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Preventing corruption and promoting integrity in
central governments (top executive functions) and
law enforcement agencies

EVALUATION REPORT

MONTENEGRO



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Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	4
II. INTRODUCTION AND METHODOLOGY	5
III. CONTEXT	6
IV. PREVENTING CORRUPTION AND PROMOTING INTEGRITY IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)	8
SYSTEM OF GOVERNMENT AND TOP EXECUTIVE FUNCTIONS	8
<i>System of government</i>	8
<i>The President of Montenegro</i>	8
<i>The Government</i>	8
<i>Other persons exercising top executive functions</i>	10
<i>Remuneration and other benefits of persons with top executive functions</i>	12
ANTICORRUPTION AND INTEGRITY POLICY, REGULATORY AND INSTITUTIONAL FRAMEWORK	13
<i>Anticorruption and integrity policy</i>	13
<i>Legal framework</i>	14
<i>Codes of conduct</i>	15
<i>Institutional framework</i>	15
<i>Awareness</i>	18
TRANSPARENCY AND OVERSIGHT OF EXECUTIVE ACTIVITIES OF CENTRAL GOVERNMENT	19
<i>Access to information</i>	19
<i>Budgetary transparency</i>	20
<i>Transparency of the law-making process</i>	21
<i>Third parties and lobbyists</i>	21
CONTROL MECHANISMS APPLICABLE TO GOVERNMENT DECISIONS AND POLICY-MAKING	23
<i>Internal and judicial reviews</i>	23
<i>Internal audit and inspection mechanisms</i>	23
<i>Public audit institution</i>	23
<i>Parliamentary control</i>	23
CONFLICTS OF INTEREST	24
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES	25
<i>Incompatibilities, outside activities and financial interests</i>	25
<i>Contracts with state authorities</i>	26
<i>Gifts</i>	26
<i>Misuse of confidential information</i>	27
<i>Misuse of public resources</i>	27
<i>Post employment restrictions</i>	27
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS	27
<i>Declaration requirements</i>	27
<i>Review mechanisms</i>	28
ACCOUNTABILITY AND ENFORCEMENT MECHANISMS	29
<i>Non-criminal enforcement mechanisms</i>	29
<i>Criminal proceedings and immunities</i>	30
<i>Whistleblowing policy</i>	31
V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES	33
ORGANISATION AND ACCOUNTABILITY OF LAW ENFORCEMENT/POLICE AUTHORITIES	33
<i>Overview of various law enforcement authorities</i>	33
<i>Access to information</i>	34
<i>Public trust in the Police</i>	35
<i>Trade unions and professional associations</i>	35
ANTI-CORRUPTION AND INTEGRITY POLICY, REGULATORY AND INSTITUTIONAL FRAMEWORK	35
<i>Anti-corruption and integrity policy</i>	35
<i>Handling of undercover operations</i>	36
<i>Ethical principles/rules of conduct</i>	37

<i>Advice, training and awareness</i>	38
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE	38
<i>Recruitment requirements and appointment procedure</i>	38
<i>Performance evaluation and promotion</i>	40
<i>Staff rotation, reassignment</i>	40
<i>Termination of duties and dismissal</i>	41
<i>Salaries and benefits</i>	41
CONFLICTS OF INTEREST	42
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES	42
<i>Incompatibilities, outside activities and post-employment restrictions</i>	42
<i>Gifts</i>	42
<i>Misuse of public resources and confidential information by police officers</i>	43
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS	43
<i>Review mechanisms</i>	43
OVERSIGHT MECHANISMS	44
<i>Internal oversight and control</i>	44
<i>External oversight and control</i>	45
<i>Remedy procedures for the general public</i>	45
<i>Reporting obligations and whistleblower protection</i>	46
ENFORCEMENT AND SANCTIONS	47
<i>Disciplinary proceedings</i>	47
<i>Criminal proceedings and immunities</i>	47
VI. RECOMMENDATIONS AND FOLLOW-UP	49

I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in Montenegro to prevent corruption amongst persons with top executive functions (PTEFs) and members of the police. It aims to identify weaknesses that need to be addressed as well as good standards in place or underway. The report aims at assisting the authorities in Montenegro to strengthen their prevention efforts in line with GRECO standards.

2. The general policy for preventing and fighting corruption in respect of PTEFs and the Police in Montenegro is being implemented within the framework of a changing political context following the elections of 30 August 2020. Public confidence in the institutions as regards the prevention and fight against corruption needs to be strengthened. A global country strategy in this field is lacking.

3. The Law on Preventing of Corruption provides the basis for corruption prevention; it makes it possible to address conflicts of interest, monitor the assets of PTEFs and police officers, and provide some transparency of their actions. However, there is a lack of ownership of this system from the public authorities, which results in shortcomings in its effective implementation. There is a need for strong political will to adopt a more proactive approach, including from all governmental institutions, as the anti-corruption policy cannot be left exclusively to the Agency for Prevention of Corruption (ASK), which has a central role in the system. The performance of the ASK has improved under its new management, though the sustainability of its effective independence remains to be ensured and its capacities to be reinforced, in particular as regards quality control procedures.

4. The focus should now be put on the overall coherence of the system and the coordination between various authorities. The role of the newly created National Council for fighting corruption needs to be clarified. Effective integrity plans should be implemented and pro-actively used within the ministries. Missing legislation, bi-laws and ethical rules aimed at PTEFs need to be further elaborated and their coherence be ensured. The legal framework should be accompanied by reinforced enforcement mechanisms, practical guidance and a possibility of confidential counselling. The integrity of PTEFs needs to be checked before appointment and their declarations checked and the transparency in this respect further enhanced.

5. The Police remains a subject of political tensions and its operational independence from undue influences should be a priority. The Directorate of police has recently been substantially re-organised with the adoption of a Law on Internal Affairs. Relevant provisions for preventing conflicts of interest and controlling police are in place. Internal bodies for enhancing the integrity and preventing corruption among the police (an Ethics Committee, an Internal Control Unit, and an Internal Anti-corruption Unit) have been set up, but their respective roles must be clarified. A new Code of Police Ethics has been adopted. However, it needs to be complemented with further provisions and guidance for its implementation in practice and this should be done with the participation of representatives of the Police. Last but not least, a mechanism available for the public to submit complaints relating to misconduct and corruption within the police is required. Such a mechanism would need to be sufficiently independent from the police and the Ministry of Interior in order to gain public trust.

II. INTRODUCTION AND METHODOLOGY

6. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003. Following its independence in June 2006, Montenegro became a member of GRECO. Since its accession, Montenegro has been subject to evaluation in the framework of GRECO's Joint First and Second (in October 2006), Third (in December 2010) and Fourth (in June 2015) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017.¹

7. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Montenegro to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Montenegro, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Montenegro shall report back on the action taken in response to GRECO's recommendations.

8. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Montenegro from 27 September to 1 October 2021, and reference was made to the responses by Montenegro to the Evaluation Questionnaire (Greco(2020)5), as well as other information received, including from civil society. The GET was composed of Ms Xhuljeta CELAJ, Auditor, Performance Audit Unit, State Supreme Audit (Albania), Mr Alexandru CLADCO, Prosecutor, Head of International Cooperation and European Integration Department of the General Prosecutor's Office (Republic of Moldova), Ms Helena KLIMA LIŠUCHOVÁ, Director of International Cooperation and EU Department, Ministry of Justice (Czech Republic), and Mr Carlos PEREIRA, Chief Inspector, National Anti-Corruption Unit, Judicial Police (Portugal). The GET was supported by Mr Stéphane LEYENBERGER from GRECO's Secretariat.

9. The GET interviewed representatives of the Office of the President of Montenegro, the Office of the Prime Minister, the Ministry of Public Administration, Digital Society and Media, the Ministry of Justice, Human and Minority Rights, the Ministry of the Interior, the Ministry of Finance and Social Welfare, the Secretariat of the Government of Montenegro, the Police Department, the Agency for Prevention of Corruption (ASK). It also met with representatives of Parliament of Montenegro, the Police Academy, the Police Administration Union, the Council for Civil Control of Police Work, the State Audit Institution, the Agency for Personal Data Protection and Free Access to Information, as well as academics and representatives of NGOs and media. The EEG members also had discussions with representatives of the Delegation of the European Union in Montenegro and of the Office of the Council of Europe in Montenegro.

¹ More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

III. CONTEXT

10. Montenegro has been a member of GRECO since June 2006 and has undergone four evaluation rounds focusing on different topics related to the prevention and fight against corruption. At the closure of the compliance procedures, 86% recommendations of the first, second, third and fourth evaluation rounds had been fully implemented. The compliance procedure in respect of the fourth evaluation round covering members of Parliament, judges and prosecutors was terminated on December 2019, with eight out of the eleven recommendations being satisfactorily implemented and one remaining partly implemented.

11. Corruption remains an issue of concern in Montenegro which challenges public trust in public institutions and political life. The perceived level of corruption is high: according to the Corruption Perception Index published by Transparency International, Montenegro was ranked 64 out of 180 countries in 2021. Montenegro was ranked 67 out of 180 in 2020. Despite several reforms to fight corruption in Montenegro, corruption remains a serious problem in the public, private and business sectors.

12. In June 2012, the European Union started accession negotiations with Montenegro. To date, 33 negotiating chapters have been opened, of which three have been provisionally closed. The political commitment to the strategic goal of European integration has been consistently stated as the key priority by the Montenegrin authorities. Overall, progress in the accession negotiations depends to a large extent on the progress in the area of rule of law, including corruption issues.

13. On 28 April 2022, Parliament – issued from the general elections of August 2020 - elected the 43rd Government of Montenegro. The political situation in Montenegro remains tense as the deep polarisation between the new ruling majority and the opposition persisted in the post-election period. Tensions and mistrust are frequent issues even within the ruling majority, slowing down reform work. Such tensions can also be noticed between the Presidential administration (the President of Montenegro being close to the former parliamentary majority) and the Government.

14. The political transition which has started since the general elections of August 2020 has had a direct impact on the functioning of the anti-corruption system. Indeed, this transition makes it difficult for the newly appointed officials within the anti-corruption bodies to get people's trust because they have to endorse the activities and decisions of the former members of such bodies. At the same time, situations resulting from the functioning of the previous public institutions remain to be dealt with.

15. The change of government and of the parliamentary majority has repercussions for the civil service as well. Amendments to the Law on Civil Servants and State Employees lowered the requirements for competence, independence and merit-based recruitment of civil servants. Moreover, the recent reorganisations of public administration led to substantial staff changes, including at senior levels, jeopardising Montenegro's capacity to retain experienced staff in many sectors.

16. The judicial reform is stagnating as key posts in the judiciary remain vacant and anti-corruption laws have not yet been adopted. Political parties have not been able to achieve

consensus on key issues, including the effective implementation of amendments to the law on state prosecution and top judiciary appointments.

17. The media landscape is diverse and partisan. Dependence on politically-affiliated business interests limits editorial autonomy, investigative journalism and genuine pluralism. While defamation of individuals is decriminalised, other criminal provisions limiting freedom of expression remain in the legislation, contrary to relevant international standards, and have resulted in controversial convictions of citizens and journalists, though Parliament adopted in December 2021 amendments to the Criminal Code which provides that attacks on journalists and other media workers are criminal offences. The role of civil society is recognised but needs to be promoted.

IV. PREVENTING CORRUPTION AND PROMOTING INTEGRITY IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government

18. According to its Constitution (2007), Montenegro is a unitary and parliamentary Republic. The people are represented directly by the members of Parliament. There are 81 members of Parliament, elected for a four-year term. Following elections to Parliament, the President of Montenegro proposes a future Prime Minister (mandator) who in turn proposes a Government to be elected by Parliament.

The President of Montenegro

19. The President of Montenegro is the Head of State. S/he is elected in general elections, directly for five years, no more than two times. According to the Constitution,² the President represents Montenegro in the country and abroad, commands over the army on the basis of the decisions of the Defence and Security Council, appoints and revokes ambassadors - at the proposal of the Government and after obtaining the opinion of Parliament, accepts letters of accreditation and revocation of diplomats, awards medals and honours of Montenegro, and grants amnesty. S/he proclaims laws by Ordonnance, calls for the elections for Parliament and proposes to Parliament the Prime Minister-Designate for composition of the Government - after the completion of discussions with the representatives of the political parties represented in Parliament, as well as two judges of the Constitutional Court and the Protector of Human rights and Liberties.

20. As agreed by GRECO, a Head of State would be covered in the 5th evaluation round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/regulatory decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

21. The GET notes that the functions of the Head of State of Montenegro are to a large extent of a formal, representative and ceremonial nature and s/he does not actively and regularly participate in governmental functions and does not advise the government on such functions. The President of Montenegro takes decisions on certain appointments; however, such decisions follow a pre-selection process in which the President is not involved. The role to propose a candidate for Prime Minister follows the results of the general elections and the candidate has to be endorsed by Parliament. The GET did not receive indications on-site that the President actively participates in governmental activities. It follows that the functions of the President of Montenegro do not fall within the category of “persons entrusted with top executive functions” (PTEFs) for the purpose of this evaluation.

The Government

² Article 95 of the Constitution.

22. The *Government* is the holder of the executive power.³ It is currently composed of the Prime Minister, four Deputy Prime Ministers and 20 ministers (16 men and 4 women). In this connection, the GET calls the attention of the Montenegrin authorities to Recommendation Rec(2003)3 of the Committee of Ministers of the Council of Europe which outlines that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

23. The Government is appointed by Parliament upon proposal of the candidate for the position of Prime Minister, simultaneously with the adoption of the programme proposed by the candidate Prime Minister. The Government is accountable to Parliament which may pass a vote of no confidence on the proposal of at least 27 parliamentarians (of the 81 MPs). Twenty-seven parliamentarians can also put questions regarding the work of the Government, which must respond within 30 days. Parliament may, at the proposal of minimum 27 parliamentarians, establish a fact-finding commission in order to collect information and facts about the events related to the work of the state authorities. The Government decides on the proposal to shorten the mandate of Parliament, to call for a state referendum, to have a vote of confidence in respect of the Government, and to dissolve Parliament.

24. The Government manages the internal and foreign policy of the State. It enforces legal norms and other regulations and general acts, adopts decrees, decisions and other acts for the enforcement of laws. It proposes plans, the budget, the National Security Strategy and the Defence Strategy. It gives an opinion to Parliament on a proposed law, other regulation and act submitted to Parliament by other entities. It meets and takes decisions when more than half of its members are present. It takes decisions by a majority vote of the attending members. In urgent and other particularly justified situations, the Government may, upon the proposal of the Prime Minister, decide on certain matters without holding a session, based on obtained consents of the majority of members of the Government. Decisions taken are then validated at the next session of the Government.

25. The *Prime Minister* is appointed by Parliament upon proposal of the President of Montenegro after consultation of the political parties represented in Parliament.⁴ S/he represents the Government and manages its work. S/he convenes and chair the Government's sessions, signs regulations. S/he may issue mandatory instructions and give special duties and authorisations to the members of the Government.

26. *Ministers* are accountable to Parliament and to the Prime Minister for the implementation of the Government's programmes and policies, the decisions and measures they take and the execution of mandatory instructions and duties and powers conferred by the Prime Minister. The Prime Minister can propose to Parliament to impeach a minister. Ministers implement the Government's programme and policy and monitor the legality and appropriateness of the work of the authorities under their purview. They report annually their activities to the Government and inform the Government on all matters within their authority that are relevant for managing Government's policy. They may submit to the Government proposals aimed at governing matters within the competence of the Government and Parliament and request that the Government takes a position on the issue within its mandate.

³ Article 100 of the Constitution.

⁴ Article 103 of the Constitution.

27. A Ministry is headed by a Minister. According to the decision of the Government, ministers can have between one and three *state secretaries*, who assist them and are accountable to them and to the Government for their work. State Secretaries are appointed and dismissed by the Government, at the Minister's proposal, without a public competition, and their duties end when the Minister's term of office ends. They exercise their labour-related rights in accordance with the law governing the rights, obligations and responsibilities of civil servants and state employees. They are working closely with the minister on defining government policies in specific areas.

28. The Prime Minister, Deputy Prime Ministers, ministers and state secretaries are considered PTEFs for the purpose of the current evaluation.

29. These officials are to submit asset and income declarations to be controlled by the Agency for Prevention of Corruption (ASK) when taking up their position (see below). However, there is no integrity check prior to their appointment. The GET considers that integrity checks should be carried out before the appointment of the political officials of the Government when they are being considered for the office. Such preliminary checks could, for instance, be carried out by Prime Minister's services based on financial declarations available and/or interviews. This would contribute to identify possible conflicts of interest or such risks in respect of persons contemplated for a post as a minister or state secretary and to manage such conflicts ahead of their appointment if need be. Therefore, **GRECO recommends laying down rules requiring that integrity checks take place prior to the appointment of ministers and state secretaries in order to identify and manage possible risks of conflicts of interest before their appointment.**

Other persons exercising top executive functions

30. The Decree on State Administration Organisation and Functioning establishes the organisation and functioning of the ministries and the state administration authorities. A clear distinction is made in the legal framework between "political officials" and "civil servants". Political officials are ministers or state secretaries, or persons assigned for the duration of the mandate of the Government, ministers or state secretaries who appoint them and to whom they report directly. By contrast, civil servants, who are not political officials are appointed for the duration of their career, at a technical level, through a public procedure.

31. The law⁵ provides that, for performing advisory, analytical, professional and other tasks, the Prime Minister has a cabinet composed of a *Chief of cabinet, a Deputy Chief of cabinet and cabinet advisors. S/he also has "special advisors"*.⁶ Deputy Prime Ministers have cabinets but without the position of (Deputy) Chief of Cabinet, nor cabinet advisors. However, they have "special advisors". The Chief of cabinet is accountable to the Prime Minister. S/he organises the work in the Cabinet, schedules tasks and takes measures for the orderly and timely execution of tasks in the Office of the Prime Minister. S/he participates in the work of the Narrow Cabinet of the Government which consists of the Prime Minister, Deputy Prime Ministers and the Secretary General. The Deputy Chief of Cabinet assists the Chief of the Cabinet and replaces her/him when appropriate. "Special advisors" are directly accountable to the (Deputy) Prime Minister too, and can be involved in the decision-making process.

⁵ Article 62 of the Law on Civil Servants and State Employees.

⁶ The advisors of the Prime Minister and Deputy Prime Ministers, who are political officials, must but distinguished from the advisors within the cabinet, who are civil servants. For the sake of this report, they are called "special advisors" in order to differentiate them from cabinet advisors.

32. Certain job positions in the Prime Minister's cabinet are filled without public announcement. The (Deputy) Chief of Cabinet and "special advisors" of the Prime Minister are appointed and dismissed by the Government at the Prime Minister's proposal, on his/her sole discretion, without following the provisions of the Law on Civil Servants and State Employees on recruiting prescribed for civil servants. The "special advisors" of the Deputy Prime Ministers are similarly appointed and dismissed at the Deputy Prime Minister's proposal. They must have passed a State exam enabling them to enter public service. However, no *ex-ante* integrity check is requested for them to be appointed. Their term of office ends when the (Deputy) Prime Minister's term of office ends, or with their resignation or dismissal. The names of all the members of the cabinet and of the "special advisors" are made public.

33. The *(Deputy) Chief of Cabinet and the "special advisors"* have the status of "political officials", subject to the same rules as the ones applied to ministers, and, to some extent, different from those applying to another category of advisors, called advisors to the ministers, who are considered as a technical staff, being civil servants and subject to the Law on Civil Servants and State Employees. They prepare, provide advice to the (Deputy) Prime Minister, participate and lead meetings, analyse materials for the (Deputy) Prime Minister, participate in Government's permanent working commissions⁷ (see below). The GET considers that the combination of the political nature of their appointment and their role within the organisation of the action of the Government and its decision making justify that they are considered PTEFs for the purpose of this report.

34. Furthermore, the Decree on the Government of Montenegro makes it possible to establish *permanent working bodies* to discuss matters within the competence of the Government and give opinions and proposals on those matters, monitor the implementation of Government regulations and harmonise the positions of state administration authorities within preparation of regulations for a Government session. The Government may establish a temporary working body to discuss certain matters within its competence and to give opinions and proposals. The permanent working body are formed by the Government's rules of procedure, and the temporary working body by a decision which defines its composition and task.

35. The GET notes that the (Deputy) Chief of cabinet and the "special advisors" of the Prime Minister, as well as the "special advisors" of the Deputy Prime Ministers, are appointed at the discretion of the (Deputy) Prime Minister, and that no integrity checks are carried out prior to their appointments. Such integrity checks are important to avert any conflict of interest before appointment, especially as they often come from the private sector and return to it after the end of their employment in government. Considering their political role as regards the functioning of the state administration and their participation in the decision-making process, the GET sees merit in providing appropriate integrity checks also for these categories of political officials. **GRECO recommends laying down rules requiring that integrity checks take place in respect of the (Deputy) Chief of cabinet of the Prime Minister, as well as the politically appointed "special advisors" of the Prime Minister and Deputy Prime Ministers, as part of their recruitment, in order to avoid and manage possible risks of conflicts of interest.**

⁷ Currently, the "special advisors" do not participate in the permanent working commissions, although the law makes it possible.

36. The *Secretary General of the Government* manages the General Secretariat of the Government, which ensures the implementation of government acts and preparation of government sessions and assists the Prime Minister in other business. S/he is appointed and dismissed by the Government on proposal of the Prime Minister and is accountable to the Prime Minister and the Government. While enjoying the status of political official, his/her post appears to be more about coordination than involvement on a regular basis with political decision-making. Therefore, the GET does not consider him/her as a PTEF in the sense of this report. The same applies to the *Secretaries of the ministries* who coordinate the work of internal organisational units of the ministries, as well as to the *Directors General* within the ministries who manage the preparation of public policies, regulations and other tasks within the narrow scope of the ministry's work. Both Secretaries of the ministries and Directors general are appointed by the Government for five years, at the proposal of the Minister, in line with the law governing the rights, obligations and responsibilities of civil servants and other state employees. They are removed from office by the Government, according to the Law on State Administration. While they enjoy the status of political officials, the GET is of the view that they should not be considered as PTEFs for the purpose of this evaluation as their role does not pertain to government decision-making but is more of an operational/administrative nature.

Remuneration and other benefits of persons with top executive functions

37. The Law on Salaries of Public Sector Employees⁸ defines the income structure, as well as the method of salary calculation. The average gross salary in Montenegro amounted to € 793 in 2021 (net salary: € 532).⁹

38. The basic salary is set by multiplying the coefficient defined for the groups and subgroups to which a public official is assigned by the calculated value of the coefficient set by the Government. A special part of the salary includes the reimbursement of expenses for meals and annual holiday - the gross value of this special part amounts to 70% of the calculated coefficient. The basic salary is increased each year of service.

Relevant PTEFs	coefficient	Gross (in €)	Net (in €)
Prime Minister	25.94	2,514.33	1,684.60
Minister	22.48	2,187.36	1,465.53
State secretary	19.89	1,942.61	1,301.55

The remuneration of the Chief of Cabinet and the “special advisors” is calculated using the coefficient 19.02. It varies according to their experience.

39. The Decree on Reimbursement of Expenses for Public Sector Employees¹⁰ defines the conditions, method of implementation and amount of reimbursement of expenses of public sector employees, including PTEFs. They may include per diems for business trips, use of own car for official purposes, allowance for living apart from family, reimbursement for field work, per diem for business trips etc. Accommodation and travel expenses are paid according to the actual cost (invoice).

⁸ Official Gazette of Montenegro 16/16, 83/16, 21/17, 42/17, 12/18, 39/18, 42/18, 34/19, 130/21, 146/21.

⁹ <http://monstat.org/eng/novosti.php?id=3234>.

¹⁰ Official Gazette of Montenegro 40/16 and 28/18.

40. The Law on Salaries defines rights after leaving office. The persons who professionally held the office, including PTEFs, receive reimbursement for one year after leaving the office amounting to the salary they received for the last month before leaving the office, with appropriate adjustment, until they find a job.

Anticorruption and integrity policy, regulatory and institutional framework

Anticorruption and integrity policy

41. A Deputy Prime Minister is in charge at the government level of questions relating to the prevention and fight against corruption. The GET was informed that a general document analysing weaknesses in respect of corruption risks etc was under preparation, with the support of the Norwegian government. In addition, regular reporting on this issue is done within the framework of the on-going process for acceding to the European Union. However, no national strategy or plan against corruption has been established so far.

42. A five-member National Council for Fighting Corruption was set up in February 2021. However very little information on this Council is available and no specific information was given to the GET as to its precise role and functioning. Interlocutors met on-site, including representatives of ministries and other anti-corruption bodies remained doubtful about the effective role of this Council. The GET could not assess the purpose of the Council and its relation with the role of the Deputy Prime Minister in coordinating the state policy against corruption and the preventive and controlling powers of the since long existing Agency for the Prevention of Corruption (ASK) (see below). In 2021, the ASK issued an Opinion on the Decision on the National Council for the fight against high-level corruption concluding that this Decision may lead to potential risk of endangering the public interest due to its insufficient precision, the lack of transparency and wide discretionary powers in certain procedures, which create a space for various abuses. The GET stresses that the operation of the Council must fully contribute to the proper functioning of the whole system for preventing and controlling corruption, including the mission of ASK.¹¹ Therefore, **GRECO recommends that clear role and missions be assigned to the National Council for Fighting Corruption so as to ensure the consistency of the overall strategy for preventing and fighting corruption.**

43. Although there is no national plan against corruption in place, the Law on Prevention of Corruption foresees that integrity Plans aimed at preventing and eliminating corruption and providing public confidence public institutions are to be established within more than 700 public authorities, including all ministries and the Police Directorate - which is an organisational unit of the Ministry of Interior, as of June 2021. These plans are to contain measures of legal and practical nature that prevent various forms of corruptive and unethical conduct.¹² They should be the result of self-assessment within each state institution, established in accordance with the rules established by the ASK. The heads of public authorities must designate Integrity managers and members of working groups entrusted with the identification of risk factors and areas to be assessed. The risk assessment is to establish the probability and occurrence and consequences of corruption (and other forms of illicit or unethical conduct) and classify the various risks in this respect. The working group is due to select adequate measures for reducing/eradicating such risks. After a period of two

¹¹https://www.antikorupcija.me/media/documents/OPINION_ON_THE_DECISION_OF_THE_NATIONAL_COUNCIL_FOR_THE_FIGHT_AGAINST_HIGH_LEV_duFEzgf.pdf

¹² Public authorities were obliged to adopt such plans by 31 March 2016.

years, public authorities are to assess the efficiency of their plans, by filling out a questionnaire produced by the ASK. Such plans are made public on the respective authorities' websites.

44. The ASK reports annually on these plans and provides recommendations to the various public authorities. It conducts continuous communication with the authorities, organises seminars, and provides the authorities with support and recommendations in the process of drafting and implementing integrity plans, as well as in assessing their effectiveness. In 2018, the ASK developed a web application for integrity plans, which provides statistics in order to assist in the analysis of these plans.

45. The GET was informed by the authorities that, out of a total of more than 21,000 measures planned in all integrity plans, 76% of the measures had been successfully implemented by the end of 2020 (14% of the measures were assessed as partly implemented and 10 % were not implemented). The GET notes that risk management mechanisms are indeed organised by the relevant texts and apply to a wide spectrum of public bodies. However, when discussing it with representatives of such bodies, the GET was not convinced that the system was fully operational in a way that made it possible to assess the exposure to risks in practice. The exercise seemed to be of a formalistic nature. A comprehensive and proactive approach seems to be missing in the various ministries. They should adopt and implement appropriate measures which would allow political officials to take full responsibility for their integrity and be subject to control. As the agency entrusted with the assessment of each integrity plan, the ASK acknowledges this difficulty and is working on a new methodology to make the exercise more concrete and aimed at a continuous improvement.

46. The GET notes that there is currently no real focus on risks of corruption faced specifically by PTEFs as opposed to risks pertaining generally to the areas of competence of the ministries. Although not practical enough, the results of the integrity plans could provide the basis of a strategy on corruption prevention that would address the risks affecting PTEFs. Therefore, the GET stresses that an anti-corruption strategy, based on an effective assessment of corruption risks encountered by PTEFs, should be adopted. Such a strategy needs to set specific goals to be achieved within a defined timeframe and be assessed properly. In order to respond to the increasing attachment of citizens to the integrity and accountability of PTEFs, such a strategy and its outcome should be made publicly available. Therefore, **GRECO recommends that a coordinated strategy for preventing corruption amongst persons entrusted with top executive functions (PTEFs) be adopted on the basis of risk assessments and that it be made public.**

Legal framework

47. The Law on Prevention of Corruption¹³ prescribes measures for preventing conflicts of interest and regulates restrictions in the exercise of public functions (including as regards gifts and post-employment restrictions), submission of declarations of assets and income by political officials, protection of whistle-blowers, as well as other issues of importance to the prevention and fight against corruption. It applies exclusively to public officials as defined by the law, including all PTEFs. Other provisions are provided for by the Law on Civil Servants and State Employees¹⁴, although not all of them apply to PTEFs. Within the framework of its

¹³ Official Gazette of Montenegro 53/14 and 42/17.

¹⁴ Official Gazette of Montenegro 2/2018 and 34/2019.

Opinion on the amendments to this Law, the ASK has detailed the rules that apply to the ministers and to all “political officials” (see below).

48. The GET is of the opinion that the Law on Prevention of Corruption provides for relevant preventive and repressive measures for fighting corruption in respect of PTEFs. However, the overall legal framework needs to be completed to be fully operational, in particular as regards PTEFs. While the authorities stated that all integrity-related measures aimed at civil servants were also applicable to ministers and their advisors, the GET noted from the interviews that PTEFs were not always clear on which provisions applied to them. The GET was told that the adoption of a Law on Government, the drafting of which has been envisaged, would clarify this situation. In addition, it was confirmed to the GET by various interlocutors that bylaws were not always in line with the relevant laws, which may create inconsistencies within the overall legal framework and make it difficult for PTEFs to have a clear view and awareness of the relevant provisions that apply to them. Therefore, **GRECO recommends that a review on the overall coherence and effectiveness of the legal framework for preventing and fighting corruption is carried out in order to ensure consistency between existing laws and bylaws, including a law on Government.**

Codes of conduct

49. In accordance with Article 6 of the Law on Civil Servants and State Employees, a civil servant and/or a state employee is bound by the Code of Ethics for Civil Servants and State Employees adopted in 2018 when performing his/her duties. However, the GET notes that these rules are not targeted to PTEFs. Guidelines have indeed been prepared by the ASK, and the Ministry of Justice is supposed to transform them into a genuine binding code of ethics for ministers and political officials. Such a Code should provide for appropriate mechanisms to ensure its proper enforcement, including sanctions for violations of such a code. This has not been done so far, as the Law on Government, which is planned to provide the basis for such a code, has not been adopted, although a working group has been set up to that end.

50. The GET considers it urgent that the planned code of ethics applying specifically to all PTEFs be adopted and that it covers pertinent issues. It should be accompanied by appropriate sanctions for violations and detailed guidance containing concrete examples for its implementation. Consequently, **GRECO recommends that (i) a code of ethics (Guidelines on ethics) aimed at persons with top executive functions (PTEFs) be established and published, covering relevant integrity matters (e.g. preventing and managing conflicts of interest, contacts with lobbyists and other third parties, handling of confidential information, post-employment restrictions, etc.), (ii) complemented with appropriate guidance and concrete examples and (iii) coupled with an appropriate mechanism of supervision and sanctions.**

Institutional framework

51. The Agency for Prevention of Corruption (ASK)¹⁵ is the key institution for promoting integrity and preventing corruption in Montenegro. It is an autonomous and independent body the objective of which is to strengthen integrity in the public sector by implementing the Law on Prevention of Corruption. The ASK is to deal with prevention, control, advice and training – including as regards the policy on lobbying and the protection of whistleblowers (see below). The Director of the ASK is elected directly by the Board of the Agency, through a

¹⁵ Article 4 of the Law on Prevention of Corruption.

public vacancy notice and a public recruitment procedure, including broadcasted interviews. The law requires for his/her high level of professionalism and apoliticality. S/he must not have a political position for the last 10 years (e.g. minister, parliamentarian or member of a political party). The organisation of the ASK is laid down in a Rulebook on Internal Organisation and Job Definitions of the Agency.¹⁶ It provides for a total of 75 employees. However, there were only 53 persons employed at ASK for indefinite period of time at the end of 2021. In accordance with Article 95 of the Law on Prevention of Corruption, the budget of the Agency may not be less than 0.2% of the current budget of Montenegro. Thus, the budget of the Agency for 2022 amounted € 1,805,373. The Council of the ASK submits an annual work report to Parliament.

52. The ASK is entrusted with the control of all the asset and private interest declarations of PTEFs (see below). The GET noted that only seven of the ASK's officials dealt with the monitoring of declarations, which appeared insufficient, considering the number of declarations to check (average of 850 declarations per year) and the limited technical capacities available.

53. The ASK also issues non-binding opinions on issues such as threats to the public interest and the existence of corruption.¹⁷ It can initiate such opinions *ex officio* or at the request of an authority, company, legal entity, entrepreneur or natural person. The ASK assesses the compliance of actions with the anti-corruption legislation. It publishes the opinions on its website. In 2021 the ASK initiated six *ex officio* proceedings, in which it determined the existence of threats to public interest which indicates the existence of corruption; four recommendations were issued to improve transparency and eliminate corruption risks, and all were implemented - for instance, an opinion was issued on the procedure for appointing the Director of the Institute of Public Health of Montenegro.¹⁸ In the first quarter of 2022, the ASK has initiated four new *ex officio* proceedings. Two proceedings were completed, determining threats against the public interest and addressing recommendations to the legal entities concerned for improving transparency and eliminating corruption risks.

54. The ASK is also mandated to render preventive opinions on specific situations referred to it by public institutions to prevent situations of conflicts of interest or other integrity-related issues. In 2021, for instance, ASK was requested by the Clinical Centre of Montenegro to give an opinion on whether the Minister of Health could perform secondary activities in the medical field.¹⁹

55. Furthermore, the ASK can give opinions on draft legislation, *ex-officio* or upon request from any entities, including the Government or Parliament. In 2021, the ASK issued ten opinions on pieces of legislation in the field of anticorruption - more than in the previous three years.²⁰ The opinion on the amendments to the Law on Civil Servants and State Employees²¹

¹⁶ adopted on 30 October 2018.

¹⁷ Article 54 of the Law on the Prevention of Corruption.

¹⁸ ASK's Opinion N° 03-02-28-21-6 of 26 April 2021.

¹⁹ ASK's Opinion N° 02-01-1673/2 of 17 August 2021.

²⁰ Draft laws on the State Prosecutor Office, on the Prosecutor's Office for Organized Crime and Corruption, on Higher Education, on Value Added Tax, on the Labour Law, on the General Law on Education and Upbringing, on National Public Broadcasting Radio-Television; Decisions on the National Council for the Fight against High-Level Corruption, on the manner and criteria for addressing the housing needs of officials.

²¹ ASK's Opinion N° 03-02-2810 of 28 December 2020.

has a significant impact on PTEFs, as it details which integrity rules apply to the Ministers, and aims at making it clear to all “political officials” which provisions from the various laws apply to them (see above). In its Opinion on the Law on sports²², the ASK concluded that the Minister who has been awarded the status of a top athlete by amending the law obtained material gain and for that reason his role in the process of adoption of the Law, could have called into question the objectivity and impartiality in the exercise of public function. In this case, the ASK also noted that there were no provisions concerning the procedure for excluding high officials of the executive branch who may find themselves in a similar situation. Therefore, the ASK issued an Opinion inviting the Government to draft a law on Government and to adopt a code of ethics for the holders of the highest offices of the executive branch.²³

56. The ASK’s Annual Verification Plan is available on the Agency’s website. The ASK informs the general public about its powers and results in the areas of preventing conflict of interest and reporting of political officials’ income and assets through press releases, press conferences, answers to journalists’ questions, as well as through informative media campaigns.

57. The GET was informed by several of the interlocutors met on-site that prior to the recent appointment of the new Director of the ASK in December 2020, the Agency was not known for being very proactive or to fully address cases submitted to it, in particular when issues concerned members of the Government. Consequently, there was a broad mistrust in its capacity to prevent and fight corruption at the highest level of the State. Before 2021, none of the opinions issued by the ASK on conflicts of interest concluded that a conflict of interest had taken place, whereas many judicial appeals lodged afterwards by representatives of NGOs against these decisions showed the opposite. For instance, ASK was referred in 2019 the case of a former Minister of Defence, where ASK rejected as unfounded a request to initiate a procedure though the Minister was suspected to have received illegal income as an official of international handball organisations. In that case, ASK claimed that the Law on Prevention of Corruption did not apply to international bodies. The Administrative Court changed this conclusion in July 2021, and the ASK issued a new Decision in January 2022 highlighting a violation of Article 12 of the Law on Prevention of Corruption.

58. The GET also noted that in the recent years, in particular since the election of the new Director of the ASK in December 2020, the independence of this body appears stronger, not least vis-à-vis the executive power. Furthermore, under the leadership of its current Director, the ASK has begun to demonstrate a more proactive approach, especially in stepping up its communication and outreach activities towards the general public. This has been acknowledged by other international actors, including by the EU delegation in Montenegro. The GET is pleased to note that the functioning of the ASK appears to go in a direction towards more independence, efficiency and with a more pro-active approach.²⁴ However, it would be necessary to have a greater hindsight in order to be able to draw more firm conclusions.

²² ASK’s Opinion N° 03-02-2294/5 of 14 January 2022.

²³ A proposal has been drafted by the ASK in cooperation with Council of Europe’s experts.

²⁴ In 2021 the ASK increased the number of opinions on the existence of conflicts of interest and restrictions in the exercise of public functions by almost 38 % since its establishment, and the number of reports on income and assets submitted increased by more than 31% in one year. 85 procedures have been initiated to control the accuracy and completeness of *ex officio* reports, which is six times more than in the previous year. 142 whistleblower reports were submitted to the ASK, which represents an increase of 90 % more than in the previous year. 345 administrative proceedings against public officials have been conducted, which is almost 72 % more than in the previous year and violations of the law were found in 89.3% of cases, which is significantly more than in 2020 (54.7%). The ASK initiated a total of 1,164 misdemeanour proceedings due to violations of anti-corruption laws within its competence - twice more than in 2020.

59. The GET also learned from interlocutors met on-site that the current active role of the ASK was sometimes facing resistance on the part of the executive power. Obviously, it is essential that all public authorities, including the executive engage proactively with the ASK and acknowledge its central role in corruption prevention and, as such, take full account of its decisions and opinions. The new composition of the ASK, with a more independent Director, is a step in the right direction. This needs to be followed by measures to provide for professionalism and independence of all staff working for the ASK. Moreover, the current situation of understaffing needs to be dealt with as a priority to make this body comply with all its functions. **GRECO recommends that, in order to ensure its full operational independence, the administrative capacities of the Agency for Prevention of Corruption (ASK) be further strengthened by ensuring independent merit-based recruitment procedures providing for integrity testing of new staff, and to ensure that the number of permanent staff of the ASK is increased to a level that is in accordance with its rules and foreseen workload.**

Awareness

60. The ASK is responsible for the training of public officials on the relevant legislative and regulatory framework, as well as the practice regarding integrity-related matters. In 2021, the ASK organised a training on "Reporting income and assets and preventing conflicts of interest", intended for newly appointed political officials who took office in 2020 or 2021. The training was attended by 8 participants from various ministries. The ASK organised three training sessions for public officials, 56 representatives of the top executive functions participated reportedly. In 2021, the ASK representatives were also lecturers at the training on "Integrity in Public Administration and Implementation of Integrity Plans" organised by the Human Resource Management Authority.

61. The GET notes that these awareness-raising and training activities aimed at PTEFs have been organised on an *ad hoc* basis. There appears to be no plan for a more systematic awareness raising or training on integrity standards and corruption risks targeting PTEFs. There are neither awareness-raising measures, nor compulsory trainings put in place when ministers, "special advisors" and other political officials in the ministries and agencies take their offices. The GET notes that the awareness of the fight against corruption remains mainly a task assigned to the ASK, but with less ownership within the various public institutions and agencies, including the ministries. The GET takes the view that much more is required in this respect.

62. Furthermore, the GET notes that only some measures have been taken to provide for individual counselling to PTEFs. According to the website of the ASK, political officials may contact the Division for Prevention of Conflict of Interest and Division for Income and Assets Verification for advice. However, there is no clear protocol and organised system of confidential counselling within the ministries. A system offering PTEFs the possibilities of confidential counselling would be an additional source for them in situations of risks of conflicts of interest and similar situations.

63. In view of the above, **GRECO recommends that (i) systematic briefing and/or training on legal and ethical integrity standards be provided to persons exercising top executive functions (PTEFs) upon taking office and at regular interval while in office; and that (ii)**

confidential counselling be provided to all PTEFs for the understanding and the implementation of these standards, and that PTEFs be duly informed of such a possibility.

Transparency and oversight of executive activities of central Government

Access to information

64. In 2020, Montenegro ratified the Council of Europe Convention on Access to Official Documents (ETS No. 205). The transparency of the governmental work is governed by the Law on Free Access to Information,²⁵ the Decree on the Government of Montenegro and the Rules of Procedure of the Government of Montenegro.²⁶ According to the law, the work of the Government must be public. Decrees, decisions, rules of procedure, decisions on appointment, designation and dismissal, as well as other regulations adopted by the Government must be published in the Official Gazette. The Government must also publish information and data on its work on its own website, including the material considered at the sessions. The Government must also inform the public about its work by means of press conferences, press releases and other appropriate ways. Press releases from the sessions of the Government are provided by the Deputy Prime Ministers and Ministers appointed by the Prime Minister, as well as by the General Secretariat of the Government – Public Relations Bureau. In addition, every ministry has its own media officer. The Law on Information Secrecy²⁷ organises the management of classified information.

65. The Ministry of Public Administration is responsible for drafting the Communication Strategy and the General Secretariat of Government implements it. More generally, public authorities, including ministries are to publish on their websites all documents related to their activities (information guide, public registries and records, programmes and work plans, activity reports, draft and final strategic documents, draft laws and other regulations, as well as the relevant expert opinions) and the use of their resources (contracts on use of financial resources originating from public revenues and of state-owned property, list of civil servants and state employees with their titles, list of political officials with their salaries and other income and reimbursements related to the execution of their public office), decisions of importance to rights, duties, and interests of third parties, as well as information to which the access was granted upon request. Such information must be published within fifteen days. When publishing information, the public authority must respect data protection rules.

66. Public authorities must publish information for being re-used in an open format, on the subportal of the e-government portal, permanently available to users. The information must be published in a manner that enables simple search, and in accordance with open standards.²⁸ The state administration authority competent for electronic government oversees the publication. The Decision on publishing documents from the Government sessions specifies the types of documents from the Government of Montenegro sessions that are published on its website.²⁹

²⁵ Official Gazette of Montenegro 44/12, 30/17.

²⁶ Official Gazette of Montenegro 3/12, 31/15, 48/17, 62/18.

²⁷ Official Gazette of Montenegro 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14, 48/15.

²⁸ The link to the Guide of the General Secretariat of the Government is: <http://www.gsv.gov.me/spi/vodic>.

²⁹ http://www.gov.me/sjednice_vlade_2016

67. The GET acknowledges that Montenegro has an adequate regulatory system for access to information in place. That said, during the on-site visit, the GET encountered NGO criticism that the Communication Strategy lacks transparency measures and resilience on providing public access to sensitive issues, such as public procurements. Further, the procedure prescribed by law and practice on challenging the refusal or omission of public authority on access to information is seen as overly complex and too lengthy. The system was described in accordance with the following:

- an individual request on access to information is to be examined by the public authority within 2 weeks (the replies to whom it might concern can be delivered within 48 hours up to fortnight),
- on the next day (the 15th) the applicant can lodge an appeal with the superior body/person,
- the next mandatory step in case the applicant is not satisfied with the reply or receives a refusal on access to information, he/she may to lodge another appeal to the Agency of Protection of Data,
- after examination of the appeal by the Agency of Protection of Data, the applicant is entitled to initiating the proceedings before the court of justice (i.e. administrative court).

68. In view of the above, the GET notes that, while the system of access to public information is stipulated in law and regulations, this framework does not appear to provide in practice an effective access to government information, owing notably to a cumbersome appeal procedure against decisions to refuse access to requested information. This is detrimental to the overall transparency of government activities. Therefore, **GRECO recommends that the legal framework governing access to information and the mechanism of appeal against such decisions be simplified in order to ensure an effective access to government information in practice.**

Budgetary transparency

69. The planning and execution of the budget, as well as the reporting are based on classification defined by the Law on Budget and Fiscal Responsibility³⁰. The process of drafting the annual budget law is preceded by the preparation of the Fiscal Strategy, adopted by Parliament and refers to the period of the Government's mandate. The fiscal policy is planned and implemented in accordance with the criteria and numerical fiscal rules prescribed by the Law on Budget and Fiscal Responsibility, while the State Audit Institution assesses the application of these rules. The Ministry of Finances publishes reports on budget execution on a monthly, quarterly and annual basis. The report on budget receipts and expenditures is published once a month, and the analysis of consolidated public spending is published quarterly. The analyses of macroeconomic developments and structural reforms are prepared twice a year and projections of public finances and macroeconomic trends are updated twice a year. All these reports are made available to the public.

70. The GET is of the opinion that budget transparency is a challenge in Montenegro. The Public Financial Management should contribute to an increased level of information included in the budget, an improved presentation of multi-year commitments and capital projects, a better budget visualization and budget reporting, aimed at more transparent use of public

³⁰ Official Gazette of Montenegro 20/14, 56/17, 70/17, 4/18, 55/18, 66/19 and 70/21.

resources. Reforms are underway to improve the system and apply the international methodology in the field of government statistics (ESA 2010), to introduce accrual accounting, and to improve the supervision of the fiscal policy.

71. There are no official discretionary funds available to PTEFs. All the funds available for each institution are distributed based on the Annual Budget Law and controlled by the State Audit Institution

Transparency of the law-making process

72. According to the Law on State Administration,³¹ within the preparation of laws and strategies, ministries must conduct a public consultation procedure. However, this is not mandatory when the draft law is to govern matters in the field of defence, security and annual budget, under emergency or unforeseeable circumstances, or in the case of minor amendments to the law that do not govern a matter differently. The Ministry must in such exceptional cases state the reasons and attach them to the draft law or strategy.

73. The procedure and method of conducting public consultation is defined by the Government Decree on selection of NGO representatives into working bodies of state administration authorities and on conducting public consultations during the preparation of laws and strategies, which provides for broad consultations in the preparation of laws and strategies. Within fifteen days from the day of adopting its annual working programme, the Ministry is to publish on-line a list of laws and strategies for public consultations, together with a brief explanation of the reasons for the law or strategy. An online search tool for all legislative initiatives registered by the Government has been set up.

74. A consultation implies giving initiatives, proposals, suggestions and comments in the initial phase of the preparation of a law or strategy. It can be conducted through the organisation of round tables, presentations, etc. Remarks, and suggestions must be submitted in written form.

Third parties and lobbyists

75. The Law on Lobbying³² defines lobbying as an activity that influences the legislative and executive powers at the national and/or local level, in order to achieve the interests of a lobbying client. A lobbying activity may be conducted by an authorised natural person, a company or an NGO that fulfils the criteria prescribed by the law. A lobbying client may be a natural person or a legal entity. A lobbied person is an elected, appointed or assigned person in a public authority, or a person whose election, appointment or assignment is approved by the public authority, or another person in the public authority who participates in the preparation and adoption of regulations or other general acts, or may influence the content of the regulation or other general acts.

76. The ASK is entrusted with the oversight of the implementation of the lobbying policy. When conducting lobbying activities, a lobbyist must show his/her identification card given by the ASK. Lobbyists must inform the Agency in writing about any changes related to the conditions for conducting the lobbying activity. The ASK keeps a register of lobbyists,

³¹ Article 52.

³² Official Gazette of Montenegro 52/14.

published on the Agency's website Should a lobbyist be deleted from the register s/he must return the identification card to the Agency within three days.

77. Lobbyists cannot start lobbying before they have concluded a lobbying contract, in which they must submit information about the lobbying client, the lobbying area and the scope of lobbying. Furthermore, lobbyists must submit annually to the ASK an activity report on the lobbying client, lobbied persons and authorities subject to lobbying, as well as the area of lobbying and financial compensation received. According to the law, the lobbied public authorities must also prepare an official note containing information about lobbyists who have contacted them to the ASK within five days from the date of the contact. They must also keep records of lobbying contacts and publish it on their websites. They can only accept communication with a lobbyist, if that is in the public interest. Data and information used in the lobbying process may be confidential, except for data and information that must be published in accordance with the law, which is made available to the competent state authorities. The scope and subject of lobbying are not confidential, and they are an integral part of the lobbying report. The ASK cannot act *ex-officio* on alleged infringement of the lobbying regime.

78. Lobbying is illegal if it is conducted by someone who has been removed from the register of lobbyists. Public authorities are to notify the ASK of illegal lobbying and provide information on persons and legal entities involved in illegal lobbying. The Agency can submit a request for initiation of misdemeanour proceedings or issues a misdemeanour order based on these notifications and information. The Law on Lobbying provides for fines in case of violation of the law, ranging from € 150 to € 20,000.

79. The GET acknowledges that the legal framework for lobbying activities is rather detailed and provides for measures to organise such activities while ensuring transparency of such contacts. Guidelines on good conduct of top executive officials, drafted by the ASK and the Ministry of Justice³³, were adopted on 23 September 2021. These Guidelines include how PTEFs can have contacts with lobbyists. However, it would appear that the general effectiveness of this framework is limited in practice. Interlocutors (both from public authorities and the NGO sector) with whom the GET had discussions submitted that the Law on Lobbying was not sufficiently clear. The GET takes notes of this and refers in particular to the definition of lobbying which is rather narrow and could possibly exclude *de facto* activities which are indeed lobbying activities and which would escape from the monitoring scope provided for by the law. The GET also noted that only five individuals and one institution had been effectively registered as lobbyists by the ASK at the time of the GET's visit. Moreover, the control by the ASK is limited as the Agency cannot act *ex-officio* in this field. A working group has been set up by the Ministry of Justice to draft a new law on lobbying. **GRECO recommends that (i) the definition of lobbying be broadened to cover all such contacts with persons holding top executive functions (PTEFs); that (ii) contacts between lobbyists and PTEFs be disclosed in respect of the identity of the persons involved as well as the subject matters discussed; and that (iii) the Agency for Prevention of Corruption (ASK) be mandated to investigate misgivings in respect of lobbying *ex officio*.**

³³ These Guidelines were drafted with assistance of the Council of Europe through the framework of the European Union and Council of Europe joint Action against economic crime in Montenegro.

Control mechanisms applicable to government decisions and policy-making

Internal and judicial reviews

80. The Law on State Administration³⁴ prescribes that, within their competences, ministers decide on appeals against individual administrative decisions issued by an administrative authority under its supervision.

81. The Law on Administrative Disputes governs the jurisdiction, composition of the court and rules of procedure of administrative acts and other administrative activities, with a view to ensuring judicial protection of the rights and legal interests of parties affected by actions taken by state authorities, as well as protecting public interest. In an administrative dispute, the court decides on the legality of an administrative act, as well as other administrative activities that determine or affect the rights, obligations and legal interests of a natural or legal entity.

Internal audit and inspection mechanisms

82. According to the Law on Management and Internal Controls in the Public Sector,³⁵ in each public entity there is an internal audit unit functionally independent and organisationally separated from other organisational units of the entity. The internal audit has a preventive role in terms of timely identification and elimination of inconsistencies and irregularities in operations. It checks the compliance of operations with regulations, gives recommendations to improve management and internal controls, as well as recommendations on how to get value for taxpayers' money. If the internal audit identifies that management, risk management and internal control need to be improved, it may provide an opinion and recommendations. An action plan based on the findings of the internal audit is drafted. The Law on Budget and Fiscal Responsibility³⁶ provides for inspection supervision over the implementation of this system. The inspection is carried out by a budget inspector.

Public audit institution

83. The State Audit Institution is organised by the Constitution and the Law on the State Audit Institution.³⁷ The National Audit Institution is an independent and supreme authority of the national audit. It audits the legality of and performance in the management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created using state property. It submits an annual report to Parliament. It is managed by a Senate whose members enjoy functional immunity.

Parliamentary control

84. Parliamentary enquiries are governed by the Rules of Procedure of Parliament of Montenegro³⁸, the Law on Parliamentary Enquiry³⁹ and the Law on Parliamentary Oversight

³⁴ Article 72.

³⁵ Official Gazette of Montenegro 75/18.

³⁶ Official Gazette of Montenegro 20/14, 56/17, 70/17, 4/18, 55/18, 66/19 and 70/21.

³⁷ Official Gazette of Montenegro 28/04, 27/06, 78/06, 17/07, 73/10, 40/11, 31/14, 70/17.

³⁸ Official Gazette of Montenegro 51/06, 66/06, 88/09, 80/10, 39/11, 25/12, 49/13, 32/14 - Decision of the CCMN, 42/15, 52/17, 17/18, 47/19, 112/20, 129/20, 65/21 and 104/21.

³⁹ Official Gazette of Montenegro 38/12.

in the Field of Security and Defence.⁴⁰ A parliamentary enquiry may be launched to review the situation in a particular area of public relevance, to gather information and facts about certain phenomena and events related to the policy and performance of competent bodies which could serve as a basis for Parliament's decisions on political accountability of public office holders or for taking other actions within its competence.

85. Parliament launches an enquiry and forms an Enquiry Committee at the proposal of at least 27 parliamentarians. The composition of the Enquiry Committee is determined by the decision on its formation and consists of an equal number of parliamentarians from the majority and the opposition parties. It is chaired by a representative of the opposition. The Enquiry Committee makes decisions by a majority of the total number of its members. The work of an Enquiry Committee is in principle public. The Enquiry Committee submits its report to Parliament, which may include a proposal to determine the political accountability of public office holders or take other actions within the competence of Parliament.

Conflicts of interest

86. According to the Law on Prevention of Corruption (Article 7), ministers and political officials are to perform their functions in such a manner that the public interest is not subordinated to private interests, and without causing a conflict of interest in the exercise of the public function. Moreover, a conflict of interest may also concern a person related to the public official. The Law on Prevention of Corruption defines *"a relative (...) in straight line and to the second degree in lateral line, a relative by marriage to the first degree, married and common-law spouse, adoptive parent or adopted child, member of a household, other natural or legal person with which the public official establishes or has established a business relationship"* and prescribes limitations and duties for those as well as for political officials.

87. The Law (Article 8) provides that if public officials, including all PTEFs, participate in the discussion and decision-making in a matter in which they, or a person related to them, have a private interest, they must inform other participants in the discussion and decision-making by making a statement on the existence of this private interest, prior to his/her participation in the discussion, and no later than before the beginning of the decision-making. Statements made by political officials appear in the minutes of the pertinent meeting. and an opinion of the ASK is to be requested. Political officials cannot participate in the discussion and decision-making until the ASK issues an opinion on the existence or not of a conflict of interest (see above).

88. When public officials suspect that they are themselves in a situation of conflict of interest, they must also take measures to resolve the conflict of interest or observe the restriction in accordance with the law (Article 28 of the Law on Prevention of Corruption). They must report the suspicions to the ASK, which issues its opinion within fifteen days. ASK establishes the existence of conflicts of interest and implements measures for preventing and resolving them. The proceedings are confidential.

89. The GET welcomes that there is a system in place to report *ad hoc* conflicts of interests to the ASK, which then assesses them and decides on how they should be managed. It underlines the importance for PTEFs to withdraw from the decision-making process whenever

⁴⁰ Official Gazette of Montenegro 80/10.

there is a perceived conflict of interest. Furthermore, the GET notes that all ASK's decisions, whether or not there is a conflict of interest, are made public. When these decisions do not conclude that a law has been violated, they are anonymised. The GET expressed its expectations that the authorities of Montenegro also regulate the disclosure of *ad hoc* conflicts of interest in the future law on Government, similarly to the Law on Civil Servants and State Employees when drafted (see above).

90. In addition, several interlocutors met by the GET on-site, including the current members of ASK, indicated that the analysis of the situations of conflicts of interest regarding ministers or other political officials were allegedly biased in the past (e.g before the new composition of the ASK in 2020, following the legislative elections) as ASK's members were considered too close to the executive power. Some representatives of NGOs indicated that their reviews initiated at administrative courts against ASK's decisions on conflicts of interest were regularly successful, but were given too late, when the PTEFs concerned were not in place anymore. Recent EU reports are more supportive to the work of the Agency under its current composition.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

91. According to the Constitution, the Prime Minister and the members of the Government cannot be parliamentarians or perform other public or professional duties.

92. According to the Law on Prevention of Corruption (Article 12), public officials cannot sit within a management body or a supervisory board and cannot be part of the executive staff of public companies, public institutions or other legal persons. When appointed, they must resign from such offices within thirty days.

93. However, the Law on Prevention of Corruption provides that political officials may engage in scientific, educational, cultural, artistic and sports activities and acquire income from copyrights, patent rights and other similar rights, intellectual and industrial property, unless specified otherwise by the law. Membership of a public official in a permanent or temporary working body established by an authority cannot be deemed a performance of two or more public functions, except for those who make decisions or participate in decision-making process. Political officials, including ministers, must report to the ASK accurate and complete data on income acquired through the exercise of such activities. In the case of membership in several working bodies, political officials may get income only from one working body.

94. The law provides that a public official who is the owner or founder of a company, institution or other legal person must, within thirty days from the appointment to public office, transfer his/her managerial rights in these entities to another legal or natural entity until the termination of his/her public office. In the case where a company has a management body in which the public official exercises his/her managerial rights as a member of the body, the transfer of managerial rights includes the obligation of the public official to resign from the membership in the management body. Within five days of the date of transfer of managerial rights, s/he must notify ASK of the person to whom s/he transferred the managerial rights and submit the evidence of the transfer of managerial rights. The person to

whom a public official has transferred managerial rights becomes a person related to the public official.

Contracts with state authorities

95. According to the Law on Prevention of Corruption, a public official cannot conclude a contract on the provision of services to a public enterprise or with an authority or company that has a contractual relation or performs tasks for an authority in which the public official exercises his/her function, unless the value of these contracts is less than € 1,000 per year - this threshold represents the accumulated amount for all agreements concluded in the same calendar year.

Gifts

96. The Law on the Prevention of Corruption (Article 16) provides that no political official, including ministers, can accept money, securities or precious metal in connection with the exercise of their public function, regardless of the value. They cannot accept gifts of a value exceeding € 50 in connection with the exercise of the public function, except “for protocol and appropriate gifts”.

97. Gifts that cannot be accepted must be refused. Moreover, within eight days of the offer, the officials are to prepare a written report on the offer made and submit it to the authority where they exercise a public function. If they were not able to refuse the gift or return the gift to the donor, they must hand it over to their authority and the gift becomes state property. If the ASK determines that they have received a gift contrary to the law, they must hand over the gift, or the equivalent monetary value of the gift, to the authority where they hold office. Failure to report can be subject to a misdemeanour sanction.

98. According to the Law on the Prevention of Corruption, each authority must submit annually to the ASK a written report on received sponsorships and donations. If the Agency determines that the received sponsorships and donations affected or could affect the legality, objectivity and impartiality of the work of the public authority, it notifies the competent authority to undertake measures within its jurisdiction. The authority must abrogate decisions adopted under the influence of received sponsorships or donations, in accordance with the law and must notify it to the ASK, which keeps a register of sponsorships and donations and publishes it on its website.

99. The GET notes that the notion of “appropriate gift” is not further defined and could lead to confusion and weaken the system. During the on-site visit, the GET was told that “appropriate gift” means an occasional gift that a public official receives during his/her term of office, without having clear and precise rules thereto. For example, it is not clear enough from Art. 16 of Law on Prevention of Corruption to what extent there is a distinction between protocol gifts and appropriate gifts and if the threshold of 50 euros (maximum of 100 euros for appropriate gifts received at the same time from multiple donors) is applicable to protocol gifts too. The lack of clear examples or of a shortlist of appropriate gifts also creates uncertainty. There are no clear rules on valuing appropriate gifts – the GET was told that the person who keeps the record of gifts ascertains their value. Protocol gifts are considered irrespective of their value and become the property of the public entity in which the public official who received it is employed. During the on-site visit, NGO representatives mentioned several situations of controversies of gifts, including trips paid by foreign states, etc.

Therefore, **GRECO recommends that the rules on gifts and other advantages be more specific, in particular by clarifying the definition of “protocol and appropriate gifts”.**

Misuse of confidential information

100. The Law on Free Access to Information (Article 14) prescribes that public authorities may restrict access to information or part of it if it is in the interest of the security, defense, foreign, monetary and economic policy, in accordance with the laws governing the field of data secrecy, or if the information is a business or tax secret. The Law on Information Secrecy defines the various levels of classification of information.

101. According to the Law on Civil Servants and State Employees, while performing their tasks, civil servants and/or state employees, including PTEFs, must avoid situations where private interests affects or may affect the impartial and objective performance of their tasks. In particular, a civil servant and/or state employee cannot, for the purpose of advancing private interest or interest of a natural or legal entity associated with him/her, use state data available to him to him/her while performing his/her tasks.

Misuse of public resources

102. The same legal principles as those applying to the use of public information applies to civil servants and state employees as regards the use of public resources.

Post employment restrictions

103. According to the Law on the Prevention of Corruption (Article 14), for a period of two years following the termination of public office, public officials cannot act before the authority where they have exercised a public function, as a representative or attorney of a legal person, entrepreneur or international or other organisation having or establishing a contractual or business relationship with this authority. They cannot establish a working relationship or business cooperation with the legal person, entrepreneur or international or other organisation that has acquired gain based on the decisions of the authority where they have served exercised function. They cannot represent a natural or legal entity, nor perform management or audit activities, before the authority where they have exercised a public function in a case where they have participated, as a public official, in the decision-making process. They cannot enter into a contract or other form of business cooperation with such authority. They cannot use, for obtaining a benefit for themselves or another person, or to harm another person, the knowledge and information acquired in the performance of their public function, unless the knowledge and information are available to the public. They cannot have lobbying activities.

Declaration of assets, income, liabilities and interests

Declaration requirements

104. The Law on the Prevention of Corruption provides for declarations on assets and income of public officials and their household members. Declarations are to cover ownership rights over immovable assets and lease rights over immovable assets for a term exceeding one year (in the country and abroad); ownership rights over movable assets the value of which exceeds 5,000 €, or that are required to be registered with the competent authorities (motor

vehicles, vessels, aircrafts, etc.); ownership rights over the immovable and movable assets of a company, institution or other legal person owned or established by the public official; deposits in banks and other financial institutions in the country and abroad; stocks and shares in a legal person or other securities; cash in the amount exceeding € 5000; rights arising from copyrights, patent and similar rights, intellectual and industrial property; debts (principal, interest and terms of repayment) and receivables; sources and amount of income from the exercise of scientific, educational, cultural, artistic and sports activities; membership in the management bodies and supervisory boards of public enterprises, public institutions and other legal persons with a share of capital owned by the state or municipality, as well as in scientific, educational, cultural, artistic, humanitarian, sports or similar associations.

105. According to the law, public officials must declare their assets when taking up their functions, regularly during the exercise of the functions, and when leaving the functions. They must, within thirty days from assuming the function, submit electronically to the ASK a written declaration on assets, as well as on assets of married and common-law spouse and children, if they live in the same household. During the exercise of the public function, political officials must submit the declaration once a year, as well as in the case of changes that relate to an increase in assets of more than € 5,000, within 30 days from the date of change. This must also be done within the framework of a procedure initiated by ASK. When terminating their public functions, they must notify the Agency and submit the declaration within thirty days and submit annual declarations to the Agency during two years following the termination of office. When moving to another public function, they must notify the ASK thereon within thirty days from the change.

106. Declarations are received by the ASK and published on its website within 24 hours after an administrative check. This process is automated and does not depend on the Agency's employees. Data from the asset declarations are kept in the Register of Income and Assets of Political officials which is part of an integrated information system of the Agency. Data from the Register are deleted *ex officio* 10 years after termination of function of the official - the procedure of deletion may be initiated at the request of the official as well, after the deadline has expired. The Agency's Rulebook detail the measures for managing electronic databases. All data that are available to the public.⁴¹

Review mechanisms

107. The ASK verifies the data from the declarations by comparing these data with the data collected on the property and income of political officials from authorities and legal persons possessing such data. The authorities and legal persons must submit the required data and information. At the request of the ASK, political officials must provide, within 30 days, detailed information on the grounds of acquiring property and income. The Agency carries out randomly data verification from the declarations according to the annual plan of verification for a limited number and categories of political officials. This process remains confidential.

108. The ASK applies three types of verifications: (i) The administrative and technical verification is a basic verification of all declarations received, which checks whether the person concerned has correctly filled the form as well as the compatibility of the electronic and printed versions of the declaration. The validity of the declaration is a prerequisite for other types of verifications (i.e. so-called primary checks); (ii) The verification of accuracy and

⁴¹ <http://www.antikorupcija.me/me/registri/>

completeness is the second phase (1,330 declarations must be checked in 2022). It is carried out in cooperation with the above-mentioned institutions that have data on assets and income of political officials and members of the same household, as well as commercial banks. This type of verification covers, among others the Prime Minister and his/her special advisors and all ministers (so-called planned checks); (iii) Additional verification is carried out by the end of the year and covers 20 political officials with the highest level of vulnerability of areas/entities to corruption and vulnerability of the function/position, held by a public official, to corruption. This procedure verifies all previously filed declarations through comparative analysis of the data provided (random checks, performed twice in the same calendar year). Ministers' reports are to be controlled every year both in terms of accuracy and completeness, and as regards restrictions prescribed by the Law on Prevention of Corruption.

109. The ASK has signed agreements with other institutions to get the data needed to facilitate the control of officials: Tax Administration, Real Estate Administration, Ministry of Interior, Securities Commission, the Central Bank, the Ministry of Justice. The Agency has direct access to the databases of these institutions, which are kept in electronic form. The Agency performs also *ex officio* verifications, on the basis of other findings, such as the verification of media articles, anonymous information, external requests etc.

110. Some interlocutors of the GET expressed doubts about the accuracy of the declarations made by some PTEFs, and in particular members of the Government, and the subsequent quality of the control of such declarations by the ASK. However, they referred to the previous governments and the previous composition of the ASK, which makes it difficult for the GET to make a relevant assessment of the current situation (see above). Nevertheless, the GET is of the opinion that this controlling system remains to be enhanced. Indeed, the GET notes that there is no systematic in-depth examination of the declarations submitted by PTEFs. Only 20 declarations are subject to an in-depth examination each year. This may be partly explained by the number of public officials who are required to submit declarations and the rather limited human resources devoted to the verification (see above). The GET is of the firm belief that the declarations of PTEFs should be systematically assessed in-depth owing to their role in decision making at the very top of the Executive. In addition, the ASK has not been able to establish automated data matching with those registers to which they have access. Also, the ASK has no legal basis to store and use the data it receives from other institutions on its side, which means that the inspection is performed only at the time of control. **GRECO recommends that (i) asset and income declarations of all persons with top executive functions (PTEFs) be systematically subject to the various levels of the substantive control by the Agency for Prevention of Corruption (ASK); and that (ii) the quality control mechanisms of the ASK be strengthened by ensuring pertinent human resources and accurate access to relevant information (databases) for the verification of the declarations.**

Accountability and enforcement mechanisms

Non-criminal enforcement mechanisms

111. The Law on Prevention of Corruption contains procedures for dealing with violations of the law in respect of public officials. Such procedures are initiated by the ASK, at the request of the authority in which the official exercises or has exercised a public function, or by the authority responsible for the election, appointment, or assignment of the official (i.e. in respect of PTEFs by Parliament, the government or ministries). They can be also initiated by other state and local authority or any legal or natural person. Requests must be submitted in

writing, directly, or electronically, or in person to the Agency. The Agency may also initiate such procedures *ex officio*, on the basis of its own information or based on anonymous information. As a starting point, the ASK requests the political official concerned to submit a written response to the allegations within 15 days. An authorised Agency's officer conducts the procedure to determine facts and circumstances. S/he can also obtain data and information *ex officio*. Hearings can be conducted. The authorised officer must within 15 days from the completion of the procedure submit a reasoned proposal for a decision to the Director of the ASK who must then, within 8 days, decide whether the rules have been violated. The decisions establishing that an official has not violated the legal provisions must be published on ASK's website – the name of the official concerned cannot be disclosed without his/her consent.

112. Sanctions and measures are prescribed by the Law on Prevention of Corruption (Article 42). On the basis of ASK's decision that there has been a violation of the law, an administrative procedure may be initiated. The relevant authority must then inform the ASK about the measures taken on the basis of the Agency's decision within 60 days. If an official has been dismissed, suspended, or imposed a disciplinary measure, the authority responsible is to notify the Agency within 30 days from the adoption of the decision. An official who has been dismissed, may not exercise a public function for a period of four years from the date of dismissal. If a violation of these rules has caused damage to a legal or natural entity, this entity is entitled to compensation by filing a lawsuit in civil proceedings. The ASK must keep records of political officials who have violated the law. All cases and decisions on identified violations are posted on the Agency's website.

113. In 2020, the ASK issued seven decisions where it found that ministers and Prime Minister had violated the law as regards their reporting on income and assets, and four decisions in 2021.

114. Between 2016 and 2021, ten resignations of political officials have taken place following the decisions of the ASK, of which one minister, two state secretaries, and two "special advisors" to the Deputy Prime Minister. For example, the Minister of European Affairs resigned after the ASK determined that he was in conflict of interest because, in addition to his ministerial function, he had the status of ambassador as Chief negotiator of Montenegro with the EU.

Criminal proceedings and immunities

115. The Prime Minister and members of the Government enjoy the same immunity as parliamentarians, as provided by Article 86 of the Constitution. No criminal action can be taken against them and they cannot be detained without the consent of Parliament, unless they have been caught performing a criminal offence for which there is a prescribed sentence of over five years of imprisonment. According to the Rules of Procedure of Parliament, the President of Parliament must address the request for approving the initiation of a criminal proceeding or determination of detention to the Administrative Committee. The Committee must submit its report including the proposal, as a rule, at the first following sitting of Parliament.

116. When looking into the functioning of immunity for the members of the Government, and similarly to what was raised as regards parliamentarians within the framework of GRECO's

Fourth Evaluation Round,⁴² the GET notes that all requests for lifting the immunity of ministers coming from a prosecutor should be granted and that this should also apply to private prosecutions as long as the state prosecutor has not considered that there was no substantiated suspicion that a criminal offence has been committed. During the on-site visit, the GET was told that there was no established practice regarding the lifting of immunity of members of the government, especially regarding corruption-related offences. When looking at Chapter 34 of the Criminal Code: "Criminal Offences against official duty" (Art. 416-424, including passive and active corruption, influence peddling and abuse of office), it can be ascertained that not all corruption-related offences are punishable with over five years of imprisonment and a practical situation could occur when a minister caught in *flagrante delicto* of committing a corruption related offence that foresees a sanction of less five years of imprisonment. In such a situation they may not be detained, nor may criminal or other proceedings in which a prison sentence may be imposed be conducted against them without the approval of Parliament. If they are caught committing a criminal offence incurring more than five years' imprisonment, they may be detained without such approval.

117. The GET recalls that within the framework of the its Fourth Evaluation Round, GRECO recommended that Montenegro consider the introduction of guidelines containing clear and objective criteria to be applied when deciding on requests for lifting inviolability of parliamentarians. The same should obviously apply in respect of members of the government. That said, the GET is of the view that the current system of immunity needs to be revised so as to exclude explicitly all forms of corruption related offences from the immunity, regardless whether they could lead to five years imprisonment or not. **GRECO recommends that the immunity provided to members of the government be revised in order to exclude explicitly corruption-related offences from such protection.**

Whistleblowing policy

118. The management of whistleblowers is organised by the Law on Prevention of Corruption and instructions by the ASK. A whistleblower is defined as a natural or legal person filing reporting in good faith a report on a threat to public interest that indicates the presence of corruption. All public authorities (as well as private companies) are required to designate a person for receiving and acting upon the report of whistleblowers. A whistleblower's report contains a description of the threats to the public interest that indicates the existence of corruption, as well as the signature and personal information of the whistleblower (if s/he does not want to be anonymous). Data is handled in accordance with the law governing data secrecy and the whistleblower is provided with protection against all forms of discrimination and restrictions. Protection can be provided if the whistleblower has been inflicted damage, or if there is a possibility of damage due to submission of the report, and in particular if his/her life, health and asset, are at risk and if he/she may occur professional damages or disciplinary sanctions.

119. Whistleblowers are to address themselves to the ASK within six months from the date of damage or knowledge of the possibility of damage due to the their application. The ASK conducts the procedure upon a whistleblower's report. It assesses the quality of the information provided, the degree of threats and the effects that can occur due to threats and provides legal assistance to the whistleblower if necessary. The GET was informed that only limited little human resources are dedicated to the management of the whistle-blowing

⁴² Greco Eval IV Rep (2014) 6E – Adopted on 19 June 2015.

policy, which includes receiving and registering reports, addressing such reports and implementing the protection measures for the whistle-blowers. The GET was also informed that this policy remained limited. In 2021, the ASK issued fifteen Opinions determining threats to the public interest. It also initiated six *ex officio* proceedings, and closed three *ex officio* proceedings from 2020. In 2021, five requests for protection of whistleblowers were submitted. In the reporting period, the ASK issued three Opinions in which it determined that there was a possibility of damage to whistleblowers and gave a total of five recommendations to employers on what should be done to eliminate the damage.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement/police authorities

Overview of various law enforcement authorities

120. All state authorities are considered in Montenegro as law enforcement authorities, governed in particular by the Law on State Administration and by the Decree on State Administration Organisation and Functioning. The Police Directorate is one of the competent law enforcement authorities established as one of the administrative structures within the Ministry of the Interior, the powers of which are defined in particular by the Law on Internal Affairs.⁴³ The *Police Directorate* is a civil organisation supervised by the Ministry of the Interior. It performs the country's basic law-and-order functions, including migration and border control.⁴⁴

121. The Police Directorate is hierarchically organised. It is headed by a Director and five deputies. According to the Rulebook on Internal Organisation and Job Descriptions, the Police is composed of:

- five units (Sector for combating crime, Sector for Border Police, Special Purpose Police Sector, Sector for Financial intelligence Affairs, General Police Sector),
- four departments (international police cooperation and public relations, analytics and improvement of police work, internal audit, telecommunication and electronic technologies),
- two centres (Forensics Centre, Centre for information security and data processing),
- two offices (Office for human resources and legal affairs, Office for financial, general and ancillary affairs),
- eight police centres.

122. The number of employees in the Police Directorate is 4,580 (including 3,826 police officers) of which 683 women (including 546 police officers) and 3,882 men (including 3,826 police officers). The uniform is worn by members of the General Competence Police Unit, the Border Police Unit, the Unit for Protection of Persons and Facilities (some do not wear the uniform) and the Special Police Unit, while others do not wear the uniform. The total number of uniformed officers is 3,693, of whom 335 are women.

123. Within the Ministry of the Interior, several bodies are specifically vested with anticorruption competences. The Ethics Committee is responsible for monitoring the implementation of the Code of Police Ethics. It gives opinions on the proposals, complaints and petitions of citizens and police officers, as well as *ex officio*, as regards behaviours of police officers in respect of suspected violations of the Code of Police Ethics. When it finds a violation, the Ethics Committee initiates or proposes the initiation of appropriate disciplinary, misdemeanour and/or criminal proceedings. The Ethics Committee also deals with counselling of police officers and drafting comments to the Code of Ethics, including guidelines for conflicts of interest, gifts, etc. An Anti-corruption unit has the competences to control employees of the Ministry who perform public procurement and to supervise the

⁴³ Official Gazette of Montenegro N° 70/21.

⁴⁴ Law on Internal Affairs - Article 18, and Decree on State Administration Organisation and Functioning - Article 17.

implementation of the law governing the protection of persons and property not provided by the State, the integrity of the employees in the Ministry, including the Police Directorate, and to control the property, income and lifestyle of all police officers. According to new Rulebook on the organisation of the Ministry of the Interior (yet to be adopted), this unit will also assess corruption risks, draft and implement integrity plans for the Police, and perform polygraph tests in respect to police officers engaged in combating organised crime and corruption (the simulated behaviour testing is a mandatory one according to art. 120 of the Law on Internal Affairs and all candidates are obliged to undergo this procedure).

124. The Police Directorate is operationally independent to act within its legal framework. It is to perform its policing tasks without political influence. That said, the Ministry of the Interior has control over the police on issues such as strategic planning in the field of fight against crime, public order and peace, traffic safety and other areas of police work and activities; training and professional development of police officers; current and investment maintenance of the Police's facilities, border crossings and other facilities jointly used by the Ministry and the Police; integrated border management and provision of technical and material resources provided for by the Schengen Action Plan; design, establishment, management, development and maintenance of information and communication technologies and systems of technical surveillance of border crossings, etc. The Police Directorate is independent in managing its human resources. It is funded by the national budget (as a part of the budget of the Ministry of the Interior) and reports to the Ministry of the Interior. The reports are made available to the public, on the Police Directorate's website, except for the classified ones. Public resources are to be used in accordance with the Law on Budget and Fiscal Responsibility. Financial operations are checked by the internal audit and the State Audit Institution.

125. The GET acknowledges that operational independence of the police is a cornerstone for the police to be able to prevent corruption. Operational independence from political influence or from influence from criminal networks are particularly important in this respect. The GET was therefore critically concerned about information coming from an OSCE report indicating that both political influence and influence from criminal groups over the police is perceived as a serious problem in Montenegro. This is further discussed under "Anti-corruption and integrity policy", below.

Access to information

126. The Law on Free Access to Information applies to the Police Directorate (see above). According to the law, the Ministry and the Police must inform the public about the performance of Internal Affairs when that is in the interest of the citizens and their safety. An officer is appointed by the Police Directorate to address requests for free access to information by interested persons. The website of the Police Directorate contains strategic documents, plans and information on the engagement of police officers and their performance on a daily basis, which is regularly updated. A Twitter account of the Police Directorate has been opened, through which short and clear messages are sent to the public, in real time. It was confirmed to the GET by civil society interlocutors met on-site that the information system was under a positive development, including an increasing volume of internal information made available to the public. GRECO encourages the authorities of Montenegro to pursue this development.

Public trust in the Police

127. The GET took note of an OSCE Survey on the Perception of the Police in Montenegro (December 2020)⁴⁵ which indicate that almost two-thirds of respondents have a positive view of the safety in Montenegro and that some two-thirds of them have a positive attitude towards the Police in general, it is striking that the same survey indicates that some 77% of the respondents indicates that they believe police officers are involved in corrupt practices to a greater or lesser extent. This figure was even higher (some 84%) in the OSCE survey of 2021.⁴⁶ Aware that these surveys are not more than just surveys on perceptions, the GET takes these indications seriously. They support the need to improve the prevention of corruption as identified in this report and to implement the recommendations. This is further discussed under “Anti-corruption and integrity policy”, below.

Trade unions and professional associations

128. The Code of Police Ethics provides that a police officer has the right to belong to a trade union, professional or other organisation and actions. The Police Directorate Trade Union is the only police trade union and the largest trade union in Montenegro, set up in November 2006, with 4,316 members (572 women). It is an independent, autonomous, voluntary, interest-based and non-partisan organisation of police officers employed in the Police Directorate and the Ministry of the Interior.

129. This Union is involved in improving the general and special financial, labour and social rights of its members, to negotiates collective agreements, defend the staff’s dignity, prevent and remedy all forms of unacceptable conduct, violations of the law and all forms of abuse of office, provide legal assistance, exercise the right to strike, inform and educate on the exercise of the police officers’ rights, improve the quality of life (addresses housing needs, organises recreations, vacations and rehabilitation of officers), etc.

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy

130. The principles and the goal of performing police work are defined in Article 19 of the Law on Internal Affairs. Police work is based, *inter alia*, on the principles of legality, professionalism, impartiality, non-discrimination, timeliness, integrity and hierarchical subordination. The Integrity Plan of the Police Directorate is part of the Integrity Plan of the Ministry of the Interior.⁴⁷ It aims to prevent and eliminate opportunities for the emergence and development of corruption and to provide confidence of citizens in the police’s work. It includes transparency in procedures and decision-making, enhancement of professional supervision, establishment of an intranet computer network, publication of the regulations governing police work, surveys on citizens trust, publication of vacancies, trainings of officers, monitoring of the implementation of the Code of Police Ethics and of conflicts of interest. Jobs related to border police and traffic police have been identified as high-risk jobs. Cash payments do not exist in the Police Directorate, but all jobs where decisions are made on the rights and obligations of legal and natural entities are categorised as high-risk jobs. Risk

⁴⁵ “Perception of the Police in Montenegro, OSCE, December 2020.

⁴⁶ Perception of the Police in Montenegro, OSCE, November 2021.

⁴⁷ The new Integrity Plan of the Ministry of Interior was adopted on 23 December 2021.

reduction measures are included into the Integrity Plan. The Plan defines the existing measures, risks and measures to be implemented within the set period, and the persons responsible for the implementation of measures (head of the competent organisational unit). The heads of organisational units submit reports on the implementation of the measures to the integrity manager, who consolidates the reports and submits them to the head of the authority and to the ASK. The integrity plan is published on the website of the Ministry of the Interior and on the website of the ASK.

131. As already mentioned above, the GET is critically concerned about surveys indicating that the general public to a large extent perceives that corruption within the police is a widespread phenomenon. Such a perception, in conjunction with the perception that the police in Montenegro is subject to improper influence from the political level and from criminal groups need to be taken very seriously and be followed up within the framework of the Anti-corruption policy. Consequently, **GRECO recommends that the Integrity Plan of the Ministry of the Interior, including the Police Directorate, provides for an assessment on risks of undue influences over the police with a view to identifying measures to strengthen the operational independence of the police in practice.**

132. As the Police Directorate is a Unit of the Ministry of the Interior, the Integrity Manager of the Ministry of the Interior is responsible for monitoring the implementation of the relevant measures defined in the Ministry's Integrity Plan. He/she reports to the Minister of Interior and to the Director of the ASK about the implementation of those measures, including as regards police issues. The risk analysis is carried by the working group in charge of developing the Integrity Plan, as requested by the ASK. In addition to the Integrity manager, the group is composed of representatives of various units, including the Police Directorate. The risk analysis is produced for a period of at least two years, and more often if necessary. In its work, the group uses work reports, reports after police inspections, internal and external audit recommendations, strategic documents, research results, NGO recommendations, report of the internal control, the Ethics Committee, the Disciplinary Commission, etc.

133. During the on-site visit, the GET was told that, according to Article 74 of the Law on Prevention of Corruption, the requirement that an integrity manager must be appointed by the head of the public authority concerned to monitor the implementation of the measures of the integrity plan are not clearly defined. There are no rules indicating that specific checks should be done prior to appointing the integrity manager, except the usual general requirements: no criminal records, good reputation and no pending criminal procedures. The GET is of the opinion that vetting the candidates for the position of integrity manager as regards their integrity (including any risks of conflicts of interest), beyond the control of criminal records, would strengthen the trust in the integrity system within and outside the Police Directorate. Therefore, **GRECO recommends that the existing rules for appointing the Integrity Manager within the Ministry of the Interior, also responsible for the Police Directorate, are supplemented, in order to strengthen the integrity checks prior to appointments to this function.**

Handling of undercover operations

134. Officers of the Police Directorate attend specialised trainings to perform undercover operations. The procedures are classified as secret. The Code of Criminal Procedure regulates the Special Investigative Measures applied to undercover investigators. These rules include

the procedure for appointing undercover investigators, the investigative procedures to apply and the means that can be used. The GET understands that the specificity of such operations involves that the general rules of transparency in the activity of public bodies do not apply in that case, while pointing out that this cannot be an open door for breaching integrity rules and that appropriate procedures and safeguards must be provided so that undercover operations remain within the framework of the fundamental principles of the rule of law and the necessary integrity rules applied to every public official and civil servant. In this respect, it refers to its position regarding the importance of regular integrity vetting of police officers (see below).

Ethical principles/rules of conduct

135. Ethical standards are prescribed by the Code of Police Ethics, the Law on Civil Servants and State Employees and the Law on Internal Affairs. The rules applied to political officials as regards conflicts of interest and restrictions also apply to police officers up to a certain rank. The Code of Police Ethics, adopted in 2021 by the Ministry of the Interior, includes a set of principles of ethical conduct of police officers, including as regards asset declarations, non-acceptance of gifts, handling of information and use of public funds.

136. The Code of Police Ethics has been distributed to all officers, and newly recruited officers receive a copy together with the decision on their employment and are required to sign a statement that they are familiar with the text of the Code. In all centres and security departments, a box is made available to collect complaints related to the implementation of the Code, the content of which is compiled monthly by a commission at the level of each centre and submitted to the Ethics Committee. The Code is made known to the public on the official web site of Police among the top 5 documents visible and on front page.

137. The GET welcomes the new Code of Police Ethics which has been adopted recently and which is made public. While this is a step in the right direction, the Code is far from being a complete instrument. The Code lacks essential provisions such as on declarations of conflicts of interest or on secondary activities. Moreover, several provisions are very general and need to be further specified. To this end, the Code should be supplemented by practical guidance based on real-life examples, in particular to make it clear which conduct is and is not considered acceptable and to ensure that the principles are relevant for the day-to-day work of police members. In this respect, it was not demonstrated to the GET that the legal provisions and ethical rules are considered as a priority among the police officers and that there is real ownership among those who are to comply with the Code. It seems from the interviews with representatives of the police, including their Trade Union, that the police officers themselves have not been much involved in the drafting of the norms applied to them. It appears rather as a tool provided by the Ministry of the Interior. The effective implementation of the Code may therefore be a challenge. Moreover, such an instrument needs to be updated at regular interval in order to be a “living instrument”. Furthermore, another important dimension is the information of the public about such a code so that they know what conduct to expect from police officers thus contributing to reducing corruption risks and reinforcing trust in the police. Taking all these elements into account, **GRECO recommends that (i) the Code of Police Ethics be revised, with the active participation of the police, and further expanded to cover all relevant integrity matters (including various situations of conflict of interest, secondary activities, gifts, contacts with third parties, outside activities, confidential information, etc.) and that it be enforceable and that (ii) it**

be supplemented with practical guidance containing concrete examples illustrating issues and risk areas.

Advice, training and awareness

138. Police officers attend general training at the Human Resource management Authority, and specialist trainings at the Police Academy. The duration of trainings ranges from one-day to several months. According to the Law on Internal Affairs, the Chief of Police (or an officer authorized by him/her), must introduce the person who is for the first time employed as a police officer to the provisions of the Code of Ethics. The new police officer must then sign a statement of compliance.

139. Training on risk factors/dealing with high-risk situations, ethics, expected conduct, prevention of corruption and conflicts of interest and related matters, is mandatory for all police officers. It is defined in strategic documents and a special training programme for police officers has been designed, according to which, in each police centre, trainers must have been trained. Trainings are organised in all police centres, for one day, on legislative and institutional framework, democratic acting, integrity, case studies and examples from practice. In the last three years, a total of 79 trainings were attended by 1,034 officers. The Police Directorate has reportedly cooperated continuously with ASK to exchange information and experiences through joint meetings, seminars, conferences, etc.

140. Considering the legal and ethical framework recently put in place, including the new Code of Police Ethics (which needs to be further elaborated), as well as the role of the new bodies entrusted with the application of the ethical framework, it is of utmost importance that all police officers are also properly trained in this area. To this comes to ensure that all police officers should have the possibility to obtain confidential counselling in respect of ethical conduct in situations where there are doubts. Such counselling goes beyond the possibility of asking for guidance from the line managers. In view of the above, **GRECO recommends that (i) systematic initial and in-service training on relevant corruption prevention matters and ethical norms and conduct be thoroughly updated and provided to all police officers at regular interval; and that (ii) a mechanism of confidential counselling on ethics and integrity matters be institutionalised in the police.**

Recruitment, career and conditions of service

Recruitment requirements and appointment procedure

141. The Law on Civil Servants and State Employees and the Law on Internal Affairs govern the procedure for merit-based recruitment. Criteria are defined to ensure equal opportunities to men and women. Each recruitment decision must be reasoned. Recruitment takes place through job announcements, but with a legal safeguard which foresees that persons who enter the Police in such manner cannot be reassigned from that job position within a two-year time.

142. The legislation requires that candidates to the police have not been criminally convicted (a proof is obtained *ex officio*), and that no criminal proceedings are pending against them. Candidates must also submit a certificate of medical fitness, and a special commission assesses the mental and physical ability for police officers, as well as security issues.

143. A candidate that meets requirements of an internal or public announcement is subject to a mandatory procedure for testing of capabilities, competences and skills, depending on the job position. The testing procedure is conducted in writing and by interview, but it may also be done in another appropriate manner, by assessing the skills for working in national authorities. This procedure is conducted by a commission composed of the head of the organisational unit that recruits new staff, a representative of the Human Resources Management Authority and an expert in that field. Once the procedure is completed, the Human Resources Management Authority delivers the list of top ranked candidates to the Director, from which s/he selects the best ranked one as a rule. The Director issues a decision with justification, against which an appeal may be filed to the Appeals Commission, which is a professional, independent body at the state administration level.

144. After recruitment, there are no further integrity checks before appointing ordinary police officers. The GET is of the opinion that vetting of the candidates for entering the police forces as regards their integrity, beyond the control of criminal records and skills, and beyond security checks, would limit the risks of corruption and violation of ethical principles by the police officers and strengthen the public trust in the institution. The same logic applies to the promotion of police officers to higher positions. In addition, the GET emphasises that personal circumstances are likely to change over time and, in some cases, make a person more vulnerable to possible corruption risks (financial problems arising, family situation, etc.). Regular vetting in the course of the career should preferably be a tool for prevention, in particular in some sectors having already been identified as particularly risk prone, such as traffic police and border police. Therefore, **GRECO recommends that police officers be subject to integrity checks prior to their appointments and promotions, as well as at regular interval throughout their career according to a clear procedure which is made known to the candidates and the public.**

145. The staff is currently composed as follows:

- 1,063 police officers (804 men, 259 women) with level VI, VII, MA, PhD of education,
- 96 police officers (75 men, 21 women) with level V of education
- 2,720 police officers (2,482, 238 women) with level IV of education
- 78 police officers (77 men, 1 woman) with level III of education.

146. In the GET's view, the police should represent, as much as possible, society as a whole. Seeking a better gender balance is not only a requirement of equality under international law, but diversity in the police in general, including at managerial level, can have positive effects on the profession as a whole (e.g. in contacts with the public, in creating a more heterogeneous environment in some parts of the police which could counter a possible code of silence, further developing multiple-eyes routines etc.). According to the new Law on Internal Affairs, if, when entering employment in the rank of a police officer, several persons meet the same requirements, gender-balanced representation must be taken into consideration. In addition, in order to raise citizens' awareness of the benefits of having women in all police sectors and thus attract women to the Police, the Ministry of the Interior has been conducting since December 2020 an intensive public information campaign entitled "We are team strength - For more women in the police".⁴⁸ Thanks to this campaign, in 2021,

⁴⁸ <https://www.osce.org/mission-to-montenegro/474980>

of the total number of candidates admitted to the Police Academy, almost 40 %. The GET encourages the authorities of Montenegro to pursue such initiatives.

147. The Senior management (Director and five deputies) is appointed with terms of office for a five-year term, following a public announcement. The Police Director is appointed and dismissed by the Government, at the proposal of the Minister of the Interior. The five deputies of the Police Director are appointed by the Minister, at the proposal of the Police Director, with the prior consent of the Government. They must be persons whose experience is defined by the law and which include experience at managerial job positions within the Police, the Ministry of the Interior, the Ministry of Defence, or the National Security Agency, or as a judge or prosecutor. They cannot have been members of a political party or have acted politically five years prior to their application for the position. A candidate who meets the requirements of the public announcement to fill a position in the category of senior management is subject to the test of competences, knowledge and abilities. The assessment is carried out by a commission formed by the authority in charge of human resources management, and it consists of the head of the authority in charge of human resources management, a person from the senior management of the recruiting state authority and a prominent expert in the relevant field of work. The GET learned that political appointments to senior positions in the police have been raised on several occasions in media. It takes the view that all appointments to the police should be based on merit and that the appointment procedures need to be carried out with sufficient transparency. This is closely connected to upholding a notion of the police as a body operationally independent from undue political influence. For these reasons **GRECO recommends ensuring that policy and/or legal measures are sufficient and properly implemented so that appointments of police officials are merit-based and free from undue political influence, including at the top level.**

Performance evaluation and promotion

148. Performance evaluation is mandatory for all police officers, including the Senior Management. The new Law on Internal Affairs⁴⁹ provides for a specific evaluation procedure which differs from the general procedure applied to civil servants and state employees. This evaluation has a direct impact on the promotion of police officers.

149. The decision to promote a police officer is defined by the Law on Internal Affairs⁵⁰ and is made by the Director of Police, following the proposal of his/her immediate superior, as well as for the transfer, rotation and temporary deployment.

Staff rotation, reassignment

150. Staff rotation, as one of the measures to strengthen integrity, is defined by the Integrity Plan and is very often applied in practice, according to the authorities. The GET acknowledges that rotation of staff can be a useful prevention tool for the certain posts, Rotation is not to be understood as a rigid notion and can be adapted to the sectors concerned and the context. The aim is to avoid police officers spending a significant part of their career and sometimes their whole career in specific work or geographic area, notably where corruption risks are higher.

⁴⁹ Articles 138 to 142.

⁵⁰ Articles 143 and 144.

151. Police officers (as other civil servants or state employees) may, for purposes of work, be permanently reassigned to another appropriate job position provided that they meet the requirements set for that position. They may be reassigned to a higher-level position provided that they meet the conditions and their performance in the last year was assessed as "outstanding". The decision of reassignment must be accompanied by reasons. Police officers may be temporarily reassigned to other job positions, within the same title, or to lower-rank positions, for the purpose of replacing an absent officer or increased workload, while retaining all rights of the job position they have been reassigned from. Temporary reassignments cannot last longer than one year.

Termination of duties and dismissal

152. According to the Law on Civil Servants and State Employees, as a rule, police officers enter into open-ended employment. Fixed-term employment may be entered for the purpose of replacement of a temporarily absent civil servant and/or state employee and for no longer than two years; performance of project-related tasks with a specific duration no longer than two years; performance of temporarily increased workload, and for no longer than six months.

153. Termination of employment is verified by the Minister of the Interior, based on the grounds defined by law (Law on Civil Servants and State Employees and the Law on Internal Affairs), and upon a proposal by the Disciplinary Commission in the case of a serious breach of duty.

Salaries and benefits

154. Basic salaries without payments for overtime, night work and work on holidays or special allowances:

- for a police officer, beginner - € 610 gross, € 412 net,
- for a police officer with more than one year of experience - € 720 gross, € 483 net,
- for an inspector, beginner - € 772 gross, € 517 net,
- for an inspector in the highest rank and with more experience - € 1222 gross, € 810 net,
- the Director of Police earns € 1615 gross, € 1083 net. The number of years of service also affects the salary, contrary to performance evaluations, which affect career advancement.

155. According to the Law on Salaries of public sector employees, the allowances paid in addition to the basic salary include allowance for night work, work on national or religious holidays and overtime work; allowance for performing tasks in certain jobs; special allowance; allowance based on years of service (past work) and allowance for on-duty service.

156. The Police Directorate Trade Union, in cooperation with the employer, addresses the housing needs of the staff by granting loans or through the right to purchase a flat under favourable terms. The allocation is carried out in a transparent manner according to predefined criteria, by an independent and autonomous commission selected by police officers. There are three possible remedies for the commission's decisions. Police officers and their families get financial assistance in the event of illness or death of a family member or a

police officer, based on precisely defined rules. It is done in the form of a formal decision against which an appeal may be filed.

Conflicts of interest

157. All civil servants, including police officers, have the obligation to do everything in their power to avoid a conflict of interest, as requested by the Law on Civil Servants and State Employees and the Law on Internal Affairs. The same principles on reporting conflicts of interest ad hoc applicable to PTEFs under the Law on Prevention of Corruption are also applicable to police officers. In addition to the obligation to report a conflict of interest, in some cases, police officers are required to sign a declaration that they are not in a conflict of interest, e.g as a part of the public procurement procedure.

158. Within the framework of the new system, ad hoc declarations of conflicts of interest are to be controlled by the managers, the Anti-Corruption Unit and the Ethics Committee, within their individually prescribed competences. However, for the time being, there are no forms for registering such declarations.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and post-employment restrictions

159. The Law on Internal Affairs governs outside activities of police officers. A police officer may, outside working hours and with the consent of the Minister, work for or be a member of the managing body of educational, scientific, humanitarian and sport associations, perform duties of lecturer at trainings, professional development and professional consultations, or work or provide services to natural or legal persons. This outside activity can only be performed if it does not lead to a conflict of interest or does not compromise the reputation of the Ministry.

160. The GET is of the view that where secondary activities are permissible, there should be an adequate system in place not only to authorise those activities but also to check regularly that they still correspond to what has been authorised and/or that no conflict of interest has arisen over time. For this purpose, a proper record should be kept of all authorised activities carried out by police officers. Moreover, the GET has not found other practical document than the law to guide police officers on the subject of secondary activities. It would be important that such a document be developed and at the very least that it is dealt in the Code of Police Ethics which is at this stage silent on this issue.

161. There are no post-employment restrictions applicable to police officers except for the Director of Police, who enjoys the status of “political official” and the relevant rules on post-employment restrictions which apply to PTEFs also apply to this function.

Gifts

162. The Law on Civil Servants and State Employees and the Code of Police Ethics provide the principle of non-acceptance of gifts for police officers. They cannot receive money, securities or precious metals for performing their tasks, regardless of their value, and cannot receive gifts for performing their tasks, except for appropriate gifts of small value, which cannot amount more than 50 euros - in case of several gifts, the total value of those gifts

cannot exceed this amount, and in case of multiple donors, the total value of the gifts cannot exceed 100 euros. This is controlled by the ASK, which can be seized by the Ethics Committee. The GET recalls here its analysis regarding PTEFs (see above), where it is recommended that the concept of “acceptable gifts” be further specified.

Misuse of public resources and confidential information by police officers

163. According to the Law on Internal Affairs, a police officer must keep confidential and protect the classified data and personal data s/he obtained while performing police duties. This obligation continues after the end of his/her employment within the Police Directorate. S/he may be released from this obligation only in accordance with the law.

Declaration of assets, income, liabilities and interests

164. The rules governing integrity-related matters applied to PTEFs (see section IV above) also apply to some categories of police officers as regards the mandatory declaration of assets and income. The Law on Internal Affairs, as well as the Code of Police Ethics, prescribe the duty to file declarations on income and assets for police officers (and related persons) at the rank of chief police inspector, senior police inspector class I, senior police inspector, independent police inspector, chief police advisor, senior police advisor class I, senior police advisor and independent police advisor. The declarations are to be filed with the ASK, in accordance with the Law on Prevention of Corruption.

165. In addition, all police officers are obliged to submit a declaration on income and assets, as well as property and income of spouses and common-law spouses and children living in a joint household to the special organisational unit of the Ministry of the Interior. The declaration on income and assets must also be submitted by the police officers whose employment in a police rank has been terminated. The Police Directorate publishes the declarations on the internal control on its website, as well as reports on acting upon complaints and controls in accordance with the Law on Management and Internal Controls in the Public Sector. At the time of the on-site visit of the GET, the Ministry of the Interior was elaborating a bylaw on declaration of assets to be submitted by ordinary police officers.

Review mechanisms

166. As regards the specific categories of police officers requested to submit asset and income declarations to be filed to the ASK, the same reviewing rules and procedures as those applicable to PTEFs also apply to them.

167. For the declarations of other ordinary police officers, the declarations are controlled by the Anti-corruption unit within the Ministry of the Interior.

168. Violations of the rules of declarations of interest and assets lead to the disciplinary liability of the police officer. In some cases, in addition to the disciplinary procedure, misdemeanour or criminal proceedings are initiated, which are independent from the disciplinary procedure.

Oversight mechanisms

Internal oversight and control

169. The internal oversight is hierarchically organised, with oversight being first of all the responsibility of the direct supervisor. According to the Rulebook on determining the disciplinary responsibility of police officers, all organisational units which acquire knowledge and information that a police officer has committed a criminal offence when on duty must notify the competent public prosecutor. The direct supervisor is obliged to submit a proposal for disciplinary proceeding. If only a violation of official duty is established, the disciplinary procedure is conducted.

170. The Police Directorate, under the authority of the Minister of the Interior, has recently been re-organised with the adoption of a new Law on Internal Affairs, setting up in particular internal bodies for enhancing integrity and preventing corruption among the police: in addition to the Ethics Committee, an Internal Control Unit (operationally independent) and an Internal Anti-corruption Unit have been set up.

171. The Ethics Committee is, *inter alia*, entrusted with monitoring the application of the Code of Ethics and promoting ethical standards and rules of behaviour within the Police. The Code of Police Ethics provides for the setting up of the Ethics Committee, which is to be composed of representatives of the Police Directorate, the Ministry of the Interior, the Police Directorate Trade Union and a representative of the non-governmental sector. This Committee is entrusted with providing opinions on the application of the Code; monitoring its application; initiating modifications of regulations in the area of police ethics; promoting ethical standards and rules of behaviour within the Police. However, the GET was told that this Committee was not functioning properly. On the one hand, a limited number of sessions had taken place since its establishment, in particular because of the sanitary crisis. On the other hand, appropriate bylaws were still expected to define the proper working procedures of the Committee and detail its missions and powers.

172. According to Law on Internal Affairs, the Anti-corruption Unit has the competences to control the police officers (see above). According to the draft Rulebook on the organisation of Ministry of the Interior (which remains to be adopted), this Unit, to be staffed with 24 officers, will assess corruption risks, draft and implement integrity plans for the Police, public procurements, perform polygraph tests in respect to police officers engaged in combating organized crime and corruption. This Unit is due to be closely connected to the ASK, in particular through IT solutions.

173. The Department for Internal Control of Police Work is responsible for preventing and investigating cases of internal corruption or other related misconduct within the Police Directorate. It is financially and personnel-wise an independent unit from the Police Directorate. It has 18 employees from the ranks of experienced police officers, with many years of police work experience and specific trainings on integrity-related matters. If violation of a work-related duty by a police officer is confirmed, a disciplinary procedure is initiated. The Department for Internal Control reports to the Minister of the Interior, who then reports to the Government. Monthly and annual reports of the Department for Internal Control of Police Work is published, including with complaints received and controls performed, on the website of the Ministry. In addition, interested persons may request access to the information

it is interested in. The Police Directorate publishes reports on the internal control on its website, as well as reports on acting upon complaints and controls in accordance with the Law on Management and Internal Controls in the Public Sector.

174. The GET acknowledges that a variety of internal institutional mechanisms for controlling police activity are in place. However, this new framework remains to be properly coordinated and effectively implemented. Clear rules about the respective roles of these bodies and their complementarity should be established so as to strengthen the overall coherence of the internal oversight and control system. **GRECO recommends that the internal control system of the police be strengthened by adopting clear rules on the respective roles of the Department for Internal Control, the Anti-Corruption Unit and the Ethics Commission and by ensuring that appropriate resources are allocated to these bodies.**

External oversight and control

175. Parliamentary control of the security sector is, in principle, governed by the Constitution, as well as by the Rules of Procedure of Parliament, the Law on National Security Agency, the Law on Police, the Law on Prevention of Money Laundering and Terrorist Financing, and the Law on Information Secrecy. The Police Directorate is part of this security sector. Parliamentary oversight is exercised by the Committee for Defence and Security. It takes into account the reports submitted by the Police Directorate. The Committee has for instance carried out an enquiry about the use of EU funds by the Border Police. It organises hearings with police directors.

176. The conduct of police officers in criminal investigations is overseen by the public prosecutor responsible for pre-trial investigations.

Remedy procedures for the general public

177. Citizens and police employees are informed through numerous campaigns, flyers, leaflets, press releases, etc. that they can report any misconduct in several ways: by phone, by e-mail, anonymously, publicly and in other ways. In 2019, the ASK, in cooperation with the Border Police Unit of the Police Directorate, printed 5,000 leaflets on the topic "Report corruption at border crossings", which were distributed at border crossings.

178. The Police Directorate has designated a person to process reports indicating corruption, who is required to act on those reports, in accordance with the secondary legislation that define sanctions to be taken in such cases. The person who files a report, petition or complaint may do it in any form. The Department for Internal Control of the Police and the Ethics Committee also reportedly to act on petitions, reports and complaints of citizens and police officers. The GET understands that these bodies belong to the Ministry of the Interior, but not to the Police Directorate. However, the GET has misgivings as to the appropriateness of giving such functions to these bodies in respect of external complaints against the police.

179. The civilian control of police work is institutionally to be exercised through the newly created Council for Civilian Control of Police Work, provided for in the Law on Internal Affairs. The Council for Civilian Control of Police Work is to receive complaints from the public on misconduct by the police. Such complaints may be initiated anonymously or publicly, in

writing or orally. The GET has only been able to meet with one representative of this Council and cannot form a definite opinion on its proper functioning and efficiency. However, it seems from the limited information which was provided to the GET that this Council is subject to political tensions and does not provide outputs that can be used for improving the functioning of the police, including as regards integrity matters. The GET has not been given evidence that the composition of this Council guarantees its independence and the qualification of its members to deal with police matters. Notwithstanding the above, the GET stresses that the existence of a body outside the police and the Ministry of the Interior entrusted to deal with complaints from citizens concerning alleged misconduct of members of the police is a fundamental institution to avoid that complaints against the police are dealt with internally by the police (“the police investigating the police” is to be avoided). Above all, such a mechanism needs to be based on strong public support. The GET is not in a position at this stage to know whether the Council for Civilian Control of Police Work would be an appropriate body to perform such an important function, but it cannot rule that out either. Therefore, **GRECO recommends that a solid external mechanism for complaints against the police be established, independent from the police and the Ministry of the Interior and with an appropriate level of knowledge to deal with such matters.**

Reporting obligations and whistleblower protection

180. Police officers are required to report on situations of corruption in order not to engage their own responsibility. Such cases may be reported to the integrity manager, the immediate supervisor of the officer concerned, the ASK and the Ethics Committee. In practice, most common situations are reports filed to the Ethics Committee and initiation of disciplinary procedure, at the initiative of the immediate supervisor.

181. The Law on Prevention of Corruption (articles 44 to 70) deals with the protection of whistleblowers (see above). Within the Police Directorate, the Internal Control Unit⁵¹ deals with whistleblowing protection and reporting. An instruction on whistleblowing reporting system within the Police has been operational since 2017. The report prepared by the Internal Control Unit is submitted to the ASK. Between 2016 and the end of July 2021, 29 reports were forwarded by ASK to the Ministry of the Interior and the Police Directorate for further action. By the end of 2021, 24 requests for protection had been submitted to ASK (one case is pending). The merits of the request for protection were not established in 13 cases. They were established in 9 cases and applicants were granted protection. The Ministry of the Interior has appointed a person responsible for receiving and acting upon the whistleblowers’ reports – his name appears on web site of the Ministry with contact data. However, during the on-site visit, the GET was informed that the so-called code of silence was still strong enough within the Police and that the mechanisms of raising awareness among Police officers or reporting cases of whistleblowing were deficient. The GET considers that the mechanism of whistleblowing should be further promoted and encouraged within the Police. Therefore, **GRECO recommends that the existing measures on whistleblowing within the police be strengthened by raising awareness and developing training on whistleblowing procedures.**

⁵¹ Art. 194-195 of the Law on Internal Affairs.

Enforcement and sanctions

Disciplinary proceedings

182. The immediate manager, the Internal Control Unit of the Police, the Ethics Committee and the Anti-corruption Unit Officer may initiate disciplinary procedures against police officers. All police employees may also do so anonymously or publicly, in writing or orally. The cases are then examined and decided by the Disciplinary Commission, as a professional and independent body at the level of state administration. Disciplinary measures imposed by the Disciplinary Commission include a fine of 20% to 40% of the salary paid for the month in which the serious breach of official duty was committed and for the period of two to six months or termination of employment. A dissatisfied officer may use legal protection (appeal to the Appeals Commission or complaint to the Administrative Court) against any decision related to his/her rights and obligations.

183. In the past five years, disciplinary proceedings were initiated due to⁵²:

- abuse of official duty (9 men, 1 woman); all officers were suspended until the end of the proceedings. 8 proceedings are pending, 2 officers were condemned: a fine of 30% salary cut for 6 months with suspended termination of employment for one year; a fine of 20% salary cut for 5 months,
- unconscientious work in the service/overstepping of powers (8 men, 0 women); 8 officers sanctions by a fine of 20% salary cut for 2 months; a fine of 20% salary cut for 5 months; a fine of 20% salary cut for 2 months (5 officers); temporary removal (suspension, proceedings are pending);
- behaviour in the line of duty and outside the line of duty in violation of the Code of Police Ethics (31 men, 0 women); a fine of 20% salary cut for a period of 1 month (4 officers); a fine of 30% salary cut for a period of 3 months; temporary removal – suspension (2 officers); a fine of 20% salary cut for 2 months (6 officers); a fine of 20% salary cut for 6 months (2 officers); a fine of 20% salary cut for 6 months (2 officers); a fine of 30% salary cut for 1 month (2 officers); a fine of 30% salary cut for 4 months; a fine of 30% salary cut for 6 months; a fine of 30% salary cut for 2 months; a fine of 20% salary cut for 3 months; suspended termination of employment for a period of one year; a fine of 20% salary cut for 4 months; a fine of 20% salary cut for 2 months; a fine of 20% salary cut for 5 months (2 officers); a fine 20% salary cut for 3 months and the inability to advance in career for the next 2 years; a fine of 30% salary cut for 6 months and suspended termination of employment for one year.

184. The new Law on Internal Affairs provides that, as the most severe disciplinary measure, the employment of police officers must be terminated if they are found responsible for severe violation of official duty with elements of corruption.

Criminal proceedings and immunities

185. Police officers do not enjoy immunity and privileges in respect of criminal proceedings.

⁵² See more statistics in Appendix to this report.

186. In the last five years, the employment was terminated in respect of six police officers as a result of criminal convictions.

187. The new Law on Internal Affairs has clarified what criminal offences related to corruption were, including abuse of official function, fraud in office, unlawful influence, incitement to unlawful influence, passive bribery, active bribery, and usury. The termination of employment of police officers is decided when police officers are convicted to a imprisonment sentence for a criminal offense which includes elements of corruption, regardless of the duration of the sentence.

VI. RECOMMENDATIONS AND FOLLOW-UP

188. In view of the findings of the present report, GRECO addresses the following recommendations to Montenegro:

Regarding central governments (top executive functions)

- i. **laying down rules requiring that that integrity checks take place prior to the appointment of ministers and state secretaries in order to identify and manage possible risks of conflicts of interest before their appointment (paragraph 29);**
- ii. **laying down rules requiring that integrity checks take place in respect of the (Deputy) Chief of cabinet of the Prime Minister, as well as the politically appointed “special advisors” of the Prime Minister and Deputy Prime Ministers, as part of their recruitment, in order to avoid and manage possible risks of conflicts of interests (paragraph 35);**
- iii. **that clear role and missions be assigned to the National Council for Fighting Corruption so as to ensure the consistency of the overall strategy for preventing and fighting corruption (paragraph 42);**
- iv. **that a coordinated strategy for preventing corruption amongst persons entrusted with top executive functions (PTEFs) be adopted on the basis of risk assessments and that it be made public (paragraph 46);**
- v. **that a review on the overall coherence and effectiveness of the legal framework for preventing and fighting corruption is carried out in order to ensure consistency between existing laws and bylaws, including a law on Government (paragraph 48);**
- vi. **that i) a code of ethics (Guidelines on ethics) aimed at persons with top executive functions (PTEFs) be established and published, covering relevant integrity matters (e.g. preventing and managing conflicts of interest, contacts with lobbyists and other third parties, handling of confidential information, post-employment restrictions, etc.), ii) complemented with appropriate guidance and concrete examples and iii) coupled with a mechanism of supervision and sanctions (paragraph 50);**
- vii. **that, in order to ensure its full operational independence, the administrative capacities of the Agency for Prevention of Corruption (ASK) be further strengthened by ensuring independent merit-based recruitment procedures providing for integrity testing of new staff, and to ensure that the number of permanent staff of the ASK is increased to a level that is in accordance with its rules and foreseen workload (paragraph 59);**
- viii. **that (i) systematic briefing and/or training on legal and ethical integrity standards be provided to persons exercising top executive functions (PTEFs) upon taking**

office and at regular interval while in office; and that (ii) confidential counselling be provided to all PTEFs for the understanding and the implementation of these standards, and that PTEFs be duly informed of such a possibility (paragraph 63);

- ix. that the legal framework governing access to information and the mechanism of appeal against such decisions be simplified in order to ensure an effective access to government information in practice (paragraph 68);
- x. that (i) the definition of lobbying be broadened to cover all such contacts with persons holding top executive functions (PTEFs); that (ii) contacts between lobbyists and PTEFs be disclosed in respect of the identity of the persons involved as well as the subject matters discussed; and that (iii) the Agency for Prevention of Corruption (ASK) be mandated to investigate misgivings in respect of lobbying ex officio (paragraph 79);
- xi. that the rules on gifts and other advantages be more specific, in particular by clarifying the definition of “protocol and appropriate gifts” (paragraph 99);
- xii. that (i) asset and income declarations of all persons with top executive functions (PTEFs) be systematically subject to the various levels of the substantive control by the Agency for Prevention of Corruption (ASK); and that (ii) the quality control mechanisms of the ASK be strengthened by ensuring pertinent human resources and accurate access to relevant information (databases) for the verification of the declarations (paragraph 110);
- xiii. that the immunity provided to members of the government be revised in order to exclude explicitly corruption-related offences from such protection (paragraph 117);

Regarding law enforcement agencies (police)

- xiv. that the Integrity Plan of the Ministry of the Interior, including the Police Department, provides for an assessment on risks of undue influences over the police with a view to identifying measures to strengthen the operational independence of the police in practice (paragraph 131);
- xv. that the existing rules for appointing the Integrity Manager within the Ministry of the Interior, also responsible for the Police Directorate, are supplemented, in order to strengthen the integrity checks prior to appointments to this function (paragraph 133);
- xvi. that (i) the Code of Police Ethics be revised, with the active participation of the police, and further expanded to cover all relevant integrity matters (including various situations of conflict of interest, secondary activities, gifts, contacts with third parties, outside activities, confidential information, etc.) and that it be

enforceable and that (ii) it be supplemented with practical guidance containing concrete examples illustrating issues and risk areas (paragraph 137);

- xvii. that (i) systematic initial and in-service training on relevant corruption prevention matters and ethical norms and conduct be thoroughly updated and provided to all police officers at regular interval; and that (ii) a mechanism of confidential counselling on ethics and integrity matters be institutionalised in the police (paragraph 140);**
 - xviii. that police officers be subject to integrity checks prior to their appointments and promotions, as well as at regular interval throughout their career according to a clear procedure which is made known to the candidates and the public (paragraph 144);**
 - xix. ensuring that policy and/or legal measures are sufficient and properly implemented so that appointments of police officials are merit-based and free from undue political influence, including at the top level (paragraph 147);**
 - xx. that the internal control system of the police be strengthened by adopting clear rules on the respective roles of the Department for Internal Control, the Anti-Corruption Unit and the Ethics Commission and by ensuring that appropriate resources are allocated to these bodies (paragraph 174);**
 - xxi. to ensure that a solid external mechanism for complaints against the police be established, independent from the police and the Ministry of the Interior and with an appropriate level of knowledge to deal with such matters (paragraph 179);**
 - xxii. that the existing measures on whistleblowing within the police be strengthened by raising awareness and developing training on whistleblowing procedures (paragraph 181).**
189. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Montenegro to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2023. The measures will be assessed by GRECO through its specific compliance procedure.
190. GRECO invites the authorities of Montenegro to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.
