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RECOMMENDATIONS FOR IMPROVEMENT OF WORK OF AGENCY FOR PREVENTION OF CORRUPTION

**THROUGH THE REVIEW OF CONCLUSIONS PUBLISHED IN THE REPORT
ON THE CONTROL OVER THE PARLIAMENTARY ELECTIONS**



Kingdom of the Netherlands

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INTRODUCTORY REMARKS

In this document Center for Democratic Transition (CDT) addresses to the Agency for Prevention of Corruption (the Agency), and to interested public, recommendations for improvement of its work in the area of implementation of the Law on Financing of Political Entities and Election Campaigns¹ (the Law) i.e. the control of political parties financing and the use of public resources.

As the organization, which is a signatory of the Memorandum of Cooperation with the Agency, aimed at improvement of the quality of its work, we consider that our fundamental obligation is a preparation of the document, which provides objective observations and specific recommendations for the improvement of the existing situation.

As a basis for our assessments and recommendations we took the Report on conducted oversight during the election campaign for the election of MPs in the Parliament of Montenegro and election of councilors in municipal assemblies of Andrijevica, Budva, Gusinje, and Kotor and exercised control over financing of election campaigns of political entities for elections held on 16th of October 2016 (the Report), published on 28/12/2016. All our claims are supported by facts, data from researches, and statements of stakeholders, the Report refers to. The focuses of our analysis were parts of the Report, related to the areas in which CDT conducted monitoring and collected data.

During the preparation of this document we were aware of the fact that significant obligations and great expectations were set before the Agency in the very first year of its work. In addition, the Agency entered the complete process with almost no experience from the previous period.

In that sense, we welcome the efforts that Agency made regarding the control of political parties financing and the use of public resources in 2016 parliamentary elections. We also welcome a preparation of plans, and establishment of a working group, which implemented it, as well as its openness for participation of NGOs in its work. In addition, the first controls and misdemeanor charges against entities subject to the Law are commendable.

However, the conclusions in the Agency's Report which are based on conducted activities during the campaign, can be at least, considered as disputable and must be discussed in detail. At the same time questions about methods and manner of control that brought

1) The Law on Financing of Political Entities and Election Campaigns (ZFPSIK), *Official Gazette of Montenegro*, No. 52/2014

to these conclusions must be opened. This is the first significant function of the document – to open an argumentative discussion about the Agency’s conclusions on 2016 parliamentary elections.

The second function of our analysis is to draw attention that there is a significant space for improvements in all areas of election control and communication with public. Also, it is necessary to discuss about specific actions for improvement of the Agency’s work, and consequently political integrity in Montenegro.

At the end, this document strives to support building of high-quality institutions in Montenegro, as well as citizens’ trust in their work, and to contribute to the quality of upcoming electoral processes.

We are available for the Agency and other interested stakeholders for any additional clarifications, information or data. We are also open for joint work on the improvement of the current situation.

CDT team

RECOMMENDATIONS FOR IMPROVEMENT IN THE AREA OF POLITICAL PARTIES FINANCING AND PREVENTION OF PUBLIC RESOURCES MISUSE

1. The Agency must significantly improve the communication system with public during and beyond the election campaign. It is necessary to improve planning, quality, content and channels of communication. Also, the Agency must additionally improve its own transparency.

The Agency's communication with public has been focused on providing explanations on its competences, noting down undertaken activities, publishing announcements on conducted control of specific entities subject to the Law, information about initiating procedures, etc. However, it failed to inform public about the quality of done job or to support it with detailed findings of controls and supplementing documents. Also, specific answers to numerous questions, asked by media, NGOs or parties during the campaign, have been missing. In these situations, the Agency usually provided formal answers, which did not answer the questions which the public rightfully posed.

A slow reaction and the absence of official statements of the Agency's representatives about some important issues during the election campaign opened space for different interpretations of its activities and contributed to the lack of public confidence in the electoral process and the Agency's work.

Although the campaign was marked by numerous doubts and accusations regarding the legality of the sources of financing of the parties, majority of statements, available on the website of the Agency, were related to the obligations of authorities and deadlines for submission of reports. Statements about conducted control - mostly in connection with a legal obligation of publishing data on the use of state resources by the authorities - were periodically published, but with no information whether the published data were accurate. Therefore, the focus was to respond to the public what the Agency was doing instead of informing the public what was achieved and to support it with facts and precise information.

In the following period the Agency must make a significant effort to advance the existing communication system, which would be better planned, timely, interactive, comprehensive, and up-to-date. A strategic planning of communication, which would be elaborated

2) The research of CDT conducted for the purposes of this document. Data were collected through the analysis of relevant documents and detailed search of Agency's website in the period from 13th to 16th January 2017.

3) Rules of Procedure of the Council of the Agency for Prevention of Corruption, Article 4: On the website of the Agency's Council are published (...) proposals of the budget and final accounts of the Agency.

4) Law on Free Access to Information, *Official Gazette of Montenegro*, No. 44/12, Articles 11 and 12

in annual plans, including special plans for election campaigns, is necessary. After the completion of the campaigns the Agency must in detail analyze the effects of its communication with the public. The high-quality communication and building citizens' trust cannot be achieved with the existing communication system and these issues should be the key tasks of the Agency.

In the following period the Agency must also improve its own transparency², especially regarding the access to information. It must be the most transparent institution in the country.

The website of the Agency was regularly updated and it has a functional search. On the website the most important administrative documents, such as the competences of the Agency and its organizational structure, as well as the main acts regulating its work, are published. The annual work plan for 2016 is also available. On the website information on civil servants and public officials can be found while information on salaries of its president and his deputies are available from assets declarations which can be found in the Agency's database.

However, on the website of the Agency there are neither budgets for 2016 and 2017, nor budget proposals, as it is prescribed by the Rules of Procedure of the Council³. Therefore, information, which would make the content of the budget understandable and presentable to citizens, is also not available. In addition, there is no information about the adoption of a work plan for a current year, regardless of a number of activities expecting the Agency, given that local elections will be held this year.

Although a plan for public procurement, decisions and agreements on procedures regarding public procurement are published, calls for tenders are not found on the website.

The Agency breaches the Law on Free Access to Information⁴ by failure to publish the Guidelines for access to information and list of public records and registers. The Agency also does not publish data on approved requests for information. Availability of these information would facilitate both the Agency's actions undertaken regarding the requests and access to data by the third parties.

The Agency regularly publishes announcements and agenda of the Council's sessions. The practice of publishing minutes is established as well. However, the latest amendments to the Rules of Procedure of the Council closed its sessions for representatives of NGOs and other experts.

Even though the website contains information about proceedings initiated upon citizens', civil sector and other appeals regarding the local elections in Tivat, the Agency did not continue with such practice. Consequently, there are no decisions on submitted appeals regarding parliamentary elections even 3 months after their ending.

The Agency does not have a practice to publish machine-readable data⁵. Documents covered by monitoring are not published in open format, with exception of assets declarations.

2. Significantly modify the Agency's approach during the control and oversight of the election campaign. Instead of "surface" control, it must move to "deep" i.e. essential control, which includes checking of data accuracy, received from political entities as well as other entities subject to the Law. In this area conclusions and statements of the Agency must be supported by unambiguous evidences i.e. control findings. Therefore, the capacity building plan, aimed at the improvement of this segment of the Agency's work, must be made.

a) Control of financing of political entities

In the Report⁶ the Agency stated that media did not give discounts for political parties. The Report shows that the parties spent a total of €939.473,76 for advertising on TV and that the firms (media-buying agencies) received €374.000 for advertising on portals and TV stations. However, CDT⁷ data on TV advertising indicate that this amount is around 1.5 million Euros. The Agency has the same data but it does not make difference between reported and estimated costs. There are no precise data about agreements with media-buying agencies, thus it cannot be concluded whether the parties were placed in a privileged position by buying media space through these agencies, i.e. whether they achieved additional discounts, which are not reported as in-kind contributions.

In the Report the Agency states that no party has in-kind contributions⁸. In practice it would mean that no party which participated in the elections, got any discount from their suppliers or any other intellectual service from their supporters.

By detailed comparisons between campaign activities and events, and the Report of the Agency, it can be concluded that the parties either did not report all actual costs of the campaign or they did not report in-kind contributions, which they received during the campaign. However, the presented costs of political parties are underestimated, i.e. they are lower than the actual.

5) Machine readable data are data structured in a computer understandable format which enables their free and repeated use.

6) The Report of the Agency, page 17: *The Agency controlled all documentation regarding media services (...) Neither irregularities, nor discounts in advertising are determined.*

7) In cooperation with company Arhimed CDT conducted monitoring of paid advertising of political entities on commercial TV stations and in print media. The assessment was made on the basis of official price lists of televisions, including discounts under special packages.

8) The Report of the Agency, page 12: *The Agency (...) determined that during the election campaign there were no in-kind contributions, i.e. provided services or goods given to a political entity without compensation or under conditions by which the political entity is placed in a privileged position in relation to other consumers.*

9) Besides stated examples CDT noticed several significant illogicalities in financing of the campaign of Democratic Front (DF). Using its legal competences, the Agency suspended public funds to DF, because of non-transparent financing, but it did not provided to the public a sufficiently understandable, detailed explanation supported by documents and evidences.

[10] *Milić: Opposition together has 10 percent more support than DPS.* Vijesti, available at: <http://www.vijesti.me/izbori2016/milic-opozicija-zajedno-ima-10-procenata-podrske-vise-od-dps-905357>, accessed on: 13.01.2017.

[11] *Workers of the Republic Institute for Urban Planning and Design (RZUP) paid a billboard themselves.* Vijesti, available at: <http://www.vijesti.me/izbori2016/zaposleni-kod-aca-dukunovica-slave-dps-906961>, accessed on: 13.01.2017.

12) Data from the report of Social Democrats (SD), available at: www.antikorupcija.me, accessed on: 16.01.2017.

13) *Fees for the New Year's Eve: Six times more money for Haris, than for Goca.* Blic, available at: www.blic.rs, accessed on: 18.01.2017

14) The Report of the Agency, page 15: *(...)costs related to promotional videos development (...) for that purpose Social Democratic Party (...) allocated €250.*

15) Video material is available at SDP Facebook profile, accessed on: 13.01.2017

16) *Ibid.*

17) Statements of leaders of DPS, DF, Democrats and others available in almost all Montenegrin media.

18) Law on Volunteerism, *Official Gazette of Montenegro*, No. 26/2010, 31/2010 and 14/2012

Our claims can be illustrated with the following examples⁹.

- During the election campaign the coalition “Ključ” stated data from an opinion poll, conducted for purposes of the campaign¹⁰ and which is not reported. Only two situations are possible: this coalition did not report incurred cost or an agency provided for free this opinion poll to the coalition, and the coalition did not report it as an in-kind contribution.
- Also, we witnessed that advertising material of the Democratic Party of Socialists (DPS) was set up on a few private buildings and it was financed by the party supporters¹¹. Even though these in-kind contributions are obvious, they were not recorded in the Agency’s Report.
- Social Democrats (SD) allocated €3.000¹² for the fee of Haris Džinović, who performed at the concert in Podgorica. Analyzing published data about Džinović’s concert fees, it is clear that a market value of his performance is multiply higher and there is no reported discount i.e. the in-kind contribution¹³.
- In the Report the Agency stated that Social Democratic Party (SDP) allocated €250¹⁴ for development of promotional videos. In the course of the campaign this party¹⁵ had at least two promotional videos¹⁶ as well as numerous video messages of the party leaders. A real market value of these services is significantly higher than €250 while SDP did not report a discount as the in-kind contribution.

In the Report the Agency stated that the parties did not show costs of “fieldwork”. We remind that during the campaign the parties disclosed data about thousands of activists on terrain¹⁷. Even if we assume that thousands of people really volunteered i.e. worked free for parties, there is a question – how did the Agency check these political parties’ statements? Did the Agency review agreements on volunteering, which the parties were obliged to sign with their volunteers¹⁸ in accordance with the Law on Volunteerism? Also, there

is a question why in the Report there are no costs regarding volunteers' insurance, which the parties were obliged to pay to each person individually¹⁹.

In addition, in the Agency's Report²⁰ it is not clear how the parties paid authorized representatives at polling stations and whether they paid all required taxes and contributions for the engaged people.

Taking into consideration stated issues, it is obvious that real costs of parties were significantly higher than reported ones. Therefore this represents an important challenge for the Agency's work in the following period.

The Agency must significantly change its approach regarding this part of its work and it must conduct detailed control of the expenditures reported by the parties i.e. it should not take reported costs for granted. The Agency must make a precise calendar of all significant events in the campaign and register statements of political entities in media and social networks in order to be able to make comparison between events and reported costs. During the campaign the Agency must note all events and promotional materials (videos, leaflets, announcements of events, promotional meetings...) in order to have adequate insight in activities and to be able to check unreported costs. If we consider the above mentioned examples, it is clear that there was such control on this occasion. The key challenge of the Agency is building of capacities for this type of control. This includes training and recruitment of consultants, who will improve the quality of the Agency's work in this area, and strengthen its work with parties on providing information about obligations and expectations of the Agency.

b) Control of misuse of public resources

Even though suspicions in misuse of state resources were a key topic during the election campaign, even they resulted in establishment the Government of Electoral Trust, in the Agency's Report beside the statement that there were no misuses of public resources²¹, we did not find arguments that could prove this statement. The Agency formed this conclusion mostly on the basis of insight into data received from the entities subject to the Law, not on the basis of the control of data accuracy²².

When it comes to exceeding the average monthly spending²³, according to data from the Report²⁴, significant discrepancies and differences in monthly spending of ministries can be noticed.

19) Law on Volunteerism, Article 22

20) The Report of the Agency, page 18: *It is necessary (...) to calculate tax obligations for payment of fees on different grounds (fieldwork, authorized representatives, etc.)*

21) The Report of the Agency, page 36: *By detailed and overall control of the obligations, restrictions and prohibitions prescribed by the Law it can be concluded (...) that there were no misuses of public resources in the election campaign.*

22) The Report of the Agency, page 37: *In order to control this prohibition the Agency regularly monitored spending of public funds...*

23) ZFPSIK, Article 28, paragraph 1

24) Annex 5 of the Agency's Report

25) During the election campaign CDT monitored data publishing regarding public funds spending, social welfares and use of official cars for 61 authorities on national and local level.

26) *Ibid.*

27) Annex 6 of the Agency's Report

28) The Report of the Agency, page 4: In that way, during September and October the control of compliance with prohibitions, restrictions and obligations, prescribed by the Law.

29) The Report of the Agency, page 13: *(...) it is determined that participants of the elections for the election of MPs (...) raised funds in the total amount of € 2.534.918.01 (...) out of which (...) parties' own funds amount to € 1.132.830 i.e. present 45% of the total amount of collected funds.*

30) The report on conducted monitoring during the election campaign for election of councilors in Municipal Assembly of Tivat and conducted control of financing of the election campaign of political entities, June 2016.

Therefore, in some months before the elections, Ministry of Education had 10 times higher spending, Ministry of Defense two times, Ministry of Culture two times, Ministry for Information Society and Telecommunications two times, Ministry of Transport and Maritime Affairs over 30%. It is not possible to obtain detailed information regarding reasons for this. Instead of that, the Agency explains these phenomena by "previously undertaken obligations", which opens space for suspicions in a possible misuse.

In its Report the Agency claims that authorities have complied with a basic spirit of the Law, related to the transparency of use of public resources and that there were no misuses. According to CDT²⁵ data more than 60% of analytical cards, even a month after announcement of the elections, were published with incomplete information i.e. insufficiently precise data on the purpose of the use of public funds by the authorities. Taking into consideration mentioned issues, it is not clear how the Agency drew such "firm" conclusions.

There was no control of social welfare, even though it represents one of the most mentioned election misuses. The Agency controlled only an obligation of publishing data. According to CDT²⁶ data social welfares allocated by municipalities were significantly higher one month before the elections, which can be seen also in the Report²⁷, but there are no data whether these costs were eligible, even though 11 municipalities were a subject of terrain control²⁸.

3. To prevent the practice of the campaign financing from political parties "own resources" which puts some parties in an unequal position. To enable the application of the essence of the Law in accordance with democratic standards and good practices of transparency and control.

According to data from the Report, majority of the parties financed the election campaign with their "own resources" (with the exception of public funds allocated for financing of the campaign) which make even 45% of collected funds²⁹. The political parties "own resources" are funds from other bank accounts of parties or funds allocated for regular operation which cannot be used for the election purposes.

CDT drew attention to this practice during the local elections in Tivat³⁰ and from then the Agency tolerated this phenomenon.

The purpose of existing division of funds, which parties receive for a regular operation and for elections, is to enable quality control and monitoring i.e. limiting of election costs. The Law also defines

costs of the regular operation of the political entities³¹ which cannot be used for other purposes, and among allowed costs are not mentioned costs of financing of the election campaign. The financing of election costs from other accounts of parties is not permitted. In the Law private resources of the parties are exclusively³² listed and it is clear that a party cannot finance election costs from its “own resources”.

The use of these type of resources for a campaign financing puts election participants, who do not have funds for the regular operation or they have it to a lesser extent, into an unequal position. The intention of the Law is to enable equal status for all parties at the beginning of an election race, which is not achieved with the Agency’s attitude toward this issue.

Having in mind these facts, we consider that the Agency must urgently end this practice. If necessary, it can be considered to increase funds for elections and decrease funds for the regular operation in an election year in order to provide to parties higher amounts for the election campaigns. A continuation of this practice brings into question the purpose of these provisions in the Law.

4. To increase proactivity of the Agency towards the entities subject to the Law in order to insure its high-quality application and to increase transparency and responsibility in election campaigns. To amend reporting formats and adjust them taking into account experiences gained from the parliamentary elections. To intensify trainings for entities subject to the Law and prepare written instructions for the Law application.

The Law clearly defined that obligations of political entities are related to the period from the day of announcement of the elections to the day of proclamation of the elections final results³³. In addition, a legal obligation, including payment of all costs from a specific bank account, opened for this purpose³⁴ and delegating a person responsible for spending of funds³⁵ and submission of reports, is clear.

However, a significant number of political entities did not fulfil this obligation on time, looking for excuses in non-existence of a legal deadline for the fulfilment. The Agency has failed to timely draw political entities’ attention to do that, which resulted in delay in opening accounts of some parties, even though they had costs related to the campaign³⁶ before that. This situation caused that some costs in the campaign are not registered at all, which ultimately leads to underestimation of the total campaign costs.

31) ZFPSIK, Article 10

32) ZFPSIK, Article 6

33) ZFPSIK, Article 2, paragraph 2

34) ZFPSIK, Article 18, paragraph 1

35) ZFPSIK, Article 19, paragraph 1

36) During the monitoring of financing of the parties for the parliamentary elections CDT recorded cases in which political parties made expenditures for the campaign while bank accounts were not opened.

37) The Report of the Agency, page 14: *In the submitted reports political entities differently presented the election campaign expenditures.*

Also, political entities were neither informed on time by the Agency, nor educated how to fill in financial reporting formats. It led to the situation in which parties presented the same types of costs in different manner, which affected the overall transparency of political parties financing³⁷.

During the campaign there were uncertainties about which entities are subject to the Law, thus it happened that some companies and businesses, whose founder/owner/or partial owner is a municipality or the state, did not deliver or were late in delivering documentation or publishing data due to lack of knowledge on the Law.

In the upcoming election campaigns the Agency must take significantly more proactive attitude towards the entities subject to the Law, especially towards political entities in order to prevent the Law violation. For that purpose, immediately after announcement of the elections the Agency must inform parties in a written form on the key obligations in the campaign. Also, the Agency must prepare training program and written instructions for political entities about deadlines for reporting and manner of filling the report in order to increase transparency of political entities.

5. Initiate amendments to the Law in order to eliminate all uncertainties in its application. Use the provided possibility for initiating legislative changes during the spring session of the Parliament of Montenegro. Thus the proposed changes could be adopted until the end of 2017 and implemented during the presidential and possible parliamentary elections at the beginning of 2018.

In the Report the Agency points on lack of clarities and disadvantages in the practical application of some Law provisions. It also provides a set of justified recommendations for amendments of some legal solutions³⁸. Some of these recommendations (defining deadline for the opening of a special bank account, a regulation of the use of parties "own resources", defining obligation for closing of a bank account and management of settling undertaken financial obligations and debts) were given even after the local elections in Tivat³⁹. However we don't know whether the Agency submitted any initiative towards the Parliament of Montenegro.

The Agency should not wait, but it must use the possibility provided within the Law on Prevention of Corruption⁴⁰ and initiate legal changes aimed at the effective prevention of corruption in this area.

38) The Report of the Agency, page 46

39) The report on conducted monitoring during the election campaign for the election of councilors in the Municipal Assembly of Tivat and conducted control of financing of the election campaign of political entities, June 2016.

40) Law on Prevention of Corruption, Article 78, *Official Gazette of Montenegro* No. 53/2014

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