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Assessment of the regulatory framework for political party and election campaign financing in Montenegro

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Abbreviations:

APC	Agency for Prevention of Corruption
LFPEEC	Law on Financing of Political Entities and Election Campaigns
NGO	Non-Governmental Organisation
SAI	State Audit Institution

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1 EXECUTIVE SUMMARY/INTRODUCTION

This paper provides an assessment of the regulation of political party and election campaign finance in Montenegro. Action 2.1.3 of the Horizontal Facility envisages an analysis of lessons learned from implementation of the relevant legal provisions in light of experience of elections held during 2016, and recommendations for changes in regulation. In line with APC needs, this has been interpreted broadly as an exercise to identify problems in the entire legal framework, including lessons from the experience of implementation in 2016. The assessment is based on the following:

- The new legal framework for political financing, consisting of the Law on Financing of Political Entities and Election Campaigns (LFPEEC) in force since 1 January 2015, the Law on Prevention of Corruption (LPC) – which established the Agency for Prevention of Corruption (APC) and came into force on 1 January 2016, APC by-laws (Rulebook on the Manner of Exercising Control of Political Entities and Control and Supervision during Election Campaign, template for election campaign financial reporting), template for annual financial reporting, and documents on implementation of the new legal framework (notably the APC Report on supervision conducted during the October 2016 parliamentary and municipal elections).
- Independent monitoring reports, including those of the Council of Europe Group of States Against Corruption (GRECO - 3rd Round Evaluation), and of civil society organisations (reports by CEMI in 2015 and CDT in 2017).
- Meetings held with the APC, Supreme Audit Institution (SAI), representatives of both governing and opposition political parties, and civil society organisations (CEMI, MANS, CDT, and Institut Alternativa).
- A workshop held on 17 March 2017 attended by all relevant stakeholders from the public sector including the APC, SAI and prosecution.

This paper focuses almost entirely on political party and parliamentary election campaign financing, and does not cover Presidential and local elections in detail. However, Parliamentary elections are the most complex to regulate due to their scale and the number and range of political entities involved. Consequently, the issues/problems identified under parliamentary elections are on the whole either not present for other elections or are the same. In addition, Action 2.1.1 of the Horizontal Facility envisages assistance to the establishment of a system of monitoring compliance of obliged entities with political party and election campaign finance regulations – the track record system. The paper also provides suggestions/recommendations for the establishment of a ‘track record’ system for recording compliance and relevant aspects of oversight and enforcement.

The **most important findings** of the paper are the following:

Clarity

- The criteria by which of budget funds for ordinary activities are allocated is not entirely clear, due to different interpretations of what constitutes a 'political entity' in Parliament.
- The separation in the law of income for ordinary activities from income for election campaigns is ambiguous (especially the question of whether 'own funds' acquired outside the election period may be used for electoral purposes).
- Definitions of electoral and ordinary spending are problematic as they are to a large extent based on types of spending rather than on the objective of spending.
- There is disagreement over what constitutes the limit on election campaign spending. On either interpretation the limit is dysfunctional. Moreover, there are no direct limitations/restrictions on the most expensive campaign activities.
- The division of oversight competencies between the Agency for Prevention of Corruption and State Audit Institution (SAI) is not clear enough, and the establishment of the SAI's obligation to audit annual reports on political entities appears to contradict the Law on the State Audit Institution.

Specificity

- The law fails to set deadlines for the designation of responsible persons for both ordinary and election campaign finance, and in the latter case defines their responsibilities too narrowly.
- The law fails to establish which accounting standard political parties/entities must use for annual reporting.
- The template for election campaign reporting is insufficiently detailed for key items, such as reporting of advertising expenditure.

Practicability/effectiveness

- Provisions on the management of election campaign funds are highly problematic, due to a clash between requirements to fund all election campaign activities from a special account on the one hand, and deadlines for opening such an account that allow this to happen late in the election campaign on the other.
- From a wider perspective, the separation of income for ordinary activities from income for election campaigns – in addition to being ambiguous legally – lacks a sound rationale
- Provisions designed to prevent misuse of state resources, while well-intentioned, appear to impose restrictions on spending that fail to take account of budget realities, and reporting requirements that are burdensome for public entities while revealing limited useful data.

- The APC's role in overseeing and monitoring election campaigns is overwhelming if taken literally, and the Agency does not employ risk assessment sufficiently to limit the scope of its controlling activities.
- Sanctions for violations of political finance regulations lack flexibility in certain respects.
- Provisions allowing the withholding or suspension of budget funds are too weak in the case of ordinary financing, and dysfunctional in the case of election campaign funds due to the very short deadline in which the APC may check the reports of political entities (on the basis of which it decides whether to release budget funds).
- The APC cannot impose sanctions directly, creating a burdensome chain of enforcement, and administrative sanctions are in practice very low due to the manner in which they are enforced by misdemeanour courts.
- There is (or at least has been) insufficient communication and coordination between the APC, SAI and prosecution.

The **full recommendations** of the paper are the following

1. Any **legislative amendments** should be initiated and carried out via a normal legislative process, with initiation by the Government followed by standard procedures for drafting and feedback, to avoid in particular uncoordinated interventions.
2. An **evidence-based analysis** should be conducted by a working group of all relevant stakeholders, to i) consider the adequacy of levels of state funding, taking into account the actual needs of parties/political entities and the private sources that can be realistically raised in Montenegro, and ii) recommend alterations to current levels of state finding if appropriate. The analysis should take account not only subsidies from the 0.5% of the state budget provided, but also financing of MPs' and municipal representatives' clubs and financing of premises.
3. Article 11 of the LFPEEC should be amended to state clearly that for the purposes of distribution of budget funds, "**political entity**" refers to the political entity that registered as a submitter of a list (and not individual parties/entities where more than one of these has formed a political entity for the election).
4. Amend Article 11.7 of the LFPEEC so that budget funds for ordinary activities are distributed **every 3 months** rather than monthly.
5. Reword Article 24.5 so that there is a prohibition on donating to political entities for up to two years following the awarding of a **public contract** (as the provision is currently worded), and prohibiting the awarding of public contracts to parties that have donated within the previous two years.
6. **Delete Articles 12.1-12.2 and Article 17 of the LFPEEC, so that the raising of funds from private sources for ordinary activities and election campaigns are not separated,**

although an appropriate overall limit on annual private sources raised may be retained if the risk of imbalance between parties/political entities is regarded as too serious. Article 18 should be amended accordingly – either deleted if no limit is retained, or altered so that where the limit on private sources raised is exceeded, the difference is transferred to the state budget.

7. **Amend the definitions of campaign spending and ordinary spending** (LFPEEC Articles 10 and 13) so that they are related to the purpose of spending, not type. Campaign spending should be defined as any expenditure incurred by a registered political entity in promoting the party or candidates or attempting to damage the prospect of another party or candidate/s at an election, whenever that spending is actually incurred. If a political entity consisting of more than one party or other political entities registers during the campaign, the spending total of that political entity includes all campaign spending by its constituent entities from the beginning of the campaign up to the date of registration.
8. **Amend the definition of in-kind contributions** in LFPEEC Article 6.3 to read “Provision of services or products given to a political entity without compensation or under conditions that deviate from market ones...” APC guidance should clarify what constitutes “market” prices, especially in election situations where similar discounts are provided to all political entities.
9. Amend LFPEEC Article 18 to establish that **all political entities that intend to participate in elections must open a special account for electoral purposes within one week of the calling of elections.**
10. Amend Article 13.4 to **establish a limit on campaign spending that is defined in relation to the total amount of budget funds allocated as election subsidies, but lowered significantly.** The limit should be established carefully, taking into account the maximum that a political entity could reasonably expect to spend, the need to restrict spending sufficiently so that small parties are not excessively disadvantaged, and taking into account other recommendations (e.g. Recommendation 11) that affect spending levels.
11. Amend the Law on Election of Councillors and Representatives (Article 50 and related articles) to **prohibit or restrict to a minimum private paid political advertising on television and radio**, while ensuring that provisions of electoral legislation on provision of free time are sufficient to ensure that parties/political entities can communicate their electoral programmes.
12. Political parties should be required to have a **website** on which they publish all financial reports and internal acts regulating finances and financial control, as well as the identities of responsible persons. Other political entities that compete in elections should be subject to the same requirement, including publishing details of the division of responsibilities relating to financing.

13. The LFPEEC should be amended to define a deadline by which **persons responsible** for financial operations in general are designated (Article 38). Article 19 should be amended to define a deadline for designation of such persons for election campaign purposes, and also define their responsibilities as being for compliance with election campaign finance regulations and reporting requirements. The law should also state explicitly that such responsible persons are personally (even if not exclusively) liable for violations, and that this applies to former responsible persons who held responsibility when a past violation took place.
14. Relevant regulations – whether they are laws or Ministry of Finance by-laws/templates - should be amended to clarify the precise **accounting standard** to which political entities must adhere. The same standard should apply to election campaign reports where relevant (e.g. for reporting spending and income).
15. Consider establishing a **threshold** (for example of annual income or spending), and exempting from annual reporting requirements political parties that fall below the threshold.
16. Amend the LFPEEC so that **spending incurred by a political entity (or its combined constituent political entities) during the campaign period but prior to its registration** as participants in the election should be reported separately within seven days of the political entity's registration.
17. Amend Article 14.1 of the LFPEEC to define **fifteen-day deadlines** on which all political entities submit reports on contributions, so that all entities report by the same deadlines.
18. Consider amending Article 30.1 to make the **deadline for submitting post-election reports** longer, for example 2 months.
19. The LFPEEC should be amended to require **entities which provide media advertising services to** political entities must publish at the beginning of the election campaign and inform the APC their full price list for electoral advertising.
20. Revise the **template for post-election campaign finance reporting** to ensure that all relevant categories of income and spending are reported in sufficient detail. The draft template provided by the APC may be used, provided the comments already provided by other technical assistance are taken into account
21. Provide **detailed guidance** on the APC website on reporting, covering the reporting of all categories and items required by the LFPEEC and reporting template.
22. LFPEEC Article 37.3 should state clearly that the APC is responsible for establishing through by-law the **supporting documents** required to be submitted with election campaign reports. Required supporting documents should include contracts with service providers that show the prices charged for services/items provided.

23. Amend LFPEEC Article 40 to **mandate that election campaign and annual financial reports are kept on the APC website permanently.**
24. Conduct a **careful analysis, with engagement of all stakeholders to determine the actual forms of misuse of public resources** that constitute a significant risk and/or have been noted in the past, and the effectiveness of current regulations in tackling such practices based on implementation to date. This analysis should serve as the basis for careful redesign/amendment of rules in such a way as to tackle such risks effectively while minimizing as far as possible the administrative burden on both public entities and the APC
25. On the basis of the analysis above, **consider establishing a selective list of entities/activities to which the relevant provisions of articles 28-30 apply.** If appropriate, the same selection should add entities that are not currently subject to the provisions.
26. For entities subject to the spending limits of Article 28, relate the **spending limit** to a more appropriate benchmark, for example spending as envisaged the three-month spending plan.
27. Amend articles 28-30 so that entities must i) submit and publish **totals of monthly spending** broken down by spending category; ii) include an explanation if the total exceeds the limit established in Article 28; iii) provide to the APC relevant **analytical cards** on request.
28. The **content of analytical cards** should be defined precisely by legal regulations (such as relevant Ministry of Finance by-laws).
29. The Ministry of Finance should (in cooperation with other relevant authorities as necessary) **provide technical solutions (software) enabling all relevant entities to collate the data required.** When such solutions are provided, the obligations of Article 28 should apply on a permanent basis, not just during election campaigns.
30. Amend Article 32 to establish that relevant entities maintain, provide to the APC and publish **records of use of vehicles assigned to senior officials** (those for which travel orders are not required).
31. Consider amending Article 33 to also **prohibit pressure by public officials or employees on any staff in public institutions** to participate in or assist campaign activities at any time.
32. Design all regulations to reflect a **clear definition and understanding of the competencies of the SAI and APC**, for example:
 - a. The **APC** is responsible for i) general oversight of political party and election campaign finance in the sense of: drafting secondary legislation, rules, documentation and guidance; providing active guidance and awareness-raising vis-

à-vis parties/political entities and other stakeholders ii) coordination of interaction with the SAI and law enforcement institutions; iii) supervision during the election campaign of compliance with provisions of the LFPEEC by political entities and state/public entities relating to election campaigns, on the basis of controls during the campaign and verification of the post-election financing reports. iv) receiving and processing complaints concerning alleged violations of the LFPEEC; (v) investigating alleged or suspected violations; vi) imposing administrative sanctions and initiating suspension/termination of budget funding.

- b. The **SAI** is responsible for i) audit of the annual consolidated financial statements of all parties and other political entities over a certain size (income threshold) that receive budget funds for ordinary activities; ii) forwarding/notifying all suspected violations of the LFPEEC to the APC; (iii) initiating enforcement proceedings for violations that are not related to the LFPEEC.
33. Amend the **Law on the State Audit Institution** to establish the obligation of the SAI to audit the annual financial reports of political parties that exceed a certain threshold of income and receive budget funds for ordinary activities. **Consider raising the threshold of income** above which a party must be audited to a level that ensures coverage of the more significant political entities (e.g. the five largest) without stretching resources unduly, while allowing the SAI to audit other parties if it deems necessary on the basis of risk assessment.
34. Establish **formal mechanisms of cooperation between the APC and SAI**, including:
- a. Obligation of both institutions to share without without delay any relevant information on political party/election campaign financing that is of relevance to the counterpart's oversight activities, and specifically to inform the counterpart without delay of any violations or problems detected in the course of their oversight activities.
 - b. Scheduled meetings before and after the SAI conducts audits of annual financial reports – in the first case for the APC to brief the SAI on its own findings on the annual financial reports, and in the second for the SAI to brief the APC on its findings and other possible issues (e.g. suspicions of violations) that could not be included in formal audit reports.
 - c. Scheduled meetings following the announcement of elections, and following the completion of the APC's report on its supervision of the campaign before the election – the first so that the SAI may brief the APC on any relevant election-related findings from its audit of annual reports, in the second case so that the SAI may be briefed on all APC findings including any insights that were not included in its reports but are of relevance to other oversight activities.
 - d. A specific objective of cooperation should be to prevent contradictory findings through the sharing of all relevant information.

35. The APC should conduct **controls during the election campaign** i) based on a risk assessment that reduces the quantity of both entities and activities controlled, in order that ii) control is in-depth, with full verification of the accuracy of data submitted. This applies both to control of political entities and public institutions.
36. Prior to the election campaign, the **APC should actively raise awareness among relevant stakeholders** (media, NGOs etc.) of the obligations of political entities and public entities during the election campaign, channels for complaining about alleged violations, which types of complaint are within the remit of the APC and what they should contain to be processed.
37. The **deadline for the APC to audit post-election reports** should be lengthened considerably, for example to 3 months. This should be accompanied by implementation of Recommendation 40 relating to the withholding of election subsidies.
38. The **post-election APC report** should be structured in a standardised way so as to make it “user-friendly”, Only information that is directly relevant to supervision/control should be included, an executive summary of all key information should be provided, and data presented in a coherent and consistent manner with appropriate visual aids.
39. In general, **sanctions for violations of the LFPEEC should be designed to have gradations**. For example, the APC should be able to issue public reprimands/warnings, followed by fines that are set according to the seriousness of a violation (frequency, size/scale, mitigating circumstances or not, etc.), with withdrawal of budget funding an option for the more serious cases. It should also be possible to invoke criminal law provisions on fraud or false accounting in very serious cases.
40. Amend Article 14 and 48 of the LFPEEC so that the APC may withhold the portion of the **state subsidy for election campaign** provided after the election only if a political entity fails to submit a report or supporting documents. Establish the authority of the APC to **disqualify a party of political entity from receiving subsidies in future elections** where serious inaccuracies in election campaign finance reporting are detected after the subsidy has been provided, and until such inaccuracies are remedied.
41. Amend LFPEEC Article 11 so that the Ministry of Finance may **suspend ordinary budget funding** in cases where either the annual financial report or election campaign financial report contains serious inaccuracies or serious other violations of the LFPEEC are detected. Suspension in these cases would occur on the initiative of the APC or SAI (or of the APC alone but including on the basis of information provided to it by the SAI).
42. **Screen the administrative sanctions** in the LFPEE (articles 51-57) to ensure that minimum fines are not excessive in certain cases (e.g. the minimum fine for failing to submit a report on time), and adjust them where and as appropriate.
43. Amend the necessary legal provisions so that the **APC can impose administrative fines directly**.

44. Amend Article 2 of the LFPEEC and/or other laws if necessary) to **ensure that all political entities competing in elections constitute legal entities.**
45. Add to sanctioning provisions **finances on responsible persons in municipalities** for:
 - a. Violation of LFPEEC Article 15 – failing to distribute funds for ordinary activities or distributing such funds in the absence of a notification by the APC that the political entity fulfilled reporting requirements;
 - b. Violation of Article 29 – failing to collect or publish data on social welfare payments during the election campaign.
46. Formalise **channels of communication between APC, SAI and prosecution** so that the SAI proactively notifies the APC of suspected violations of the LFPEEC (as per Recommendation 34), and the APC proactively notifies the prosecution of any indications of possible violations of Article 193a of the Criminal Code.

Recommendations on the establishment of a track record system are provided in Section 4.

2 MAIN ASPECTS OF REGULATORY FRAMEWORK

This section describes the legal framework for financing of political parties and election campaigns in Montenegro. The subject regulated by the LFPEEC is “political entities”, which are for the purposes of the law “political parties, coalitions, groups of voters and candidates for the election of the President of Montenegro” (Article 2 LFPEEC).

2.1 State funding

Political entities are entitled to two different kinds of funding – for ordinary activities (non-election related) and for election campaigns:

Ordinary activities. 0.5% of the state budget (1.1-1.3% for municipalities) is allocated to political entities that won at least one seat in Parliament or the relevant local assembly. 20% of funds are divided equally among the entities, and 80% in proportion to the total number of seats won.

Election campaigns. 0.25% of the state budget or relevant municipal budget is allocated to help cover election campaign costs of any political entity that submits a list for a relevant election. Again, 20% of the funds are distributed equally and 80% on the basis of the total number of seats won in the election. The 80% is to be distributed within seven days of submission by political entities to the APC of reports on funds raised and spent for the election campaign.

2.2 Private income sources: rules and restrictions

Permissible sources.

- Parties may receive money from private sources, which comprise: membership fees, which may not exceed annually 10% of the average monthly salary; contributions – payments from individuals or legal entities (on a decision of its management body) or goods/services provided on other than market terms; income from party activities (publishing, sales of promotion materials and event organisation) and from property and legacies, and borrowing from banks and other financial institutions in Montenegro. (Article 6)
- Contributions may not be received from: other states, companies and legal entities outside the territory of Montenegro and 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; persons against whom the tax authorities have initiated a compulsory collection procedure, have not met outstanding obligations towards employees in the past three months or were convicted by a final judicial decision for a criminal offense with the elements of corruption and organized crime; and entities that received a public contract, for the period of 2 years prior to the conclusion of the contract and 2 years after termination. (Article 24)
- Contributions are either payments, or in-kind contributions. The latter are defined as “Provision of services or products given to a political entity without compensation or under conditions whereby the entity is placed in a privileged position compared to other consumers and as well as borrowing from banks and other financial institutions and organizations under conditions deviating from market conditions, as well as write-off of a part of debts..” (Article 6.3)

Limits

- The amount of private sources raised in one year may not exceed the budget funds for ordinary activities it receives annually, or 10% of the total budget funds allocated to ordinary activities if the party does not receive any funds. Contributions are limited to 2000 euros per year from an individual and 10,000 euros for legal entities. (Article 12)
- For elections, private funding sources for the election must be raised only during the campaign. The amount raised may not exceed the political entity’s share of the portion of the budget allocated to parties equally (the 20% mentioned in Section 2.1) by more than 30 times. (Article 17)

Bank accounts

- Financial contributions must be made through a party bank account (Article 6.12). For elections a special account must also be opened for this purpose and no other, and all payments must be made only from this account (Article 18).¹

¹ If two or more political entities submit list, budget money is paid to an account of one of them determined by agreement between them.

2.3 Expenditure

Definitions

- The LFPEEC (Article 10) defines **ordinary spending** as “costs for employees’ earnings, 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 similar costs characterizing the regular operation of political entities.”
- **Election expenditure** is defined in Article 13 as “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.”

Limits/restrictions

- Article 13.4 LFPEEC restricts total electoral spending to the “amounts referred to in Articles 14 [regulating budget funds for election campaign] and 17 [restricting the private sources that may be raised - see Section 2.2, ‘Limits’].” As Section 3.4 details, there is disagreement over what this limit means.
- Prohibited donors may not run media/public campaigns on behalf of or for the needs of a political entity during the election campaign.

2.4 Responsibility, reporting and disclosure by political entities

Responsible persons in political entities

- Political entities must designate a person responsible for financial operations (Article 38.2). For elections, entities must also designate a person responsible for the “purposeful spending of funds and submission of reports” (Article 19)

Annual reporting (Article 37)

- Political entities must keep accounting records in accordance with a Ministry of Finance regulation. The current reporting template dates from 2012 and is divided into two parts: the first is a tailor-made Annual Report on Income, Property, and Expenditure of the Political Party, which includes ordinary activities and election campaigns if there were any during the reporting period; the second is an annual statement of accounts, referred to sometimes in the law as the Consolidated Financial Statement (CFS).

- The above reporting must be submitted to the tax authorities, SAI and APC by 31 March of each year. The APC publishes the documents on its website within 7 days of receipt.

Election campaigns

- During election campaigns, political entities must report to the APC contributions of legal and natural persons on a fifteen-day basis (Article 42). The report is published within 7 days of receipt.
- Following elections, each political entity that participated must submit a report on the origin, amount and structure of funds received and spent for the election from public and private sources, and submit it to the Agency with supporting documentation within 30 days of election day (Articles 39-40). Reporting must include specification of financing from budget funds and private sources separately, and bank statements showing all revenues and expenditures during electoral period. A template for reporting is issued by the APC, and the report is published by the APC within 7 days of receipt.
- Political entities must submit to the APC and publish prices and “and possible discounts received” for media advertising, and entities offering media advertising must submit price lists to the APC (Article 13).

2.5 Use/misuse of public resources

The LFPEEC contains a set provisions designed to prevent the misuse of state/public resources for electoral purposes, some of which are unusually innovative/radical. The following prohibitions/restrictions apply.

- The use of premises of state bodies, state administration bodies, local self-government bodies, local administration bodies, public companies (or founded/partly public owned), public institutions and state funds and companies founded and/or owned in major part or partly by the state or local self-government unit for the preparation and implementation of the campaigning activities is prohibited unless the same conditions are provided for all participants in the election process. It is also prohibited to distribute promotional materials of political entities within the same entities (Article 26).
- State/public entities including local government bodies and public companies may not engage in paid advertising which could in any way place a political entity/ies or their representatives in a favoured position during the election campaign. (Article 27)
- State and local budget spending units may not spend more in any given month during the election campaign more than the average monthly spending during the 6 months prior to the campaign, except in emergency situations. If elections are held in the first half of the year, monthly spending may not exceed spending plans established by the Ministry of Finance or local administration body at the beginning of the fiscal year (Article 28.2); according to the APC this means they may not spend more than one twelfth of the annual budget spending plan in any given month.

- Public legal entities may not write off debts of citizens during the electoral period or for one month after the election, including for water, electricity and any other municipal service (Article 31).
- Public officials may only use official cars for official purposes during the campaign, with the exception of protected persons² (Article 32).
- Public institutions, companies and state funds may only employ persons on a fixed contract or temporary basis only if this is envisaged by the act on job descriptions for that entity (Article 33).
- Public officials (except MPs and councillors) and employees in state/local government bodies/administration, public companies/institutions and state funds are prohibited from engaging in election campaign activities during working hours (Article 33).

State/public entities are also subject to the following reporting requirements. For elections where less than 20% of the total electorate is entitled to vote, the reporting obligations only apply to the territory in which elections are taking place (for example municipalities).

- Every seven days from the beginning of the campaign to one month after the election, all state and local budget spending units must publish on their websites the 'analytical cards' from all accounts they hold and submit them to the Interim Committee, a Parliamentary working body responsible for monitoring of implementation of the LFPEEC (Article 28).
- The Ministry of Labour and Social Welfare (MSLW) and municipalities must collect analytical cards containing data on amounts and beneficiaries of all types of social welfare under their jurisdiction, publish the data on their websites and submit it to the Interim Committee and APC every 15 days (Article 29).
- Every 15 days during the election campaign, the Ministry of Finance must publish statements from the State Treasury and an analytical card on budget spending and submit them to the Interim Committee and APC. Municipalities must do the same for local budgets (Article 30).
- Every seven days during the election campaign all state/local/public institutions, companies and state funds must publish all travel orders issued for the use of official vehicles and submit them to the APC (Article 32).
- Bodies/entities subject to the restrictions on hiring during the electoral period must submit all employment decisions with supporting documentation to the APC, within three days of the decision. The APC publishes the documents within seven days of receipt.

² These are: President, Speaker of Parliament, Prime Minister, Minister of Justice, Minister of Foreign Affairs, Supreme State Prosecutor, Special State Prosecutor, Director of the Agency for National security, Director of Police, other prosecutors and judges when required by safety reasons, and immediate family members of the President, Prime minister and Speaker of the Parliament

2.6 Oversight and supervision

Oversight and supervision of political party and election campaign finance is divided between financing of ordinary activities and election campaign financing, and at the same time (for both of these) divided between the Agency for Prevention of Corruption and Supreme Audit Institution. According to the law:

- Control over financing of political entities and election campaigns shall be performed by the APC (Article 4 LFPEEC), and supervision over implementation of the LFPEEC is carried out by the Agency (Article 43).
- The SAI audits the consolidated financial statements of political entities whose income exceeds 10,000 Euros (Article 43). Its audit reports should provide opinion and recommendations (Article 50).
- The APC conducts monitoring and control of the compliance of political entities with election campaign finance regulation during the election campaign period, including but not limited to the calculation of in-kind contributions, paid-for media advertising, and prohibition of financing of political entities or running campaigns on their behalf. It also receives political entities reports on their election campaign financing within 30 days of elections, adopts them within 7 days, and publishes its own report on supervision/control of financing of the election campaign of political entities within 60 days of elections (Article 46). Under Article 44 it is also the body responsible for deciding whether there is a violation of the LFPEEC and initiating sanctions in such cases (on sanctions see Section 2.7). The methodology for control and supervision by the APC during the election campaign is regulated in more details by a Rulebook. According to the Rulebook the Agency must approve a plan of control within 10 days of the calling of elections, based on risk analysis (see Section 2.8), and the Rulebook details other procedures for the conduct of control.
- Political entities must provide the APC with data it requests within three days (Article 46), while public entities must provide information within 15 days (Article 45).
- If the APC obtains information indicating irregularities or violations of the LFPEEC, and the irregularities can be resolved during the procedure of control it issues a warning. If this is not the case or the political entity fails to take action, the APC should file a report or motion with the competent body – generally, a misdemeanour court (Article 46, 48).
- A report on supervision and control during the election campaign must be adopted by the Agency and published on its web site within 60 days of the announcement of the final election results (Article 46).

2.7 Sanctions

Three types of sanction may be invoked for violations relating to political party/election campaign finance violations: withholding or suspension of public funding, administrative fines for misdemeanours, and criminal sanctions for certain cases of misuse of state resources. As stated above, the APC may issue a warning if detected irregularities can be resolved.

Administrative fines. The LFPEEC establishes fines for a very wide range of violations of the LFPEEC. Fines from 5000-20000 Euros may be imposed on political entities, while responsible persons of the APC may be fined 500-2000 Euros, responsible persons in ministries, local government or other public entities 200-2000 Euros, Presidential election candidates 1000-2000 Euros, natural persons 500-2000 Euros and legal entities 200-4000.

State funding.

Ordinary funds. The Ministry of Finance or local administration body responsible for providing funds for ordinary activities must suspend payment if the political entity did not submit its consolidated financial statement (annual report) within the legal deadline, i.e. 31 March (Article 11). The article implies that funding can be resumed once the report is submitted.

Funds for election campaign.

- The 80% of funds allocated for electoral costs are distributed within seven days after political entities submit to the APC election campaign finance reports and supporting documents “referred to in Article 37”, where supporting documents are described as “reports on assets of all legal entities and companies it founded or in which it has an ownership share”. If a political entity does not submit these, or if its funds for ordinary activities are at that time suspended (see above), the APC shall suspend the distribution of these funds until final decision of a misdemeanour court (Article 48.3). This implies that if the court decides in favour of the political entity, the APC must release the funds.
- The Agency may impose partial or full loss of entitlement to budget funds if a political entity uses funds acquired for the election campaign costs for other purposes than those defined in Article 13 (see Section 2.3, ‘Definitions’), or funds are not acquired via a special bank account (see Section 2.2 ‘Bank account’).

Criminal penalties. There are no criminal sanctions relating to violations of political party or election campaign financing (for example for repeated or very serious inaccuracies in reporting). The Criminal Code does sanction the misuse of state resources however. However, in 2015 Article 193a was added. This states that “An official who uses or enables the use of the property of state bodies, public institutions, public enterprises and funds, local self/government units and enterprises partially owned by the state for the purpose of

representation/advertising of the electoral slate (political entity) will be punished by a prison sentence of between 6 months and five years.” This provision has not been invoked to date.

3 ANALYSIS: PROBLEMS, ISSUES AND RECOMMENDATIONS

This section identifies problems and issues in the legal framework described in Section 2, as well as other problems that have been identified through implementation of this framework, during the practice of oversight by the APC and SAI.

A general issue relates to the process of legal drafting. The process by which the current LFPEEC was drafted has been criticised significantly due to the fact that it was not drafted by the Government but introduced in Parliament, facilitating uncoordinated interventions (for example amendments to make state funding more generous).

Recommendation:

1. Any **legislative amendments** should be initiated and carried out via a normal legislative process, with initiation by the Government followed by standard procedures for drafting and feedback, to avoid in particular uncoordinated interventions.

3.1 State funding

Montenegro is unusually generous in the provision of state funding for parties/political entities. This is partly due to the somewhat uncoordinated manner in which the LFPEEC was approved in 2014, when MPs raised the proportion of the state budget allocated to state funding from 0.5% to 0.6% (this was lowered again subsequently to 0.5%), and at the same time amended the draft to exclude from this limit the funding for employees of groupings of parliamentary and local assembly representatives as well as funding for premises (Article 7.2 LFPEEC). An analysis by the Centre for Monitoring and Research (CEMI) has shown for example that funding for parties in 2016 for both ordinary and election activities would be far lower in Croatia, Serbia or Slovenia than in Montenegro.³ While there may be legitimate reasons for generous funding, depending on context, levels should be established with care - not least because state funding for parties is generally unpopular among electorates.

A second more specific problem in the law – or at least in its implementation – relates to the definition of ‘political entity’ for the purpose of allocating funds for ordinary activities. As mentioned earlier, the general definition of a political entity is “political parties, coalitions, groups of voters and candidates for the election of the President of Montenegro” (Article 3). Where more than one political entity (for example three parties) for a political entity to participate in an election and win seats, a question arises over whether they then constitute one political entity or three for purposes of ordinary funding. This is important due to the allocation of the 20% of funds for ordinary activities that is distributed equally among political entities. APC officials state that there have been instances of political entities joining together for the election, winning seats and then claiming funds for each of their constituent political entities separately. Article 11.5 of the LFPEEC implies clearly that in this context there is one political entity only (Article 11.4 for example states that the 20% of funds awarded “to a

³ CEMI, “Financing of Political Parties in Montenegro - Creation of the Conditions for a Fair Political Competition”, 2015, pp. 52-53.

political entity which participated in the elections as a coalition or a group of voters shall be distributed in accordance with the agreement and Articles of Association of these political entities.” Nevertheless, more clarity may be required.

Third, funds for ordinary activities are distributed on a monthly basis. While distribution should not be too infrequent due to the need to suspend funding in case of certain violations, monthly distribution creates an unnecessary administrative burden.

Section 3.8 covers problems in the use of state funding as an incentive for compliance with reporting requirements.

3.1.1 Recommendations

2. An **evidence-based analysis** should be conducted by a working group of all relevant stakeholders, to i) consider the adequacy of levels of state funding, taking into account the actual needs of parties/political entities and the private sources that can be realistically raised in Montenegro, and ii) recommend alterations to current levels of state funding if appropriate. The analysis should take account not only subsidies from the 0.5% of the state budget provided, but also financing of MPs’ and municipal representatives’ clubs and financing of premises.
3. Article 11 of the LFPEEC should be amended to state clearly that for the purposes of distribution of budget funds, “**political entity**” refers to the political entity that registered as a submitter of a list (and not individual parties/entities where more than one of these has formed a political entity for the election).
4. Amend Article 11.7 of the LFPEEC so that budget funds for ordinary activities are distributed **every 3 months** rather than monthly.

3.2 Private sources of funding

Sections 3.2-3.4 (private sources of funding, obligations relating to electoral bank accounts, rules on expenditure) are closely interlinked, and recommendations for these sections are therefore consolidated in Section 3.4.

Current restrictions and limits on private sources of funding are largely in line with international standards and good practice, except in the following areas.

Permissible donors

- The prohibition on companies that receive public contracts from donating to a political entity for up to two years preceding a contract is problematically worded, as it conditions one thing (provision of donation) on another (receipt of public contract or similar) that has not yet happened and cannot be predicted reliably.

Limits on private sources and donations

- The LFPEEC sets up a strict division between sources of funds for ordinary activities and for election campaign activities, and places limits on the total amounts that may be raised for each. A rationale for these provisions may be seen in the risk that established/incumbent parties are likely to have a major advantage in raising private sources (for example membership fees and donations) over small political formations.
- However, it is questionable whether a regulatory division between ordinary and election campaign finance makes much sense, for at least three reasons:
 - The division between ordinary and election campaign finance is already blurred in practice. It is not clear whether parties may use “own funds” – i.e. funds that they have acquired outside of the campaign period – for campaign purposes. Article 17.1 states that parties may only raise funds for the campaign from private sources during the election campaign – which would appear to exclude the use of any private sources from outside the campaign period. However, the reporting template for election campaign finances issued by the Ministry of Finance in 2012 and in force until the current template was approved by the APC in 2016 contained a table for reporting of own funds, implying that the use of such funds is legal. In practice the use of own resources in elections is common – especially loans, according to the APC. The APC’s report on control of the October 2016 parliamentary elections states that political entities used a total of Euro 1.1 million in own funds for the election campaign. The APC holds the view that smaller parties would not survive if they could not use such resources, due to their inability to obtain donations. This suggests that, paradoxically, enforcing a ban on the use of own resources in elections may well harm small parties more than it benefits large ones.
 - While some countries do establish limits on total income (or donations), they are very difficult to enforce and **ultimately rely on the existence of effective restrictions on spending**. It is therefore questionable whether they do anything additional to restrict political financing when (as under the current law) limits on election campaign spending are already in place, as well as restrictions on permissible donors and contributions per donor.
 - Third, imbalances in funding may be offset not only by the generous system of state funding, but also the implementation of Recommendation 11 concerning the restriction of private advertising are implemented.

Definition of in-kind contribution

- The definition of in-kind contributions includes the provision of service or products “under conditions whereby the entity is placed in a privileged position compared to other consumers” (Article 6.3). The usual benchmark for defining an in-kind contribution is whether it is provided on conditions that deviate from market prices – in fact this definition is used in Article 6.3 in the context of bank/financial institution loans. The use of the expression “placed in a privileged position” inserts ambiguity. For example, during election campaigns according to the APC parties have received similar discounts on

market prices for TV advertisements; disagreement then followed (for example with NGOs) on whether such discounts constitute in-kind contributions.

3.3 Bank accounts for election campaigns

The rules governing the obligation to open a special bank account to which all electoral donations must be made and from which all election expenses must be made are one of the most serious problems in the current legal framework.

Deadline for opening account

- Under the Law on Election of Councillors and Representatives (LECR), parliamentary elections are called by the President of Montenegro up to 100 days before voting day. Political entities submitting lists to compete in the election may do so until 25 days before election day, at which point the obligation to open a separate bank account arises under the LFPEEC. In practice, this means that the election campaign begins before political entities open bank accounts (and often long before), resulting in a situation where parties/political entities i) cannot legally receive donations for part of the campaign period, and ii) campaign prior to the registration for election and designate the spending as ordinary spending.
- The problem of the deadline for opening a special bank account is complicated due to the fact it arises from the interaction of two different laws, (LFPEEC and LECR). In particular the problem is caused primarily by the fact that – unusually by international practice – political entities are not obliged to register before the campaign starts. Ideally, the LECR (Article 46 and other articles linked to it) would be altered so that the deadline for registration – and therefore for opening an account – is as soon as the campaign starts. However, it is assumed that amendments to the LECR are not a realistic goal, and therefore a solution needs to be found in the LFPEEC. As this issue impacts most severely on the regulation of campaign spending, it is taken up again in the following section.

Closing of election account

- While the deadline for opening the electoral account is implicit in the fact that election-related income and spending may only be received/incurred using the account, the LFPEEC does not establish a deadline by when the election account should be closed, or indeed any obligation to do so.
- If parties raise more money from private sources than the limit established in Article 17.2, they must transfer the difference to the “permanent gyro account of the political entity or entities” (Article 18.4); if it exceeds the limit on total annual donations for ordinary activities established by Article 12, the difference must be transferred to the state budget (Article 18.5). This provision means that if a political entity raises income that is 1 Euro below the limit in Article 12 it keeps all of the difference, but if it is 2 Euros higher the political entity loses the entire difference. In practice, it is unlikely that a political entity would ever be in situation that Article 18.5 would be enforced. This situation results from

the establishment of separate limits on private sources raised for ordinary activities and elections, and would be solved by Recommendation 7.

3.4 Expenditure

The regulation of political spending exhibits the following problems.

Definitions of ordinary and campaign spending. As can be seen from the articles cited in Section 2.3, ordinary expenditure and election campaign spending are defined in the LFPEEC mainly in terms of types of activity (e.g. rental costs, employment costs, advertising, etc.) rather than in terms of the purpose of spending (ordinary activities or election campaign), with limited exceptions. However, almost any type of spending can be either ordinary or 'election campaign-related' depending on when it is incurred and/or what the purpose of it is. For example, employees or offices may typically serve the non-electoral needs of a party, but during an election campaign (indeed probably before it starts) a party is likely to hire more staff and rent extra offices for electoral purposes.

In addition, due to the problems caused by the misfit between the campaign and registration deadlines, there is a specific need to adopt a definition of campaign spending that includes all spending during the electoral campaign period, in order to make both spending limits and reporting meaningful.

Limit on campaign spending. There is disagreement over what exactly constitutes the limit on campaign spending (established by Article 13.4). One opinion is that it is equal to the total budget funds received by a political entity (Article 14.2-14.3) plus the maximum permitted funds from private sources that a party may raise for the election (30 times the political entity's share of the portion of budget funds for elections that is distributed equally - Article 17.2). Another interpretation is that the limit is equal to the amount stated in Article 14.1 (the total 0.25% of the state budget allocated for financing election campaign costs). However, on either interpretation the limit appears to be illogical. In the first case, linking the subsidy partly to the election subsidy a political entity receives *after* the election would make it impossible to know the limit in advance, introducing unacceptable legal unpredictability. Moreover, the limit would be different for each political entity, introducing an unacceptable distortion of the electoral playing field. On the other interpretation (that the limit equals 0.25 of the state budget), the limit would be so high that no political entity would ever spend an amount anywhere close to it.

Absence of restrictions on campaigning activities. Effectively limiting the cost of elections is arguably the most efficient way to level the playing field between political parties and reduce incentives to engage in questionable activities. While spending limits are a common mechanism for achieving this, monitoring compliance with and enforcing them is not easy. Based on international experience, a more effective way of reducing costs is by directly restricting or prohibiting visible campaign activities, most often advertising on television and other broadcasting media; together with provisions to provide free airtime to parties are in

place and implemented, such measures can level the playing field considerably. In Montenegro there are no limits on TV advertising, and it accounts for the large majority of campaign spending according to both official reporting and independent monitors.

3.4.1 Recommendations

5. Reword Article 24.5 so that there is a prohibition on donating to political entities for up to two years following the awarding of a **public contract** (as the provision is currently worded), and prohibiting the awarding of public contracts to parties that have donated within the previous two years.
6. **Delete Articles 12.1-12.2 and Article 17 of the LFPEEC, so that the raising of funds from private sources for ordinary activities and election campaigns are not separated**, although an appropriate overall limit on annual private sources raised may be retained if the risk of imbalance between parties/political entities is regarded as too serious. Article 18 should be amended accordingly – either deleted if no limit is retained, or altered so that where the limit on private sources raised is exceeded, the difference is transferred to the state budget.
7. **Amend the definitions of campaign spending and ordinary spending** (LFPEEC Articles 10 and 13) so that they are related to the purpose of spending, not type. Campaign spending should be defined as any expenditure incurred by a registered political entity in promoting the party or candidates or attempting to damage the prospect of another party or candidate/s at an election, whenever that spending is actually incurred. If a political entity consisting of more than one party or other political entities registers during the campaign, the spending total of that political entity includes all campaign spending by its constituent entities from the beginning of the campaign up to the date of registration.
8. **Amend the definition of in-kind contributions** in LFPEEC Article 6.3 to read “Provision of services or products given to a political entity without compensation or under conditions that deviate from market ones...” APC guidance should clarify what constitutes “market” prices, especially in election situations where similar discounts are provided to all political entities.
9. Amend LFPEEC Article 18 to establish that **all political entities that intend to participate in elections must open a special account for electoral purposes within one week of the calling of elections.**
10. Amend Article 13.4 to **establish a limit on campaign spending that is defined in relation to the total amount of budget funds allocated as election subsidies, but lowered significantly.** The limit should be established carefully, taking into account the maximum that a political entity could reasonably expect to spend, the need to restrict spending sufficiently so that small parties are not excessively disadvantaged, and taking into account other recommendations (e.g. Recommendation 11) that affect spending levels.

11. Amend the Law on Election of Councillors and Representatives (Article 50 and related articles) to **prohibit or restrict to a minimum private paid political advertising on television and radio**, while ensuring that provisions of electoral legislation on provision of free time are sufficient to ensure that parties/political entities can communicate their electoral programmes.

3.5 Record-keeping and reporting

The current law and implementing regulations on reporting by political entities exhibits a number of areas where obligations are not entirely clear or are poorly defined.

General

- Political parties are not required by law to publish key documents, notably financial reports and internal acts regulating finances and financial control. The same applies to other political entities that compete in elections, including agreements between components of political entities on the division of responsibilities relating to financing - for example which entity opens the electoral bank account, rules on annual financial reporting for entities that win mandates, etc.
- The law does not establish clearly enough the obligation to determine persons within parties/political entities responsible for compliance with financing regulations and reporting requirements.
 - **Ordinary finances.** While Article 38 mandates the designation of a person responsible for financial operations, it does not establish a deadline for doing so.
 - **Elections.** Article 19 obligates the designation of a responsible person responsible for (at least in the English translation) “purposeful spending of funds and submission of reports”. This appears to exclude many issues related to income, for example compliance with restrictions on permissible donors or donation limits. In addition, the Article does not establish a deadline by which the responsible person should be designated.
 - **Responsibility after leaving position.** One problem raised by interlocutors was that it can easily happen that there is no responsible person or entity to confront – most obviously, when a political entity forms for an election, fails to win seats and disbands. It is also not clear whether anyone can be held personally responsible for past violations if the responsible person has changed.

Annual reporting

- Article 37.1-3 defines the obligation of political entities to keep accounting records and submit reports. However, the law is not entirely clear on whether ‘political entity’ refers to parties (or for example groups of voters who have gained seats in Parliament or local assemblies) or the relevant political entity registered in the previous election (which may be several parties together for example, see above). The template for annual reporting

refers only to “political parties” in the titles of both parts of the template. According to the APC the entities obliged to report are registered parties plus any other entities that receive funds from local or state government for financing of ordinary activities (for example there are 14 groups of voters currently registered who receive budget funds), whether the relevant political entity is a parliamentary group of parties (which receives funds calculated on the basis of its identity as a parliamentary group) or each party within that group separately is not unambiguously stated in the law.

- It is not clear what accounting standard the annual reports of political entities must comply with – and specifically whether they should report as a budgetary entity or business entity. This has significant consequences for the accuracy and clarity of reporting; for example, under the first method income is reported at the moment of payment (cash basis), but on the second it is reported at the moment of invoicing (accrual basis), which can make the difference between reporting a donation as a donation for electoral campaign on the one hand or for ordinary activities on the other.
- The fact that all political parties/entities without exception have to submit financial reports may impose an excessive regulatory burden on small parties. International practice (e.g. in the UK) suggests that a good regulatory balance can be to exempt from such obligations political entities that are small enough not to be significant players.

Election campaign reporting

The legal provisions and other regulations on reporting of election campaign finances exhibit the following problems. These are noted briefly here, and the Horizontal Facility will provide more detailed comments on an upcoming draft reporting template.

- The provision requiring political entities to report contributions on a fifteen-day basis does not specify whether the fifteen day interval is the same one for all entities or is different for each entity depending on when it was registered. In the latter case, this would make reporting relatively chaotic and more difficult for the APC and external observers to monitor.
- The 30-day deadline for submitting election campaign finance reports is in line with the recommendation of the OSCE/Venice Commission Guidelines (which states that reports should be submitted within 30 days of election day). However, based on the experience of other countries (for example Albania, Ukraine) this deadline may be too short, if it means that parties/political entities must ensure an exhaustive and accurate report including all supporting documents (invoices, etc.) as required. This issue also connects to the problem of the short deadline the APC has for auditing/checking election campaign finance reports (see Section 3.7).
- The current template for the election campaign finance report lacks detail. While the consultant has only the “Instructions on the form for the report on origin, amount and structure of funds collected and spent from public and private sources in the campaign for election of members of Parliament and councillors”, both the APC and NGOs have highlighted areas where the template needs amendment. The most important examples of this raised during discussions with interlocutors are the general categories of

“advertising expenses” and “media coverage”, from which it is not possible to determine how much a political entity spent on different forms of advertising. The APC report on control of the October 2016 elections also mentions the lack of any specific categories for reporting a number of items of spending such as equipment purchase, hospitality, accommodation of activists, transport/fuel and the like. In addition, the APC also notes that transparency of spending on media advertising is hindered by the lack of clearly available prices for the services purchased by political parties.

- The template for election campaign reporting is not accompanied by any guidance on how to complete it, apart from the very brief “Instructions on the form for the report on origin, amount and structure of the funds collected and spent”, which deal mainly with which forms should be completed and deadline. Particular issues of concern are the lack of guidance on how to identify and calculate in-kind contributions, or on how to report debts that are outstanding at the moment a political entity completes its election campaign finance report. Good practice internationally is to provide guidance on all aspects of reporting.
- The LFPEEC requires election campaign reports to be submitted together with “the supporting documents referring to in Article 37” – this is referred to in Article 14.4 as a condition for the second tranche of the budget funds for election campaign to be provided. Article 37.3 appears to define supporting documents as “the financial statements and reports on assets of all legal entities and companies it founded or in which it has an ownership share.” It is not clear why this particular kind of supporting document is important for the purposes of election campaign reporting. The APC report on control of the October 2016 elections includes among violations it detected failure to document spending with bills, invoices and/or contracts – implying that these are required supporting documents.

Other

- The LFPEEC mandates that both annual reports and election campaign finance reports are put on the APC’s website promptly. However, it does not establish any length of time they should be kept there. This could make it difficult for external observers (media/civil society) to exercise oversight. International experience suggests that problems with political finance reporting may often emerge with some time lag, making it important that information stays in the public domain.

3.5.1 Recommendations

12. Political parties should be required to have a **website** on which they publish all financial reports and internal acts regulating finances and financial control, as well as the identities of responsible persons. Other political entities that compete in elections should be subject to the same requirement, including publishing details of the division of responsibilities relating to financing.

13. The LFPEEC should be amended to define a deadline by which **persons responsible** for financial operations in general are designated (Article 38). Article 19 should be amended to define a deadline for designation of such persons for election campaign purposes, and also define their responsibilities as being for compliance with election campaign finance regulations and reporting requirements. The law should also state explicitly that such responsible persons are personally (even if not exclusively) liable for violations, and that this applies to former responsible persons who held responsibility when a past violation took place.
14. Relevant regulations – whether they are laws or Ministry of Finance by-laws/templates - should be amended to clarify the precise **accounting standard** to which political entities must adhere. The same standard should apply to election campaign reports where relevant (e.g. for reporting spending and income).
15. Consider establishing a **threshold** (for example of annual income or spending), and exempting from annual reporting requirements political parties that fall below the threshold.
16. Amend the LFPEEC so that **spending incurred by a political entity (or its combined constituent political entities) during the campaign period but prior to its registration** as participants in the election should be reported separately within seven days of the political entity's registration.
17. Amend Article 14.1 of the LFPEEC to define **fifteen-day deadlines** on which all political entities submit reports on contributions, so that all entities report by the same deadlines.
18. Consider amending Article 30.1 to make the **deadline for submitting post-election reports** longer, for example 2 months.
19. The LFPEEC should be amended to require **entities which provide media advertising services to** political entities must publish at the beginning of the election campaign and inform the APC their full price list for electoral advertising.
20. Revise the **template for post-election campaign finance reporting** to ensure that all relevant categories of income and spending are reported in sufficient detail. The draft template provided by the APC may be used, provided the comments already provided by other technical assistance are taken into account
21. Provide **detailed guidance** on the APC website on reporting, covering the reporting of all categories and items required by the LFPEEC and reporting template.
22. LFPEEC Article 37.3 should state clearly that the APC is responsible for establishing through by-law the **supporting documents** required to be submitted with election campaign reports. Required supporting documents should include contracts with service providers that show the prices charged for services/items provided.

23. Amend LFPEEC Article 40 to **mandate that election campaign and annual financial reports are kept on the APC website permanently.**

3.6 Use/misuse of state resources

The provisions of the LFPEEC consist of direct prohibitions on use of certain public resources; restrictions on budget spending and recruitment during election periods; and obligations to disclose and publish information on spending, including specific information on social welfare payments and use of official vehicles. Significant problems and challenges have become apparent during the first year of implementation of the law, especially the provisions limiting maximum spending and on disclosure of spending – to the extent that it was suggested by the APC that the aim of the provisions has not been matched with their effect on the ground.

3.6.1 General issues

The provisions of the LFPEEC designed to prevent the misuse of state resources are an innovative attempt to tackle a problem that is inherently difficult to regulate. Regulation is difficult for a number of reasons. Some of these are common to other areas of electoral regulation – for example that restrictions on one phenomena may lead to it being modified or moved in time to circumvent the restriction. Other reasons are specific. For example, the borderline between ordinary populism and misuse can be difficult to draw. The opening of a new infrastructure project by a minister during the election campaign may be motivated solely by a desire for electoral success. However, defining this as a misuse of resources is highly controversial, at least in the absence of detailed analysis of the circumstances surrounding each case (for example timing of investment and its implementation), and defining them as illegal even more so. Even where such conduct is regarded as something that needs to be restricted, it may be appropriate to do so not through electoral legislation but for example regulations relating to public procurement.

While the provisions that have been put in place were designed to tackle specifically identified risks – for example that social welfare or other spending will be used during election campaigns specifically to buy support – there are nevertheless some concerns about how effective the new provisions have been in practice.

3.6.2 Specific comments

Coverage of provisions on spending, vehicles and recruitment

- Institutions. Concerns were raised – including by the APC – that the provisions on restrictions on and disclosure of spending, vehicles and recruitment do not cover certain institutions which could be sources of misuse or for which there are been suspicions in the past – examples mentioned were the Airport Authority which is not an entity subject to the restrictions and obligations in the LFPEEC, and school teaching assistants who are

not included in the organigram of schools and therefore not subject to the provisions on recruitment in the LFPEEC.

- Time period. A more serious objection suggested was that important abuses (e.g. benefits related to housing provision or public service recruitment) take place outside election campaigns.

Restrictions on and disclosure of spending

The provisions on limits on and disclosure of monthly spending have proved problematic for a number of reasons raised by interlocutors (the APC, Ministry of Labour and Social Welfare) and acknowledged by NGOs.

- Normal levels of spending are not distributed evenly over months of the year. For example, spending of certain types may be weighted more towards the middle of a year due to the need for planning, procurement etc.
- Spending for a particular month may vary due to the time-lag between initiation/approval and actual spending.
- In practice, where a public entity exceeds the spending limit, the APC requests a justification, whereupon the entity in question provides a justification which the APC has lacked the capacity to verify. This links to the problem of the scope of APC supervision (see below).
- Some interlocutors suggested that the restrictions on spending can even have negative effects in certain circumstances – for example deterring the Ministry of Labour and Social Affairs or local government from spending even if it is needed.
- The disclosure regime is based around the submission of “analytical cards” – formatted information on spending on defined items - by budget units, and most specifically the Ministry of Labour and Social Welfare. However, there is no clear definition of the information that ‘analytical cards’ (the format in which spending information is disclosed) must contain. The analytical cards provide voluminous information, but no information that would provide more than a summary of total amounts of spending under particular categories; for example, names of recipients of welfare payments are not provided. In practice, the cards appear to have constituted a limited yet time-consuming carrier of information. For example, the cards do not include the identities of specific recipients.

Vehicles

- The provisions on disclosure of all travel orders for official vehicles do not apply to vehicles for which travel orders are not required, notably cars allocated to the most senior officials.

Direct prohibitions

- The prohibition on (unelected) public officials and employees from engaging in election campaign activities during working hours (Article 33) does not cover situations where officials or employees are forced or pressured into participating in campaign activities outside of working hours. Article 25 prohibits political entities, legal and natural persons from exerting “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.” However, this appears to relate primarily to pressure on potential non-state entities to provide contributions.

3.6.3 Recommendations

24. Conduct a **careful analysis, with engagement of all stakeholders to determine the actual forms of misuse of public resources** that constitute a significant risk and/or have been noted in the past, and the effectiveness of current regulations in tackling such practices based on implementation to date. This analysis should serve as the basis for careful redesign/amendment of rules in such a way as to tackle such risks effectively while minimizing as far as possible the administrative burden on both public entities and the APC
25. On the basis of the analysis above, **consider establishing a selective list of entities/activities to which the relevant provisions of articles 28-30 apply**. If appropriate, the same selection should add entities that are not currently subject to the provisions.
26. For entities subject to the spending limits of Article 28, relate the **spending limit** to a more appropriate benchmark, for example spending as envisaged the three-month spending plan.
27. Amend articles 28-30 so that entities must i) submit and publish **totals of monthly spending** broken down by spending category; ii) include an explanation if the total exceeds the limit established in Article 28; iii) provide to the APC relevant **analytical cards** on request.
28. The **content of analytical cards** should be defined precisely by legal regulations (such as relevant Ministry of Finance by-laws).
29. The Ministry of Finance should (in cooperation with other relevant authorities as necessary) **provide technical solutions (software) enabling all relevant entities to collate the data required**. When such solutions are provided, the obligations of Article 28 should apply on a permanent basis, not just during election campaigns.
30. Amend Article 32 to establish that relevant entities maintain, provide to the APC and publish **records of use of vehicles assigned to senior officials** (those for which travel orders are not required).

31. Consider amending Article 33 to also **prohibit pressure by public officials or employees on any staff in public institutions** to participate in or assist campaign activities at any time.

3.7 Supervision

As summarised in Section 2.5, oversight and supervision of political finance regulation is divided between the APC and SAI, with the prominent role allocated to the former. While it is clear what the two institutions have been doing since the LFPEEC came into force, how competences are exactly supposed to be divided under current regulation is not entirely clear in detail.

The APC is responsible for overall supervision of political party and election campaign finance. The LFPEEC establishes detailed responsibilities for oversight by the APC of election campaign finance, and of the SAI to audit annual reports. In addition, the APC is responsible for monitoring compliance with prohibition/restrictions on the use of public resources during election campaigns, and the related disclosure requirements.

Problems are apparent in the following areas.

Division of competencies

- If competencies for oversight of political finance are divided between different institutions, the scope of these competencies must be very clearly defined, and detailed mechanisms for coordination between institutions must be established.
- The current template for annual reporting (audited by the SAI) includes a section on election campaign finance, which must be completed if the political entity in question took part in any election during the reporting year. At the same time, the APC controls – i.e. inspects and may check/verify reports on – the political entity’s financing of the same election separately, immediately after the election. This creates clear space for overlapping competences. If the two institutions then use differing interpretations/approaches with respect to terminology (for example the valuation of in-kind donations), this will lead to problems. It is not clear for example what would happen if one institution detects a violation that the other did not (e.g. the SAI finds evidence of violations of election campaign finance regulations that the APC did not detect in its post-election audit). Conversely, the APC also receives annual reports; if it decides to check these reports in any way (which it may) and finds discrepancies or evidence of violations, it is not clear how these should be addressed given that the SAI will also perform an audit of the same reports.
- Article 9 of the Law on the State Audit Institution states that the SAI “shall decide independently regarding the entities subject to audit, unless otherwise provided by this Law” – a standard provision on supreme audit institutions designed to safeguard their independence and effectiveness. The only audit which the SAI must conduct by law is of the Annual Financial Statements of the Budget. Article 43.2 of the LFPEEC (according to

which the SAI audits the consolidated financial statements of political entities with income exceeding 10,000 Euros) appears to contradict this provision.

SAI audit of annual reports

- Under the LFPEEC the SAI currently audits all parties and other political entities that won parliamentary seats that have income exceeding 10,000 Euros. According to the SAI the threshold puts disproportionate strain on its resources, requiring it to audit the annual reports of 30 parties for 2016. It should be noted that SIGMA recommended in 2015 that “[t]he SAI should endeavour to change legislation, to be able to audit the final accounts of political parties following a risk-based approach, instead of having to audit all political parties every year.”⁴
- Although it can submit initiatives to the prosecutor’s office in case of suspicion of criminal activity, for lesser violations (which are the vast majority of those related to political finance) the SAI issues only opinions and does not initiate misdemeanour proceedings. In addition, the APC highlighted the need for the SAI to forward to it any suspicions/information on legal violations.

Scope of APC oversight during election campaign

The remit of the agency during the election campaign as described in LFPEEC Article is i) to “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 and other prohibitions and restrictions prescribed by law” (Article 46.4); ii) monitoring compliance with the prohibitions and restrictions on use of public resources during the election period. The APC “Rulebook on the manner of exercising control over political entities and control and supervision during election campaign” states that a plan of control and supervision is to be approved within 10 days of the calling of the election, based on risk analysis, and this should “define the institutions and, where appropriate, political entities over which a comprehensive control of implementation of the rules and compliance with the prohibitions and restrictions prescribed by the Law will be carried out...”.

- The task described in Article 46.4, while within the remit of the Agency, is an impossible task to perform if the sentence is taken literally as being to control compliance of all political entities and public entities with all obligations of the LFPEEC. In addition to five persons with responsibilities for control of political party and election campaign finance, the Agency had to allocate an extra 20 of its staff (who do not deal with the subject normally) to control of the October 2016 parliamentary and local government election campaigns. Control of compliance with the provisions on use of public resources was an especially severe burden: for example, the the APC had to control analytical cards of 447 public institutions on a weekly basis, and travel orders of 998 entities.

⁴ SIGMA, Baseline Measurement Report - Principles of Public Administration, Montenegro”, April 2015, p. 108. http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Montenegro.pdf

- While the APC Rulebook determines that the scope of audit should be narrowed through **risk analysis**, the meaning of the relevant provision cited above implies that risk analysis is to be employed only to select certain political entities, and that for these entities control of compliance with all obligations is to be conducted. On the basis of international experience, it cannot be stressed too much that even control of compliance of even two major parties with all their obligations cannot be performed by a single oversight body; indeed, attempting to do so would be a waste of public resources and out of step with good regulatory practice. In this regard the following should be noted:
 - **Risk analysis** should involve not just the selection of entities to audit/control, but also **selection of which aspects of campaign finance to monitor**; for example, if there were allegations in previous elections of third-party spending on advertising in favour of a particular political party/entity, or of failure to declare certain types of spending, risk analysis would push towards focusing on these particular issues, or a sample within them – and perhaps for a few larger parties only, etc. The consequences of applying such a methodology may sometimes be counterintuitive: for example, a decision might be made not to check on compliance with provisions on prohibited donors, despite the seriousness of potential violations - on the assumption that no compliance officer would explicitly reveal such a donor in a political entity's report.
 - The same point applies to control of the use of **public resources**. The quantity of information being received by the APC appears to have led to a situation where the APC interprets its role as being only to **check if political entities submit reports on spending, and not to check the veracity of the figures**. The consequence of this 'tick box exercise' is a rather shallow form of oversight.
 - Risk analysis should also be based on an assessment not only of what types of violation are most likely, but also on **what damage they are likely to cause**; for example, if a certain type of minor petty violation is very common but does not have a significant effect on the integrity of the campaign, risk analysis may recommend ignoring it.
 - Risk analysis should embrace the use of '**red flags**' as criteria for selecting entities or processes to control. For example, if a party (or many parties) declares many donations that fall just under the donation limits (which one major party did during the October 2016 parliamentary election campaign), this may be a sign of donation splitting. Other examples include where a party declares total spending just under the spending limit, large donations are provided by persons with no known link to the party, a number of senior functionaries of state enterprise donate to a party, etc.
- It is outside the scope of this paper to make a judgment on the effectiveness or thoroughness of the APC's control of compliance with election campaign finance obligations. However, the unqualified finding that no in-kind contributions occurred during the October 2016 parliamentary election campaign raises questions about the thoroughness and effectiveness of oversight. The APC's verdict on party's reporting of

their campaign spending also diverges significantly from NGO findings of discrepancies and gaps in reporting.⁵ See also 'Complaints' below.

Complaints

Concerning complaints/allegations concerning violations of campaign finance regulations, the APC has "Instructions on the manner and procedure for reporting and resolving complaints filed in the course of the election campaign", which establish standard provisions for dealing with complaints (grounds for dismissal without processing, procedure for investigating complaints, etc.). From the APC report on control for the October 2016 elections, it is not entirely clear how many complaints in total were received or their breakdown. It is clear that the vast majority concerned violation of LFPEEC provisions relating to reporting of use of state resources. One complaint by an NGO concerning campaigning by political entities before the opening of a special bank account is mentioned.

Overall, the situation regarding complaints is not clear, except for an apparent massive disparity between the number of complaints concerning alleged violations of ordinary political finance rules and those concerning alleged misuse of state resources. Some 2373 complaints of alleged violations of provisions on reporting by public entities of spending were filed during the campaign. It appears that not one complaint was resolved in favour of the complainant, although the relevant section of the Report is not clear on this (p. 6). If it is true that so many complaints were filed and all were unfounded, this either means that the APC is not processing some complaints properly, or that it is not raising awareness among potential complainants of what constitutes an admissible complaint.

Post-election control/supervision

- The APC has only seven days to check post-election reports before deciding whether to release the second tranche of budget funds for elections. This is an extremely short length of time, in which no adequate control of the veracity of a report can be realistically carried out.
- APC has no means of controlling the use of the tranche of public funding for electoral purposes that is distributed after the election.

Post-election report on supervision and control

- The APC must adopt and publish a report on supervision and control during the election campaign within 60 days of the announcement of the final election results. The main issue that stands out from the APC report on the October 2016 Parliamentary and municipal elections is its structure and length. The report is very long and descriptive. For example, it describes in detail the amounts parties reported spending on each category of spending,

⁵ Center for Democratic Transition, "Recommendations For Improvement of the work of the Agency For Prevention of Corruption through the Reveiw of Conculsions published in the Reporton Control over the Parliamentary Elections", CDT 2017, pp. 9-11. http://www.en.cdtmn.org/wp-content/uploads/2017/02/preporuke-final_engl-verzijaa.pdf

with an emphasis on verbal description rather than visual summaries. It is difficult to extract easily from the report the main issues: for example: an assessment of the overall degree of compliance; clear summary of complaints submitted, for which alleged violations and the results of any proceedings (on page 44 it is stated that the Agency acted on all complaints, but with no information on what were the findings or consequences); identification of key violations detected; lessons of implementation in terms of weaknesses in legal framework, or other rules etc.

Recommendations:

32. Design all regulations to reflect a **clear definition and understanding of the competencies of the SAI and APC**, for example:
 - c. The **APC** is responsible for i) general oversight of political party and election campaign finance in the sense of: drafting secondary legislation, rules, documentation and guidance; providing active guidance and awareness-raising vis-à-vis parties/political entities and other stakeholders ii) coordination of interaction with the SAI and law enforcement institutions; iii) supervision during the election campaign of compliance with provisions of the LFPEEC by political entities and state/public entities relating to election campaigns, on the basis of controls during the campaign and verification of the post-election financing reports. iv) receiving and processing complaints concerning alleged violations of the LFPEEC; (v) investigating alleged or suspected violations; vi) imposing administrative sanctions and initiating suspension/termination of budget funding.
 - d. The **SAI** is responsible for i) audit of the annual consolidated financial statements of all parties and other political entities over a certain size (income threshold) that receive budget funds for ordinary activities; ii) forwarding/notifying all suspected violations of the LFPEEC to the APC; (iii) initiating enforcement proceedings for violations that are not related to the LFPEEC.
33. Amend the **Law on the State Audit Institution** to establish the obligation of the SAI to audit the annual financial reports of political parties that exceed a certain threshold of income and receive budget funds for ordinary activities. **Consider raising the threshold of income** above which a party must be audited to a level that ensures coverage of the more significant political entities (e.g. the five largest) without stretching resources unduly, while allowing the SAI to audit other parties if it deems necessary on the basis of risk assessment.
34. Establish **formal mechanisms of cooperation between the APC and SAI**, including:
 - e. Obligation of both institutions to share without without delay any relevant information on political party/election campaign financing that is of relevance to the counterpart's oversight activities, and specifically to inform the counterpart without delay of any violations or problems detected in the course of their oversight activities.

- f. Scheduled meetings before and after the SAI conducts audits of annual financial reports – in the first case for the APC to brief the SAI on its own findings on the annual financial reports, and in the second for the SAI to brief the APC on its findings and other possible issues (e.g. suspicions of violations) that could not be included in formal audit reports.
 - g. Scheduled meetings following the announcement of elections, and following the completion of the APC's report on its supervision of the campaign before the election – the first so that the SAI may brief the APC on any relevant election-related findings from its audit of annual reports, in the second case so that the SAI may be briefed on all APC findings including any insights that were not included in its reports but are of relevance to other oversight activities.
 - h. A specific objective of cooperation should be to prevent contradictory findings through the sharing of all relevant information.
35. The APC should conduct **controls during the election campaign** i) based on a risk assessment that reduces the quantity of both entities and activities controlled, in order that ii) control is in-depth, with full verification of the accuracy of data submitted. This applies both to control of political entities and public institutions.
 36. Prior to the election campaign, the **APC should actively raise awareness among relevant stakeholders** (media, NGOs etc.) of the obligations of political entities and public entities during the election campaign, channels for complaining about alleged violations, which types of complaint are within the remit of the APC and what they should contain to be processed.
 37. The **deadline for the APC to audit post-election reports** should be lengthened considerably, for example to 3 months. This should be accompanied by implementation of Recommendation 40 relating to the withholding of election subsidies.
 38. The **post-election APC report** should be structured in a standardised way so as to make it "user-friendly", Only information that is directly relevant to supervision/control should be included, an executive summary of all key information should be provided, and data presented in a coherent and consistent manner with appropriate visual aids.

3.8 Sanctions

As described in Section 2.7 these may be the suspension/termination of state funding, administrative measures including fines, and criminal charges (for misuse of state resources). The current system of sanctions exhibits the following problems.

General

- According to international standards and good practice, sanctions should be effective, proportionate and dissuasive. Although sanctions may range from very small fines to the

termination of state funding, in fact the current system does not provide for an effective set of graded sanctions. In particular:

- The APC may issue warnings, but only during a control process and where the violation/s detected can be resolved during the process. There is no established approach of grading sanctions according to criteria such as the history and context of a particular violation. See Administrative sanctions below.
- While the LFPEEC provides for considerable discretion in the determination of actual fines imposed for particular violations, issues of proportionality and in particular the weak record of courts in imposing fines are further obstacles to achievement of good practice in this area.

Withholding/suspension/termination of budget funding

The provisions on conditionality of budget funds exhibit the following weaknesses

Funding for ordinary activities. Funding for ordinary activities can be withheld or suspended by the Ministry of Finance/local government if the annual report was not submitted. However, there is not provision for withholding or suspending funds in the case of serious inaccuracies in the report.

Funds for election campaigns. The APC may withhold the payment of the second tranche of funding for an election campaign if the election campaign report or supporting documents are not submitted, or if funds were acquired otherwise than through the special bank account. It may also impose partial or full loss of entitlement to budget funds if a political entity uses funds acquired for election campaign costs for other purposes than those defined as election campaign costs in Article 13, funds are not acquired through the special bank account, or in case of “violation of the law referred to in Article 11.10.” (Article 48)

- The most serious problem with these provisions is already described in Section 3.6 – the short seven-day period in which the APC must make such a decision (and by implication, examine the reports). As recommended in Section 3.6, this period should be lengthened. However, under the current set-up this would mean that a significant portion of budget funds are only received a long time after the election.
- Article 11.10 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 reference in Article 48 to this article as a criterion for withholding or suspending budget funds is not clear since Article 11.10 does not actually define a violation.
- Funds are suspended until the final decision of a misdemeanour court. It is not clear from this whether the “final decision” referred to is on the suspension of funds or on administrative sanctions for the same offence for which funds have been withheld, or whether funds are released on that decision (whatever it is) or only if it is in favour of the

party/political entity. Also, delays in court proceedings may effectively mean the suspension of funding irrespective of the facts of a proceeding.

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 lack of a clear definition of ‘supporting documents’ is already mentioned in Section 3.5.
- The violation of using election campaign funds for other purposes would become less relevant or irrelevant if Recommendation 7 on ending the separation between raising of funds for ordinary activities and election campaign activities is implemented.
- Taken together, these issues raise the question of whether the provision of funds for electoral campaigns should be disconnected from reporting requirements (or linked only to the formality of submitting a report), and mechanisms provide under which ordinary funding may be suspended in the case of serious election campaign finance violations.

Administrative sanctions

- Concerning the size of sanctions, the range of fines in the LFPEEC appears generally reasonable. The law is divided in such a way that similar ranges of fines are applied to a wide range of different offences, and it may be necessary to check through the list of offences under each range of fines to ensure proportionality. For example, a question was raised by the APC whether the fine for failing to submit the annual report on time – a minimum of 10,000 Euros – is proportional if the report is 1 day late. This links directly to the point underlined under ‘General’ above concerning the need for the APC to have the ability to impose a full range of sanctions in a graduated manner.
- The APC cannot impose administrative fines directly, but initiates proceedings in a misdemeanour court. According to all interlocutors, in practice this has had unfortunate consequences because courts have imposed sanctions at the lower end of the range, and even lowered them further using provisions on mitigating circumstances from the Misdemeanour Law.
- Where groups of citizens or NGOs participate in elections as a political entity, they cannot be subject to administrative sanctions for violations because they are not legal entities under Montenegrin law and cases are therefore dismissed by misdemeanour courts.
- If a municipality fails to distribute budget funds to which political entities are entitled, or provides funds after an election irrespective of the APC’s position/decision on whether a political entity fulfilled the conditions for doing so (in other words violates Article 15), the LFPEEC does not provide for any sanction on the municipality or its responsible person/s.

- The law does not provide for any sanctions when a municipality fails to collect and publish data on social welfare payments during the election campaign (Article 29)

Criminal sanctions

- No cases have been initiated under Article 193a of the Criminal Code. While this may not be surprising in view of the fact the Article was only introduced in 2015, both the prosecution and APC agreed that communication between the APC and prosecution should be intensified – for example when the APC becomes aware of allegations or sees indications of possible violations.

Recommendations

39. In general, **sanctions for violations of the LFPEEC should be designed to have gradations**. For example, the APC should be able to issue public reprimands/warnings, followed by fines that are set according to the seriousness of a violation (frequency, size/scale, mitigating circumstances or not, etc.), with withdrawal of budget funding an option for the more serious cases. It should also be possible to invoke criminal law provisions on fraud or false accounting in very serious cases.
40. Amend Article 14 and 48 of the LFPEEC so that the APC may withhold the portion of the **state subsidy for election campaign** provided after the election only if a political entity fails to submit a report or supporting documents. Establish the authority of the APC to **disqualify a party of political entity from receiving subsidies in future elections** where serious inaccuracies in election campaign finance reporting are detected after the subsidy has been provided, and until such inaccuracies are remedied.
41. Amend LFPEEC Article 11 so that the Ministry of Finance may **suspend ordinary budget funding** in cases where either the annual financial report or election campaign financial report contains serious inaccuracies or serious other violations of the LFPEEC are detected. Suspension in these cases would occur on the initiative of the APC or SAI (or of the APC alone but including on the basis of information provided to it by the SAI).
42. **Screen the administrative sanctions** in the LFPEEC (articles 51-57) to ensure that minimum fines are not excessive in certain cases (e.g. the minimum fine for failing to submit a report on time), and adjust them where and as appropriate.
43. Amend the necessary legal provisions so that the **APC can impose administrative fines directly**.
44. Amend Article 2 of the LFPEEC and/or other laws if necessary) to **ensure that all political entities competing in elections constitute legal entities**.
45. Add to sanctioning provisions **fines on responsible persons in municipalities** for:
 - c. Violation of LFPEEC Article 15 – failing to distribute funds for ordinary activities or distributing such funds in the absence of a notification by the APC that the political entity fulfilled reporting requirements;

- d. Violation of Article 29 – failing to collect or publish data on social welfare payments during the election campaign.
46. Formalise **channels of communication between APC, SAI and prosecution** so that the SAI proactively notifies the APC of suspected violations of the LFPEEC (as per Recommendation 34), and the APC proactively notifies the prosecution of any indications of possible violations of Article 193a of the Criminal Code.

4 ESTABLISHMENT OF A TRACK RECORD SYSTEM FOR POLITICAL FINANCE

In order for the APC to follow its own oversight activities and gauge their effectiveness it is necessary for its oversight activities in the area of political party and election campaign finance to be recorded in a format that is accessible and comprehensible. This need has been highlighted by the APC itself, especially in the area of oversight during election campaigns, where the Agency has been performing control over hundreds of public entities and tens of political entities on a constant basis. It is also needed for other stakeholders to be able to orient themselves in a complicated regulatory arena, and for the APC to be accountable for its oversight activities. The track record system may therefore be seen as an internal information system of the APC for its own purposes, or as a tool of external communication. The recommendations of this sub-section assume that the recommendations in Section 3 are implemented.

4.1 General comments

Formalised information (data, statistics) on compliance and enforcement are by nature useful in their own right, and for straightforward uses – for example for the APC to be able to inform the public. However, such data must be interpreted very carefully if it is to be used to make qualitative judgments on the effectiveness of the regulatory system. The following points are of particular importance.

- It is not inherently obvious what kind of statistical change constitutes evidence of ‘success’. An increase in complaints of alleged violations might signal an improvement in the complaints system, but it could also signal a deliberate effort by political entities to try and stop oversight functioning; or it might not be of much relevance if most complaints are inadmissible. Conversely, a drop in complaints could reflect a view that filing them is a waste of time. An increase in misdemeanour proceedings might signify an improvement in enforcement, or a decrease in compliance, and so on.
- In practice, quantitative indicators (such as those mentioned above) are never sufficient to give an adequate picture, and need to be accompanied by qualitative information, such as a description of the most important cases.

This said, the following sub-sections indicate what information should be gathered and stored in the system. The most probable workable form of the system for numerical data in technical terms is probably as Excel spreadsheets in the short term, into which the raw data (e.g. from a 15-day report on donations) is inputted manually as soon as it becomes available, and in which aggregation of data into totals is performed automatically. This may be accompanied by ordinary Word documents for qualitative description of cases. Ideally, such information should be integrated into an APC database system, enabling more effective processing of data, searchability etc.

4.2 During election campaigns

The APC needs to implement mechanisms to collect, store and make available the following information:

- A list of controls conducted by the APC: entities controlled, which aspects of campaign financing controlled in each case and whether the control consisted in verifying formal compliance (relying on data submitted) or verification of data submitted.
- Running totals of the following:
 - Number of political entities competing
 - Number of (15-day) deadlines for reporting donations met
 - Spending by each political entity, updated when 15-day reports are received.
 - Donations received during the campaign.
 - Number of violations detected by the APC during planned controls and investigated according to LFPEEC Article 44, broken down by legal provision and political entity involved
 - Number of complaints received, broken down by legal provisions and entity that is the subject of the complaint
 - Number of complaints admitted and processed according to LFPEEC Article 44
 - Number of complaints processes concluding with decision on violation
 - Number of administrative sanctions imposed (if the APC is empowered to impose sanctions directly) OR number of sanctions imposed by misdemeanour courts (if current system is preserved)
 - Average size of sanction for each type of violation
 - Number of initiatives submitted to Prosecution, broken down by paragraph
 - Number of parties submitting post-election report, and of those that did so within the legal deadline
 - Number of cases of election funding withheld by APC following election
- For significant cases – e.g. of particularly serious violations/alleged violations or violations of interest for regulatory reasons (e.g. ones that illustrate a need to amend rules), a short description of the case according to a standardized structure, for example:
 - Nature of violation/alleged violation, name of political entity
 - How violation came to notice of APC (*ex officio*, complaint, notification from other institution, etc.)
 - Description
 - Proceedings conducted
 - Conclusions, including sanctions or proposed sanctions/further action
 - Any final decisions
- Information on fulfilment by APC of other obligations
 - Number of financial reports it has published within the set timeline
 - Number of complaints processes that have been put on the website within a defined number of days after completion

4.3 Information on oversight, compliance and enforcement in general

For compliance and oversight outside of electoral periods, a similar logic may be followed, with modifications reflecting differences in specific obligations over which the APC and SAI perform oversight:

- Number of parties/political entities subject to reporting requirements
- Number of parties/political entities submitting annual reports within legal deadline
- Number of parties/political entities audited by SAI
- Number of recommendations issued by SAI, broken down by type of violation
- Number of recommendations from previous year audits implemented
- Number of notifications of suspected violations by SAI, broken down by recipient: APC, misdemeanour court, prosecution
- Consequences of proceedings following SAI notifications