Montenegro: Building integrity in the defence sector

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Montenegro. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengren
Director General

Abbreviations and acronyms

CHU	Central Harmonisation Unit
DACI	The Directorate for Anticorruption Initiative
HRM	Human Resources Management
HRMA	Human Resources Management Authority
IAS	International Audit Standards
IIAS	International Internal Audit Standards
ISAF	The International Security Assistance Force to Afghanistan
LPOSD	Law on Parliamentary Oversight of Security and Defence Sector
MANS	The Network for Affirmation of the NGO Sector
MDI	Montenegro Defence Industry
MP(s)	Member(s) of Parliament
NCOs	Non-commissioned officers
NSA	National Security Agency
PIFC	Public Internal Financial Control
ROPP	Rules of Parliamentary Procedures
SAI	State Audit Institution
SIGMA	Support for Improvement in Governance and Management
UNCAC	UN Convention against Corruption

Contents

1 Executive Summary

Being an official candidate country for membership in the European Union, as well as the most advanced aspirant country to join NATO, Montenegro is undergoing significant changes throughout the whole system. Among other challenges identified in this endeavour, fight against corruption in defence sector will need to be particularly addressed, which represents the core issue of this report.

The recent EU progress report on Montenegro was, in general, positive, but highlighted levels of corruption and organised crime as areas for improvement. On that line, Montenegro welcomed the new concept of accession talks designed by the European Commission which was adopted after the previous experiences with Bulgaria and Romania. The „new approach" foresees that the first negotiating chapters have to do with security and the fight against corruption and organised crime, namely Chapter 23 on the judiciary and fundamental rights, and Chapter 24 on justice, freedom and security.

With regards to Euro-Atlantic integration, Montenegro is for the forth year in a row in the Membership Action Plan process. Noting the achievements made in this process, the Annual National Programmes for Montenegro identified key challenges that will need to be addressed and dealt with, including reinforcing the rule of law, finding the resources to modernise intelligence sector and the Armed Forces, as well as raising public support for joining NATO.

EU and NATO integrations are two complementary and compatible processes, both requiring a set of conditions and standards to be achieved, which will, in the long term, contribute to the overall modernisation and reform of the Montenegrin society and its institutions.

The direct oversight role of Parliament has been strengthened to a certain extent and the increasing number of parliamentary interventions in this regard has helped to improve the transparency and accountability of the government. However, much remains to be done, especially in facilitating the operation of the opposition parties and in establishing follow-up measures to the parliamentary conclusions and to recommendations on inquiries or questions. There are deficiencies when it comes to Parliament's involvement in high value military and security acquisitions or important military disposals. The Parliament is informed about these issues solely in the prior general debate on the state budget and ex post in the debate on the yearly report. This means that Parliament cannot, for instance, block decisions on high value military and security acquisitions or important disposals of military assets. This constitutes a risk factor for anti-integrity behaviour and corruption.

The democratic control of the defence sector is still weak. Activism by civil society organisations and courts might gradually achieve effective control of the intelligence services by the constitutionally designated institutions, namely Parliament and the executive, but there is still a long way ahead.

The Supreme Audit Institution and the Ombudsman, as parliamentary institutions monitoring the executive, need to improve significantly in order to gain influence in direction setting to public authorities in the executive.

The policy on reduction of conflicts of interests in the case of politicians and high officials is slowly being implemented, albeit suffering many reversals. When it comes to the armed and security forces there is no effective conflict of interest regime in place, as the few provisions contained in their sectorial law are completely insufficient to guarantee a minimally credible conflict of interest regime.

Transparency is a relatively new value in the country, but the principle of open and transparent administration is progressively, if slowly, taking place. However, the situation is far from being up to standard. One reason is that a marked bias towards confidentiality remains in legislation and in the administrative practice. Another is that institutions are too weak to ensure a sound implementation of the transparency policy and legislation.

Procedures governing public procurement acquisitions are slowly improving, including in defence sector. However, an overhaul of the exceptions to the general procurement rules on military and security grounds is necessary in order to make those exceptions more precise and justified. The disposal of military assets has been a major source of alleged cases of malpractices in the recent past, in part due to deficient legislation. However, legal loopholes permitting such disposal remain in place, which could lead to a resurgence of suspicion of corruption if selling more assets becomes necessary again. Discretionary decisions in defence-related procurement should be reduced in number and made clearly challengeable before the administrative court.

Decision-making powers are concentrated at the apex of the administration where the minister is the only person responsible for approving and authorising any expenditure, with no real scheme for delegation or for managing delegated powers. Under these circumstances it is very unlikely that a culture of financial management and responsibility will emerge. Therefore the internal financial control tends to be formulaic, with little effect on the control of corruption. The Inspector General at the Ministry of Defence focuses on military matters and has no role in financial management, public procurement or internal financial control.

The civil service and human resources management system is not sufficiently developed as a mechanism to promote impartiality and professionalism in state administration. However, advances have been made during the past few years within the framework of the EU integration to incorporate more clearly and resolutely the merit principles into human resource management schemes. The whole system remains fragile and its durability remains to be seen. However, no new civil service reforms should now be introduced. Efforts should instead be focused on consolidating and implementing the reforms made as recently as of 1 January 2013.

The Agency for Public management and eGovernment

Properly speaking there is no multipurpose anticorruption agency, which is not necessarily a flaw in the system. The Directorate for Anticorruption Initiative (DACI) is a specialised body within the executive, under the ministry of justice, providing policy proposals on preventing corruption and coordinating anticorruption initiatives at the national level.

2 Introduction

The accession of potential candidate countries to the EU and NATO, requires a scrutiny of the main institutional settings and working arrangements that make up their public governance systems in order to assess the resilience to corruption of governments and public administrations. In this vein, the present report assesses Montenegro´s preparedness for membership in NATO by evaluating the protection of public integrity in the defence sector.

The point of departure for the analysis is the observation that a holistic approach to security sector reform is increasingly called for.[1] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. Although the current report mainly focuses on the Montenegrin Ministry of Defence, it also addresses some key arrangements concerning the Armed Forces, in particular those regarding the management of AF human resources, material and financial resources. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across national systems of public governance and impacting the MoD as any other ministry.

To a large extent the report concentrates on checks and balances in the public sector, *i.e*. mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing of responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

- parliamentary oversight;
- anti-corruption policies;
- specialised anti-corruption bodies;
- arrangements for handling conflicts of interests;
- arrangements for transparency/freedom of access to information;
- arrangements for external and internal audit, inspection arrangements;
- Ombudsman institutions.

In addition to examining the checks and balances, the gap analysis focuses on two high risk areas susceptible to corruption/unethical behaviour:

- public procurement (or alternatively: disposal of defence assets);

[1] See for instance OECD (2007), *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice.*

- human resources management (HRM).

Both areas are of particular importance for the defence sector. In general MoD and the Armed Forces are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of these bodies.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: based on its analysis it proposes a number of recommendations for reform action to be undertaken by the government. This report presents the findings from a series of interviews with employees at all levels of the defence sector in Montenegro, and an assessment of various kinds of documents. It covers the period from 1st January 2007 until 1st March 2014.

3 Parliamentary oversight over the executive and independent bodies reporting to Parliament

In this section we analyse the functioning of Parliament in relation to its constitutional role of control of the political action and performance of the executive. Montenegro is a parliamentary democracy where the constitution allocates many powers to Parliament. We will analyse the inner direct parliamentary instruments (inquiries, questioning, etc.) as well as the way in which Parliament uses the reports of those institutions which, while being independent, report to Parliament, for example the Ombudsman, the Commission on Conflicts of Interest, and the State Audit Institution (SAI).

3.1 Direct parliamentary oversight over the executive

The 2007 Constitution gives sufficient standard powers to Parliament to oversee the security and defence policy, as well as the performance of the security services and the Army. In addition, the 2006 Rules of Parliamentary Procedures (ROPP, as last amended in 2010) and in particular the 2010 Law on Parliamentary Oversight of Security and Defence Sector (LPOSD) provide further mechanisms for the parliamentary control of intelligence and defence-related areas. Along with these two instruments, Article 177 of the Law on the Armed Forces of 2009, as last amended in 2011, states that "the Armed Forces shall be under democratic and civil control. Democratic and civil control of the Armed Forces shall be carried out by the Parliament of Montenegro, the Government of Montenegro, and the Defence and Security Council. Supervision over the Armed Forces shall be carried out by the Parliament of Montenegro through its competent working body". The August 2012 amendments to Article 26 of the 2008 Information Secrecy Law awards free access to classified data to the members of the Parliamentary Committee of Security and Defence.

Previously, the ROPP foresaw parliamentary control only over the police and the intelligence service, not over the Army and the Ministry of Defence. This absence was addressed by the 2010 LPOSD, which lists all the security-related institutions and organisations under the remit of parliamentary scrutiny. It now includes the Armed Forces and the Ministry of Defence.

Although the legal framework for parliamentary oversight is largely in line with international standards there are some limitations to its actual effectiveness. In Montenegro MPs can pose questions to the government only in separate, special sessions held every two months (Article 187 of the ROPP), which limits the parliamentary capacity to react immediately in face of governmental malpractice. Likewise a parliamentary inquiry, which can be initiated by 27 MPs if they justify the need for it, can be rejected by simple majority without any justification whatsoever. Perhaps the parliamentary oversight could be made more effective if the ROPP would allow for a parliamentary inquiry to be initiated by a motion supported by 30 per cent of MPs. Moreover, members of

parliamentary committees generally do not use their powers fully. The Committee for Security and Defence has failed to consider or react to a state audit report on alleged malpractices in the financial management of relevant ministries.

A positive aspect is that parliamentary meetings in plenum are broadcast on television and radio thus allowing interested citizens to follow the question and answer sessions as well as the debates on inquiries and draft legislation.

In practice, the Ministry of Defence provides the Parliament on a regular, annual basis with quantitative and procedural information concerning public procurement in the Armed Forces and arms sales or military asset disposals and revenues. Namely, MoD submits the following reports to the Committee for Security and Defence: Report on Conditions in the Military of Montenegro; Report on Performance of Ministry of Defence; Report on Participation of Armed Forces in Peace Keeping Missions. The reports are submitted on a yearly basis. The yearly report also contains information on the maintenance of the Armed Forces. However, it appears that the information provided on procurement procedures is not sufficiently detailed, especially when it comes to details of the items purchased and the identity of the supplier (information usually classified as confidential). This could raise doubts on the integrity of spending on defence-related issues.

There are deficiencies when it comes to Parliament's involvement in high value military and security acquisitions or important military disposals. The Parliament is informed about these issues solely in the prior general debate on the state budget and ex post in the debate on the yearly report. This means that Parliament cannot, for instance, block decisions on high value military and security acquisitions or important disposals of military assets. This constitutes a risk factor for anti-integrity behaviour and corruption. According to generally acknowledged international standards parliaments should:

- Examine and report on decisions/planned decisions regarding procurement/asset disposal/arms sale, arms transfer
- Examine and report on proposed contracts
- Review the following phases of procurement:
    - Specifying the need for equipment
    - Comparing and selecting a manufacturer
    - Assessing offers for compensation and off-set

In addition, the practice is that the parliamentary governing majority shows little curiosity about government performance, which adds to the opaqueness of the acquisition and disposal practices.

According to existing information and evaluations released by civil society organisations,[2] the effectiveness of parliamentary oversight of defence and

[2] See *Institute Alternativa* (2011), "Law on Parliamentary Oversight of Security and Defence Sector First Year of Implementation" available at: http://media.institut-alternativa.org/2012/07/institute-alternative-

security is hampered by Parliament's failure to review reports in a timely manner and to address a number of issues raised in them in a sufficient number of sessions. For example, the parliamentary debate on the 2008 Ministry of Defence report was initiated only in November 2009 and the 2010 report in July 2011, at a time when the Committee was overwhelmed with the simultaneous discussion of two other equally important reports, one on troop deployment and another on a proposal to send army personnel to support the International Security Assistance Force to Afghanistan (ISAF). The simultaneous accumulation of important reports for parliamentary consideration and debate undermines the capacity and the role of Parliament to adequately scrutinise reports and oversee programmes.

Nevertheless, the Montenegrin Parliament is progressively asserting its supervisory role over defence and security. In 2011 two control and two consultative hearings were held at the initiative of opposition parties, although only one hearing took place in the entire period from 2008 up to 2011. These achieved mixed results since the control sessions ended without concrete mandates, recommendations or follow up. But the consultative hearings were well prepared, open to the expert participation of civil society organisations and with specific recommendations on flood prevention and maritime safety, which were the matters under scrutiny. The Parliamentary Committee on Security and Defence submitted 9 reports in 2012 to the plenum of Parliament, which has reviewed only one of them.

The role of the specialised Parliamentary Committee for Security and Defence, established in 2005, is to oversee the whole security sector, including the intelligence services, but it is not the sole committee in charge since the Budget and Finance Committee also has the security sector within its purview. Moreover, a recently created parliamentary committee, the Anti-corruption Committee, also holds oversight powers over the security and defence sector. The Security and Defence Committee is considered one of the most important in Parliament. It has 13 members and is chaired by a member of the majority, and is becoming increasingly active. Its legal framework is the ROPP, but more specifically the LPOSD.

The latter clearly demonstrated the oversight potential of the Committee by allowing one third of its members to set the agenda, whereas previously this could easily be impeded or blocked by the ruling majority. Nonetheless, the Committee chairman may decide at his discretion not to include a given topic on the agenda or delay sine die the debate on a given topic, which can frustrate the reinforced oversight powers of the Committee. The Committee has to report yearly on its activities to the plenum of the Parliament, which according to observers like the *Institute Alternativa*, could force the Committee to work in a more proactive way. However, so far opposition parties have been rather passive in using the new instruments that the legal framework put at their

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law-on-parliamentary-oversight-of-security-and-defense-sector-first-year-of-implementation-en.pdf; as well as the 2013 Report on the Second Year of Implementation, released on 29 March 2013.

disposal and the ruling majority has continued to obstruct key questioning of government performance in security and defence issues.

The professional parliamentary staff at the service of the Security and Defence Committee is 4-strong, whereas the Committee on Budget and Finance is 5-strong. These staffing numbers are clearly insufficient in either case. In addition, the recruitment of the staff has reportedly been questioned because of favouritism and disrespect of the merit principle. Training received by the staffers, mainly provided by international donors[3], could offset allegations of staff incompetence by supplementing their capabilities.

MANS (The Network for Affirmation of the NGO Sector) accused the police of bugging private citizens' communications for more than two years through a secret agreement concluded in 2007 with a private mobile telecommunications operator in a manner contrary to the constitution. The court finally upheld that charge and declared the agreement null and void. Despite this clear court ruling, which is final, neither disciplinary sanctions nor legislative action have been undertaken as yet to punish the perpetrators of the agreement and prevent subsequent monitoring of communications. Inexplicably, the Parliament has not reacted to this incident either. This behaviour has raised serious questions about the role of the police, which was illegally applying special investigative activities. Both the National Anticorruption Commission and the Agency for Personal Data protection have defended the agreement between the police and the telephone company as perfectly legal.

In general, a diverse evaluation of the more recent developments concerning the parliamentary oversight of the security and defence sector is given by most international observers, including the European Commission Progress Reports of 2011 and 2012, and the analysis of the security sector since 2009–2012 conducted by a number of NGOs under the financial auspices of the Norwegian Ministry of Foreign Affairs.[4]

In summary, the direct oversight role of Parliament has been strengthened to a certain extent since the adoption of the LPOSD, and the number of parliamentary interventions in this regard has increased in recent years enhancing the transparency and accountability of the government. However, much still remains to be done, especially in facilitating the operation of the opposition parties and in establishing follow-up measures to the parliamentary conclusions and to recommendations on inquiries or questions. A major cause for concern regarding parliamentary oversight of potential corruption in defence and security are inadequacies in legal

[3] Mainly by the Centre for Democratic Control of Armed Forces (DCAF) and Westminster Foundation for Democracy.

[4]See: Kalac, Emir and Sindik, Nedeljk: "*Security Sector Reform in Montenegro 2009-2012*", under the Project on "Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans" financed by the Ministry of Foreign Affairs of the Kingdom of Norway and carried out, in cooperation with the DCAF, by seven local think tanks in the Western Balkan region. Podgorica 2013.

frameworks and actual practices which make the involved decision makers vulnerable to allegations of wrongdoings.

3.2 Control of the Military and Intelligence Services by Parliament and by the Executive

According to the Constitution, the oversight of the intelligence services is the responsibility of the Parliamentary Committee on Security and Defence. The legal framework, apart from the constitution, is composed of the Parliamentary Rules and Procedures, the 2005 Law on the National Security Agency, the Law on Defence, the Law on Data Secrecy and in particular the 2010 Law on the Parliamentary Oversight of the Security and Defence Sector. The latter consolidated all legal provisions concerning the democratic oversight of the intelligence services and broadened the powers of the Parliamentary Committee. These powers are deemed to be sufficient to effectively fulfil its oversight role. The Committee's remit includes the Ministry of Defence, the Armed Forces, the police and the National Security Agency.

The Director of the National Security Agency (NSA), a body responsible for the performance of national security activities aimed at the protection of the constitutional order, independence, sovereignty, territorial integrity and security of Montenegro, human rights and freedoms determined by the Constitution, as well as other activities relevant to the national security interests, is appointed by the government upon proposal from the Prime Minister and the opinion of the Parliamentary Committee.

The Head of the Department for Military Intelligence and Security Affairs is appointed by the Government on the proposal of the Minister of Defence, with an opinion obtained from the Parliamentary Committee for Security and Defence.

The 2012 Law Amending the Law on Defence stipulates that, besides the intelligence and counterintelligence affairs in the area of defence, which are organised and performed by the NSA, military intelligence, counterintelligence and security affairs are organised and performed by the Ministry of Defence and Armed Forces. These affairs are performed by the Department for Military Intelligence and Security Affairs, an organisational unit within the Ministry of Defence.

The main control device of the intelligence services by the executive is through the appointment and dismissal of the director of the NSA, who reports to and is accountable to the government for his personal performance and for that of the NSA as a whole. An inspector general within the NSA is directly appointed and dismissed by the government. The inspector general reports to both the director of NSA and to the government.

Intelligence, counterintelligence and security affairs performed by the Ministry of Defence and the Armed Forces are supervised by the Government, the Parliament Committee for Security and Defence and the Security and Defence

Council. Internal control over the conduct of military intelligence, counterintelligence and security affairs in the Ministry of Defence and the Armed Forces is performed by the Defence Inspector, in accordance with Article 56 paragraph 2 of the Law on Defence.

Legally speaking, the NSA is an independent organisation with its own budget and managerial autonomy. The extent to which the government may interfere politically in the daily operations of the NSA is difficult to ascertain. The main criteria for appointing the current director of the NSA were political, not professional. There is no legal constraint preventing the government from doing the same in the future. This calls into question the impartiality of the NSA and also raises doubts about the risks of partisan utilisation of the intelligence services by the ruling political parties.

The NSA shall request judicial authorisation to undertake special investigative activities entailing intrusion into the privacy of individuals. The Law (Article 14) stipulates in detail the conditions to be fulfilled in order for a judge to authorise those investigations. This design of the judicial intervention is deemed as adequate.

The Department for Military Intelligence and Security Affairs is embedded within the Ministry of Defence.

In conclusion, the framework for the democratic and civilian control of defence is still weak. Activism by civil society organisations and courts may gradually promote effective control of the intelligence services by the constitutionally designated institutions, namely Parliament and the executive.

3.3 The State Audit Institution

We include the State Audit Institution (SAI) within the section on parliamentary oversight of the government because the SAI, although independent, reports to the Parliament and government, its members are appointed by the Parliament and it requests its budget directly from the Parliament. In this sense, it can be regarded as an institution serving the constitutional parliamentary mandate to oversee the executive.

Article 144 of the constitution defines the SAI as an independent and supreme authority of state audit. It is a collegial body made up of a senate of five and the president is elected among them. The remit includes all bodies funded from the state budget or created using state property and the SAI can carry out regularity (financial) and performance audits regarding the use of public funds and assets. However, the audit carried out so far has mostly concentrated on regularity.

The Law on the SAI was adopted in 2004 and has been amended several times, the last time in 2007. Namely, when the country became aware of the importance to introduce the function of external audit, it referred for support,

among other external actors, to the German technical cooperation, who than deployed a project in 2002 leading to the creation of the SAI in 2004.

The legislation ensures the functional independence and the financial autonomy of the SAI. However, a recently released SAI 2012–2017 Strategic Development Plan indicates that the independence of its members and officials is not sufficiently guaranteed. As a consequence, the development plan seeks to secure the functional immunity of the senate, similar to that enjoyed by judges.

Article 51 of the Law on the SAI ensures financial autonomy and according to observers, such autonomy is reasonably guaranteed in practice, but it would be reinforced if the Ministry of Finance were less authoritative in establishing the SAI budget and would negotiate this with the Parliamentary Committee on Budget and Finances.[5] Therefore, the financial autonomy of the SAI may be compromised by this recurrent behaviour of the Ministry.

The staff is more than 50-strong with almost 40 senior or junior auditors. Apart from the members of the senate, staffers are civil servants who need to be recruited and managed according to the merit-system rules defined in the 2011 Law on the Civil Service and State Employees. The systematisation (inventory of posts) allows for an additional number of 12 staffers. The staffing numbers are reasonably well established. Training is mainly provided by senior staff members through in-service induction of their junior colleagues. SAI premises are still insufficient, as its office space is scarce.

The SAI is free to decide its working plan in which it can include discretionarily and randomly a selection of bodies and institutions. All institutions and bodies are legally obliged to submit any information requested to the SAI. This approach may lead to a waste of resources and the SAI could improve its effectiveness by introducing more risk-based selection criteria upon which to base its choice of bodies to be audited each year.

Clearly, the security and defence funds would fall within this category of maladministration and corruption risk-prone funds because the largest budgetary appropriation of funds goes to security providers and because the complex nature and confidentiality of security-related public expenditure makes it particularly vulnerable to malpractice. For the first time, in 2008 the SAI audited the Ministry of Defence and in 2012 the National Security Agency (NSA) − the intelligence services − to the astonishment of the incumbents. The NSA was very diligent in implementing the recommendations of the SAI.

The possible vulnerability to malpractice of security-related funds may be supported by the findings of the 2007 audit on the Ministry, which indicated that the Ministry had used confidential procedures for procurement/disposal more than necessary. In addition, other more technical-financial deficiencies were found by the SAI auditors in the financial management arrangements of

[5] See the March 2012 SIGMA Assessment of Montenegro.

the Ministry, some of them in breach of the budget and public procurement laws. It is worth mentioning that most of the findings were due to the fact that the Ministry of Defence was audited after only 6 months of its establishment (June 2006), when as yet no strategic documents, plans, or the job systematisation had been adopted. Thus, a realistic planning of the budget in the previous year, i.e 2006, which at the time was conducted only by the General Staff, was impossible. The Ministry formally accepted the audit conclusions, and informed the SAI in due course (by October 15, 2008) of the steps it has undertaken to remedy the failings identified. Another audit exercise should be conducted on the Ministry of Defence sooner rather than later.

The SAI shall submit its reports to the Parliament and government. The annual SAI report shall be made available to the general public too. Secondary legislation also stipulates the dissemination of special reports through various kinds of mechanisms (publication, internet, press releases or statements, press conferences and so forth). These provisions on reporting transparency make no exception of security and defence-related audit reports.

The stance of the Parliament towards the SAI reports is uneven and at times uninterested. However, if compared with other parliamentary committees, the parliamentary committee members on security and defence deploy a very active stance on reports concerning their subject matters, according to observers such as the *Institute Alternativa.*[6] The implementation of the SAI recommendations by the Parliament and state administration is not followed up so as to establish whether the audited bodies have in practice heeded the SAI‘s recommendations. In general, it seems that state institutions and bodies pay relatively little attention to the SAI recommendations. To improve this situation, it would be helpful if the SAI showed greater concern about the applicability and relevance of its recommendations.

The SAI performance is questioned by certain civil society organisations because it has never brought a single court action on misdemeanours or crime in public financial matters, despite gathering evidence deemed to be sufficient in many cases. It is unknown whether the prosecutor has initiated any case based on SAI audit findings. Likewise, the personal independence of the incumbent SAI president is being questioned by media reporting that he received a loan from the government to cope with his legal defence costs incurred when an Italian criminal court investigated massive cigarette smuggling that occurred during his tenure as Minister of Finance.

The performance of the SAI would improve if less focus was put on randomness as the main criterion for choosing the bodies to be included in its annual audit plan, while introducing malpractice and corruption risk vulnerability as one key criterion. It would equally improve if sound follow-up mechanisms regarding the way in which audited institutions implement the SAI

[6] *Ibid*.

recommendations were introduced. Efforts should be made to raise the interest of parliamentarians in the findings of the SAI.

3.4 The ombudsman institution

The Ombudsman institution was created in 2003 as a Protector of Human Rights and Freedoms whose competences were focused on the field of human rights. The institution has no jurisdiction on matters other than human rights. Therefore, maladministration and corruption fall outside its remit if there are no human rights-related matters also involved. In consequence, the Protector can intervene over the armed and security forces only if there are allegations of human rights violations. In 2011, the Protector processed 13 complaints against the Ministry of Defence and decided upon 12 of them. No specific data are publicly available on the contents of these complaints and how the Ministry complied with them, but most of them are complaints about the slowness of the Ministry in solving personnel complaints about housing and access to information issues.

Although the institution is defined in Article 81 of the 2007 Constitution as autonomous and independent, Article 50 of the Law of 2003 still obliges the Protector to negotiate its budget with the government, which puts into question the financial autonomy of the institution. This is also reflected in the 2011 Report of the Ombudsman where (page 137) it is stated that the institution has no "financial independence". The European Commission's 2011 Progress Report signalled that the financial resources made available to the Protector "are insufficient to carry out all its tasks efficiently". However, the institution spent only 86 per cent of its allocated budget in 2011. The new 2011 Law on Civil Service and State Employees further undermines the independence of the Protector by shifting the responsibility for recruitment of the Protector's staff to the Human Resources Management Authority (HRMA) under the Ministry of the Interior with prior authorisation by the Ministry of Finance.

The Protector and his deputy are elected by a simple majority of Parliament for a six-year term with possible re-election. The position is full time and incompatible with membership in political parties and with any kind of political or professional private activity, and the incumbent can be dismissed by the Parliament only in the cases listed by the Law. Staffers at the Protector's office are civil servants and they are 20-strong, including 8 experts. The number of staff and the premises are considered insufficient as reported in the Protector 2011 Annual Report.

The Protector can initiate a legislative procedure to amend existing laws or introduce new legislation in the field of human rights and propose a procedure on the constitutionality of laws to be filed before the constitutional court (Articles 25 and 26 of the 2003 Law). The Protector can also request the initiation of disciplinary procedures against officials deemed to be responsible for human rights violations (Article 45). Although there is a sentiment among international observers that administrative bodies tend to disregard the Protector's recommendations, in fact the influence of the Protector is

progressively increasing in the view of the institution itself. However, it is doubtful whether the institution is well equipped to carry out effectively the new responsibilities given to it by the 2011 amendment to the Law on the Protector whereby the institution takes responsibility for the prevention and combatting of torture and ill-treatment as foreseen by the international treaties[7] ratified by the country.

The Protector submits an annual report and as many specific reports as necessary. Reports are generally of high quality. The majority of them refer to the slowness or silence of state bodies in solving citizens' complaints. The Protector has identified individual cases of human rights violations. The country, despite some incidents, is generally respectful of human rights.

The Protector should have more financial autonomy and managerial independence from the executive.

In conclusion, the Supreme Audit Institution and the Ombudsman, as parliamentary institutions monitoring the executive, need to improve significantly in order to gain influence in direction setting to public authorities in the executive.

3.5 Prevention of conflict of interest

Conflict of interest is regulated by the Law on Prevention of Conflict of Interest of 2009, as amended in 2011. The first Law on the matter was enacted in 2004. It created the Commission of Prevention of Conflicts of Interest. The conflict of interest regime has been ineffective. It remains to be seen whether the new regime established in 2011, applicable since March 2012, will be more effective. The introduction of a conflict of interest regime has been internationally driven and was not in response to any significant domestic pressure. This absence of local ownership may lead to a failure to implement the regime.

Public officials, defined (Article 3) as encompassing anybody elected, nominated or appointed to a representative public body or public administration, are obliged to submit declarations of income and property to the Commission for the Prevention of Conflict of Interest within 30 days from taking office and regularly every ensuing year. The income and assets of a number of close relatives, including unmarried couples, shall also be included in the relevant official´s declaration. The definition of public official, which was amended in 2011, remains vague and raises legal uncertainty as to its scope. This may represent a further loophole conducive to a weak implementation of the regime.

[7]Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.

It is true that the intention of the new Law on Conflict of Interest was to expand its scope, but the vagueness still remaining in the definition of public official reveals an uncertain conflict of interest policy, which translates into legislation where the unnecessary profusion of details in some aspects and the absence of them where they are needed rends the regulation confusing. The legislation in force requires fine-tuning and precision, as the balance between the public interest and the rights of the individual should be more clearly guaranteed. The unclear legal provisions are conducive to certain officials being appointed to the boards of several public bodies or steering committees, which could be against the intention of the law.

In March 2013, the number of public officials within the scope of the conflict of interest regime is estimated at 3,538 (1,420 at state level and 2,118 at local government level). Out of that total, 1,372 have submitted their 2012 tax declaration. Given the difficulties of the Commission in verifying bank accounts, the majority of declarations refer only to property, not liquid assets.

Article 20 of the Law stipulates the content of tax declarations, which is quite comprehensive. The Commission has to verify the declarations, which raises difficulties when it comes to bank accounts, which are not verified. In addition, doubts exist as to whether the Commission is independent and objective enough in carrying out the authentication processes. Data declared are stored in a Register held by the Commission, which is accessible to any interested individual or public authority.

Breaches of the law may lead to fines (ranging from €300 to €1,500) and disciplinary sanctions to be imposed by the employing institution. If the Commission concludes that the scrutinised behaviour of an official constitutes a criminal offence, it is obliged to forward the whole dossier to the prosecutor and withdraw from the investigation. In 2012 the Commission issued 649 decisions on breaches of the law, the most common violation being failure to declare income or assets, incomplete information, and breaches of the incompatibility regime.

In recent times (2010) concurrent employment of the highest officials in the Armed Forces in weapons-related companies selling weaponry and other military equipment to the Army, such as MDI (Montenegro Defence Industry), has also drawn the attention of the media.

Public officials are not allowed to enter into contracts for the provision of services to public companies or private companies which are in legal relationships with the state body or municipality where the official is employed. However, contracts amounting to less than €500 per year are allowed. These restrictions do not apply to military personnel. Working for scientific, humanitarian and suchlike organisations is permitted, including in non-governmental organisations.

Members of the Armed Forces are not included within the scope of the law on conflict of interest. Therefore they are not obliged to declare income or assets,

whereas the non-military staff within the Ministry of Defence are. Nonetheless, professional military personnel serving in the Ministry of Defence who have been appointed as public officials, declare their assets and income in accordance with the provisions of the Law on the Prevention of Conflict of Interest.

Chapter VIII (Articles 55-60) of the 2009 Law on the Armed Forces, as amended in 2011, describes standards of conduct for military personnel. Duties include the obligation to act impartially and to avoid conflicts of interest, not to accept gifts and privileges personally or for their family, although they are allowed to undertake certain gainful, compatible activities outside working hours, if authorised. Their superiors define which activities are compatible on a case-by-case basis. Certain activities such as scientific research, teaching, humanitarian work, sports and the like are not subject to prior authorisation.

Civilian personnel are barred from being members of private companies and must resign from these or, if they are shareholders, they must transfer their shares to a blind trust fund until the termination of the official function and notify the transfer to the Conflict of Interest Commission within five days. Military personnel are not affected by this prohibition.

Public officials participating in administrative decision-making procedures shall abstain and withdraw from the procedure, save certain exemptions stated in the Law of Conflict of Interest (Article 12). If the official fails to withdraw, the decision in question is null and void.

Articles 14-18 of the Law regulate the prohibition on accepting gifts, except those of little or symbolic value. Otherwise the gift must be returned to the giver. These provisions do not apply in the Armed Forces, which have no equivalent restriction. Likewise the cooling-off period of two years after quitting office (Article 13) applies only to the civilian personnel of the public administration, but not to the Armed Forces.

The Commission for the Prevention of Conflicts of Interests is the authority for the administration of the conflict of interest regime. The Chair of the Commission is a full-time job whereas the other six members are part-time. The Secretariat is 9-stong (up to 13 in line with the systematisation). The annual budget is adequate as well as the office space and premises. The Commission has no financial autonomy since its budget is administered by the Ministry of Finance. The Commission is not independent of political parties either, as its members can hold office in a party, albeit not serve on its managing bodies. They are elected by majority vote in Parliament: they may thus be expected to be subservient to the ruling majority.

The performance appraisal of the Commission is so far mixed. The notion of conflict of interest and the practice of avoiding it is still unfamiliar since it has been imposed by international actors, especially by the conditionality linked to the EU accession process. On the one hand the Commission has attempted to achieve some results, but is confronted with many external and internal

difficulties. Among the internal difficulties is the lack of political and financial independence. Among the external is the opposition that its actions incur from other institutions (e.g. the Agency for Data Protection and Free Access to Information has challenged the Commission in court to prevent the publication by the latter of banking data, and to exclude from the law underage members of public officials' households).

Politicians and public officials at local level actively oppose the application of the conflict of interest regime. Nevertheless, awareness is increasing of the negative effects of conflicts of interest on the performance of the democracy, and citizens' trust in the public institutions and conflict of interest situations is progressively diminishing.

In summary, the policy on reduction of conflicts of interests in the case of politicians and high officials is slowly being implemented, albeit suffering many reversals. When it comes to the Armed Forces there is no effective conflict of interest regime in place, as the few provisions contained in the sectorial law are completely insufficient to guarantee a minimally credible conflict of interest regime.

3.6 Transparency, free access to information and confidentiality

Free access to information is a constitutional right (Article 51 of the constitution) further developed by the 2012 Law on Free Access to Information, which replaced the 2005 Law. The 2012 Law introduces more restrictions to access to information than the previous one did, but it also provides more opportunities to challenge the classification of data as confidential. It has also introduced more severe penalties to be imposed on officials breaching the law. The new Law also foresees that a body independent of the executive will supervise and protect the freedom of access to information, a function which was previously awarded to the Ministry of Culture. The recent changes were driven by the EU conditionality, but also by intensive domestic lobbying by non-governmental organisations, and others. The transparency regime is also regulated by the Law on Data Secrecy of 2008, amended in 2010 and 2014, and the Law on Personal Data Protection of 2008, amended in 2012.

Article 14 of the Law on Free Access to Information spells out the restrictions and exceptions to that right, which include security, defence and foreign policy, and cross-refers to the regulations on data secrecy. Article 3 of the Law on Data Secrecy loosely defines secrecy in terms of protection of the security and defence of the country. The combination of the above-mentioned three pieces of legislation gives an unclear picture of the restrictions to access to information. In the final instance the decision will be at the discretion of the official in charge of classifying information in any of the grades of confidentiality (top secret, confidential, restricted and so forth), even if the new Law opens more ways to challenge such decision. This situation needs to be addressed. The current regime on transparency provided for by the three above-mentioned legislation does not spell out clear criteria for assessing, with an acceptable

degree of legal certainty, the possible harmful consequences of data disclosure. Nevertheless, certain steps have been made in order to further align the three pieces of legislation mentioned with the European standards in this area. Namely, the decree which is supposed to specify the categories of data to which can be assigned the level of secrecy: top secret, secret and confidential is in the procedure of drafting.

On the other hand, the Law on Free Access to Information is fairly well aligned with international standards in terms of no need to justify the petition of information, timeliness of the data provision by officials (15 days), and free of charge access (but obligation to cover certain costs by the applicant). The implementation of the transparency regime has been uneven so far. MoD is investing continuous efforts to publish as much information as possible on its web page, and to respond to the request on free access to information, all with the aim to promote the principle of transparency to the greatest extent possible.
In February 2013 the Agency for the Protection of Private Data was also given the responsibility to protect the access to information. Thus it is responsible for the two policies. The Agency's bodies are the Council and the Director. Council members are elected (legally unspecified type of majority) by Parliament for a five-year term and are directly accountable to Parliament. The Director is appointed by the Council through a public competition procedure. Staffers are governed by labour law, not civil service legislation, which is assessed by the Director as an advantage in that it frees him from merit-based recruitment constraints. Obviously, this allows him to take largely discretionary decisions in human resource management, promoting patronage practices, and poses a risk to the impartiality of the Agency. The media has already reported criticism by council members of the personnel management practices of the Director, asking for his dismissal.

Given that the protection of free access to information has been amended recently to the more traditional tasks of private data protection, the Agency does not comprise at present (February 2013) staffers dedicated to the new function of access to information. The systematisation foresees a staff of 25, but only 18 posts are filled so far. The salaries of council members and the Director, all of them full-time jobs, are equivalent to those of judges of the constitutional court. The Director's remuneration is likened to that of the secretary general of the constitutional court, but he is entitled also to other compensations as regulated by the Agency. The salaries of the rank and file staff are determined by self-regulation of the Agency, which poses a risk of rent-seeking. Training of the staff relies on funding by international donors. Premises and equipment seem to be adequate.

Failure by the administration to release information can be challenged before the administrative court, which is a well-reputed institution. However, its rulings are quite often ignored – with no consequences – by administrative authorities. This is very damaging not only to the freedom of access to information, but to the notion of a state ruled by law, a fundamental Copenhagen criterion for EU accession.

The new Law obliges public authorities to make public more data than before, including the salaries of senior officials. This also affects the Ministry of Defence. Namely, the data on salaries and other remuneration of senior MoD officials could be found on the MoD's web page, and they are published on a monthly basis.

In this ministry an Archive Service is functional as of 2007. Although being sufficiently staffed, further training and improved working conditions are needed. It keeps all the information concerning the Ministry, except procurement dossiers classified as confidential. A thorough overhaul of its current archiving practices needed.

The transparency of defence budget is ensured as it is the public document, nevertheless, confidential spending and income (from sales of military equipment) is not disclosed except, upon request, to the members of the Parliamentary Committee on Defence and Security.

Transparency is a relatively new value in a country but the principle of open and transparent administration is progressively, if slowly, taking place. However, the situation is far from being up to standard. One reason is that a marked bias towards confidentiality remains in legislation and in the administrative practice. Another is that institutions need to put more commitments and efforts in order to ensure a sound implementation of the transparency policy and legislation.

4 Policies under the responsibility of the executive

4.1 Public Procurement and Military Asset Disposal

4.1.1 Acquisitions through Public Procurement

The 2011 Law on Public Procurement entered into force on 1 January 2012, and was passed as a result of the EU integration process under pressure and through technical assistance from the EU to transpose fully the *acquis communautaire*, but the EU Directive 2009/81 on Defence has not been transposed. The legal framework is supplemented by the Laws on Administrative Procedures (2011) on Administrative Disputes (2003), and on Concessions (2009), as well as the Decrees on the Organisation and Functioning of the State Administration (2012) and on Special Purpose Foreign Trade (2010).

The legal framework establishes a multitude of exceptions to the application of the general legislation on public procurement. Article 3 of the 2011 Law excludes weaponry and munition procurements along with other defence-related supplies. The broad range of exceptions to public procurement procedures encourages arbitrariness in public procurement and contradicts EU Directives.

The Decree on Special Purpose Foreign Trade determines that the purchase of assets for special means is carried out through confidential equipment procurement procedures. The Minister of Defence decides discretionarily on labelling a procurement as confidential, and the degree of confidentiality, within the criteria established by the legal framework, especially the Law on Foreign Trade Ammunition, Military Equipment and Goods with Dual Use.

Article 3 of the Law on Procurement demands that the government enact a decree singling out the exceptions to the general rule on public procurement. However, the decree is still pending. The data[8] show that defence non-publicly tendered procurement acquisitions represented 15% of the total defence procurement in 2011, but in 2012 this totalled 60.8%.

The institutional setup for public procurement consists of the Public Procurement Authority, which is an autonomous administrative body responsible for policy preparation and implementation, and the State Public Procurement Control Commission, which is the review instance for complaints. The two institutions have acquired wider control powers under the new Law.

[8]Public Procurement Administration of Montenegro: "*Report on Public Procurement in Montenegro for 2011*" (published in May 2012) and Ministry of Defence´s Department for Contractual Arrangements and Public Procurement, available at: http://www.business-anti-corruption.com/media/4000099/institute-alternative-corruption-and-public-procurement-in-montenegro.pdf

The Ministry of Finance is in charge of supervision of the legality and purposefulness of the Public Procurement Authority. This latter has some 14 staffers (18 foreseen in the systematisation) organised into four departments. The budget is insufficient for it to monitor public procurement processes adequately. Observers such as the European Commission and SIGMA consider that the institution needs further efforts to build its capacities.

Each contracting authority has to appoint a "Procurement Officer" responsible for monitoring the legal conformity of all procurements carried out within the remit of that authority, but final decisions on procurements are taken by the "Tenders' Committees", both for open and confidential tenders. No clear specification exists in legislation as to who can be a member of a tender committee. This arrangement creates ambiguous situations because the tender committees divest the procurement officers of most of their authority, while the latter are still held responsible for the quality of the procurement processes and outcomes, and are liable to administrative sanctions in the case of mistakes.

The Government adopted a General Ethics Code for Public Procurement while demanding that each institution adopts its own code consistent with this. There are no requirements for potential tenderers to show good business compliance records, but the Ministry of Defence, for example, shall request information from other state departments (social security contributions, tax clearance, etc.). There is no requirement concerning anticorruption programmes to be carried out by private tenderers.

In general, the needs' analyses and market research carried out prior to launching a procurement procedure are relatively sloppy, often leading to waste of budget funds, according to observers[9]. This opinion is shared to some extent by the Public Procurement Authority.[10]

Contracting authorities shall inform the Public Procurement Authority before initiating procurement procedures. The latter publishes the tender on its website, known as the Public Procurement Portal. Potential tenderers shall be given sufficient time to prepare their bids. The length depends on the complexity of the tender. The minimum time limit in open procedures is 37 days, but the contracting authority may extend the time limit (Article 89) or shorten it by reason of urgency (but never less than 22 days).

The defence and military procurement responsibilities are centralised in the Ministry of Defence and the Armed Forces. The 2013 Act on amending the Act on Organisation and Systematisation of the Ministry of Defence establishes within the Ministry a Service for Procurement. The Service has the main responsibility for all procurement procedures within the Ministry of Defence and the Armed Forces. Other MoD organisational units provide input to the processes. There are 7 positions systematised in the Service. Two military persons and four civilians make up the current staff consisting mainly of

[9] *Ibid.*
[10] *Ibid.*

lawyers and economists. However, the training they receive is insufficient. The head-of-section post is currently (February 2013) vacant. The current staff is sufficient for handling high value procurements, but is insufficient to deal with the numerous low value procurement procedures. The personal details of the MoD's "Procurement Officer" are published on the webpage of the Public Procurement Authority.

The Law forbids discrimination and obliges all contracting authorities to act impartially and in a transparent way. The procurement specification is part of the tender documentation, which reduces the risk of favouritism towards a given supplier. In general, the Law seems to be respected in this regard, but there appears to be a loophole in the law when it comes to objectivising the criteria for assessing the offers provided by the bidders.

The 2011 Law contains provisions determining the exclusion of bidders based on suspicion of corruption or conflict of interest. In the case of suspicion of corrupt practices by the tenderers, the contracting authority, including the Ministry of Defence, shall submit the matter to the public prosecutor, with a recommendation to include the relevant bidder on a "black list". The inclusion on a black list is rarely due to corruption. It is more often due to poor or non-implementation of contract obligations. The inclusion on a black list has limited consequences, as only the authority taking the initiative to include someone on such a list is circumscribed by this: other state institutions may still contract with a blacklisted supplier.

The Law devotes significant attention to preventing possible conflicts of interests on both demand and supply sides. The contracting authority shall disclose any potential conflict of interest affecting anyone participating in a procurement procedure. No civil servant or authority can, for a period of two years after the conclusion of the contract, enter in an employment relationship with a bidder to whom a contract was awarded in which that authority was involved (Article 16).

The Tenders' Committees shall keep the records and report the procurement procedures with recommendations regarding the choice of the most appropriate bid to the contracting authority, usually a minister. The minister is not compelled to accept the recommendation issued by the tenders' committee. Nor is he obliged to ask a prior authorisation from Parliament or the Council of Ministers. This is one of the main flaws of the current legal framework: although in practice the minister usually chooses the bidder recommended by the tender' committee, he enjoys large legal discretion to award procurement contracts to whoever he sees fit or to discontinue the awarding procedure, and he does not need to give reasons for his decision. It is hoped that this problem will be addressed in the ongoing review of the Administrative Procedures Law. The Public Procurement Authority shall publish the final award on the Public Procurement Portal. These provisions are generally complied with. The Ministry of Defence has the practice of publishing the award on its website as well.

The Ministry of Defence does not have a department or mechanism to ensure that procured goods or services have an acceptable quality. The practice that the officials who defined the terms of reference and the technical specifications are the same as those checking the quality of the goods or services procured is detrimental to quality and may lead to corruption.

The complaints and review mechanism is placed in the State Commission for the Control of Public Procurement Procedures. Its main responsibility, as an autonomous body, is to protect the public interest and the rights of the bidders. The Commission has four members with a five-year mandate who are professionals appointed by the government, but reporting to Parliament. The secretariat of the Commission is made up of civil servants or state employees. The Commission's budget and premises seem to be sufficient. Decisions of the Commission are final, binding and immediately enforceable by the relevant contracting authority. The sessions of the Commission are not open to the public (Article 140 of the Law) in order to better protect the freedom of speech of its members.

Complaints may be lodged directly to the Commission, with a copy to the contracting authority. A fee of 1% of the contract value, up to a maximum of €8 000 is required to lodge a complaint. The fee was introduced to prevent those with ungrounded complaints from abusing this right, but in some cases where the contract value is relatively high, it may deter well-grounded complaints.

In the case of high value contracts (over €500 000), the contracting authority shall, within 5 days of the award, forward the complete dossier to the State Commission for review, which shall be completed in 30 days. Should the Commission find malpractices, it may repeal partially or totally the award on its own motion and adjust it accordingly, while informing the contacting authority of the irregularities observed. On the other hand, as mentioned above, the SAI conducted an audit of the Ministry of Defence in 2008 and found numerous public procurement-related irregularities, such as undue circumvention of general procurement rules by using unjustified confidential procurement procedures.

The most common breaches of procurement provisions in the country are deemed to be the following: discriminatory terms of reference; evaluation criteria inconsistent with the procurement purpose; disregarding good potential alternative offers; passivity of bidders by failing to ask for tender clarifications which are legally mandatory for the contracting authority; deficient and/or incomplete technical specifications.

4.1.2 Military Asset Disposal

With the country's independence in 2006 the Armed Forces inherited a well organised, but over-equipped army from the Yugoslav Federation. Selling military assets was a necessity in the years following independence while building a new army and Ministry of Defence. The government adopted a Decree (October, 2006) on the Procedure for Selling Surpluses of Munitions

and Military Equipment. This Decree, which governed most of the sales thenceforth, considered all those sales as confidential and excluded the application of the public procurement provisions from the Yugoslav Federation. This Decree was abolished in 2010 and was superseded by the Decree on Foreign Trade in Weapons, Munitions and Goods of Dual Use of October 2010. The manner of sales of means for special purposes is succinctly dealt with in its Article 10. This matter is also regulated by two other Decrees: The Decree on Sales through Public Tender of Shares and Property (of December 2003) and the Decree on Sales and Lease of Assets of State Property (of July 2010).

All assets used by the Ministry of Defence are the property of the State, according to the Law on State Property. The sale of assets, depending on their type, is carried out by means of confidential or public sales. Assets other than weapons and military equipment and dual-use items are sold in public sales. The sale of military equipment and dual-use items is carried out in accordance with the Decree on foreign trade in items for special use. The sale of other items used by the Ministry of Defence and the Armed Forces is carried out in accordance with the Decree on the sale and lease of state-owned property.

The following procedure is required in order for moveable property to be offered for sale: Units of the Armed Forces of Montenegro send their proposal to the General Staff of the Armed Forces, including the list of moveable items which are surplus to further use. Based on the opinion of the General Staff, the proposal is submitted to the Logistics Department within the Material Resources Sector, which compiles a file for the Government in order to make a decision on declaring the items as surplus and offering them for sale. Prior to the submission of the proposal to the Government, the MoD is obliged to obtain the view and opinion of the Ministry of Finance of Montenegro. The Government of Montenegro, by means of a decision, defines the manner of disposal of the items concerned and the obligations of the MoD. The Minister of Defence issues a decision setting up a commission which defines the initial price of the items concerned, and the commission presents their report to the Minister. The commission for the establishment of inital prices comprises experts from the MoD and AF. Members of the assessment commission may not be members of the sales commission. Once the report on establishment of initial prices has been adopted, the Minister issues a decision on setting up the commission which must carry out the sale.

The value of the asset to be disposed of is established by the internal services of the Ministry of Defence, as there is no obligation to consult with an independent assessor. Sales of property require the creation of a tender committee, whose membership and precise functions are determined on an ad hoc basis, to supervise the operation.

Nevertheless, the Decree requires that members of the committee shall not have a direct or indirect interest in the operation, or must otherwise withdraw from the procedure. A large portion of cases defining the disposal of state property which is used by MoD, and in relation to which the Government has adopted a Decision on Sale, are available on the website of GoM. For assets other than

military equipment and dual-use items, all sales procedures are public and competition requirements can be found either on the MoD website or in daily media. All the proceeds arising from the disposal are deposited in the State Treasury Account. Regulations on asset disposals in the defence sector are insufficiently aligned with international standards, including EU Directives.

The bulk of asset disposals were carried out in the years 2006 and 2007, immediately after independence and, according to the SAI, they were fraught with serious irregularities. Media reports aired suspicions of criminal misuse of public funds and allegations of misdeeds compromising national security. This large scale disposal took place before the presentation of the National Strategic Defence Review, a plan discussing the defence capabilities needed by the country. Logically, it would have made more sense, from a sound sequencing outlook, to undertake the asset disposal operations after that strategic plan had been decided, not before it.

In summary, procedures governing public procurement acquisitions are slowly improving, including in defence and security. However, an overhaul of the exceptions to the general procurement rules on military and security grounds is necessary in order to make those exceptions more precise and justified. Discretionary decisions in defence-related procurement should be reduced in number and made clearly challengeable before the administrative court. The disposal of military assets has been a source of alleged cases of malpractice in the recent past, in part due to deficient legislation. However, legal loopholes permitting such disposal remain in place, which could lead to a resurgence of corruption if selling more assets becomes necessary again.

4.2 Internal Financial Control and Inspector General

4.2.1 Internal Financial Control

Public Internal Financial Control (PIFC) is regulated by the 2008 Law of the same title, amended in 2011 and 2012, the Rulebook on the Manner and Procedure for Establishing and Implementing Financial Management and Control, and the Treasury Directions indicating guidance and responsibilities of line managers on financial management. The 2008 Law and its successive amendments operate a decentralisation of the internal financial control systems from the Ministry of Finance towards line ministries and agencies, while taking into account the small size of the country administration.

According to observers like the European Commission, the legal framework is in place, but doubts exist about the capabilities of the public administration to implement it. As in many other fields, international pressure played a determinant role for the introduction by the authorities of a system of internal financial control, as specifically required by the European Union. Nevertheless, the administration is progressively introducing better financial control and internal audits. Extensive training has been delivered in 2011 and 2012 to officials in charge of financial management and control.

As for the Ministry of Defence, its Financial Service carries out ex ante control of commitments and payments. The Department of Internal Audit of the Ministry assists the Financial Service to interpret the law when necessary. The latter was established in 2010 (previously this function was the responsibility of the internal inspection services) and is functionally independent from the Ministry. Its remit is the Ministry, the Army and the Directorate of Classified Data Protection. The Department of Internal Audit uses IAS (International Audit Standards), and IIAS (International Internal Audit Standards) in addition to having a Strategic Plan for Internal Audit for 2010–2013, which outlines the yearly audit plans. The staff turnover in the Department resulted in a current (March 2013) staff shortage with only one official (the systematisation foresees three staffers). The Department is in charge of developing the defence sector integrity plan required by the new Civil Service Law. Under the current understaffing circumstances it is most unlikely that the Department of Internal Audit will be able to adequately meet its responsibilities.

When it comes to the financial management and the control system of the Ministry of Defence, it is necessary to understand the general situation in the country. One key goal of the Law on Public Internal Financial Control is to strengthen the spending units' internal financial control arrangements, with the aim of entrusting the management of internal controls to middle and lower level managers. For that purpose, the Law (Article 14) stipulates that spending units shall appoint a financial manager responsible for the development, establishment and implementation of financial management and control. The financial manager function is performed by the Head of Financial Service of the Ministry of Defence. Concurrently, an Action Plan for establishment, implementation and development of financial management and control was adopted. According to this document, the system is to be set up by December 31, 2013[11]. SIGMA[12] observes that the weakness of the system lies in the fact that the Minister is the only person responsible for approving and authorising any working changes, and there is no real scheme for delegation or for managing delegated powers.

Within the Ministry of Finance, the Central Harmonisation Unit (CHU) is the central coordination body responsible for the development of the internal financial control system methodology and setting standards for internal control and management and internal audit. The Head of the CHU is supported by six staff. Observers such as SIGMA perceive that institutions seem to recognise the staff's competence, and there are frequent requests for support from the CHU. All CHU staffers have been recruited from the Department for Internal Audit of the Public Sector (within the Ministry of Finance) and have been involved in internal audits of institutions in the public sector. Thus their knowledge of the manner in which public sector institutions work as well as of the weaknesses of

[11] The progress review – Monitoring Report, MoD. September, 2012.
[12] SIGMA 2012 Assessment of Montenegro.

some financial processes has been an indispensable value added for their current scope of work.[13]

4.2.2 The Inspector General

Since 2007 the Ministry of Defence introduced the position has had the Inspector General in the Department for Inspection. Subject to the consent of the Government, the Inspector General is appointed by the Minister of Defence in accordance with the provisions of the Law on Defence. The Inspector General is accountable to the Minister. The key task of the Inspector General is to conduct inspection and control in accordance with the Law on Defence, Law on Inspection Control and other regulations governing the competencies of the inspection control as defined in Article 56 of the Law on Defence.

According to the 2010 Amendments to the Law on Defence, affairs relating to accounting, revenue control, contractual obligations and expenditures of the Ministry have been excluded from the competencies of this Department. These affairs are conducted by the Internal Audit Department, which was established in 2010.

According to the Rulebook on internal organisation and job position systematisation of the Ministry of Defence, there are three positions for six persons within the Department for Inspection Control. The Inspector General's primary task is to coordinate and organise the work of the Department for Inspection Control in performing the inspection controls and internal controls as defined in the Article 56 of the Law on Defence.

For the purpose of protecting their rights, persons serving in the Armed Forces are entitled to refer to the Inspector General any issue relating to the work and functioning of the command and/or the unit in which they serve, in accordance with Article 46 of the Law on Armed Forces of Montenegro. Since 2007, eight cases of such referrals by professional military personnel have been recorded.

Staff training is provided through attendance at professional courses in the Human Resources Management Authority. The workplan is defined by monthly workplans, which are based on the inspection control annual plan, proposed by the Inspector General and approved by the Minister. The Minister may, at any time, order the carrying out of an extraordinary inspection. In practice, the Minister has initiated four of these inspection controls in 2012. Once an inspection control is completed, the Inspector General must draft a report within five working days.

The Inspector General at the Ministry of Defence focuses on military matters and has no role in financial management, public procurement or internal financial control.

[13]SIGMA 2012 Assessment Montenegro, p.18.

In summary, decision-making powers are concentrated at the apex of the administration where the minister is the only person responsible for approving and authorising any expenditure, with no real scheme for delegation or for managing delegated powers. Under these circumstances it is very unlikely that a culture of financial management and responsibility will emerge. Therefore the internal financial control tends to be formulaic, with little effect on the control of corruption. The Inspector General at the Ministry of Defence focuses on military matters and has no role in financial management, public procurement or internal financial control.

4.3 Civil Service and Human Resource Management

The Law on Civil Servants and State Employees was passed in July 2011 and entered into force on 1 January 2013. The main goal was to introduce the merit system into the civil service as a means to achieve a higher degree of professionalism and reduction of politicisation. The merit system was unknown in prior local legislation and practice. The international community, especially the European Commission, the Norwegian Government and SIGMA tried for some years to push the authorities to undertake a much needed reform in view of Montenegro's ambitions for both EU and NATO membership. The introduction of the merit system has been less radical than the one suggested by the international advisors, but it still represents a step in the right direction. However, the lack of constitutional backing may be detrimental to the sustainability of these reforms.

The general civil service legislation applies to all civil servants and state employees in the Ministry of Defence, representing some two-thirds of its total staff. Currently the Armed Forces are 1,834-strong while the Ministry of Defence has 204 staff with the following breakdown: 59 military officers, 5 Non-commissioned officers (NCOs) and 140 civilian civil servants or state employees. No special criteria are applied to the selection of personnel in corruption-sensitive positions (e.g. procurement, contract monitoring, financial management) apart from rank for the military personnel and seniority for the civilians. Whereas the adoption of the Civil Service Law in 2011 has been an attempt to introduce the merit system in the administration, this has had no parallel in the Armed Forces.

The legal framework covering the military personnel consists of the 2009 Law on the Armed Forces (amended in 2011) and the 2007 Law on Defence (amended in 2012). These two Laws apply to all army personnel, i.e. professional military personnel and civilians employed in the Army. These two laws were adopted on the initiative of the Ministry of Defence to align the domestic legal framework with EU and NATO standards, but the legislative process was mostly internally driven.

Despite the recent changes, the politicisation in the Montenegrin public administration, including in the Ministry of Defence and to some extent in the Army, is still a problem. The political positions in the Ministry of Defence are

the Minister and State Secretaries. The Chief of Defence holds a position equivalent to that of Deputy Minister of Defence and the appointment is made by the Council of Security and Defence upon the minister's proposal. The general rule is that the new Law on Civil Servants and State Employees considers as civil service positions the majority of positions in the State administration, including the Ministry of Defence, and the military positions are clearly defined and regulated by their own specific laws.

According to the Law on Civil Servants and the Law on State Administration some positions in the Ministry of Defence at the interface between political and civil service posts are categorised as "senior management staff". In accordance with the Law this category of posts is recruited by a public announcement followed by a structured interview. The candidates from the other three categories of civil service posts – expert management staff, expert staff and operational staff – are also recruited through open, competitive procedures by means of a written and oral examination. Finally, the recruiting authority proposes the candidate with the highest score to the government. However, the recruiting authority may choose someone else from outside the short list, giving reasons. These senior management posts are usually fixed-term, which reduces the professional independence of managers as well as their capacity to act impartially. Fixed-term appointments are becoming numerous. The discretion of recruiting managers and the increasing use of temporary contracts works against the merit system.

In fact, surveys, including those carried out by SIGMA (2010), show that the majority of respondents believe that personal and political connections make a difference in civil service recruitment and promotion. Likewise, the above mentioned Norwegian-led survey carried out by Difi in 2011 showed that the majority of those surveyed believed that professional merit was of secondary importance for promotion within the civil service.

The new Law on Civil Servants (in force since January 2013) is more explicit in terms of meritocratic recruitment and promotion and offers a better career perspective within the administration, but its effects remain to be seen.

Nonetheless, the new Law on Civil Servants, while introducing the merit system more clearly, still remains anchored in the past, as it allows for discretionary recruitment of any of those on the shortlist prepared by the selection committees (Article 45 of the 2011 Law). This may undermine the credibility of the whole recruitment system introduced by the new law. Decisions on recruitment can be appealed in the first instance before the Appeals Commission, whose president and members are appointed and dismissed by the government upon proposal by the Ministry of Interior in accordance with the law, and then before the Administrative Court.

The Law on State Administration (Article 41a) introduces the post of State Secretary (within ministries), as a politically appointed position whose mandate is strictly tied to that of Ministers. The number of State Secretaries is not limited by law and it is determined upon proposal from the Ministry of the

Interior and Public Administration to the Government which collects the individual proposals from ministries. Tying the tenure of state secretaries to that of ministers may hamper the continuity and stability of administrative operations. In addition, the purely political character of state secretaries is conducive to further politicisation of the public administration.

The legal regulations underpinning impartiality are similar for the military and civilian personnel, even if they are regulated respectively by two separate pieces of legislation. However, as mentioned, the Montenegrin Constitution does not underpin general public administration values such as impartiality, transparency and meritocratic public employment.

Recruitment to the Armed Forces is regulated by the Law on the Military and respective secondary legislation. These norms clearly demand public competition to the vast majority of posts, which is carried out under the responsibility of the Ministry of Defence. However, the analysis has identified certain inconsistencies in the legal framework within this area. Namely, although not applicable since 2009 (from the moment when the new Law on Military entered into force) the by-law, which allows the possibility for non-competitive recruitment in certain special cases, is still in power. Those cases are the following: a) unspecified "posts of extraordinary importance", b) in case of readmission to the Armed Forces after leave and c) in case of officers and warrant-officers educated at the military school or academy through scholarships awarded by the Ministry of Defence. This decree should be amended in accordance with the provisions in the current Law on Military or completely abolished.

For both open and restricted recruitment, the responsibility lies with the Ministry of Defence's Personnel Admission Commission manned by general staff members and representatives of the Ministry of Defence, but the Commission is not bound by any legally prescribed recruitment procedure. It simply has to draw up a list of candidates meeting the criteria spelled out in the announcement. Those preselected undergo a medical examination. Then the Commission sends the whole list to the Minister of Defence, who freely makes the final recruitment decision without needing to clearly justify his decision. This modus operandi leaves a wide leeway for discretionary recruitment both by the Commission and by the Minister. It is hoped that the compulsory giving of reasons may be addressed in an upcoming revision of the Law on Administrative Procedures.

Media and international observers have raised concerns regarding these arrangements as being very exposed to patronage and nepotism. This was apparent in 2012 on the occasion of the appointment of officers, through extraordinary promotion, to the ranks of General and Commodore, a decision which split the Council for Defence and Security into two camps along party lines. No decision had been released as of October 2012.

As Military Courts do not exist, decisions on recruitment in the Armed Forces can be appealed before the civil court. This arrangement demands changes

because the civil law courts are unsuited to dealing with administrative decisions where, by definition, one of the parties has preponderance so destroying the equality of arms. In the absence of special military courts, rightly forbidden by the constitution, the Administrative Court should be the court to adjudicate in administrative cases affecting recruitment, promotion and dismissal in the Armed Forces.

In the general civil service, the new legal arrangements foresee that increase in salary is based on performance appraisal. Concerning the military personnel, the Law on the Armed Forces and its secondary legislation stipulate a promotion procedure whereby performance appraisal in the two years prior to promotion is decisive. In the absence of more objective decision-making procedures, the existing ones, based almost exclusively on performance appraisal, protect the merit principle only to a very limited extent. The reason is that performance appraisal, by definition, is heavily loaded with subjective judgement by managers. There is no sound scheme for performance management at the Ministry of Defence. The new Civil Service Law may help to refine the performance appraisal system, but this remains to be seen.

In general, performance appraisal is a new technique introduced recently in the country. It largely remains a formalistic exercise which will take time to be understood and more time to take root. According to a 2011 Norwegian Difi survey, only 40% of civil servants were appraised and the majority did not receive any feedback after the appraisal, but 95% received the highest mark. UNDP has also surveyed the system, finding approximately similar results. As a consequence, one could conclude that the performance appraisal scheme does not lead to any practical improvement in the performance of individuals or organisations, and it is not factored into training needs analyses.

The termination of employment in the civil service is compulsory at the age of 67. No dismissal is possible without clear procedures stipulated in the Law on Civil Servants and State Employees which include the following: termination of employment by operation of law; resignation given by civil servant and/or state employee; by agreement between a head of state authority and civil servant and/or state employee; by expiration of the period employment was entered for. Professional military personnel − those of higher ranks − have lifetime tenure save those recruited from the civilian service (who are recruited under a three-year fixed term contract. Soldiers are also recruited under fixed-term contracts renewable up until a certain age limit.

There are clear set of rules concerning the acquisition of pension rights. The State budget covers all matters concerning pensions, injury and death in service of military personnel. However, in the case of death in military operations, the Minister of Defence decides on the appropriate support and compensation for the surviving family at its discretion.

The remuneration system for the civil service is determined by the Law on Salaries of Civil Servants and State Employees, as amended in 2012. The remuneration of the military personnel is established in the Law on the Military

and its secondary legislation (2010). The differences between the remuneration system in the civil service and in the Armed Forces are considerable, as the military personnel have much higher salaries as well as a reward system. This creates imbalances and a sense of unfairness within the Ministry of Defence. Civilian personnel have individually tried to lobby for better salaries. As a result, a 30% supplement foreseen for those dealing with secret information has been allotted to some individuals, such as the Sector Head of Finances at the Ministry of Defence, at the discretion of the minister.

In addition, individual bonuses may be paid to civil servants, not to military personnel, at the discretion of the Minister (the legal wording reads that bonuses are decided "for outstanding performance and quality of work"). The only limitation to bonuses is that the variable part of the remuneration cannot exceed 80% of the preceding year's average income in the country. Fortunately this variable part is difficult to calculate and the state budget does not have funds allocated for this. Therefore it is rarely paid. Nevertheless, the system as such does not ensure predictability in remuneration of the civil service even if de facto it appears to be fairly predictable. Salaries and pensions are regularly paid on time, with no arrears.

The salaries of civil servants and military personnel are not disclosed to the public, as they come under legislation on privacy protection. Ancillary employment outside the administration is permitted and there are no limitations on the amount of remuneration gained.

Despite some formal provisions for reporting misconduct, there is no real protection of whistle-blowers in corruption-related cases. The Montenegrin institutional system is unable to protect civil servants and public employees from retaliation if they alert others to presumed corrupt behaviour on the part of their superiors or colleagues. There is no specific law protecting whistleblowers, but the 2011 Law on Civil Service (Articles 79 and 80) obliges civil servants to report corruption to their superiors who are then to take measures accordingly, including securing the anonymity of the whistleblower. In addition, the 2012 Code of Ethics for Civil Servants protects them from abuse. The new Civil Service Law mandates integrity plans to be developed within each institution to address the main vulnerabilities to corruption and develop mechanisms to combat these. All these provisions may be helpful, but are insufficient to protect whistle blowers. They should raise even more clearly awareness of the necessity of setting up mechanisms in this respect. Nonetheless, the social memories of the role of denunciators under the previous regime may prevent the culture of whistleblowing from emerging in any meaningful way in the medium term.

In summary, the civil service and human resources management system is still little developed as a mechanism to promote impartiality and professionalism in state administration, although strides have been made during the past few years within the framework of EU integration in incorporating more clearly and resolutely the merit principles into human resource management schemes. The whole system remains fragile and its

institutionalisation is still weak. Its durability remains to be seen. Consequently no new civil service reforms should now be introduced. Efforts should instead be focused on consolidating and implementing the reforms made recently.

5 Anticorruption policies and the anticorruption agency

5.1 Anticorruption Policies and Strategies

The 2012 political electoral programme of the major governing party states that "the most important task of the government in the upcoming period will be suppressing corruption and organised crime in accordance with the criteria for EU membership".

The Government Programme, adopted on 31 January 2013, contains seven anticorruption actions. One priority is that the Ministries of Justice and of the Interior provide "data and analyses on the type, organisational structure, responsibilities and powers of public authorities fighting against organised crime and corruption", as well as "recommendations to overcome existing normative and institutional constraints". The Programme also suggests the adoption of a new anticorruption plan for 2013–2014. The Ministry of the Interior and Public Administration is in charge of preparing anticorruption strategies.

The current National Anticorruption Strategy 2010–2014 is overseen by a National Anticorruption Commission. The strategy document is fairly general and mentions several areas considered more vulnerable to corruption, but it does not contain any reference to specific measures to be developed by each ministry or agency – this is elaborated in the Action Plan. No mandate is addressed to the Ministry of Defence. However, as mentioned above, the new Law on Civil Servants instructs each institution to develop and implement internal integrity plans. Such plans should be based on an assessment of corruption risks and an analysis of their potential impact, and shall develop and propose measures to contain and reduce those risks.

As in many other areas, the elaboration of anticorruption strategies has been mainly driven by the international community, especially by the EU, a fact which again raises the question of their local ownership and sustainability. One indication is the already perceived weak implementation of such strategies, despite the fact that they comply with the standard structure found in strategic documents elsewhere, i.e. background; analyses on the nature, causes, levels and trends of corruption; assessment of preceding anticorruption efforts; objectives and priority areas; proposed prevention and suppression measures; monitoring and adjustment mechanisms etc. However, the various sections are uneven in terms of the quality and depth of the analyses and measures provided.

Many people in Montenegro regard the anticorruption strategies as outlandish, not stemming from genuine local needs to fight corruption and unethical behaviour. This is corroborated by the Deputy Prime Minister and Minister of Justice, who in a public statement assessed the document as follows: "The strategy and action plan are too ambitious taking into account the capacities of the State bodies in charge of dealing with these issues equally and thoroughly at

all levels"[14]. In fact, the way in which the strategy was drafted only partially responded to local needs, where the notion of strategy and policy documents remains unfathomable to many, and where there is no policy − only laws and decrees are taken seriously.

The strategy was drafted by a working group within the National Anticorruption Commission and was made public through the internet and daily newspapers and discussed at a public roundtable before its government approval. Many institutions provided comments. The strategy was accompanied by an action plan for 2010–2012. A new action plan for 2013–2014 has been prepared by the Ministry of Justice and adopted by the government. The current action plan contains objectives, but its operational activities lack a precise timeframe and budgetary costing. Implementation indicators are generally not very meaningful. The action plan does not contain provisions on monitoring and reporting.

Nevertheless, the oversight of the action plan implementation is the responsibility of the National Anticorruption Commission, which submits reports to the government twice a year, as well as to the parliamentary committees on Finance and Political System and Judiciary. The members of the National Anticorruption Commission are usually the heads of the institutions to be monitored. This may call into question the impartiality of the Commission, but at the same time it represents a peer pressure on those institutions that are lagging behind. Whatever the case, it is difficult to disagree with SIGMA that the "Commission is basically the Government monitoring itself"[15]. The Commission has been regularly criticised by civil society organisations as a body unable to produce any meaningful results.[16]

As for the Ministry of Defence, there is no specialised anticorruption unit in charge of policy design in that field. Nevertheless, pursuant to the Law Civil Servants the ministry has established a working group with the task of preparing the programme of development and implementation of integrity plan, of informing the employees of the need for adoption of integrity plan and of submitting the integrity plan proposal to the minister for the final adoption.
There is a National Security Strategy, but it is mainly focused on defence and security issues, omitting corruption as a potential source of insecurity. Organised crime is treated more as an external threat than a domestic risk. The document failed to identify security challenges, risks and threats stemming from domestic corruption and organised crime, which are an evident preoccupation in many social circles in the country.

In conclusion, and as stated above, it seems that the elaboration of anticorruption strategies has been mainly driven by the international

[14] Vanja Calovic, director of MANS, was quoted in an article in *Vijesti*, on 13 November 2012 under the title: "They wrote recommendations that nobody followed".
[15]SIGMA 2012 Montenegro Assessment.
[16] See MANS: "Report on the Implementation of the Action Plan Accompanying the National Anti-corruption Strategy", July-September 2011.

community, especially by the EU, a fact which again raises the question of their local ownership and sustainability in an environment where only laws and decrees are considered compulsory.

5.2 The anticorruption agency

The Directorate for Anticorruption Initiative (DACI) is a specialised body providing policy proposals on preventing corruption and coordinating anticorruption initiatives at the national level. It also carries out research, policy analysis, awareness raising, international coordination and education. Its responsibilities and organisational structure are defined in a January 2001 Government Decree, the General Law on the State Administration and the 2012 Decree on the Organisation and Functioning of the State Administration, which reformulates the DACI responsibilities, emphasising its character of being a consultative and advisory body to the Government. According to the latter Decree, DACI is an administrative body within the Ministry of Justice. It has 16 staff, a number which is compatible with the systematisation approved by the Ministry of Justice and considered as being sufficient to meet its responsibilities. DACI provides secretariat services to the National Anticorruption Commission in charge of monitoring the Implementation of the Strategy on Fighting Corruption and Organised Crime. DACI can freely publish its reports on its website. Training for DACI staff is mostly funded by international donors and to a great extent consists of study visits abroad.

Therefore, DACI is not an independent anticorruption agency in the sense of the UN Convention against Corruption (UNCAC). A debate took place in Montenegro in 2011, with the participation of the Ministry of Justice, the European Commission, SIGMA and representatives of the civil society among others. It was concluded that an UN-Type Agency was not viable in a country with the characteristics of Montenegro. Instead the revision of the Penal Code and the reinforcement of existing law enforcement institutions, such as the prosecutor and the judiciary were proposed, as well as the reform of certain institutions such as the Conflict of Interest Commission.

DACI's director is a civil servant, appointed by the Government on the proposal of the Minister of Justice following a public competition. The director of DACI reports to the Director General and the Minister of Justice every six months, not to Parliament. Dismissal also follows established civil service legal procedures. Civil Service Law and remuneration provisions also apply to the rest of DACI personnel.

DACI is not entitled to propose legislation by itself, but can make recommendations to the Minister of Justice. Likewise, DACI is regularly called to cooperate, participate or give advice in drafting legislation that will have an impact on anticorruption. In this regard it has participated in the drafting of recently passed important laws such as the Laws on Political Party Financing, on the State Election Commission, on Lobbying, etc. DACI cannot undertake investigation of corruption-related behaviour or any kind of enforcement of

legislation. Corruption alerts which DACI may receive from citizens are forwarded to the prosecutorial service and the police.

DACI has general rather than specific cooperation with the Ministry of Defence as with any other State body, and mostly in the training domain together with the Human Resource Management Authority. DACI has difficulties in being recognised as a source of anticorruption expertise throughout the administration.

According to MANS (The Network for Affirmation of the NGO Sector), a prominent NGO in the anti-corruption field, the anticorruption system has many flaws. Some of them concern the systems of internal and external audit, where the results of investigations into corrupt behaviour are inadequate. Likewise, the State Prosecutor, despite regular findings of malpractice by the State Audit Institution reports, does not act *ex officio* to prosecute the perpetrators of criminal acts. Especially notorious were the corruption cases surrounding the privatisation policies.

Despite the voices of civil society organisations in particular and some international actors claiming the creation of an UN-type anticorruption agency, the government would be well-advised to follow the recommendations that emerged from the public debate of 2011 on the issue. This entails reinforcing the state instruments which have already been assigned the responsibility for the suppression of corruption (namely the police, the prosecutor and the judiciary, whose independence needs strengthening) and reinforcing certain special bodies such as the Conflict of Interest Commission, the State Audit Institution and others which have been scrutinised in the present study.

Properly speaking there is no multipurpose anticorruption agency, which is not necessarily a flaw in the system. The Directorate for Anticorruption Initiative (DACI) is a specialised body within the executive, under the ministry of justice, providing policy proposals on preventing corruption and coordinating anticorruption initiatives at the national level.

6 Recommendations

6.1 Recommendations for the MoD:

1. Human resources management

   Montenegrin MoD needs to continue efforts to improve meritocratic HRM. In addition, the MoD needs to focus its attention on *military* HRM. The current Law on the Armed Forces suffers from serious deficiencies. The system does not appear to be transparent or well regulated and leaves the procedure and the individuals involved in the process open to allegations of nepotism and unfair treatment.[17] The total reform of the current law should be considered.

2. Public procurement

   Defence-related exceptions to general rules on public procurement should be revised, reduced in number and made more precise and better justified. Any procurement decision, both in acquisition and in asset disposals, should be challengeable before the administrative court.

3. The conflict of interest regime

   The situation is in urgent need of reform when it comes to the Armed Forces where there is no effective conflict of interest regime in place.

4. Free access to information

   There is a need to focus on the issue of how the balance is struck between free access to information on the one hand and on the other protection of personal data and state secrets.
   The combination of the various pieces of legislation gives an unclear picture of the restrictions to access to information. In the final instance the decision will be at the discretion of the official in charge of classifying information in any of the grades of confidentiality (top secret, confidential, restricted and so forth), even if the new Law opens for more ways of challenging such decision.
   The current regime on transparency provided for by the above-mentioned pieces of legislation does not spell out clear criteria to assess, with an acceptable degree of legal certainty, the possible harmful consequences of data disclosure.

[17] This assessment was i.a. expressed in the NATO-report cited above, footnote 2.

5. Corruption risk management

   There is a need for further strengthening of the system for monitoring and evaluation of corruption risk management. Specialised professional functions need to be created or significantly strengthened within institutions. Although the Montenegrin public administration is progressively introducing better financial control and internal audits, there may be some doubt as to whether the Internal Audit Unit of the MoD is able to adequately fulfil its functions.

6. Improved integrity framework

   The proposals mentioned above should be addressed in a comprehensive effort to improve the integrity framework in the defence area.

6.2 General recommendations

1. The mechanisms for civilian and democratic control of defence sector are weak. Further efforts are needed to fully subject them to civilian control by elected representatives both in the executive and in parliament.

2. Institutions which are instrumental for the parliamentary control of the executive, such as the State Audit Institution (SAI) and the Protector of Human Rights (Ombudsman) need strengthening. Parliamentarians should be encouraged to take the findings and recommendations of these institutions more seriously.

3. The SAI should introduce corruption risk as one of the criterion in setting priority audit areas in its annual audit plan and should also introduce improved follow-up mechanisms on its recommendations.

4. The Ombudsman needs more financial autonomy, funding predictability and managerial independence from the executive. Its remit should be enlarged to include any kind of administrative malpractice, in addition to violations of human rights. Its resources should be adapted accordingly.

5. The conflict of interest policy and regulations need to be improved. One means would be better targeting and verification of asset and interest disclosure. Another means would be the overall strengthening of the checks and balances systems, especially the judiciary and the

commission on conflicts of interest by means of involving the civil society organisations in the oversight tasks of this latter.

6. The promotion of more transparency at every level of government and in the functioning of every public institution should be tirelessly and permanently pursued. Constant checks on the degree of transparency in decision making and working procedures should become customary.

7. Internal financial control needs to be strengthened and a culture of managerial accountability developed.

8. The civil service needs to be depoliticised and professionalised by clearly implementing the merit system and the principle of equal access in all human resource management decisions, including at the ministry of defence.

9. Transparency in remuneration and discipline for breaches of constitutional obligations of civil servants, police forces and intelligence services is a necessity. Military personnel should be clearly subjected to the same constitutional obligations.

10. There is a need to provide for considerably higher level of inclusion of MoD in the process of development and implementation of the most important anti- corruption strategic documents in the country.

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Montenegro. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Montenegrin Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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