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REGIONAL ANTI-CORRUPTION INITIATIVE

REGIONAL ACTIVITY: DEVELOPMENT OF NATIONAL METHODOLOGIES ON ANTI-CORRUPTION ASSESSMENT OF LAWS

**Introducing anti-corruption assessment of laws
in Montenegro**

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The views expressed in this document are solely those of the author and do not necessarily reflect the views of the Regional Anti-Corruption Initiative (RAI) or its member States, or of the Austrian Development Cooperation.

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Contents

1	SUMMARY	3
2	TERMS OF REFERENCE	4
3	CURRENT STATE OF PLAY	4
3.1	Legal framework	4
3.2	Corruption Proofing Section	6
4	RECOMMENDED NEXT STEPS	6
4.1.	Scope	6
4.2.	Entity in charge	6
4.3.	Methodology	7
4.4.	Legal basis	8
4.5.	Organisational set-up	9

1 Summary

The Agency for Prevention of Corruption (hereafter “Agency”) established a “Section for monitoring of legislation and opinions on anti-corruption regulations” with three full-time staff in early 2017. The Agency and the Section are currently in the process of defining their own framework and methodology for corruption proofing. The “Law on Prevention of Corruption” of 2014 provides the Agency already with the power of conducting corruption proofing (Articles 78 and 79). Thus, based on discussions during an in-country workshop on 16-17 March 2017, the following **key steps** were identified:

- Corruption proofing of legislation will in principle cover **all laws**, whether statutes or bylaws, whether drafts or enacted laws.
- There will be three **entities** in charge of corruption proofing in Montenegro:
 1. Agency;
 2. Relevant ministries;
 3. Parliament.
- The Agency will adopt a Methodology based on the **Regional Methodology**¹, Part 2. It will contain three parts:
 1. a short checklist (1-2 pages);
 2. more detailed explanations in a second part (each corruption risk explained with an illustrative example);
 3. guidelines for the Agency on carrying out corruption proofing in practice.
- **Trainings** for the Section.

¹ rai-see.org/wp-content/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf.

2 Terms of Reference

In 2014, RAI and the Regional Cooperation Council (RCC) developed and published the **Regional Methodology** on Anti-corruption Assessment of Laws (corruption proofing of legislation). Following up on the Regional Methodology, RAI intends to facilitate the introduction or strengthening of anti-corruption assessment of laws in at least three beneficiary countries until end of 2018.

This assessment dovetails an in-country **workshop** organised by RAI Secretariat on 16-17 March 2017 in Podgorica with representatives from the Agency and a representative of the Ministry of Justice. The workshop reviewed the various options of regulating and organising corruption proofing as a tool and identified the next steps forward. This report summarises the current state of play and the next steps needed for introducing the tool reviews the current **state of play** and the necessary **next steps**.

3 Current state of play

3.1 Legal framework

The “Law on Prevention of Corruption” of 2014 provides the Agency already with the power of conducting corruption proofing:

Responsibilities of the Agency Article 78

The Agency shall: [...]

- Take the initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption or to bring them in line with international standards in the field of anti-corruption;
- Give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption; [...]

Opinions for the Improvement of Prevention of Corruption Article 79

The Agency may, at its own initiative or at the request of an authority, company, legal person, entrepreneur or natural person, give an opinion for the purpose of improving the prevention of corruption, reducing the risk of corruption and strengthening of ethics and integrity in authorities and other legal persons, which includes an analysis of the risk of corruption,

measures to eliminate the risk of corruption and corruption prevention.
[...] The Agency shall publish the opinions referred to in paragraph 1 of this Article on its website or in any other appropriate manner making them available to the public.

The “Government Rules of Procedure” foresee the following regarding Regulatory Impact Assessment – RIA (corruption proofing can be seen as a subcategory of RIA) and regarding compliance with general legal rules:

Article 40

Together with proposal of the law, other regulation or general legal act, the proponent is also obliged to submit:

- opinion of the Secretariat for Legislation on whether the proposed legal act is harmonised with the Constitution and justice system of Montenegro;

[...]

- RIA form, drafted in line with the legal act by the Ministry of Finance, as well as the opinion of the Ministry of Finance regarding either proponent’s position that RIA was not necessary or the adequacy of RIA conducted;

The “Rules of Procedure of the Parliament of Montenegro” do not require these documents to be submitted to Parliament, but explanatory notes:

Article 130

[...]

The explanatory statement of the Bill shall contain: [...] reasons for adoption of the law; [...].

Article 35 of the “Regulation on Organisation and Methods of Work of the Public Administration” entrusts the “Secretariat for Legislation” with the following:

The Secretariat for Legislation is responsible for: [...] facilitating harmonisation of laws, other regulations and general legal acts, in the process of their preparation, with the Constitution and the legal system; providing expert assistance and facilitating concordance in terms of expertise and methodology when drafting laws, other regulations and general legal acts, in line with the legal and technical requirement for drafting of laws; [...] providing opinions regarding draft laws and proposals of laws and other regulations; [...].

The “Secretariat for Legislation” established “Legal and Technical Rules for Legal Drafting” which have the purpose

“to ensure the uniformity in drafting legislation, its quality, to avoid legal and technical omissions and mistakes, to accelerate the adoption procedure thus ensuring the objective and the purpose for which legislation is enacted” (Introduction) .

The Rules contain three chapters on “I. Legislative drafting”, “II. Language, style and manner of writing regulations”, and “III. Special rules related to amendments and corrections to legislation”.

3.2. Section for monitoring of legislation and opinions on anti-corruption regulations

The Agency commenced work in January 2016. Early 2017, it established a “Section for monitoring of legislation and opinions on anti-corruption regulations” with three full-time staff. The Section is currently in the process of defining its own methodology of work. Based on Articles 78 and 79 of the Law on Prevention of Corruption, the Section has already started reviewing draft laws.

4 Recommended next steps

As a result of the discussions at the workshop, the following next steps were identified:

4.1. Scope

Corruption proofing of legislation will in principle cover all laws, whether statutes or bylaws, whether drafts or enacted laws.

4.2. Entity in charge

There will be three entities in charge of corruption proofing in Montenegro:

- The Agency;
- Relevant ministries;
- Parliament.

The Agency will develop an easy to use Methodology for avoiding corruption risks in laws. The Methodology will be available online to the general public at large. Thus, anybody –

including Ministries and Parliament – may use it for reviewing draft laws and submitting proposals during public consultations. The Secretariat will contribute to corruption proofing within its mandate as further defined in its Technical Rules. Parliament can also apply the Methodology during the parliamentary process. The Agency, including with support of RAI, could provide trainings for focal points from each entity including civil society.

4.3. Methodology

The Agency will adopt a Methodology based on the **Regional Methodology**, Part 2. It will contain three parts:

- a short checklist (1-2 pages);
- more detailed explanations a second part (each corruption risk explained with an illustrative example, referencing the “Legal and Technical Rules for Legal Drafting” in order to avoid overlaps);
- and guidelines for the Agency on carrying out corruption proofing in practice.

The guidelines will address the following issues:

- Focus of corruption proofing on general laws (as opposed to special anti-corruption laws such as political finance laws or whistleblower protection laws);
- Primary responsibility within the Agency of the respective departments for specialised anti-corruption laws;
- Non-exhaustive list of criteria for prioritising laws to be reviewed;
- Possibility of corruption proofing reports reviewing
 - o only parts of laws;
 - o only a certain depth of the laws;
- General caveats regarding corruption proofing reports such as
 - o Issues not addressed (aspects of implementation and practical organisation, issues in other general laws having cross-effects, such as civil servant law, etc.);
 - o Limitation of the corruption proofing report to areas of priority;
 - o Etc.
- Practical steps for corruption proofing:

- Drawing a map of stakeholders of the law;
- Identifying work-flows defined by the law;
- Table of content/structure of the law;
- Prioritisation of most important parts of the law;
- Defining the sources for the assessment;
 - Desk review;
 - Interviews;
 - Possibility of corrupted legislation (bribery, political finance, conflict of interest, etc.);
- Defining aspects not reviewed by the assessment, in particular
 - in particular implementation aspects;
 - cross effects with other laws;
- Sources for identifying corrupted legislation.

4.4. Legal basis

Ideally, corruption proofing should be put on a statutory basis (Regional Methodology, Part 2, 2.1). Articles 78 and 79 of the Law on Prevention of Corruption provide a statutory basis to some extent. The Agency should review whether it has the right to request information from other State bodies whether they complied with recommendations contained in corruption proofing reports of the Agency. The following Article in the Law on Prevention of Corruption could be a possible legal basis:

Article 78, last paragraph:

In performing the tasks within its jurisdiction, the Agency may engage national and international experts or institutions and organizations.

This provision would concern drafted and enacted laws. “Engaging” could be understood as requesting information from other state bodies. In addition, regarding draft laws, the “Regulation on the procedure and manner of conducting public consultation in preparation of laws” obliges the authors of draft bills to provide feedback to proposals during public consultations. This provision does not apply to enacted laws, though.

The Agency might want to consider whether it would be beneficial to amend Article 40 of the “Government Rules of Procedure” with one bullet point regarding a “statement on

corruption proofing” by the author of a draft law, and the “Opinion of the Agency” in case such an opinion exists. Furthermore, this might reflect on the “Rules of Procedure of the Parliament of Montenegro” with similar addition in Article 133.

4.5. Organisational set-up

The following trainings are needed:

- A specialised training for the “Section for monitoring of legislation and opinions on anti-corruption regulations”;
- A more general training for all other stakeholders (ministries, Parliament, civil society, academia) – to be introduced after the specialised training by the Agency as part of its strategic cooperation.