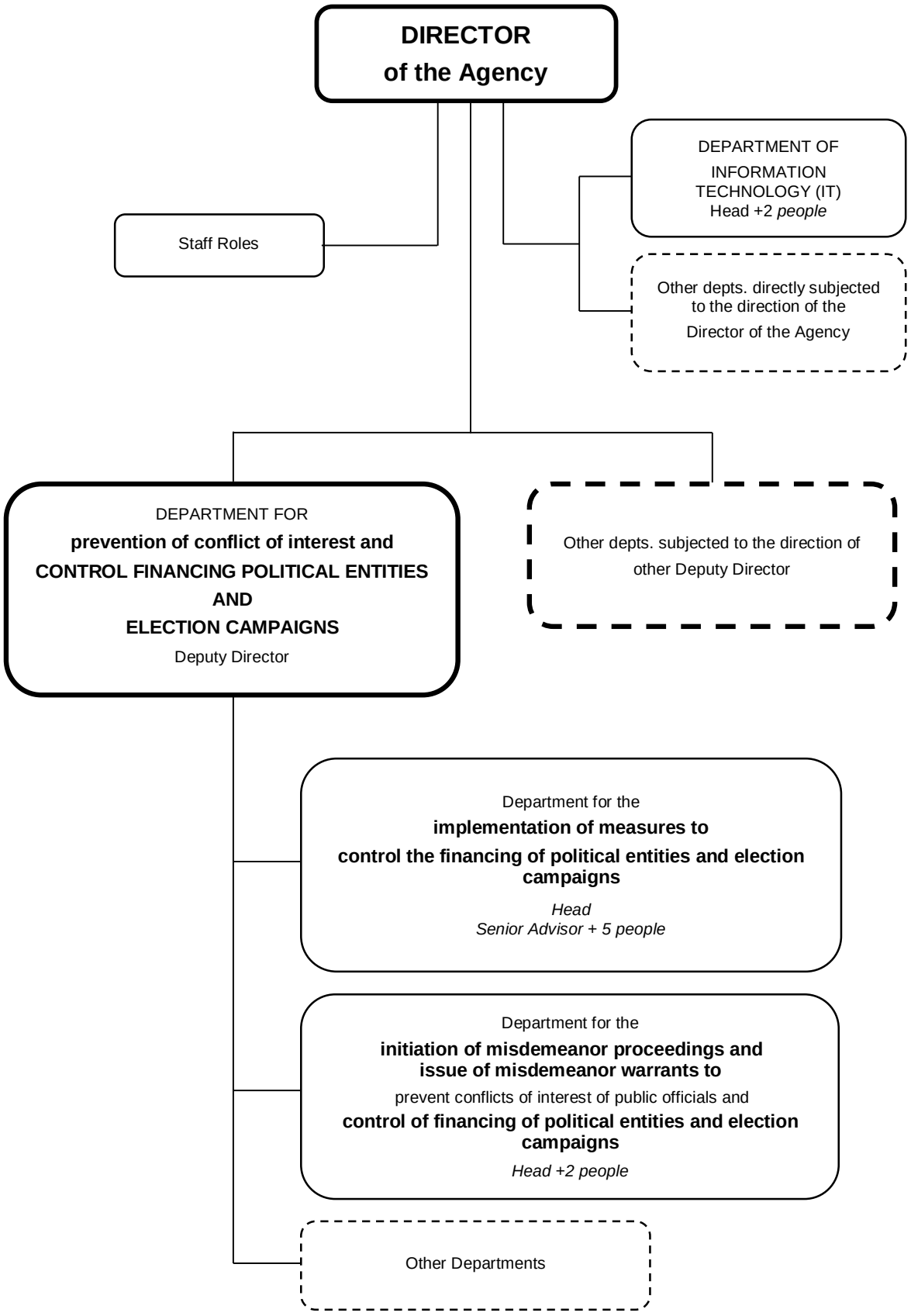
The *Department* closely collaborates with the ***Department for initiation of misdemeanour proceedings and issue of misdemeanour warrants to prevent conflicts of interest of public officials and control of financing of political entities and election campaigns*** (thereinafter also: Department on Issues of Misdemeanour) (under the same Deputy Director) on matters of procedure of misdemeanours, and with ***Department of information technology*** on technological solutions regarding the provisions for transparency of the information and the submission of information required by the law.

On the *Figure 1* the organizational flow chart in the connection of the scope of the present Report.

2.2 CAPACITIES AND STAFFING TASKS

The Department currently has a staff of 6 full time people: a Head and 5 employees. According to the information given by the Agency, all these 5 employees/persons work on the substance (control on submitting of the reports, analysis of submitted information, etc.). According to the Agency Work Plan for 2017 (source: Work plan of the Agency for prevention of corruption for 2017, Agency for Prevention of Corruption, February 2017) there are no vacant positions at the moment. The representative of the Agency reported about studies and participations of the staff in different projects, which help to improve their capabilities.

Figure 1


DIRECTOR
of the Agency
DEPARTMENT OF
INFORMATION
TECHNOLOGY (IT)
Head +2 people
Staff Roles
Other depts. directly subjected
to the direction of the
Director of the Agency
DEPARTMENT FOR
prevention of conflict of interest and
CONTROL FINANCING POLITICAL ENTITIES
AND
ELECTION CAMPAIGNS
Deputy Director
Other depts. subjected to the direction of
other Deputy Director
Department for the
implementation of measures to
control the financing of political entities and election campaigns
Head
Senior Advisor + 5 people
Department for the
initiation of misdemeanor proceedings and
issue of misdemeanor warrants to
prevent conflicts of interest of public officials and
control of financing of political entities and election campaigns
Head +2 people
Other Departments

The "*Overview of information on activities of the agency for prevention of corruption for the European Commission*" mentions that the following activities were done in the field of control of financing of political entities and election campaigns:

- (2016) Project of experts support to the work of the Agency in cooperation with the US Embassy in Montenegro. The project has been implemented through the technical cooperation and expertise of Slovenian expert in the area of jurisdiction of APC, mr Bećir Kečanović;
- "*Project of support in the area of control of financing of political entities and electoral campaigns*", implemented in cooperation with the Embassy of Great Britain, the expert Lisa Klein worked with the Agency's employees on specific tasks in this area. The Project continues in 2017;
- The current Project of the EU - Council of Europe Horizontal Facility, which offers a knowledge enhancement to the Agency staff aimed to strengthen the capacities of the Agency;
- Depending on findings and recommendations of experts engaged through these projects, possible legislative changes may be discussed in the Parliament.

The Law foresees a lot of tasks and obligations for all involved subjects (political entities, state bodies, private persons, and private legal entities), while the monitoring of their compliance falls among the Agency duties.

Unfortunately, many tasks specified in *The Law* are realistically impracticable for the Agency's employees.

For instance, during the election campaign for the Parliamentary election 2016, the Agency had to control and publish a big amount of reports, every 7 days it would need to control the analytical cards of 447 public institutions and travel orders of 998 public entities.

The Agency has then performed a really enormous job. On the other side, employees were not in a position to perform more detailed and deeper analyses of received information. This lack of staff, just during an election campaign period, highlights the need for more work forces during such periods (e.g, temporary employees).

An effective evaluation and crosscheck of data regarding financing of political parties and election campaign cannot suffer due to the peak of work which occurs during election campaign period.

Agency needs solution such as increasing number of employees and more automated processing of received data to perform better its tasks regarding election campaigns.

Active and under development **IT solutions** appears to be enough only as "first support" of works for the area of control of financing of political entities and election campaigns.

That means data analyses, data comparison, more elaborated data-crossing or a sophisticated "data mining", cannot be executed from present D-Base platform. Instead, employees must do a manual research on hard copies or in a file, manually prepare a spreadsheet (e.g., Excel) in order to make the needed "analytics".

All reports received from political entities are publically available.

Any person accessing to the published data report can find searched data on the Agency website. However, information is available as documents that are not editable. Therefore, the

person has to tackle the same manual-work of Employees of the Agency, for obtaining processed data.

In the opinion of the expert, a more automatized procedure for obtaining processed data is recommended for middle-term.

The collaboration with ***Department on Issue of Misdemeanour*** on the **matters of procedure of misdemeanours** appears not satisfactory in terms of feedback on misdemeanour proceedings.

Moreover, not always does the ***Department for the control the financing of political entities and election campaigns*** ask for feedback on misdemeanour proceedings.

In any case, the ***Department for the control the financing of political entities and election campaigns*** does not seem to pay enough attention on results of misdemeanour proceedings and, in particular, when proceedings are unfavourable to the Agency. Therefore, a further analysis on results should be performed and recommended.

The collaboration should be better performed.

The Agency does not have the right to impose sanctions. The Agency initiates the misdemeanour proceeding before the misdemeanour court.

Some violations of *The Law*, such as not submitting report in time, not including the requested information in the report, not submitting requested report, etc., are not cases for a judge. These violations should be sanctioned by the Agency and possibly, together with all other infractions/not compliances under the authority of the Agency.

In opinion of the expert, the Agency should have the power to impose sanctions. This will make the procedure for making decisions on imposing fines quicker and more efficient, and it will give the Agency an additional opportunity to show the results of its work.

To communicate effectively and together with the need of a formal press release, public officials should consider, also the public's concerns (e.g. on the transparency of the entire political entity system, on the common sense of equity and beneficial returns to the society, etc.). Good communication skills can help public officials engage with members of the public in interviews, debates and discussions. The more the information flows freely, the more the public can feel satisfied.

Therefore, a good communication can be persuasive and powerful, not only imparting knowledge, but also turning the listener around to the speaker's way of thinking.

The Head of the Department personally provides for the most communication needs of the Agency on matters political entities/election campaign financing, even though he does not seem to have any specific training/experience in public speaking supporting a great personal good will.

The Agency misses an integrative approach towards the communication and the presentation of achieved results or simply to divulgate its work/activity.

The Agency should identify a person as Agency's speaker/communicator for TV, newspapers, web, etc. In addition, assistance to the head of the Agency and heads of departments is needed whenever their presence in speaking appears necessary or suggestable.

In any case, basics of public speaking should be arranged towards concerned officials.

2.3 BUDGET

The budget of the Agency is unique and calculated for the whole body.

Representatives of the Agency report that the available budget framework appears enough for the efficient work in the fields of control of financing of political parties and election campaigns, implementation of the law, and supervision tasks.

3. REVIEW OF CURRENT LEGISLATIVE FRAMEWORK

This chapter describes the legislative framework regarding financing of political parties and election campaigns in Montenegro. This report covers the new legislation, which is currently in force.

3.1 LAW ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGN AND LAW ON PREVENTION OF CORRUPTION

As already mentioned in the “Introduction", there is a new regulation related to financing of elections and political parties and control. It is the ***Law on Financing of Political Entities and Election Campaign*** (hereinafter also: *The Law*), in force since January 2015 and the ***Law on Prevention of Corruption,*** in force since January 2016.

The Agency has started supervision of implementation of *The Law* in January 2016, with the entrance into force of the *Law on Prevention of Corruption. The Law on Prevention of Corruption* foresees that the *Agency shall carry out activities of control of the financing of political entities and election campaigns, in accordance with a special law - The Law on Financing of Political Entities and Election Campaign.*

In accordance with *The Law* the Agency has to adopt several by-laws:

- ***Instruction*** *on content of the report on* ***contributions from legal and natural persons*** *to political entities in the course of election campaign* (pursuant to Article 42 Paragraph 2)
- ***Instruction*** *on the form for the report on* ***origin, amount and structure of funds collected and spent*** *from public and private sources in the election campaign* ***for the election of the president of Montenegro*** (pursuant to Article 39 Paragraph 1)
- ***Instruction*** *on the form for the report on* ***origin, amount and structure of funds collected and spent*** *from public and private sources* ***in the election campaign for election of member of parliament and councillors*** (pursuant to Article 39 Paragraph 2)
- ***Instruction*** *on the manner and* ***procedure for reporting and resolving complains*** *filed in the course of the election campaign* (pursuant to Article 44 Paragraph 23)
- ***Rulebook on the manner of exercising control*** *of political entities and control and supervision during election campaign* (pursuant to Article 35 Paragraph 7)
- ***Rules*** *on the manner of accounting and* ***reporting on in-kind contributions*** *to political entities* (pursuant to Article 6 Paragraph 7)

The *Law on the Prevention of Corruption* defines the range of duties and responsibilities of the Agency. Among these, regarding control of the financing of political entities and election campaigns, the Agency has to:

- *Adopt acts* under the jurisdiction of the Agency in accordance with the law
- Take the *initiative to amend the laws, other regulations and general acts*, in order to eliminate the possible risk of corruption or to bring it in line with international standards in the field of anti-corruption
- *Give opinions on draft laws and other regulations and general acts* for the purpose of their alignment with international standards in the field of anti-corruption

- *Initiate* and *conduct proceedings* for establishing the violation of the provisions of the present and other laws governing the responsibilities of the Agency
- *Cooperate with the competent authorities*, higher education institutions, research organizations and other entities, in order to implement the activities in the area of prevention of corruption
- *Keep records and registers* in accordance with the present law;
- Issue misdemeanour reports and *initiate misdemeanour* and other proceedings
- *Conduct* educational, research and other preventive *anti-corruption activities*
- *Exercise regional and international cooperation* in preventing anti-corruption
- *Implement measures of control of financing of political entities and election campaigns*, in accordance with a special law.

3.2 THE LAW ON POLITICAL PARTIES

As the main "player" during Parliament elections and municipality elections is a political party, it is important to mention also the ***Law on Political Parties***.

The *Law on Political Parties regulates the conditions and manners of establishment, organizations and termination of the activities of political parties* (Article 1). In terms of the *Law on Political Parties, a political party finds its definition as an organization of freely and voluntary associated citizens pursuing political goals in democratic and peaceful manner* (Article 2). In addition, the same law rules *that the work of political party has to be transparent* (Article 3).

It is not exactly clear what does the term "work of political party has to be transparent" mean in practice.

The *Law on Political Parties* is poor in the regulation on managing on day-to-day operation of political party, on rights and obligation of the party members, on disclosure of the information, on termination of membership, on party members, on administrative bodies, on liability of the members and administrative body, on adopting of statute changes, etc. According to the provisions of the law, main part of these topics should be included in the Statute and Programme of political party. Article 11 determines that the statute of the political party shall contain "composition, powers, decision-making procedure and mandate of the political party bodies", "decision-making procedure for nomination of candidates and procedure for election of the political party bodies", "procedure for nomination of candidates in the process of election of the political party bodies" etc. It is wide range of provisions that in the other countries are prescribed by the law.

Questions arise if Statute and Programme of a political party should be made available to the public and, who should evaluate if the Statute and Programme of political party regulate all the issues and in which quality. In addition, the law does not regulate number of members of political party, and who can become a member of a political party. In the reality, the situation might be that the number of members is not equal to the number of founders (200 citizens) as it is required for establishing a political party.

Under provisions of the present law, the work of political party cannot be called transparent.

It is not the scope of this report, but the expert suggests revising the *Law on Political Parties* in order to harmonize the provisions with *The Law* and to make work of political party transparent.

3.3 THE ELECTION LAW

The electoral legislation provides basic regulation for the conduct of elections.

While the electoral legislation provides basic regulation for the conduct of democratic elections, it is neither coherent nor comprehensive. Inconsistencies had a negative impact on all stages of the electoral process, particularly the absence of a provision on official start of the election campaign… Different interpretations of the law resulted in confusion among various stakeholders, undermining legal certainty.

Consideration should be given to undertaking comprehensive electoral reform with the aim to harmonize election legislation internally and with other relevant laws. The reform process should be inclusive and completed well in advance of the next elections. (source: Montenegro Parliamentary Elections 2016, OSCE/ODIHR Election Observation Mission Final Report, January 2017, Pag.5-6)

In connection with *The Law*, the *Election Law* determines that

- *no less than 60 (sixty) and no more than 100 (one hundred) days shall pass between the day of calling for and the day of election of councillors and/or representatives* (Article 14 Paragraph 2)
- *the list of candidates for the election of councillors shall be submitted to the MEC, and the list for the election of representatives shall be submitted to the REC, as early as 20 (twenty) days from the day of calling for the election, and not later than 25 days prior to the polling day* (Article 46 Paragraph 1)
- *election of councillors and representatives shall be held not less than 15 days prior to the termination of the election period of councillors and/or representatives whose term of office is still valid* (Article 14 Paragraph 1).

These provisions are really confusing / imprecise and heavily impact the provisions set in the *Law on Financing of Political Entities and Election Campaign*. This will be discussed in more detail in other sections.

3.4 OTHER

Criminal code

Article 193a of ***Criminal Code*** foresees the criminal sanctions for misuse of public resources. Article 193a was introduced in 2015 and it foresees imprisonment from 6 month up to 5 years to an official person who uses or enables the use of property of state bodies, public institutions, public enterprises and funds, local self-government units and companies in which the state has a proprietary interest, to present the electoral list.

The *Criminal Code* does not establishes sanctions for other kind of violations regarding financing of political entities or election campaign.

The expert suggests evaluating other cases when the criminal liability might be applied.

Law on Misdemeanours

As mentioned before the Agency does not impose sanctions. It can initiate the misdemeanour proceeding before a misdemeanour court.

The ***Law on Misdemeanours*** rules standards for determining misdemeanours and misdemeanour sanctions, misdemeanour liability, misdemeanour proceedings, and the procedure for the enforcement of misdemeanour sanctions.

Law on Financing of Political Entities and Election Campaign does not contain a separate section on terms or definitions used in the law.

3.5 MAIN TERMS

3.5.1 Political entity

The term "political entity" is a broad concept. In terms of *The Law, political entities are*:

- *political parties*
- *coalition*s
- *groups of voters*
- candidates for the election of the President of Montenegro (Article 2 Paragraph 1).

The definition on what a "political entity" might be is clear. Clear is also that a political entity is a "legal entity". However, it is not clear in the situations when the liability applies. For instance, since a voter group is not a legal entity, it cannot be administratively sanctioned.

The responsible person of the political party should be the person named/called the "*person authorised to act on behalf of the political party*" (*Law on Political Parties*). The power and mandate of that "*person authorised to act on behalf of the political party is defined in the statute of the relevant political party"*.

The problem regarding the juridical status of the group of voters and coalitions arises also at the moment of distributing of the public founds.

The Law applies the same reporting requirement to a political party as to a voter group or a coalition. It is not clear if the same accounting requirements are possible to apply to political party, voter group and coalition.

3.5.2 Election campaign

According to Article 2 Paragraph 2, *election campaign is a set of activities of a political entity from the day of calling of the elections until the day of proclamation of the final election results*.

The Law clearly states that election campaign:

- is **a set of activities** of political entity

The Law does not precise which kind of activities this may be. Thus leaving the space for interpretation.

- **activities only of a political entity**

The Law does not foresee the situation when someone else may advertise a political entity or invite to vote for or against a political entity.

- **activities performed only during certain period** - from the day of calling of the elections until the day of proclamation of the final election results.

3.5.3 Election campaign period

According to Article 2 Paragraph 2, *election campaign is a set of activities of a political entity* ***from the day of calling of the elections until the day of proclamation of the final election results***.

The *Law on Election of Councillors and Representatives* determines that:

- *no less than 60 and no more than 100 days shall pass between the day of calling for and the day of election of councillors and/or representatives* (Article 14 Paragraph 2);
- *the list of candidates for the election of councillors shall be submitted to the MEC, and the list for the election of representatives shall be submitted to the REC, as early as 20 days from the day of calling for the election, and not later than 25 days prior to the polling day* (Article 46 Paragraph 1).

Thus, elections can be called not earlier than 100 days before election day and not later than 60 days before election day. However, list of candidates shall be submitted between 25-20th day before election day.

This means that **the election campaign starts at the day of calling of the elections**.

For the Agency and every public administrations involved in the election process (as well as for participants and interested parties), this represents the moment since when it can begin preparing for fulfilling its functions and restrictions for the election. Therefore, the Agency/Public Administration can be ready to handle the election campaign/election only when it has already begun.

Actually, at the moment of the elections campaign starts, the situation is as follows: the election account is not yet opened, a responsible person is not yet determined, the list of candidates is not yet submitted, public/municipality entities and political entities begin preparing for fulfilment of requirements of *The Law* (while restrictions/requirements are already applicable since the moment the campaign starts).

In addition, the problem, regarding opening of election account or day of the appointing a responsible person, is aggravated by the fact that ***The Law*** **does not set/determines a period within which** the gyro account should be opened and the responsible person should be designed, **at all**.

As recommendation, *The Law* should determine a certain period (30 days should appears fair, quite probably), balanced on the Agency/Public Administration ability to be ready for the election campaign. According to this approach, the **day of calling for election** should consider the above said additional time and *The Law* should **clearly** distinguish it from the **day of election campaign start**.

The period established in *The Law* directly depends from the *Election Law.* The harmonization among these two regulatory acts appears necessary.

The possible solution is to amend both regulatory acts together. To amend the *Election Law* by extending the 60-100 days period for the "*day of call*" to 90-130 days; to amend *The Law* establishing that the Election Campaign starts 30 day after the "*day of call*" and requiring gyro account opening, the responsible person appointing, list of candidates registering etc. within this

period of 30 day. Accordingly, the definition of the election campaign period should be changed and the relevant Article of *The Law* must be changed.

By this perspective, previous highlighted critical situation (gyro account opening, appointing of the responsible person, making list of candidates registered, making the Agency/public body involved ready) should find definitive solution.

Should amendments to the *Election Law* not be possible, the alternative path should consider amending *The Law* only. Such option will be discussed in the next sections.

4. SOURCES OF FUNDING

The ***Law on Financing of Political Entities and Election Campaign*** regulates funding of political entities in Montenegro. According to the provisions of *The Law*, political entities acquire funds both from public sources and from private sources.

4.1 FINANCING FROM PRIVATE SOURCES

The Law defines that funding from private sources are:

- membership fees,
- contributions,
- income from the activities of political parties,
- income from property and legacies,
- borrowing from banks and other financial institutions in Montenegro (Article 6 Paragraph 1).

4.1.1 Membership fees

Membership fee *is the amount of money that* ***a member of a political party pays*** *regularly, in manner and under conditions determined by Articles of Association or other act of the political party* (Article 6 Paragraph 2). *The Law* limits the overall amount of membership fees. It shall not exceed the amount of 10% of the average monthly net earnings in Montenegro for the previous year, at monthly level.

Thus, bringing *The Law* into practice, if in 2015 the average monthly net earnings was 480 euro and supposing minimum number of members of one political party is 200 members (according to the *Law on Political Parties*), then the maximum amount of membership fees a political party may acquire in 2016 is top up to 115 200 EUR.

A political entity shall adopt the decision on the amount of membership fees for the running year (hereinafter also: ***decision on membership****) by the end of January at the latest, and submit it to the Agency, which shall publish it on its website no later than seven days from the day of receipt* (Article 12 Paragraph 3).

There is a discrepancy between articles of *The Law*. In Article 6 Paragraph 2 "***membership fee** is the amount of money that **a member of a political party pays***", while in Article 12 Paragraph 3 and Article 53 Paragraph 4 *The Law* this requirement refers to a political entity. It is not clear then if *The Law* requirements and restrictions on membership fees are applicable to the political party or to a political entity, as well.

Articles 12 and 53 of *The Law* must be revised to clarify where the "political party" or "political entity" is needed.

From the point of view of transparency of financing of political parties, the publishing of the ***decision on membership*** does not help much. Actually, the information on the number of members of the political party is not available. In addition, it is not clear what the **decision on membership** should include. In any case it is not possible to know in advance the real amount political party will acquire as membership fees (a member cannot pay, a member can be excluded). The moment when the acquired amount of membership fees of a political party becomes publicly available is at the moment of publication of the party's annual report is. Political party/entity includes the information on membership fees in the *Annual Report* according to the "POČ form"

POČ form

Income from membership fee					
Name and surname	**Unique Personal ID Number#**	**Address**	**City**	**Membership number**	**Amount (in €)**
Total:					

The report does not foresee the date when the membership fee was received/payed.

In opinion of the expert the requirement of Article 12 Paragraph 3 on **decision on membership** (submitting and publishing) is an additional burden for both political parties and the Agency which does not bring any benefits not to the public neither to the agency.

It would be enough that information on acquired membership fees is submitted/published together with the *Annual Report*.

4.1.2 Contributions

Contributions are free voluntary payments made in favour of a political entity by:

- natural person
- legal person
- companies
- entrepreneurs (Article 6, Paragraph 3).

The definition of the term "contributions" used in *The Law* is inaccurate and also it is not clear why the term is used in the plural.

The term "legal person" already includes terms "companies" and "entrepreneurs". Also it is not clear why also these terms are used in plural person – as "companies" and "entrepreneurs". Probably, it means at least two companies or two entrepreneurs together.

Amend Article 6 Paragraph 3 of *The Law* so that "***contribution** is a free voluntary payment made in favour of a political entity by natural person or legal person*".

The expert would like to note that *The Law* does not foresee the situation when political entity does not want to accept the contribution from someone (e.g. case when the limit is over or it is contribution from abroad). The contribution might be already in the bank account of the political entity when it recognizes that this contribution is not in accordance with the provisions of *The Law. The Law* does not prescribe if a political entity may transfer back to the contributor a contribution.

At the same time, as contribution is a voluntary made payment and thereby a political entity cannot "control" it, the situation when unpredictable money goes to an entity's account should be normal. However, *The Law* determines a fine from 10,000 euros to 20,000 euros shall be imposed for a misdemeanour on a political entity if it receives not allowed contributions or exceeds the limit on contributions. A situation may arise that a political entity is sanctioned for what cannot affect - the amount of received contributions.

The Law should also foresee the provision allowing a political entity to refuse a contribution. For instance: "A political entity is not obliged to accept a contribution. A contribution shall be considered accepted if it is not transferred (given) back to the contributor within 5 days after its receiving".

4.1.3 In-Kind Donations

As well, *contributions are **in-kind contribution***. *The Law* defines that *in-kind contributions are*:

- *provision of services or products given to a political entity without compensation or under conditions whereby the political entity is placed in a privileged position compared to other consumers,*
- *as well as borrowing from banks and other financial institutions and organizations under conditions deviating from market conditions,*
- *write-off of a part of debts* (Article 6 Paragraph 3).

In-kind contribution shall be calculated at market value and reported as income. (Article 6 Paragraph 6).

The Agency adopted the *Rules on the manner of calculating and reporting on in-kind contributions to political entities* (thereafter also: *Rules on In-kind Contributions*). Article 2 of the *Rules on In-kind Contributions* states: *a political entity shall calculate in-kind contributions as the difference between the price paid for a product or service to a legal or natural person and the market value of such product or service on the day the product or service are paid for or contracted, pursuant to the data of the authority responsible for statistics, if such difference is greater for at least 5% of the market value of the product or greater than 5000 euro. And if the data of the authority referred to in paragraph 1 of this article are not available, the market price shall be calculated based on the average price obtained from three different product suppliers or service providers at the time of payment*.

The term "*provision of services or products given to a political entity **under conditions whereby the political entity is placed in a privileged position compared to other consumers***" is not clear. It would appear clearer determined if stated as: "*provision of services or products given to a political entity without compensation or under market price*".

The expert suggests amending this article by cancelling the text "*under conditions whereby the political entity is placed in a privileged position compared to other consumers*" replacing it with "*provision of services or products given to a political entity without compensation or under market price*".

The expert would like to note that the supervision over contributions from legal entities and over the in-kind contribution is always problematic. However, a critical situation arises in case of the in-kind contribution from a legal entity. **Unfortunately, and just for the combination of nature of the contribution and subject contributor (legal entity), the Agency cannot be able to perform a real control on the veracity of the in-kind contribution**.

In terms of control, the question of the in-kind contribution from a legal entity represents a true grey-area, where deviant behaviours might find fertile ground. From the opposite side, the Agency objective of reduced capacities to engage a real control on such contribution makes the in-kind contribution from a legal entity questionable.

In term of generality, the in-kind contribution from a legal entity represents only one among many financing channels acknowledged by a generous funding system.

It is advisable to evaluate the real need to maintain the in-kind contribution from legal entities (in the framework of wide financing alternatives presently acknowledged by The Law) when considering the objective problems of effective control of this kind of contribution.

During election campaign, there is always space to operate with **prices and discounts on political advertising**. From the present regulation is not clear if discounts are either discounts or in-kind contributions, which also opens some questions on the legitimate usage of these opportunities in terms of elusion and elusive reporting purposes.

Anyway, it is doubtful whether, during the Parliament election in 2016, the Agency had the capacity to conduct an in-depth assessment of all advertisements prices, market prices and compare them with data reported by political entities.

A more easily implementable system may foresee that providers of advertisement or related services, interested to supply products/services for the election campaign to political entities, should issue an own price list to keep fixed for any political entity client requiring their services for said campaign.

For instance: for transparency, publicity and control, the price list has to be delivered to the Agency (which also publishes it on its website) prior to the election campaign (1 months appears enough for the political entities to have a view of offered services/prices, make their choices, give a work to an provider, and make arrangements for the deployment moment/period). In this way, the effectiveness of the Agency's action becomes certain.

The definite period by which to submit a price list is intended as peremptory. The non-compliance with the deadline precludes the company from the opportunity to take jobs for political/election advertisements to the service provider.

Such a firm disposition, should find inspiration in the highest need to ensure transparency of access to a "regulated market". Someone might argue that delayed submissions could simply represent only a loss of orders during the election campaign. Therefore, delayed submission should not be rejected. The answer to such argues finds two replies: the access to the market (for the

political entities) would become altered and, additionally, the Agency will not have any tools for controlling the previous period (to which all other providers would already have been subjected).

In order to regulate the matter of prices and discounts for political advertisement, *The Law* should foresee the provision requiring to the providers of advertisement or related services, intending to be suppliers of political entities during the election campaign, to submit their fixed-prices list to the Agency, by 1 month prior the start of the election campaign. The Agency shall publish their prices lists on its website. Services providers not submitting their price lists or not submitting the price list in time will have no permission to take any job for political/election advertisements.

Again, since the day of calling for election coincides with the day of the start of the election campaign (and the lack of a period of preparation before the official opening of the campaign), it becomes cause for an almost impossible application of a simple measure such as the above one (in a more general picture of uncertainty and confusion that makes the Agency's action weak and ineffective).

Another point requiring attention is the **borrowing from banks**. It is not clear, and does not sound much justified, the reason why political entities may borrow from banks and other financial institutions, if the state budget funding is so generous. In addition, the political entities seem used to returning the loan by using the funds received from the state/municipality.

The legislator/state should evaluate in depth if a political entity taking a loan should also receive public funds. Especially from the point of view of the level of independence of a political entity towards a bank to which it is in debt. Some doubts arise in the situation when the law allows "*writing-off of a part of debts*" (Article 6, Paragraph 3).

4.1.4 Limitation

The amount of funds political entity can acquire from private sources is limited. From one side there is a limit on total amount, from other side there is a limit on amount a legal or natural person can donate to the political entity.

One natural person may contribute to a political entity up to 2000 euro per year. For legal entity, the ceiling is higher. Legal entity may contribute up to 10 000 euro per year (Article 12 Paragraph 4). This limit does not include the membership fee.

The funds political entity acquires from private sources it may use for financing regular operation and for financing election campaigns (Article 9). Furthermore, *The Law* stipulates more limitations, it is the ceiling on:

- amount of funds political entity can acquire from private sources **to finance regular activities**;
- amount of funds political entity can acquire from private sources **to finance the election campaign**.

The limit is calculated for the calendar year.

*The amount of funds political entity can acquire from private sources **to finance regular activities** may amount up to 100% of the funds belonging to political entity from the public funds for regular activities* (Article 12 Paragraph 1). *If political entity does not receive any funds from*

public sources, the limit is lower. In this case political entity may raise funds from private sources up to 10% of total public funds allocated for financing of regular activities (Article 12 Paragraph 2).

The decision on the amount of budget funds referred to in paragraph 1 of this Article 12 shall be adopted by the Ministry and local administration body respectively, not later than by 31 January of the current year and shall publish it on its website no later than seven days from the day of adoption of the decision (Article 12 Paragraph 5).

Political entities may raise funds ***for financing of the election campaign costs*** *from private sources only during the election campaign* (Article 17 Paragraph 1). *In this case amount may not be exceeded by more than 30 times of the amount of public funds belonging to political entity as a share of the part mentioned in Article 14 paragraph 2* (Article 17 Paragraph 2).

In this provision arises the problem mentioned before regarding the election campaign period. Actually, under the present regulation, the earlier (even before the submitting list of the candidates) political entity opens the account, the longer is the period for acquiring of the funds, private funds in this case.

The Law foresees the following sanctions in case the political entity exceed limits of the acquired funds.

- *If the funds for financing of the election campaign raised from private sources exceed the amount referred to in Article 17 paragraph 2 of this Law, surplus funds shall be transferred to the permanent gyro account of the political entity or political entities, in accordance with the mutual agreement* (Article 18 Paragraph 4). Actually, it means private funds acquired for financing of election campaign, after transferring to the regular account, became funds for financing regular activities.
- *If the total amount of funds on the permanent gyro account of the political entity exceeds the amount referred to in Article 12 paragraphs 1 and 2 of this Law, funds shall be refunded to the Budget of Montenegro and local self-government budget, respectively* (Article 18 Paragraph 5).

These provisions oblige political entities systematically calculate/follow to the amount of acquired funds. The sanction for acquiring of funds contrary to Article 18 is enough heavy; up to full loss of budget funds (*The Agency may pronounce the measure of partial or full loss of entitlement to budget funds* (Article 48 Paragraph 4).

As already noted, a contribution is a *voluntary made payment* by natural or legal person. Thereby, it should not be possible that a political entity may/can stop flow of the contributions at any possible moment (e.g. when the limit of contribution reached the ceiling). Normally should not be the situation when political entity affects the contributors. The situation when unpredictable/unrequested money goes to an entity's account should be normal.

It would be suggestable to revise the regulation and establish provisions that after closing the election account remaining money is transferred to the regular account.

4.1.5 Incomes separation

The regulation on incomes separations is complicated and questionable.

In the situation when funding from private sources is so insignificant compared to the amount of public funding and where there are already set strict limits on amount of contributions from legal entity and natural person, the separation between financing of regular activities and election campaign finance does not make much sense.

Limitation on total amount of incomes from private contributions in case of Montenegro is complicated and it creates additional administrative burden to both the Agency (as to the supervisory body) and political entity. This administrative burden is more significant compared to benefit it provides. More effective is to establish restriction and clearness on spending of political entities.

4.2 FINANCING FROM PUBLIC SOURCES

In terms of *The Law, public sources are the funds allocated from the Budget of Montenegro and local self-government budgets* (Article 5) *Political entities acquire funds for financing their regular operation and for financing election campaigns* (Article 3). In this case, regular operations are activities, which are not related to the election campaign.

It should be admitted that political entities receive one more kind of financing from public sources - "*funds for financing of the employees in the MP and councillor clubs and providing for business premises for the needs of political entities*" (Article 7, Paragraph 2 and 3).

State of Montenegro is very generous in political entities funding. According to the data provided by the Agency political entities in 2016 received 13 217 814 euro as public/budget funds.

Considering the size of country, number of citizens (620 029 citizens according to Statistical year book 2011) and number of eligible voters for Parliament election of 2016 around (528 817 eligible voters according OSCE, Montenegro Parliamentary elections 2016), the amount of funds state spends for financing of political entities is really large. Calculating it per citizen and per eligible voter this number is several times higher than in other European countries.

The dependence on money is strong. In order to get the vote of the voter, State of Montenegro spends huge amount of money. It should be analysed on the basis of information from reports of political entities, what for political entities spend funds thus, determining the actual and real need of political entities. Some kinds of spending should be reduced by introducing a limit on the costs and encouraging political parties to use less expensive methods of self-promotion, such as, meetings with potential voters. Consequently, reducing dependence on money will lead to a consistent reduction in the amount of budget financing.

It should be also admitted that schemes on calculating and distributing of state funds are complicated. The experience proves that more simple schemes bring more benefits because they are more understandable for all involved parts and as well more transparent for the society.

4.2.1 Financing of the Regular Operation

The financing of the regular operation form the budget funds is shown in Figure 2.

Article 11 Paragraph 10 states that *the Ministry and the local administration body shall suspend the payment of funds referred to in paragraph 4 of this Article to a political entity, if the consolidated financial statement for the previous year has not been submitted within the period prescribed under Article 37 of this Law. The Law* uses the term "suspend" which has the force of

“stand-by” rather than “revocation”. It should mean that a political entity may end such “stand-by” condition and get the financing at the moment the *Annual Report* is submitted.

Figure 2

<table>
<tr><th colspan="3">FINANCING OF THE REGULAR OPERATION OF POLITICAL ENTITIES
from Budget Funds (Article 11)</th></tr>
<tr><td></td><td><u>STATE LEVEL / PARLIAMENT</u></td><td><u>LOCAL LEVEL / MUNICIPAL ASSEMBLIES</u></td></tr>
<tr><td>Who gets the financing</td><td>political entities having seats in the Parliament (par. 1)</td><td>political entities having seats in the municipal assemblies (par. 2)</td></tr>
<tr><td rowspan="2">How the Financing is calculated</td><td rowspan="2">0.5% of State adopted budget (par. 1)</td><td>1.1% of municipal assemblies adopted budget (par. 2)</td></tr>
<tr><td>from 1.1% to 3% of adopted budget for municipalities with a budget of less than five million euros (par. 3)</td></tr>
<tr><td rowspan="3">How Funds are Allocated</td><td colspan="2">20% in equal amounts to political entities -having seats- (par. 4)
80% in proportion to the total number of seats political entities have at the time of distribution (par. 4)</td></tr>
<tr><td colspan="2">If political entities is a coalition or a group of voters, the distribution (20% and 80%) shall be in accordance with the agreement and Articles of Association of these political entities (par. 5)</td></tr>
<tr><td colspan="2">If one or more elected candidate “leave or change their membership in a political entity”, “funds distributed … shall remain in a political entity to which the” elected candidate “belonged at the moment of inauguration of the representative body” (par. 6)</td></tr>
<tr><td>Body in charge of funds allocation</td><td>Ministry of financial affairs (par. 7)</td><td>local administration body financial affairs (par. 7)</td></tr>
<tr><td>Frequency of the funds allocation</td><td colspan="2">on monthly basis, by the fifth day of the month for the previous month (par. 7)</td></tr>
<tr><td>Suspension of the payment of funds</td><td colspan="2">if the consolidated financial statement for the previous year has not been submitted within the period prescribed (par. 10)</td></tr>
</table>

Figure 3

FINANCING OF THE ELECTION CAMPAIGN **financing from Budget Funds**		
	STATE LEVEL / PARLIAMENT	**LOCAL LEVEL / MUNICIPAL ASSEMBLIES**
When the financing is foreseen	For in the year in which regular elections are held (article 14, par. 1)	
Who gets the financing	Political entities: - submitting an electoral list (article 14, par. 2); - awarding seats (article 14, par. 3).	
How the Financing is calculated	0.25% of State adopted budget (article 14, par. 1).	
How Funds are Allocated	**20% in equal amounts** to political entities - submitting an electoral list- (article 14, par. 2). **80% in proportion** to the total number of seats awarded to political entities (article 14, par. 3).	
Body in charge of funds allocation	Ministry (article 15, par. 1) of financial affairs (article 11 par. 7)	Local administration body (article 15, par. 1) for the financial affairs (article 11 par. 7)
Conditions and Accomplishments for the allocation of funds	**Political entities submitting an electoral list**: *no particular duties.* **Political entities awarded with seats**: - Submit the Reports on Funds Raised and Expended for the election campaign with the supporting Documents (article 14, par. 3) [see also Article 37] - Notification from the competent Election Commission on the number of seats awarded (article 15)	
Body in charged for the Control of Accomplishments	*[Only for Political entities awarded with seats]* The Agency	
Kind of Control of Accomplishments and Output	**Control of Fulfilment of the conditions** (article 15, par. 1): submission of Reports on Funds Raised and Expended for the election campaign with the supporting Documents (referred to in article 14, par. 4); **Output**: Notification on the fulfilment of the conditions (article 15, par. 1)	
WHEN - Timing for the allocation of funds	**Political entities submitting an electoral list**: within eight days *(from the expiry of deadline for submission of the electoral lists)* (article 14, par. 2). **Political entities awarded with seats**: within seven days *(from the day when the political entities submit to the Agency the Reports on Funds Raised and Expended for the election campaign with the supporting Documents)* (article 14, par. 3)	
Publicity of Act on transfer of funds and corresponding documentation	Published on the websites of the Ministry (article 15, par. 2)	Published on the websites of the Local Administration (article 15, par. 2)

4.2.2 Financing of the Election Campaign

The Figure 3 describes the Financing of the Election Campaign from the budget funds.

The Law does not establish that the funds for "financing of election campaign", in case the political entity is a coalition or a group of voters, shall be "*distributed in accordance with the agreement and Articles of Association of these political entities*" (like it is in Article 11 Paragraph 5 in case of "funds for regular operation"). This provision should be amended / precised.

It is notable that the only one requirement political entity should comply with is the submitting to the Agency of the reports on funds raised and spent for the election campaign with the supporting documents. The Agency has no other power than control the formal simple submission of all required documents.

It appears clear that the content of the notification made by the Agency (positive or negative, no matter) cannot affect the accreditation of funds in any case. This will be viewed in other sections more in details.

On the Agency's website, there is no information about funds allocated to the political entities. From the content of *The Law* it is understandable, that the information can be found at the relevant web pages (Ministry or municipality) or, ex post, in the reports of political entities on the Agency's website. However, a correct and transparent way is to let know to the public that a "political entity "A" in 2017 is entitled to receive budget funds in amount "x" euro which will be distributed in "y" amount euro every month".

The expert recommends to publish on the Agency's website the information (or at list a link where the information can be found) on how much budget funds are going to be distributed among political entities.

It should be also admitted that budget funds for regular operation are distributed every month (it is foreseen in Article 11 Paragraph 7). In opinion of the expert, this is quite often. It would be more convenient/ comfortable to distribute funds once in a quarter. This would also reduce administration costs.

5. EXPENDITURES FOR REGULAR OPERATION AND EXPENDITURES RELATED TO ELECTION

5.1 EXPENDITURES FOR REGULAR OPERATION

As above mentioned, funds political entities receive from private sources and from public funds (state and municipality), represent financing a political entity acquires firstly for regular operation and secondary for election related operations. From the other side they are funds part of which political entities shall use to finance their regular operation and a part to finance operations related to election.

There is no a realistically clear line separating "regular operations" and "election related operations" during an election campaign. It can be assumed that a part of funds for regular operations find usage within the grey zone where "regular operation" and "election related operations" coexist.

The Law defines (Article 10) that costs of **the regular operation** of political entities as *costs referring to costs characterizing the regular operation of political entities*. Article lists them as follows:

- costs for employees' earnings and costs for hiring experts and associates,
- payroll taxes and social security contributions,
- administrative and office-related costs, including the costs of renting premises for work,
- overheads,
- costs of transportation,
- costs of organization of meetings and events,
- costs of promotion of operation and goals of the political entities between elections,
- costs of international activities of political entities,
- costs of organizing trainings for the members and activists of political entities,
- costs of public opinion polls,
- costs of procurement and maintenance of equipment,
- bank commissions
- and other similar costs.

5.2 EXPENDITURES RELATED TO ELECTION

The Law defines **expenditures related to election** as ***costs of the election campaign***. They are costs relating to:

- campaign rallies,
- commercials and promotional material,
- media presentations,
- advertisements and publications,
- public opinion polls,

- engagement of authorized representatives of the political entities in extended composition of the bodies in charge of conducting elections,
- overheads and general administration,
- as well as transportation costs in the period of the election campaign. (Article 13, Paragraph 1)

Expenditures ("for regular operation" and "related to election") are divided by type of spending, in *The Law*. There are expenses (see the list above) taking place during election campaign period, and which are expenses eligible also for normal operation at the same time. Therefore, it appears clear what portion of these costs cannot be clearly distinguished and allocated (entirely or in part) between regular operation and campaign operation, during an election campaign.

A more rational way would be to divide expenditures by the purpose for which they incur.

Understanding how much a political entity spends for election campaign, has much more meaning than what kind of expenses are related to regular spending rather than election campaign. For this purpose, the division of expenses by purpose appears desirable and necessary.

Using the same criterion of analysis of above, the expert also notes that the expenses on election campaign may arise before the official day of election campaign begins.

For example, a political entity may pay for advertisements before the election campaign period, and to agree to have advertisements placed/distributed during the election period. In such condition, the invoice would fall into regular expenses count, whereas the object of the invoice would take effect directly into the election campaign period. In reality, that is to bypass the law.

The Law does not regulate such situation.

The experts recommend the following in order to make understandable/determinable how much a political entity spent for election campaign:

Firstly, - the election campaign period should be clearly set: when it starts and when it ends and rules of the regulation should be clear and at the same condition to every entity involved;

Secondly, – the expenses arising prior the election campaign but related to election campaign, should be counted in the overall amount a political entity could spent for the campaign,

Thirdly, – to renounce to the division on kinds of spending as now stated in *The Law*, and integrate the principle just above said,

Fourthly, - accordingly, adopt a new form of post-election report. The report should clearly show how much the political entity spent for the election campaign, independently from when payments were effected and what for they were done.

The Law establishes that, during the election campaign, only the activities of political entities are considered as election campaign (*election campaign is a set of activities of a political entity*, Article 2 Paragraph 2). From the opposite side, there is no provision regarding the possible situation in which a subject (private person, legal person, legal entity) promotes or makes anti-advertising towards a political entity/candidate by himself/itself. The situation of advertising against appears as the most critical and hard to link to a single or a more political entities getting advantage from it.

In opinion of the expert, *The Law* should also lay down provisions where not only activities of political entity are considered election campaign, but also activities of other legal and natural persons might be considered as election campaign.

The Law requires the opening of the gyro account and acquiring/spending of funds to/from this account (bank statement of the account). The amount of money spent from this account should be the amount a political entity spends for its election campaign.

5.3 LIMIT ON SPENDING

Article 13 Paragraph 4 of *The Law* defines that ***costs*** *of the election campaign of a political entity* ***must not exceed the amount referred to in Articles 14 and 17*** of this law. This amount is the ceiling of expenditures for election campaign for a political entity.

It does not appear to be clear from this definition how to calculate the ceiling. In fact, for the calculation of the value, two different methodologies can be used with two relevant different results:

- the ceiling as the sum of tree components: Article 14 Paragraph 2, Article 14 Paragraph 3 and Article 17.
- the ceiling as sum of two components: Article 14 Paragraph 1 and Article 17.

Representative of the Agency reports that for the calculation of the ceiling Article 14 Paragraph 1 and amount of private sources set in Article 17 Paragraph 2 are taken into consideration.

Since the provision of *The Law* is not clear, as Article 13 Paragraph 4 refers to Articles 14 and 17 in the whole, without specifying the Paragraph.

Clarification in Article 13 Paragraph 4 of *The Law* is needed.

A political entity shall submit the amount of prices and possible discount granted for media advertising of the election campaign to the Agency, which publishes this info (Article 13 Paragraph 2). However, *The Law* misses to lay down when the information required by Article 13 Paragraph 2 and Article 13 Paragraph 3 should be submitted to the Agency.

Complementarily, *entities offering services of media advertising for the election campaign shall submit the price list for services* to the Agency (Article 13 Paragraph 3).

The representative of the Agency explains that the Agency requires the proper information from both political entities and media providers on the basis of these provisions.

According to the information in the reports on election campaign submitted by political entities, the most part of expenses is related to advertising on television which is understandable. Nowadays, the TV is the most effective means, even though the most expensive one.

Political entities with more funds can then access to TV mean with greater intensity. From this point of view, Political entities are not in equal position.

Of course, absolutely equal conditions cannot be realistically guaranteed to all political entities. However the disproportion could be better balanced in favour of the completeness of the democratic system.

A positive way for balancing the intensity of TV advertisements is to make the period for political TV advertisements shorter and/or set a maximum available broadcasting/transmission time per day. The latter would imply counting of the time used for all political forces.

The reality of the political advertising sees an increase of intensity towards the end of the election campaign. In this period the party keeping higher resources may have a too disproportionately dominant position compared to the other political entities.

A possible solution is the prohibition of TV political advertisement from a certain period before the election day, or for period anyway no too close to the election day.

This should also reduce the overall expenditures of political entity for election campaign, as well as reduce their need of funds.

The Law establishes negative consequences in case a political entity exceeds the limit and acquires more funds for financing the election campaign. In this case, the political entity shall transfer the exceeded amount to the permanent gyro account of the political entity (Article 18 Paragraph 4), becoming part of funds for regular activities.

The Law underlines also plural form - "*account of political entities*", probably supposing the situation with coalitions, where this case should be foreseen in the coalition agreement.

Moreover, a political entity has to keep in consideration the provision of Article 18 Paragraph 5, that, in case it exceeds the limit on amount from private sources for regular operation, the exceeded amount should be transferred to the state budget.

This negative situation would not arise if *The* Law would not establish income separation and limit separation on private sources for regular activities and for election campaign financing.

Furthermore, from the point of view of logical interpretation, the contributions from a private source are voluntary contribution a political entity should not be realistically able to control and predict in the amount per each contributor, and in the overall amount from all contributors.

The negative consequences foreseen by *The Law* for the private contributions do not appear appropriate, because it indirectly imposes to political entities a hardly manageable system of control and regulation of contributions.

5.4 GYRO ACCOUNT

The Law does not stipulate the number of accounts a political entity may have. Instead, there is a regulation on when the special account has to be opened.

The Law stipulates that *private contributions shall be made to the* ***corresponding gyro account of the beneficiary political entity*** (Article 6 Paragraph 12). It should be understood that this is a bank account for the daily operations (regular operation) of political entity.

Opening of election account

Another gyro account should be opened ***for election period*** *for the purpose of raising funds to finance the election campaign and this account shall not be used for any other purpose* (Article 18 Paragraph 1). *All funds intended to finance the election campaign shall be paid to the gyro account* (Article 18 Paragraph 1) and ***all payments of election campaign costs shall be carried out*** *by the political entity* ***via the same account*** (Article 18 Paragraph 2).

In case of coalition *- two or more political entities submit a joint list -* ***funds*** *intended for financing election campaign* ***shall be paid into the gyro account of one of the political entities from the coalition***. *The political entity intended to open the account should be determined by the agreement among the political entities composing the coalition and the latter shall inform the Agency* (Article 18 Paragraph 3).

The law provides no indication on when (or within which period) the gyro account has to be opened, before submitting the list of candidates or after. *"***Account should be opened for election period**" – this is what *The Law* requires. Here the ambiguity of the situation arises.

During Parliament election 2016 some political entities opened account earlier (before submitting of the list of candidates), some others later.

Here, the opinion of experts varies.

One interpretation – that the account shall be opened on the day of calling of election, as according to Article 2 Paragraph 2 it is the day when election campaign starts.

Second interpretation – until the political entity has not presented list of candidates, this political entity is not participant of election and cannot/should not open election account, and raise funds.

Third interpretation – an election account shall be opened at any day from the day of calling of election as *The Law* does not lay down the concrete day/period.

Since all payments of election campaign shall be carried out via this account, the situation arising from the different moment of opening gyro account, puts political entities in not equal condition, because the period during which they acquires funds varies.

Also from side of the Agency, the knowledge of bank account opening is crucial for its purposes, allowing the control of all in/out transactions independently whether or not a political entity will participate in the election campaign with its own list (it should not be forgotten that the deadline for submitting the list of candidates ends only 25 days before the vote).

In the already held elections political entities opened gyro accounts according to their own convenience. It seems necessary that *The Law* provides for a concrete timeframe within which the gyro account needs to be opened.

The bank account should be opened as soon as possible, possibly on the first day of election campaign or possibly closer to the first day of the election campaign.

The expert suggests amending *The Law* in terms of introducing additional provision. For instance to amend Article 18 by introducing a restriction that "*In order to participate in the election, the political entity shall open an election/gyro account within 3/5 working days after the day of calling for election*". Of course, also sanctions, for the case that a political entity is not complying with the provision, should be amended accordingly.

Taking into account the recommendations of the chapter 3.5.3. "Election campaign period" the political entity would have enough time to open election account before election campaign starts and also the Agency would have time to operate with the data on election accounts and relevant political entities.

Election account closing

Here there is another situation not regulated by *The Law*. *The Law* does not contain provisions on the closure of the gyro/election account. Moreover, *The Law* does not even require closing the gyro account, at all.

However, *The Law* foresees the case of exceeding of acquired funds in the election account. The situation is ambiguous, since it is not clear which period should be counted for the amount of the gyro/election account.

The provisions on closing of election gyro account have to be introduced into *The Law*. *The Law* should determine when the election gyro account should be closed and sanctions should be foreseen in case the political entity is not in compliance with this provision.

5.5 RESPONSIBLE PERSON

The Law requires that:

- for the election of members of parliament and councillors a political entity shell determine a person which will be responsible "**for the purposeful spending of funds and submission of reports**" (Article 19 Paragraph 1).
- for internal control over financial operation "**a political entity shell designate a person responsible for the financial operation**" (Article 38 Paragraph 2).

Even though *The Law* clearly states that one person responsible should be designed for the election, and one for daily financial operation, *The Law* does not stipulate / determine when exactly this responsible person should be appointed and how long this period is or when it ends.

The situation with *person responsible for election* is similar as in case of election gyro account. *The Law* does not state when this responsible person should be determined. Here the ambiguity of the situation arises.

There are different interpretations by experts on this, like in the case of election gyro account.

One interpretation –the person shall be determined on the day of calling of election, as according to Article 2.2. It is the day when election campaign starts.

Second interpretation – until the political entity has not presented list of candidates this political entity is not participant of election and cannot/should not determine a responsible person.

Third interpretation – a responsible person may be determined at any day from the day of calling of election, as *The Law* does not establish the concrete day/period.

Opinions varied also during the 2016 Parliamentary elections. The responsible persons of different political entities were determined differently. Some political entities appointed the person later. In any case, the situation created different periods of responsibility.

Like in the case with gyro account a responsible person should be appointed as soon as possible, possibly on the first day of election campaign or possibly closer to the first day of the election campaign. The expert suggests to amend *The Law* with provision establishing that a political entity should determine a responsible person (like in case with gyro/election account) within 3/5 working days after the day of calling for election. Of course, the sanctions, in case a political entity is not in accordance with the provision, should be respectively amended.

Taking into account the recommendation of the chapter 3.5.3. "Election campaign period", the political entity would have enough time to determine a responsible person before election

campaign starts and also the Agency would have time to operate with the data about responsabile persons and relevant political entities.

Provisions of *The Law* do not give a clear picture on the extent of liability of responsible person (is this person responsible only for the period it was appointed for, what happens in case the responsible person changes/ is dismissed etc.).

In case of a political party, a responsible person is defined in the statute and it "acts on behalf of the political party". However, the Agency representative reported there is no information on statues of political parties available from official registers. In addition, the regulation does not impose an obligation to inform the Agency of the data in the statutes.

The representative of the Agency explained that this responsible person is actually more a contact person, with whom the Agency can communicate - rather than a reference person bearing responsibilities.

Differing from this explanation, Article 19 Paragraph 1 establishes that the responsible person keeps responsibility "for the purposeful spending of funds and submission of reports". However, a more detailed description of his responsibilities can be read in section "IX. PENAL PROVISIONS" of *The Law*:

- submitting to the Agency the amount of price and possible discount in price for media advertising of the election campaign (Article 13 Paragraph 2)
- publishing the amount of price and possible discount in price for media advertising of the election campaign (Article 13.2)
- failing to raise the private sources through a corresponding gyro account (Article 6 Paragraph 12).

Anyway, these latter responsibilities do not find a proper correspondence/link with responsibilities stated in Article 19 Paragraph 1.

The spirit of *The Law* appears clear in seeing this subject as really responsible "for the financial operation" and responsible "for the purposeful spending of funds and submission of reports" independently of the general formulation in The Law. Other parts of *The Law* should be reviewed in order to make clear and define powers/duties and corresponding responsibilities of the responsible person, accordingly.

Only in case of a clear set of duties/responsibilities and the compulsory communication of the person responsible, the Agency can exercise its institutional role with the strength/power of a State's Institution Authority.

6. PROHIBITIONS AND RESTRICTIONS

This chapter will talk about restrictions complementing the restrictions already mentioned in the previous chapters.

6.1 RESTRICTIONS ON FINANCING

It is **prohibited** that the political entities **receive** material and financial assistance and in-kind contributions **from:**

- **other states, companies and legal entities outside the territory of Montenegro;**
- **natural persons and entrepreneurs who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies with a share of state-owned capital;**
- **trade unions;**
- **religious communities and organizations;**
- **non-governmental organizations;**
- **casinos, bookmakers and other providers of games of chance** (Article 24 Paragraph 1).

It is not clear what the term "from other states" actually mean. If the term "from other states" in terms of Article 24 Paragraph 1 means any kind of transfers from abroad are forbidden, then it should also mean that the Montenegrin citizen living/staying abroad cannot contribute to a political entity making transferring from foreign bank account.

Also in Article 53 Paragraph 15, different terms are used: **"companies and legal entities outside the territory of Montenegro", "entrepreneurs", "legal entities and companies with a share of state-owned capital", "bookmakers and other providers of games of chance".** The approach of *The Law* implies that a company or entrepreneurs are not legal entities.

Also, terms "from other states" and "outside the territory of Montenegro", are not clear: they should have the same meaning. The arising question is if there is some difference between them.

The term "entrepreneurs who do not have the right to vote in Montenegro" arises the question if there are entrepreneurs having a right to vote.

Is not clear if *The Law* forbids all kind of contributions from abroad (even from citizens and Montenegrin legal entities) or it forbids contribution from natural persons and legal entities registered abroad.

Term **"public institutions" and "legal entities and companies with a share of state-owned capital"** are not defined in *The Law*. In the other chapters/sections of *The Law* different terms are used to name probably the same institution/entity. It arises ambiguity.

Also is not clear what "**material assistance**" and "**financial assistance**" are. In articles on source of financing, these two terms are not mentioned. It is not clear if it means that in this article something different is foreseen compared to Article 6 and Article 3. These articles already lay down the sources of funding. They are membership fees, contributions, income from the activities of political parties, income from property and legacies, borrowing from banks and other financial institutions in Montenegro.

Normally, "bookmakers", "other providers of games of chance", "religious communities", "religious organizations", "casinos", "non-governmental organizations" are legal entities.

Description/Name/Definition of those persons or entities should be the same as in the relevant laws on this entities/juridical forms.

The Law also does not look from the other side on the situation with contributions. The situation where political entity does not want to accept the contribution from someone (can be case when the limit is over or contribution from foreign legal entity was transferred to the account of the political entity). If such kind contribution is already in the account of the political entity, it is not clear from the provisions of *The Law* if political entity may transfer back to the contributor funds arrived in the account without sanctions.

The sanction if political entity receives the contribution "from abroad" is enough high. Article 53 Paragraph 15 determines that *a fine from 10,000 euros to 20,000 euros shall be imposed for a misdemeanour on a political entity if it receives material and financial assistance and in-kind contributions from: other states, companies and legal entities outside the territory of Montenegro, natural persons and entrepreneurs who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies with the share of state-owned capital, trade unions, religious communities and organizations, non-governmental organizations, casinos, bookmakers or other providers of games of chance* (Article 24 Paragraph 1).

The text of *The Law* should be amended in order to use common terminology and definitions.

Considering that Montenegro *is on the way to join the EU*, total restrictions on contributions from outside of the territory of Montenegro in the future could be contradictory with EU regulation, where for instance the EU citizen may participate in the municipality election where he is resident, supposing then that he can contribute as well to the political entity.

The Law sets some other prohibitions related to the contribution to political entity. Such as

- *it is **prohibited** that a person who was convicted by a final judicial decision for a criminal offense **with the elements of corruption and organized crime finances** a political entity* (Article 24 Paragraph 2),
- ***political entities shall not borrow from natural persons*** (Article 24 Paragraph 4),
- *legal entities, companies and entrepreneurs and related natural persons which, based on a contract with the competent bodies, in accordance with The Law, **performed affairs of public interest or concluded a contract in the public procurement procedure**, **in the period of two years preceding the conclusion of the contract, for the duration of the business relationship, as well as two** years after the termination of the business relationship shall not give contributions to the political entities* (Article 24 Paragraph 5).
- *natural persons and legal entities, **against which the tax authority initiated a procedure** of compulsory collection by adoption of the conclusion on compulsory collection of tax, **shall not make contributions** to political entities* (Article 24 Paragraph 6),
- *a legal entity which has not met the outstanding obligations towards the employees within the past three months shall not make contributions to political entities* (Article 24 Paragraph 7).
- *it is prohibited that the political entities, legal and natural persons exert any form of pressure on legal entities, companies and natural persons in the course of raising*

contributions or any other activity related to the election campaign and financing of political entities (Article 25 Paragraph 1).

In Article 24 the terminology ("legal entity", "companies", "entrepreneurs" etc.) should be amended in order to use common terminology and definitions in all text of *The Law.*

Verification of each contribution restrictions mentioned above should be resource-demanding process.

To perform more serious cross-checking and analyses an investigatory approach is required from the Agency. For instance, it is doubtful how does the Agency establish/proves that someone exerted pressure on other.

6.2 PROVISIONS AND RESTRICTIONS ON USE OF RESOURCES OF STATE AND MUNICIPALITIES

The detailed and concrete description of the prohibition of the use of resources of the state and municipalities in *The Law,* leaves the clear sensation on the attempt to solve the issue of the misuse of the public resources by means of *The Law.*

Such restriction should be prescribed by other regulatory acts, not by *The Law*. It is logically if you have a service car, you use it for work purposes - advertising during election campaign period is not a work. Probably, such regulation should be included in the regulation on officials or employees.

The Law should not be considered as a tool for solving problems encountered in the state/municipal authorities regarding the misuse of their funds.

Main restrictions prescribed by *The Law* are the following:

1) It is prohibited to use/usage of the premises of:
   - *state bodies,*
   - *state administration bodies,*
   - *local self-government bodies,*
   - *local administration bodies,*
   - *public companies/enterprises,*
   - *public institutions and state funds*
   - *companies founded and/or owned in major part or partly by the state or a local self-government unit,*

for the preparation and implementation of the campaigning activities, unless the same conditions are provided for all participants ***in the election process*** (Article 26 Paragraph 1).

2) It is **prohibited** distribution of promotional material of political entities in the
   - *state bodies,*
   - *state administration bodies,*
   - *local self-government bodies,*
   - *local administration bodies,*
   - *public companies/enterprises,*
   - *public institutions and state funds*

- *companies founded and/or owned in major part or partly by the state or a local self-government unit* (Article 26 Paragraph 2)

3) It is **prohibited** paid-for advertising of
   - *state bodies and local self-government bodies,*
   - *public companies/enterprises,*
   - *public institutions* and state funds

which could in any way place into a favoured position the political entities or their representatives during the election campaign **(**Article 27);

4) It is **prohibited** to the
   - *State and local budget consumer units*,

except for the State Election Commission and the municipal election commissions, of a monthly consumption higher than the average monthly consumption in the previous six months from the day of calling of the elections until the day of holding of the elections (Article 28 Paragraph 1);

5) It is **prohibited** to *the*
   - *legal entities founded, owned in major part or partly by the state or a local self-government unit*,

in the period from the day of calling until the day of holding of the elections, as well as one month following the holding of the elections, arrange for debt write-off to citizens, including bills for electricity, water, and bills for all types of municipal services (Article 31);

6) It is **prohibited** to use *public official* cars in the period of the election campaign, except for the needs of official duty.
7) It is **restricted** employment for a fixed term in the
   - *state bodies,*
   - *state administration bodies,*
   - *local self-government bodies,*
   - *local administration bodies,*
   - *public companies/enterprises,*
   - *public institutions and state funds,*

   in the period from the day of calling until the day of holding of the elections (Article 33).

In all these Articles there is no consequences linked to determining of the election campaign period. Different terms are used: “election process”, “election period”, “from the day of calling of the elections until the day of holding of the elections” and “in the period of the election campaign”.

In all articles the same term should be used “election campaign period”, “during election campaign period”. Because in Article 2 Paragraph 2 is already established that the election campaign are activities **from the day of calling of the elections until the day of proclamation of the final election results.**

In any case, more precise definition of election campaign period should be introduced in *The Law.*

The Law uses different terms often having the same meaning to mention an authority body: “state bodies”, “state administration bodies”, “local self-government bodies”, “local administration bodies”, “public companies/enterprises”, “public institutions and state funds”, “companies founded and/or owned in major part or partly by the state or a local self-government unit”, “state and local budget consumer units”. In addition, the meaning of the term “public company” in the context of articles is not clear. It is not clear why *The Law* uses different terms “public enterprise”, “public company” or “legal entities founded, owned in major part or partly by the state or a local self-government unit”.

In *The Law* should be introduced terminology, such as “authority body” and “state/municipality owned company” which is used in the correspondent sectoral laws.

Instead of “Company” or “Enterprise” should be used term “legal entity”. Article 31 uses the term “legal entities founded, owned in major part or partly by the state or a local self-government unit”, but Article 26 “companies founded and/or owned in major part or partly by the state or a local self-government unit”. It is not also clear why *The Law* uses many terms in the plural form.

It would be advisable introducing to *The Law* a section on definitions where all terms used in *The Law* are defined, instead of repeating in many articles all long names. For instance: state/municipality owned company is the legal entity founded, owned in major part or partly by the state or a local government.

The use of resources of the state/municipality will always be difficult to regulate. The expert suggests taking into consideration particularities of the country itself when designing the regulatory framework.

7. REPORTING AND TRANSPARENCY

There is a close link between submitted reports/their content and the possibility to make the financing of political entity and election campaign more open/transparent to the public. From this side, the Agency can obviously make available to the public only the information it collects.

The Law determines the number of reports, which state/local authorities and political entities have to submit during election campaign period.

7.1 ANNUAL REPORT

A political entity shall submit *the statement of accounts and the consolidated financial statement* (thereinafter also: *Annual Report*) every year to the tax authority, to the State Audit Institution and to the Agency (Article 37 Paragraph 2).

Accounting records of incomes, property and expenditures by origin (especially for funds from public and private sources), the amount and structure of incomes, property and expenditures should be kept in accordance with the form adopted by Ministry of Finance (Article 27 Paragraph 1).

The Law uses "should be kept", but actually the form adopted by Ministry of Finance is the form for submitting of the *Annual Report*.

The *Annual Report* has to be submitted by 31 March. The Agency has the duty to publish the Annual Report on its website, within seven days from the day it is received (Article 27 Paragraph 5).

Article 37 Paragraph 2 prescribes that all political entities have to submit the report.

Some doubts arise if also group of voters and coalition should submit the report. In terms of logical interpretation, each political entity has to submit its Annual Report.

There is a special form on "*ANNUAL REPORT ON INCOME, PROPERTY, AND EXPENDITURE OF THE POLITICAL PARTY for _____ (year)*" adopted by the Ministry of Finance.

The Law does not prescribe what kind of accounting standards a political entity should use. Moreover, the same accounting requirements should not be applied to voter groups and to political parties with turnover less than 10 000 euro.

The form of Annual Report presently used is more similar to the Annual Report of public/state budget units. Probably, because the audit is made by the State Audit Institution.

7.2 REPORTING DURING ELECTION CAMPAIGN

Political entities

A political entity has to submit the ***Report on contributions from legal and natural persons*** (thereinafter also: *Report on Contributions*) to the Agency every 15 days during election campaign period (Article 42 Paragraph 1).

The *Report on Contributions* has a special form determined in the by-law: "*Instructions on content of the report on contributions from legal and natural persons to political entities in the course of election campaign*" (Article 42 Paragraph 2).

Again, since the day of calling for election coincides with the day of the start of the election campaign (and the lack of a period of preparation before the official opening of the campaign) and the day of submitting of the list of candidate is on another day (20-25 days before election day), it is not clear when the first and the last report should be submitted.

The provision should be precised in accordance with the provisions on the period of election campaign.

Outside of the election campaign period, the information on received donations should only appear in the *Annual Report*.

It is also not clear which information should be allowed to be included in the *Report on Contributions.* For example, contributions received in a period prior to the previous 15 days (e.g. because forgotten or for mistake).

The provision to report the information on the received contribution by 15 day from the day it is received, is comprehensible both from the point of view of the control and from an implementation perspective.

The *Report on Contributions* also contains sensitive data of persons which cannot be publically disclosed. Since the Agency has to publish the Report on Contributions, its employees have additional work to do in order to not make those data publically available.

State and municipality authorities, state/municipality owned enterprise

As mentioned, the misuse of resources of the state and municipalities is a serious issue in the country. The consequence to these behaviours is a requirement to submit specific reports on the usage of public resources during the election campaign period.

Here below, a list of reports all public authorities should submit:

- **Budget consumer units –**
  All budget consumer units, at the state and local level **every seven days from the day of calling of the election till the election day and one month after the election day.**
  Also, they shall publish the analytical cards from all the accounts in their possession on their website; (as well as submit them to the working body of the Parliament in charge of monitoring of the implementation of *The Law* and other regulations of significance for the building of confidence in the election process (hereinafter referred to as: the Interim Committee) (Article 28).
- **Issued travel orders for official cars**
  Every seven days from the day of calling of the election till the election day *all state bodies, state administration bodies, local self-government bodies, local administration bodies, public companies, public institutions and state funds and companies founded and/or owned in major part or partly by the state or local self-government unit* shall publish on their website all issued travel orders for official cars and submit them to the

Agency, which shall afterwards immediately submit them to the Interim Committee (Article 32).

- **Decisions on employment**
  State administration bodies, local self-government bodies, local administration bodies, public companies, public institutions and state funds shall submit all decisions on employment with the supporting documentation to the Agency **within three days from the day of adoption of the decision**. The Agency shall publish these documents its web site within seven days from the day of submission (Article 33).
- **Expenditures from the budget** (state administration body in charge of financial affairs)
  Every 15 days in the period from the day of calling until the day of holding, *the state administration body in charge of financial affairs* (hereinafter referred to as: the Ministry) shall publish statements from the State Treasury and the analytical card on expenditures from the budget on their website and submit them to the Interim Committee and to the Agency**.** (Article 30 Paragraph 1).
- **Expenditures from the budget** (local administration body)
  Every 15 days in the period from the day of calling until the day of holding, *The local administration body (municipality)* shall publish statements from the statements from the local treasury and the analytical card on expenditures from the budget on their website and submit them to the Interim Committee and to the Agency**.** (Article 30 Paragraph 2).
- **Distribution of all forms of social welfare** (Ministry in charge of Labour and Social Welfare and municipalities)
  During the election campaign, *Ministry in charge of Labour and Social Welfare and municipalities* shall collect the data on distribution of all forms of social welfare/analytical cards at their level and publish this information on their website and as well, **every 15 days** shall submit these data to the Interim Committee and the Agency (Article 33 Paragraph 1 - 3).

Who	How Often	What	To whom	On website (yes/no)	Article. Paragraph
All budget consumer units, at the state and local level	**every seven days**	the analytical cards from all the accounts in their possession	Submit to Interim Committee	Institution shall publish on their website	28
all state bodies, state administration bodies, local self-government bodies, local administration bodies, public companies, public institutions and state funds and companies founded and/or owned in major part or partly by the state or local self-government unit	**every seven days**	all issued travel orders for official cars	Submit to the Agency, Agency immediately shall submit Interim Committee	Institution shall publish on their website	32
State administration bodies, local self-government bodies, local administration	**within three days from the day of adoption of the decision**	all decisions on employment with the supporting documentation	To the Agency	Agency shall publish on its website within seven days from the day of submission	33

bodies, public companies, public institutions and state funds					
the state administration body in charge of financial affairs	**Every 15 days in the period from the day of calling until the day of holding**	statements from the State Treasury and the analytical card on expenditures from the budget	Shall be submitted to the Agency and Interim Committee	Institution shall publish on their website	30.1
The local administration body (municipality)	**Every 15 days in the period from the day of calling until the day of holding**	statements from the statements from the local treasury and the analytical card on expenditures from the budget	Shall be submitted to the Agency and Interim Committee	Institution shall publish on their website	30.2
Ministry in charge of Labour and Social Welfare and municipalities	**During the election campaign**	the data on distribution of all forms of social welfare/analytical cards at their level	every 15 days shall submit these data to the Interim Committee and the Agency	Institution shall collect and publish on their website	33.1-3

Here again, as in the other Articles of *The Law*, the usage of different terms to determine the same subject/thing: "the local administration body (municipality)", "local self-government bodies", "local administration bodies", "all budget consumer units" etc.

The control on whether all entities mentioned in *The Law* really publish the required information, whether they publish them in time, and if the published information are the required information, appears to be a really huge job for the Agency.

Besides this, and just to offer the order of magnitude of the complexity to accomplish this task for the entire public administration involved (and the relevant control system!), it should be presumed that every entity/body should know what/when to publish and when/where to submit the required information.

Furthermore, there is no consequences/link on why some information should be published on the website of the entity/body, and why in the other case the information should be submitted to the Agency and the Agency should publish it on its website.

During the 2016 Parliamentary Elections, the Agency became a controller of the fact of submitting and submitting in time. Actually, during the election campaign period, the Agency could not find time to verify the origin and authenticity of received information and data. A consequence of this is weak supervision. The Agency did a huge job, but the main Agency's findings among all information/data submitted were related to delay in submitting or not "filled" gaps.

7.3 REPORT ON ELECTION CAMPAIGN

Within 30 days after election day political entity which participated in the election should submit to the Agency the ***Report on origin, amount and structure of funds collected and spent from public and private sources in the election campaign*** (hereinafter also: *Report on Election Campaign*).

The Law also requires relevant "*supporting documentation*" (Article 39 Paragraph 1). Such as *bank statements showing all revenues and expenditures from these accounts, in the period from its opening until the day of filing of the report with the documentation* (Article 39 Paragraph 5).

The by-law specifies that the Report on Election Campaign should contain:

- **Report on the funds collected from public sources** (contains Revenues from the Budget of Montenegro and Revenues from the budget of a local government unit).
- **Report on the funds collected from private sources** (contains Revenues from contributions made by legal persons, Revenues from contributions made by natural persons, Credits, borrowings and other services provided by banks and other financial institutions and organizations).
- **Report on the funds collected and spent from public and private sources** (contains Expenses of pre-campaign rallies, Expenses of commercials and advertising material, Advertising expenses, Expenses of media coverage, Expenses of public opinion polls, Expenses of engagement of authorized representatives of the submitter of an election lists in the extended composition of the body, Overhead and general administration expenses, Transportation expenses during the campaign election, Other expenses of the election campaign).
- **Summary report on funds collected and spent from public and private sources** (Total collected and spent funds).

The form of the Report on Election Campaign is very detailed and such level of detail appears questionable.

Article 39 Paragraph 5 contains terms regarding account and period "***in the period from its opening until the day of filing of the report*".** It is not clear the reason why the provision extends the period by "***the day of filing of the report***".

The law requires that *the Agency shall publish the report within seven days from the day of receipt* (Article 40 Paragraph 1).

The Law does not foresee a situation where the report might be amended once submitted. If from one side, 30 days may sounds enough for a punctual drafting of the report, from the other the experience has taught that amendments can arise.

The extension of the period till "**the day of filing of the report"** should be reviewed. The provision on the possibility of making corrections to the submitted document, should reviewed / amended.

7.4 PUBLICALLY AVAILABLE INFORMATION

Every piece of information published on the Agency's website is not manageable like data-base information. Submitted reports are on paper / "hard-copy", and the published ones are scanned copies. They are undoubtedly publically available, but with no chance to process the content of the data electronically.

Moreover, the information required under Articles 28-33 is placed on different institutions' websites.

A huge amount of information is available to the public, proportionally to the required effort of their searching and elaboration.

The willingness to make the information public and transparent, should find positive match with an easy- finding & processing of the information itself (intelligibility of data).

On the other hand, a re-assessment of such significant amount of data in favour of its quality (at parity of effectiveness) appears necessary.

The reality of the current state of things makes the publicity system heavily inefficient, even if it meets the formal requirement of the law.

The electronic mode of producing, transmitting and processing information is a great opportunity for making the law fulfilled, and the controlling task of the Agency much more lean and effective.

The road open with electronic technologies may also offer accessible all reports required by law on the agency's website without even representing a burden on the IT system of the body.

Medium/Long term target: making the reporting system electronic and as more standardized as possible per issuer category.

Long term target: bringing all information required by the Law into a single portal, offering data-processing tools available. Specifically for the Agency, analysis & control tools should be foreseen.

8. IMPLEMENTATION OF CONTROL

The Law is clear and strictly divides the competences.

The Agency:

1. performs control over **financing of political entities** and **election campaigns**,
2. carries out supervision over **implementation of *The Law***,
3. performs control on restrictions of the **use resources of state and municipalities** during election campaign
4. performs control over requirements on the **disclosure of information**.

The State Audit Institution:

1. performs **audit of the consolidated financial statements** of the political entities whose total income exceeds 10,000 euro (Article 43 Paragraph 1)
2. prepares **the report** which should also provide the opinion and recommendations for the removal of irregularities and take other measures, in accordance with *The Law* and the law governing the rights, obligations and manner of operation of the State Audit Institution (Article 50).

Article 46 of *The Law* determines implementation of control and supervision during the election campaign. However, during the election campaign, the Agency also performs other activities.

Agency shall:

- **collect regularly the data** on all the activities of political entities in relation to the funds expended for financing of the costs of the election campaign (Article 46 Paragraph 2),
- **perform control and supervision** of the calculation of in-kind contributions, paid-for media advertising, and prohibition of financing of political entities or running campaigns on their behalf (Article 46 Paragraph 4),
- **perform control and supervision** of other prohibitions and restrictions prescribed by *The Law* (Article 46 Paragraph 4), such as prohibitions, restrictions and requirements on the disclosure on use of public resources;
- **submit a report** or a motion within 15 days **from the day of detected irregularity** or violation of *The Law* (Article 46 Paragraph 5),
- **pronounce** the measures of warning to a political entity if it ascertains the shortcomings which can be removed in the procedure of control (Article 48 Paragraph 1),
- **shall file** a motion for the initiation of a misdemeanour procedure if political entity fails to act upon the warning measure or the violation of *The Law* should occur, and related shortcomings cannot be removed,
- **adopt and publish** on its website the method (the *Rulebook*) of performing control and supervision during the election campaign (Article 46 Paragraph 7),
- **adopt and publish** on its website reports on exercised supervision during the election campaign and on exercised control of financing of the election campaign of the political entities (Article 46 Paragraph 6).

Submitting a report or a motion, the provision of Article 46 Paragraph 5, should be a part of daily “life” of the Agency not only during election campaign period.

As mentioned in the section 2.2., the Agency has to perform an enormous work (mentioned above) especially with regard to election campaign.

The representative of the Agency reported about this enormous workload. During election campaign period before Parliament election in 2016 the Agency had to control analytical cards of 447 state and municipality institutions and travel orders of 998 state and municipality authorities and state/municipality owned legal entities, once per week. The representative of the Agency reported that during election campaign period before Parliament election in 2016 the Agency allocated 20 additional staff members to perform the control.

Five employees of the Department are not in a position to perform more detailed and deeper analyses on received information. An effective evaluation and crosscheck of data regarding financing of political parties and election campaign was missed for data received on 2016 Parliamentary elections.

The main findings of the Agency with regards to all the information political entities, state/municipality institutions and state/municipality owned legal entities submitted related to non-compliances with submitting the reports in time.

In opinion of the expert, to perform more detailed and deeper evaluation and crosscheck the Agency lacks investigatory approach in performing the control on submitted information/data.

Among duties of the Agency is the adoption and publishing of the *Report on exercised supervision during the election campaign and exercised control of financing of the election campaign of the political entities* (hereinafter also: *Report on Supervision*) within 60 days of the proclamation of the final election results.

The *Report on Supervision* on 2016 Parliamentary elections is very long and detailed. It is doubtful that a reader can easily arrive to the full understanding/conclusions or to the main numbers. The *Report on Supervision* is very voluminous. Presumably, someone worked over it seriously and for a long time. There are tables and graphs even the main information is presented as text. There are no serious findings (unless on submitting) carried out by the Agency during the supervision of the Parliamentary Elections.

To the contrary, NGO findings are significantly different. They confirm that the Agency performs mainly control on submitting in time and does not perform crosschecking, and comparing of “data in the reality” with the data submitted by the political entity.

The information the report contains should be more concrete.

According to the expert's opinion/experience, the period of 60 days is too short to perform enough efficient evaluation and crosschecking of data and to discover all hidings/not compliances. In opinion of the expert, the period of 60 days should be prolong to 4-6 months.

A political entity should submit to the Agency ***the report on funds spent on the electoral campaign*** (thereinafter also: *Report on Expended Funds*) together with supporting documents within 30 days from the day of holding of the elections. The report should be supported by bank documentation showing all revenues and expenditures from accounts. Then, 7 days after submitting of the report, the second part of the budget funds for financing the election campaign shall be transferred to political entities.

It should be noted that *The Law* does not foresee the audit/control of the report in order to detect non- compliance with the provisions of *The Law,* which can become reason of suspension disbursement of the budget funds.

The Agency verifies only the fact of submitting the report. The content of the *Report on Expended Funds* does not affect the distribution of the funds.

8.1 COMPLAINTS

The situation with complains is not clear. What the Agency reports does not match significantly to what the NGOs report.

There is the a by-law adopted by the Agency pursuant to Article 44 Paragraph 3 of *The Law* - the *Instructions on the manner and procedure for reporting and resolving complaints filed in the course of the election campaign*.

There were over 2000 complaints submitted to the Agency for the 2016 Parliamentary elections. The *Report on Supervision* of 2016 Parliamentary elections does not contain clear data on how many of them were confirmed during performing the analyses of received information and evaluation of cross checks. It is doubtful that among so many complaints there were no reasoned complaints.

In opinion of the expert, the reason why so many complaints were unfounded has to be evaluated. Probably better explanation to the submitters (NGOs, public, media) about the scope of the complaint is needed. On the other side, more analytic and investigatory approach of the Agency evaluating the information of complaints is needed.

8.2 STATE AUDIT INSTITUTION

According to *The Law*, the audit on the consolidated financial statements of political entities has to be performed if the total income exceeds 10,000 euro.

There is a form adopted by the Ministry of Finance.

As it was mentioned in the chapter 8.1, *The Law* does not prescribe what kind of accounting standards should the political entities use. But the form of the report on *Annual Report* presently used by political entities is more similar to the *Annual Report* of public/state budget unit. Probably it is because the audit is made by the State Audit Institution.

At the same time, also the Agency receives the same reports. The only obligation of the Agency regarding the *Annual Report* is to publish it on the website.

The *Annual Report* also includes the period of election. Despite the fact that there is a certain communication between the Agency and the State Audit Institution, it is not particularly collaborative. The State Audit Institution does not take into the consideration the control done by the Agency on the part of election (which is not auditing), mainly because the State Audit Institution has their criteria and methods.

The State Audit Institution completes the audit of the *Annual Report* of the political entity by preparing an own report on the audit. The State Audit Institution publishes that report on its website.

Once the State Audit Institution publishes the report/conclusion on their website, the report on results of audit is not sent to the Agency. So, The Agency finds itself in the position of any other readers of State Audit Institution website. The State Audit Institution does not send any additional information/notices on possible detected issues.

That is not a way to collaborate between State institutions. The Agency cannot be put at the same level as the general public.

The State Audit Institution should provide full mutual collaboration with the Agency, and full detailed information personally/directly.

As the *Annual Report* contains a section which the political entity should fill, if it took part in the election, then the State Audit Institution audits the same section as the Agency. As the cooperation between the two institutions is not defined, it is not actually clear how the State Audit Institution performs the audit of the part that regards the elections.

The representative of the State Audit Institution informed us that institution put all finding in their report and it is the Agency that should take initiative (if there is something regarding competences of the Agency). It should also be noted, that the State Audit Institution does not initiate misdemeanour proceedings, but it can submit information to the prosecutor's office in case of criminal activity suspicious.

The representative of the State Audit Institution stated that the Law on the State Audit Institution doesn't foresee that institution shall audit financial reports of political entities. During the meeting, the State Audit Institution reported that the auditing of political entities commits a part of Institution resources in terms of personnel, time and funds (auditing some tens of political entities). Also, the State Audit Institution stressed the point that the audit should be performed using the institution methodology, whose accent raises possible doubts about the effectiveness of this methodology with respect to the purpose to be achieved. A specialised evaluation should be done in this area.

If the audit is performed by the State Audit Institution, the collaboration and communication with the Agency should be done in the best possible way, it should be very close cooperation.

However, it is difficult to carry out in the situation where two different institutions with two different targets/scope/competences collaborate; unless the competencies and collaborations mechanisms/manners/methods of the Agency and the State Audit Institution are positively defined.

The expert would like to note, that the position steaming from *The Law* that the Agency performs control over financing of political entities and election campaigns and carries out the supervision over implementation of *The Law*, but State Audit Institution audits annual reports of the political entities, is not applicable in Montenegro case / situation.

In opinion of the expert, better solution is that the Agency itself performs the audit on the Annual financial reports of the political entities. Under such provisions, the Agency can perform both the control over financing together with auditing of political entities.

This perspective should require additional resources allocated towards the Agency. In order to facilitate the audit the political entity should submit the Annual Report supporting with the report of a sworn auditor.

9. LIABILITY

The Law foresees following sanction for violations of provisions of the law:

- pronouncement of warning,
- administrative fines,
- suspension of public funding
- partial or full loss of public funding.

In the legal framework of Montenegro the misuse of public resources foreseen criminal liability.

Sanctions can be imposed to

- a legal entity
- political entity
- responsible person of the Agency
- a state body, state administration body, local self-government body, local administration body, public company, public institution, state fund and legal entity founded and/or owned in major part or partly by the state or a local self-government unit
- on a candidate for the presidential elections
- natural person.

The problem with terminology and definitions affects also the section "Penal Provisions".

The Law does not determine what will happen in the case when a political party will cease to exist or remain bankrupt or if a group of voters breaks out. In this case, responsibility should lead to the board of the political party or to those who payed or to those who took decisions. Should be issue of the other law, but it should be foreseen.

9.1 PRONOUNCEMENT OF WARNING

The Law establishes that *the Agency can pronounce a warning to a political entity if it ascertains the shortcomings which can be removed in the procedure of control* (Article 48 Paragraph 1). The provision makes clear that a warning can be issued only during control procedure.

It is not actually clear, why the Agency is limited with "only during the control" and "if it ascertains the shortcomings, which can be removed".

In opinion of the expert, the Agency should have the right to issue the warning to a political entity in any occasions regarding non-compliance. Also, suitable time should be given to a political entity to remove the shortcoming.

9.2 ADMINISTRATIVE FINES

As *The Law* set up a wild range of restrictions and prohibitions, there is a range of punishable violations. The range of fines varies from 200 up to 20000 euro.

- A fine from 5,000 euros to 20,000 euros/5000-20000 shall be imposed for a misdemeanour on a legal entity (Article 51),

- A fine from 5,000 euros to 20,000 euros shall be imposed for a misdemeanour on a political entity (Article 52, 53),
- A fine from 500 euros to 2,000 euros shall be imposed on the responsible person of the Agency (Article 54),
- A fine from 200 euros to 2 000 euros shall be imposed on the responsible person in a state body, state administration body, local self-government body, local administration body, public company, public institution, state fund and legal entity founded and/or owned in major part or partly by the state or a local self-government unit (Article 55),
- A fine from 1,000 euros to 2,000 euros shall be imposed for the misdemeanour on a candidate for the presidential elections (Article 56),
- A fine from 500 euros to 2,000 euros shall be imposed for the misdemeanour on a natural person (Article 57).

Amplitude of fines is wide. On a political entity or legal entity, they vary from 5000 to 20 000 euros. At the same time, fines have wide freedom. There are no criteria to guide when choosing "how much" to apply.

The expert suggests considering establishing criteria on when it is enough the Agency issues warning and when the fine should be higher. It can be case when the entity is in delay for submitting the report. If the delay is one-two days would not be reasonable to apply sanction of 10000 euro.

The Agency does not impose sanctions. The Agency initiates misdemeanour proceedings before a misdemeanour court. From the point of view of efficiency, it would be suggestable to foresee that the Agency can impose sanctions. It would give to the Agency an additional opportunity to show the results of its work.

There are now sanctions foreseen for the violations laid down in Article 15 and Article 29 of *The Law. The Law* should be amended in this respect.

9.3 SUSPENSION OR LOSS OF PUBLIC FUNDS

In case a political entity does not submit its Annual Report in time, the *Ministry or respectively local administration body shall suspend the payment of funds* for regular activities (Article 11 Paragraph 10). The term "suspend" used in *The Law* should mean that the payment is restarted when political entity submits the *Annual Report* (even in grave delay).

In addition, Article 48 Paragraph 3 prescribes that *the Agency shall adopt a decision on temporary suspension of transfer of budget funds to the political entity until the adoption of the final decision in the misdemeanour procedure*:

- *in case the political entity does not submit its Annual Report in time* (Article 11 Paragraph 10)
- *in case the political entity does not submit the Report on funds raised and expended for the election campaign with the supporting documents* (Article 14 paragraph 4).

In conclusion, from the reading of the above articles:

- there is no time limits to end the misdemeanour procedure. That means funds may stay suspended for an indefinite period;

- there is no clarity on what is regarded as the "final decision" of the misdemeanour court;
- whatever the scenario under Article 48 Paragraph 3 arises, it appears unlikely that a political entity would not receive the suspended funds;
- the Agency has clearly no entitlement/power to revoke/cut funds in cases of law infringements.

Article 48 Paragraph 4 states that *the Agency **may** pronounce the measure **of partial or full loss** of entitlement to budget funds for financing of the election campaign costs*:

- **in case when the funds for financing of the election campaign costs are not used for financing of the election campaign costs** (not for purpose listed in Article 13)
- **in case of acquiring of funds** contrary to Article 18 **– not through the election account**.

Here, *The Law* introduces an ambiguously large environment of discretion on the Agency, which should operate with a narrower margin of appreciation, instead.

The Law should sanction with partial/full loss of funds the missing or delayed submission of the report/documentation.

The suspension of funds should apply only in case of extraordinary circumstances and only for a defined period of clarification, at the end of which a final deliberation should be taken by the Agency.

The Law should clearly state under which circumstances, measures of loss of funds are to be applied and in which amount.

9.4 CRIMINAL LIABILITY

The criminal sanction is foreseen for misuse of public resources. Article 193a of Criminal Code was introduced in 2015 and it foresees imprisonment from 6 month up to 5 years to an official person who uses or enables the use of property of state bodies, public institutions, public enterprises and funds, local self-government units and companies in which the state has a proprietary interest, to present the electoral list.

The Criminal Code does not lay down / foresee sanctions for other kind of violations regarding financing of political entities or election campaign.

The expert suggests examining other cases of criminal liability. Making more detailed and investigatory approached analyses of the financial data of political entities, the proper cases will be identified. Criminal liability could be applied in cases of serious violations of *The Law* regarding financing the political entity or election campaign.

10.CONCLUSIONS AND RECOMMENDATIONS

There is a confused picture of the financing system of political parties and election campaign financing and supervision over it in Montenegro. Above all, the main concern arises with regard to the whole system of control, which appears to be weak and ineffective.

The present situation / conditions on control over financing of political entities and election campaign are characterized by:

1) ambiguous regulation, illogical and inconsistent law under many aspects. This creates the main difficulty in the application and control of its implementation;
2) the strong role of political entities in the society and institutions;
3) the widespread ~~allegations on~~ misuse in the use of public resources.

None massive modification of the regulation seems feasible and realistic in such situation. Considering this, the following recommendations aim to reach feasible/realistic results by:

1) proceeding with amendments of the regulation by gradual steps;
2) reinforcing the controlling role of the Agency as a first step, by amending the most critical points of *The Law*, first;
3) emphasizing the target on improving efficiency of the Agency and stressing on few new improvements on its operational activity, rather than the attempt of restricting the political entities (which are the decision makers on the entire law/system);
4) communicating with public in constructive way, also by accepting the challenges coming from media and NGOs.
5) repeating the cycle bringing heavier interventions mainly on the work of the Agency and, in second step to the financing system. Cycle by cycle, the intervention to the present regulatory system should give shape of stable, clear, logical and consistent regulation.

Recommendations and conclusions are the following.

1. The most significant issue in the present political parties/election campaign financing system (its regulation) comes from:
   - the coincidence between the day of calling for elections and the day of election campaign starts;
   - the day of submitting of the list of candidates comes later and it is too close to the election day.

Once the solution on these two instances are set, most of problems now in place will find simple/natural resolution.

1.1. A feasible solution comes from a small amendment of both regulatory acts (the *electoral legislation* and the *Law on Financing of Political Entities and Election Campaign*) together:

- Article 14 Paragraph 2 of the *Election Law*, by extending the 60-100 days period to 90-130 days;
- introducing in *The Law* that the election campaign starts 30 day later the day of calling for elections, and requiring the opening of the election account, the appointing of the responsible person, the registration of lists of candidates, etc. within this 30 days period.

Accordingly, the definition of the election campaign period should find updating in Article 46 Paragraph 1 of the *Election Law*, and *The Law* should find updating in the usage of relevant terms.

1.2. Should amendments to the *Election Law* not be possible, the alternative path should consider amending *The Law* only.

In this case, amendments to *The Law* in terms of introducing additional provisions are needed. For instance, the Article 18 should add:

- the following restriction: "*In order to participate in the elections, the political entity shall open an election/gyro account within 3/5 working days after the day of calling for election*";

- a provision establishing that *"A political entity should determine a responsible person within 3/5 working days after the day of calling for election*".

2. Provisions on closing the gyro/election account have to be introduced into *The Law.*

3. *The Law* should be reviewed in order to make accordingly clear and defined the powers/duties responsibilities of the responsible person.

Definitions and terminology

4. *The Law* should use clear definitions and common terminology.

5. The section on "Definitions" (where all terms used in The Law are defined) should be introduced into *The Law.*

6. *The Law* should use a common terminology regarding *"state/local government bodies/administration/institutions", "public companies", "legal entity", "election campaign period".*

7. *The Law* should be clear in using a term as singular or as plural. In addition, wherever a term having general meaning appears, it should be used as singular.

8. Articles 12 and 53 of *The Law* must be revised making clear where the use of terminology of either "political party" or "political entity" is needed.

9. The definition of term *"contribution"* (referred in Article 6 Paragraph 3) should be amended; it could be rephrased as follows: "*contribution is a free voluntary payment made in favour of a political entity by natural person or legal person*".

10. Revise Article 24 Paragraph 1 of *The Law* making clear the use of terms "material assistance" and "financial assistance".

Capacities of the Agency

11. The Agency needs more employees in the *Department for the control the financing of political entities and election campaigns* both for better performing present tasks and for performing future tasks.

12. A more automatized procedure for obtaining processed data is a recommendation for the middle-term.

Middle/Long term target: making the reporting system electronic and as more standardized as possible per category of users.

Long-term target: introduce data processing tools that allow monitoring the functioning of the agency and assessing its effectiveness; specifically for the Agency, analysis & control tools should be foreseen.

13. Perform better the collaboration with *Department for initiation of misdemeanour proceedings and issue of misdemeanour warrants to prevent conflicts of interest of public officials and control of financing of political entities and election campaigns*.

14. Identify a person as Agency's speaker/communicator for TV, newspapers, web, etc. In addition, assistance to the head of the Agency and heads of departments is needed whenever their presence in speaking appears necessary or suggestable.

15. Arrange training on basics of public speaking towards concerned officials.

Financing / Spending

16. Revise and clarify the restriction on contributions from outside of the territory of Montenegro. Clarify if *The Law* forbids all kind of contributions from abroad (even from citizens and Montenegrin legal entities) or it forbids contribution from natural persons and legal entities registered/resided abroad (referred in Article 24 Paragraph 1).

17. Evaluate the real need to maintain the in-kind contribution from legal entities. In particular, the borrowing from banks is the point requiring more attention.

18. Evaluate if a political entity taking a loan should also receive public funds.

19. Perform a detailed analysis on aggregate data taken from reports of political entities in order to carry out useful information for further evaluations. On the base of the analysis determine the actual and real need of political entities in financing. Such evaluation may lead to necessity of reducing some kinds of spending by introducing a limit on the costs and encouraging political parties to use less expensive methods of self-promotion. Consequently, reducing dependence on money will lead to a consistent reduction the amount of budget funds.

20. The followings are the recommendations in order to make understandable/determinable how much a political entity spends for election campaign:

Firstly, - the election campaign period should be clearly set: when it starts and when it ends and rules of the regulation should be clear and at the same condition to every entity involved;

Secondly, – the expenses arising prior the election campaign but related to election campaign, should be counted in the overall amount a political entity could spent for the campaign;

Thirdly, – to renounce to the division on kinds of spending as now stated in *The Law* (see Recommendation 22);

Fourthly, - accordingly, adopt a new form of post-election report. The report should clearly show how much the political entity spent for the election campaign, independently from when payments were effected and what for they were done.

21. Evaluate introducing less complicated schemes on calculating and distributing of state funds.

22. Divide expenditures by the purpose for which they arose, instead of "*for financing regular operation" and "for financing election campaigns"*.

23. Include all income/expenses incurred during the election campaign period in the post-election report.

24. Revise and amend provisions regulating distribution of the funds in case a political entity is a coalition or a group of voters. *The Law* establishes that "*funds for regular operation*", shall be "*distributed in accordance with the agreement and Articles of Association of these political entities*" (referred in Article 11 Paragraph 7), whereas *The Law* does not set a correspondent provision for "*financing of election campaign*".

25. Introduce provisions allowing a political entity to refuse a contribution. For instance: *"A political entity is not obliged to accept a contribution. A contribution shall be considered accepted if it is not transferred (given) back to the contributor within 5 days after its receiving".*

26. Revise and amend provisions regulating what happen with the financial assets after closing the election account, for example "*after closing the election account its residual amount of money shall be transferred to the regular account*".

27. Clarify the calculation of the *threshold* in Article 13 Paragraph 4.

28. Introduce clear restrictions on the limitation of total amount of incomes from private contributions.

29. Clarify if the limit on amount of contribution includes/calculates in-kind contributions.

30. Introduce different period for the distribution of the budget funds for regular operation; for example the distribution of funds once in a quarter.

Informing the public

31. Provide that the available information on the Agency's website is more intelligible with possibility to process data electronically. This recommendation refers to Recommendation 12.

32. The Agency's website should also provide information on amount of funds planned and already distributed to each political entity.

Collaboration with the State Audit Institution

33. The State Audit Institution should provide full mutual collaboration with the Agency, and full detailed information personally/directly; both collaboration and communication with the Agency should be done in the best possible way and in close cooperation.

34. Define clearly the competencies and collaborations mechanisms/manners/methods of the Agency and the State Audit Institution.

Misuse of state/municipal funds

35. *The Law* should not be considered/used as a main tool in solving the problems that are encountered in the state/municipal authorities regarding the misuse of their funds.

Reporting

36. Revise and clarify the provision of Article 39 Paragraph 5. It is not clear why the provision extends the period "*until the day of filing of the report*".

37. Introduce the provision that foresees that political entity can make corrections in submitted documents.

38. Introduce the provision that foresees submitting/publishing of information on acquired membership fees together with the *Annual Report*.

39. Determine what kind of accounting standards a political entity should use.

Control/sanctions

40. The provision of Article 46 Paragraph 5 (submitting a report or a motion), should be as a part of daily work of the Agency (not only during election period).

41. The Agency should have the right to issue a warning to a political entity in any occasion of noncompliance. Suitable time should be given to a political entity to remove the shortcoming, as well.

42. The period in which the Agency shall adopt and publish on its website reports on exercised supervision during the election campaign and on exercised control of financing of the election campaign of the political entities (Article 46 Paragraph 6) should be prolonged up to 4-6 month.

43. Evaluate more in depth the reason of many unfounded complaints.

44. Use more analytic and investigatory approach in evaluating of complaints.

45. Explain to the complaints' submitters (NGOs, public, media) about the scope of the Agency in processing the complaint.

46. Evaluate introducing of the provision that foresee that the Agency performs the audit of the Annual financial reports of the political entities.

47. Revise the criteria when issuing of warning is enough and when the higher fine should be applied.

48. Revise the reasonability and the amount of sanctions; higher sanction should find application in case an entity repeats a violation or a violation is serious.

49. The suspension of funds should be applied only in case of extraordinary circumstances and only for a defined period of clarification, at the end of which a final deliberation should be taken by the Agency (admitting or revoking the funds).

50. Clarify under which circumstances, measures of loss of funds shall be applied and in which amount.

51. Evaluate and define other cases regarding financing of political entities/election campaign, when criminal liability may be applied.

52. Introduce the provision that foresees that the Agency has the power to impose sanctions.

53. Perform more serious/deep cross-checking and check of the veracity of the figures, also using the research/investigatory approach.

Other issues

54. Foresee that not only activities of a political entity are considered as election campaign, but also activity of any legal or natural persons might be considered as election campaign activity (e.g. political advertisement).

55. Foresee the provision (in order to regulate the matter on prices and discounts for political advertisement) requiring to the providers of advertisement or relate services, intended to be suppliers of political entities during the election campaign, submitting their fixed-price list, by for instance 1 month prior the election campaign starts. The Agency shall publish their prices lists on its website. Services providers not submitting their prices lists or not submitting the price list in time will have no permission to place political advertisements.

56. Evaluate the possibility/prospective to prohibit political advertisement on TV for a certain period before the election day (not too close at the election day).

57. Introduce the provision that determines what happens in case a political party ceases to exist, gets bankrupt or if a group of voters breaks out.

58. Revise and harmonize the *Law on Political Parties* and *The Law* making the work of a political party really transparent and its main information (statutes, *person authorised to act on behalf of the political party*, number of members, etc.) publically available.