

# Political finance reforms in Montenegro: *Proposals for legislative reform*

---

Drafted by Dr. Tilman Hoppe, LL.M.,  
Senior Advisor for the German Bundestag, independent anti-corruption expert\*

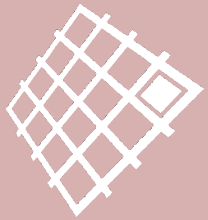
\*The views expressed in this document are solely those of the authors and do not necessarily reflect the views of any of the national or international organisations mentioned.



This material is funded by the European Union and the  
British Embassy Podgorica.  
All views expressed cannot be attributed to donors and  
are the sole responsibility of the author.







mans

Political finance  
reforms in  
Montenegro:  
*Proposals for  
legislative reform*

---



---

# Table of Contents

---

03	1. SUMMARY
04	2. TERMS OF REFERENCE
05	3. FOREIGN FUNDING
	3.1. <i>Legislative loophole:         funding of media campaigns</i>
	3.2. <i>Oversight powers</i>
09	4. ABUSE OF STATE RESOURCES
	4.1. <i>Active oversight</i>
	4.2. <i>Complaints management</i>
	4.3. <i>Analytical cards</i>
12	5. TRANSPARENCY
	5.1. <i>Record keeping and evidence</i>
	5.2. <i>Internal regulations</i>
	5.3. <i>Financial reports</i>
	5.4. <i>Accountability for reporting</i>
	5.5. <i>Media discounts</i>
	5.6. <i>Interim reports</i>
16	6. SANCTIONS
	6.1. <i>Additional offence:         lack of cooperation</i>
	6.2. <i>Additional offence:         lack of submitting internal documents</i>
	6.3. <i>Statutes of limitations</i>
	6.4. <i>Criminal offences</i>
	6.5. <i>Reimbursement of public funds</i>
	6.6. <i>Additional offence:         false accounting</i>
	6.7. <i>Whistleblower protection</i>
	6.8. <i>Foreign funding</i>

---

# 1

## SUMMARY

---

This paper serves as a background assessment in preparation of **legislative proposals** supported by MANS. The new Law on Financing of Political Entities and Election Campaigns (LFPEEC), in force since 1 January 2015, has advanced the legislative framework in Montenegro for political finance. However, serious shortcomings remain:

- The LFPEEC legalises **unlimited** in-kind **contributions** by **foreign** entities to Montenegrin political parties for their ordinary media and public campaigns.
  - There are **no sanctions** at all for natural or legal persons providing (prohibited) **foreign funds** to a Montenegrin party, whether for media campaigns or any other activity.
  - **Enforcement powers** of the Agency (for Prevention of Corruption) are **weak**. For example, it cannot enforce demands for data from private natural or legal persons.
  - **Accountability** of the Agency to the public lacks in terms of responding to **complaints** (*“What concretely happened to citizens’ complaints?”*).
  - **Transparency** is weak regarding publishing internal regulations, standards of financial reports, accountability for reporting (*“signature”*), and media discounts.
  - **Statutes of limitations** are extraordinarily short (2 years); this de facto legalises most minor and more serious violations.
  - **Administrative sanctions** are missing for failure to **cooperate** with the Agency, for providing **foreign funding** and for **false accounting**.
  - **Criminal offences** are missing almost entirely, in particular for providing significant amounts of prohibited donations, for significantly exceeding spending limits, and for false accounting regarding significant amounts.
  - The **most effective** administrative sanction of **reimbursement of public funds** is missing or in case of inaccurate statement of accounts.
- Most of above mentioned shortcomings stand in direct contradiction to international standards, in particular the **OSCE/ODIHR/Venice Commission Guidelines**. This aside, all above mentioned shortcomings compare weakly to good practices of other countries. Therefore, each section of the paper contains concrete **legislative proposals** in order to remedy the shortcomings. It should go without saying that proper **independence** of the Agency and **political will** for implementing norms are preconditions for all legislative proposals to work.

## 2

# TERMS OF REFERENCE

---

By decision of 30 October 2018, the Montenegrin **Parliament** set up a **committee** for election legislation reform. [1] **MANS** [2] has been invited to delegate an associate member to this Committee. The Parliament mandates the committee to draft and present to the Parliament proposals in particular for amendments to laws, by 30 September 2019.

This paper serves as a background assessment in preparation of **legislative proposals** supported by MANS. It is not the purpose of this paper to duplicate (all) recommendations by other assessments. [3] By contrast, this paper will focus on the most pressing and impacting challenges in the following four areas: **foreign funding**, abuse of **state resources**, **transparency**, and **sanctions**. To this end, this paper mainly addresses the following two laws: Law on Financing of Political Entities and Election Campaigns (LFPEEC), in force since 1 January 2015; Law on Prevention of Corruption (LPC) – which established the Agency for Prevention of Corruption (the “Agency”), and came into force on 1 January 2016.

### *This paper takes into account in particular the following reports:*

- Council of Europe Group of States against Corruption (GRECO – 3rd Round Evaluation); [4]
- Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online);
- OSCE/ODIHR Election Observation Mission, Final Report, Montenegro, Presidential Election, 2018; [5]
- OSCE/ODIHR Election Observation Mission, Final Report, Montenegro, Parliamentary Elections 2016; [6]
- MANS, Report on Abuses during Campaign for Presidential Elections 2018. [7]

### *The following international standards are guiding this paper:*

- OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (2010), in particular Chapter XII “Funding of Political Parties”; [8]
- OSCE/ODIHR/Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes (2016); [9]
- Council of Europe Resolution (97) 24 Concerning Twenty Guiding Principles on the fight against Corruption, in particular Principle 15. [10]

It should go without saying that proper **independence** of the Agency and **political will** for implementing norms are preconditions for all legislative proposals to work. [11]

[1] <https://www.mina.news/english/parliament-sets-up-committee-for-election-legislation-reform/>.

[2] „Mreža za afirmaciju nevladinog sektora” (Network for affirming the non-governmental sector), <http://www.mans.co.me/en/>.

[3] See in particular the unpublished Council of Europe Technical Paper of 2017, listed below.

[4] <https://www.coe.int/en/web/greco/evaluations>.

[5] <https://www.osce.org/odihr/elections/montenegro>.

[6] <https://www.osce.org/odihr/elections/montenegro>.

[7] <http://www.mans.co.me/en/report-on-abuses/>.

[8] [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

[9] CDL-AD(2016)004, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)004-e).

[10] <https://rm.coe.int/16806cc17c>.

[11] See in this regard inter alia: Greco Eval III Rep (2010) 7E, Theme 2, recommendation vi (Montenegro), <https://www.coe.int/en/web/greco/evaluations>; OSCE/ODIHR Election Observation Mission, Final Report, Montenegro, Presidential Election, 2018, p. 12, <https://www.osce.org/odihr/elections/montenegro>.

# 3

## FOREIGN FUNDING

### 3.1. Legislative loophole: funding of media campaigns

The prohibition of foreign funding is an important cornerstone of political finance legislation. The OSCE/ODIHR/Venice Commission Guidelines state in no. 172:

“Contributions from foreign sources are **generally prohibited**. This is consistent with the Council of Europe’s Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns, (Rec(2003)4), which provides that ‘States should specifically limit, prohibit or otherwise regulate donations from foreign donors’. This restriction, practiced in many OSCE states, is in the interest of avoiding **undue influence** of foreign interests in **domestic political affairs**.”

In general, the LFPEEC is in line with this standard. However, Article 24 para. 1-3 of the LFPEEC currently reads as follows (emphasis by author):

“ (1) It is **prohibited** that the political entities receive material and financial assistance and in-kind contributions from: **other states**, companies and legal entities **outside the territory** of Montenegro; natural persons and entrepreneurs who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies with a share of state-owned capital; trade unions; religious communities and organizations; non-governmental organizations; casinos, bookmakers and other providers of games of chance.

(2) It is prohibited that a person who was convicted by a final judicial decision for a criminal offense with the elements of corruption and organized crime finances a political entity.

(3) In the period from the **day of calling** until the day of **holding** of the **elections**, it is **prohibited** that the natural and legal persons referred to in paragraphs 1 and 2 of this Article run **media and public campaigns** on behalf or for the needs of a political entity.”



## 3.2. Oversight powers

Thus, para. 3 makes a significant exception to the prohibition in para. 1: It allows for **unlimited** in-kind **contributions** by foreign entities to Montenegrin political parties outside election campaigns. Correspondingly, such contributions are **not subject to sanctions** under Art. 51 no. 5 LFPEEC. [12] This legalises for example the following: A foreign state or legal person finances advertisements, public campaign materials, billboards, websites, or airtime of a political party in Montenegro. This legal gap puts Montenegro in stark contrast to above mentioned Guidelines by OSCE/ODIHR/Venice Commission. While this exception can make sense for some of the other prohibitions mentioned in para. 1 and 2, it is a **striking loophole** in the context of foreign funding.

### **Recommendation 1:**

Article 24 para. 3 of the LFPEEC is amended by a sentence 2 as follows:

*“For other states, companies and legal entities outside the territory of Montenegro, and for natural persons and entrepreneurs who do not reside in Montenegro, the prohibition applies also outside this period.”*

This aside, the sanctions for receiving foreign funding are strikingly low (maximum fine of 20,000 €, Art. 53 no. 15 LFPEEC, and miss the most relevant cases; see below at section 6.4 and 6.8).

With foreign funding, it is particularly important that an oversight body is able to verify where **financial flows** come from in reality. For example, financial flows might arrive on the accounts of political parties and stem from a domestic entity, such as a resident of Montenegro. However, in reality, the domestic resident has only channelled foreign funds as a **straw-person** to the political party. In such cases evidence on the wealth and cash-flows of that person including bank account records seems essential.

In this context, one should keep in mind no. 220 of the **OSCE/ODIHR/Venice Commission Guidelines**:

*“Legislation must include guidelines [...], what powers of investigation are granted to such [...] bodies [...]. Generally, legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Absent such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate.”*

It is interesting to note the rather far-reaching powers oversight bodies in other countries have. For example, GRECO noted the “extensive powers” the **Latvian** Corruption Prevention and Combating Bureau (**KNAB**) enjoys in the context of political finance oversight:

*“In carrying out its tasks, the KNAB has extensive powers: it can inter alia carry out criminal investigations; use various special **investigative techniques** in these investigations; obtain documents from state and municipal bodies, companies, organisations, officials and other persons, **regardless of their secrecy regime; enter premises; impose administrative sanctions and arrest persons (Article 10, paragraph 1 of the Law on the Corruption Prevention and Combating Bureau).** [13]”*

[12] Art. 51 no. 5 LFPEEC: “A fine from 5,000 euros to 20,000 euros shall be imposed for a misdemeanour on a legal entity, if [...] in the period from the day of calling until the day of holding of the elections, runs a media and public campaign on behalf or for the needs of political entities (Article 24 paragraph 3)”

[13] Greco Eval III Rep (2008) 1E, Theme 2, at no. 51 (Latvia), <https://www.coe.int/en/web/greco/evaluations>.

The respective **Montenegrin** provision seems to pale in comparison. Article 45 “Ascertaining of Facts and Circumstances” of the LFPEEC reads (emphasis by author):

“

*(1) Procedure referred to in Article 44 [Proceeding and Deciding in Case of Violation of the Law] of this Law shall be conducted by the Director of the Agency through a person authorized by the Agency (hereinafter referred to as: authorized officer).*

*(2) The authorized officer shall, ex officio, obtain the data and notifications on facts necessary for conducting of the procedure and decision-making, of which the official records are kept by the competent state bodies, state administration and local administration and local self-government bodies, and public companies, companies, institutions or **other natural and legal persons**.*

*(3) Bodies, legal and natural persons referred to in paragraph 2 of this Article shall, within the deadline not exceeding 15 days and in manner determined by the Agency, submit the requested data and notifications i.e. make possible the insight into the requested documentation in accordance with the law.*

*(4) If the bodies, legal and natural persons referred to in paragraph 2 of this Article fail to act within the deadline and in manner referred to in paragraph 3 of this Article, they shall immediately inform the Agency of the reasons for that.*

*(5) In case referred to in paragraph 4 of this Article, the Agency shall **inform** the body performing **supervision** over their **work** and submit a **special report** to the Parliament.*”

The “disciplinary” pressure probably intended through para. 4 does not work with private entities. This aside, a “special report to Parliament” seems hardly deterring to a natural person withholding data from the Agency. For the respective recommendation on **sanctions**, see below at section 6 “Sanctions”.

This aside, the provision is rather **vague** in areas that are usual points of discussion in obtaining data:

- Is data falling under business and other **secrets** included in Art. 45 para. 2 LFPEEC?
- Is **banking** data included and data from the Administration for the Prevention of **Money Laundering**?
- Can the Agency obtain data from **foreign entities** outside Montenegro, and if so how?
- Can the Agency obtain data from domestic and foreign **open sources**?
- How could the obtaining of data be **enforced** aside from sanctions (e.g. through search and seizures)?

The **Latvian** experience shows that clear and effective powers can make the difference in oversight of political finance. An impact assessment published by Princeton University comes to the following conclusions:

“

*Through its investigations into high-level graft and campaign finance violations, the new agency rapidly established a reputation for effectiveness. [...] Constituting roughly 5% of the bureau’s staff, KNAB’s party-finance division investigated thousands of donor lists and issued 135 administrative sanctions during its first five years, thereby prompting the courts to suspend or terminate more than 20 political parties. After the 2006 elections [...], KNAB fined the party 1.03 million lati (US\$1.9 million) for egregious campaign finance violations. [14]*”

[14] Gabriel Kuris, *Surmounting State Capture: Latvia’s Anti-Corruption Agency Spurs Reforms, 2002-2011, Innovations for Successful Societies*, Princeton University, 2012, <https://successfultsocieties.princeton.edu/publications/surmounting-state-capture-latvias-anti-corruption-agency-spurs-reforms-2002-2011>.

Obviously, stronger oversight powers in Montenegro would benefit the investigation of all violations, not only on foreign funding.

**Recommendation 2:**

Art. 45 LFPEEC should be amended by new paras. 6-7 as follows:

*"6) Data in para. 2 includes data falling under business and other secrets banking data, data from the Administration for the Prevention of Money Laundering, data from domestic and foreign open sources (including for-pay-databases).*

*(7) The Agency can exchange data in direct contact with foreign authorities to the extent they cooperate with the Agency. The Agency can request assistance from other authorities on international data exchange, in particular tax authorities and judicial authorities."*

Art. 45 para. 5 LFPEEC should be amended by a sentence 2 as follows:

*"The Agency may confiscate data and documents held back by private natural or legal persons without due justification as per [existing set of rules on administrative/investigative confiscation]."*

# 4

## ABUSE OF STATE RESOURCES

---

It appears to be obvious that abuse of state resources is a **major concern** of compliance with the LFPEEC. The Council of Europe Assessment states: “It is clear that the vast majority [of complaints] concerned violation of LFPEEC provisions relating to reporting of use of state resources.” [15]

### 4.1. Active oversight

The OSCE/ODIHR noted regarding the 2018 Presidential election: [16]

*“[The Agency] conducts monitoring and field inspections during the campaign, but the control remains **formalistic** and limited due to the limited capacities, as the review is primarily based on the documentation submitted by the candidates. The APC (Agency) **failed to proactively react to breaches of campaign finance regulations and did not issue warnings or initiate sanctioning procedure against candidates reporting incorrect figures on expenditure.**”*

Compliance reviews should not depend solely on the Agency passively waiting for complaints. Similarly, the State Audit Institution performs its audits of public administration not (only) based on complaints, but also based on regular reviews of all public bodies. This is a strong incentive for public bodies to comply with the law as even violations could be detected that go rather unnoticed to possible complainants.

#### **Recommendation 3:**

Art. 35 LFPEEC should be amended by a sentence 2:

*“The special act shall foresee regular proactive verifications of compliance by public bodies. Public authorities and their subunits are selected for such compliance audits based on risk, random, and similar criteria.”*

[15] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 37.

[16] OSCE/ODIHR Election Observation Mission, Final Report, Montenegro, Presidential Election, 2018, p. 12, <https://www.osce.org/odihr/elections/montenegro> (emphasis by author).

## 4.2. Complaints management

Apparently the Agency came to the conclusion that all complaints regarding the Parliamentary election were unfounded. The **Council of Europe** Assessment diplomatically hints to the obvious conclusion that the Agency did not undertake enough efforts in reviewing the complaints (*“If it is true that so many complaints were filed and all were unfounded [...]”*). [17] One should keep in mind that **GRECO** noted already in 2010 – with apparent concern – *“that the existing sanctions have never been applied in practice. Since the enactment of the relevant party/campaign funding rules, the Ministry of Finance (MoF) found no major violation indicating possible misuse of public funds.”* [18]

In this regard, stronger oversight powers play an important role (see above at 3.2) as well as active oversight (see above at 4.1). Most importantly, though, is **accountability** of the Agency to the **public**: What was the alleged category of violation? Regarding which public body? Which date? Was the complaint substantiated? What effort did the Agency undertake? What was the outcome? What file-number does the complaint carry? It goes without saying that the “identity of complainants and witnesses should remain confidential to protect their safety”, [19] unless they explicitly agree to be named.

The **OSCE** and **Venice Commission** state specifically regarding abuse of state resources:

*“Authorised law-enforcement bodies – police, prosecutors – should **investigate** cases on the misuse of administrative resources **effectively** and **timely**. [...]”*

The legal framework should ensure that the electoral management bodies and courts – and other judicial bodies – hold hearings and that their **decisions** are made **public, written** and **reasoned** [...]” [20] One should notice good practices in this regard, such as for example the one by the U.S. Federal Election Commission: [21]

*“Because the **public** has the **right to know** the **outcome** of any enforcement proceeding, within 30 days after the parties involved have been notified that the entire matter has been closed, the redacted files for closed enforcement matters are available for review at the Enforcement Query System found on the Commission’s web site at <http://eqs.nictusa.com/eqs/searcheqs>. The redacted files are also available to the public in the Commission’s Press Office and the Office of Public Records. Complaints and responses are placed on the public record, though in some cases, sensitive or privileged information such as personal phone numbers or financial information is redacted.”*

In this regard it is important for citizens to have access to data in **machine-readable format** so they can automatically search and use the data, which is not possible with data “entrapped” in picture images of scanned documents. A number of international initiatives have made open data and its implementation principles the mainstay of current access to information dialogue. [22]

[17] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 37.

[18] Greco Eval III Rep (2010) 7E, Theme 2, at no. 79 (Montenegro), <https://www.coe.int/en/web/greco/evaluations>.

[19] U4 Expert Answer, Anti-corruption complaints mechanisms (2007), Guiding Principle G (p. 6), <https://www.u4.no/publications/anti-corruption-complaints-mechanisms.pdf>.

[20] OSCE/ODIHR/Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes, Study no. 778 / 2014, at C.1.5 and 1.6, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)004-e).

[21] Federal Election Commission, Guidebook for Complainants and Respondents on the FEC Enforcement Process, May 2012, p. 22, <https://www.fec.gov/legal-resources/enforcement/complaints-process/> (emphasis by author).

[22] See in particular: <http://opendatacharter.net/>; [www.opendefinition.org](http://www.opendefinition.org/); [www.opengovguide.com/topics/open-government-data](http://www.opengovguide.com/topics/open-government-data).

Open data concerns also the absence of usage fees. [23] An interface on the Agency’s website for the structured submission of complaints could support the maintenance of an electronic list.

#### **Recommendation 4:**

Art. 44 LFPEEC shall be amended by a para. 5:

*“(5) The agency shall inform the public about all complaints and their outcome, including but not limited to the alleged category of violation, the public body concerned, the date of the alleged violation, the substantiation of the complaint, efforts undertaken by the Agency, the outcome, and the file number of the complaint (‘public registry of complaints’). Data shall be published online, through a single searchable website, free of charge, indexable and downloadable in full as machine-readable open data. New complaints are put on the public registry within 10 working days. The public registry of complaints is updated every two months regarding efforts undertaken by the Agency and the outcome.”*

## 4.3. Analytical cards

The **Council of Europe** Assessment recommends:

“*The content of analytical cards should be defined precisely by legal regulations (such as relevant Ministry of Finance by-laws).* [24]

The content of analytical cards varies across the institutions and needs to be standardised.

#### **Recommendation 5:**

Art. 28 LFPEEC is amended by a new paragraph 4 as follows:

*“The analytical cards should provide information at least on the following categories of information: Budget line, transaction number, Recipient/supplier including the registration number in case it is a legal entity, amount, date.”*

As in most countries of this World, legal persons in (partial) state ownership carry out public functions in Montenegro. It is obvious that such legal persons need to be included into the scope of Art. 28 LFPEEC.

#### **Recommendation 6:**

Art. 29 LFPEEC should be amended by a new para. 4 as follows:

*“State and local budget consumer units as per para. 1 of this Article includes public enterprises or other businesses or legal persons exercising public authority, i.e. activities of a public interest or state-owned, as defined in Article 3 of the Law on Prevention of Corruption.”*

[23] International Open Data Charter, Principle 3 paragraph 3 lit. c: “Release data free of charge”, <http://opendatacharter.net/principles/>.

[24] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 11 recommendation 28.

# 5

## TRANSPARENCY

### 5.1. Record keeping and evidence

It is striking to note that the LFPEEC contains no provision on the duration of **record keeping**. This entails the significant risk that administrative inquiries or criminal investigations will literally lead into nothing, as evidence will have vanished and so without legal consequences. By contrast, the German legislation foresees a **ten year** time period. [25] The obligation to keep records is ineffective without a respective sanction. Thus, for example under German law, the entity obliged to keep records, carries the burden of proof for their existence. [26] To this extent, rules for the accounting of entrepreneurs apply accordingly to political parties. [27]

#### **Recommendation 7:**

Art. 37 LFPEEC should be amended by new para. 6 as follows:

*“The political entity shall hold accounting records and supporting documentation for ten years, including but not limited to contracts, invoices, receipts, and banking statements. In case records and documentation are missing, the political entity carries the burden of proof for their existence in all civil and administrative proceedings.”*

### 5.2. Internal regulations

The **Council of Europe** Assessment further recommends regarding documentation:

*“Political parties should be required to have a website on which they publish all financial reports and internal acts regulating finances and financial control, as well as the identities of responsible persons. Other political entities that compete in elections should be subject to the same requirement, including publishing details of the division of responsibilities relating to financing. [28]”*

It is not clear for **how long** political entities are still “around” and can be held **accountable**. Therefore, it seems advisable to oblige political entities to forward the information to the Agency or allow political entities to upload the information on the Agency’s website. Furthermore, financial reports are already mandatorily available online (Art. 37 para. 5 LFPEEC). Thus, one does not need to implement the full recommendation as worded by the Council of Europe Assessment.

[25] § 24 Abs. 2 S. 2 Law on Political Parties, Germany: “Accounting records, books, balance sheets and statements of accounts shall be held for ten years”, English translation:

<https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

[26] General rule, see for example Federal Supreme Tax Court, Judgment of 15 February 1989, X R 16/86 (regarding taxation); Court of Appeal Hamm, 3 U 133/99, regarding civil law.

[27] § 24 para. 2 S. 1 German Law on Political Parties: “The commercial law regulations applying to all merchants which govern the rendering of accounts, especially the assessment and valuation of assets, shall be applied mutatis mutandis unless provided otherwise by the present Act”, English translation:

<https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

[28] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 8, recommendation 12.

**Recommendation 8:**

Art. 38 LFPEEC should be amended by a new sentence 2 in para. 1, and a new para. 3 as follows:

*“(1) [...]. Sentence 1 of this paragraph includes agreements between components of political entities on the division of responsibilities relating to financing.*

*(3) The political entity submits the documents referred to in paragraphs 1 and 2 of this Article to the Agency within seven days from their adoption. The Agency shall publish documents referred to in paragraphs 1 and 2 of this Article on its website, within seven days from the day of receipt.”*

### 5.3. Financial reports

The **Council of Europe** Assessment notes: *“The law fails to establish which accounting standard political parties/entities must use for annual reporting.”* [29] The LFPEEC should contain the minimum set of categories, to make statutorily sure “that all relevant categories of income and spending are reported in sufficient detail”. [30] For example, the German law defines the minimum set of reporting categories in a detailed statutory provision comprising about 1,000 words. [31] In contrast, the LFPEEC allows not more than 5 words on this matter. The following recommendation is based on the German law and contains the core part of a legislative amendment, but might need additional amendments to fully fit into the LFPEEC. Para. 4 B VI addresses the recurring fraud scheme in practice that political parties receive services which are formally for pay, while the service fee due is never paid. In essence, such schemes can lead to unaccounted donations.

**Recommendation 9:**

A new Art. 9a LFPEEC (concerning all reporting) should be inserted as follows:

*“Article 9a, Minimum accounting and reporting standards*

*(1) Accounting as required by this law shall follow the [tbd] standard.*

*(2) Income accounting shall cover:*

- 1. membership dues;*
- 2. contributions paid by elected office-holders and similar regular contributions;*
- 3. donations from natural persons;*
- 4. donations from legal persons;*
- 5. income from business activities and participating interests in companies;*
- 6. income from other assets;*
- 7. receipts from organized events, distribution of printed material and publications and from other income-yielding activities;*
- 8. public funds;*
- 9. any other receipts;*
- 10. grants received from party branches;*
- 11. details on liabilities written off or not enforced by creditor, and*
- 12. total income, as an aggregate of nos. 1 to 10.*

*(3) Expenditure accounting shall cover:*

- 1. personnel-related expenditure;*
- 2. operating expenditure*
  - a) on day-to-day business,*
  - b) on general political work,*
  - c) on election campaigns,*
  - d) on asset management, including any interest accruing therefrom,*
  - e) other interest,*
  - f) other expenses;*
- 3. grants payable to party branches; and*
- 4. total expenditure, as an aggregate of nos. 1 to 3.*

[29] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 6, 9 recommendation 14.

[30] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 30.

[31] § 24 (English version) Law on Political Parties; English translation:

<https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.



(4) *The asset and liability statement shall cover:*

1. *assets owned:*
  - A. *capital assets:*
    - I. *tangible assets:*
      1. *real estate,*
      2. *branch office furnishings and equipment,*
    - II. *financial assets:*
      1. *participating interests in companies,*
      2. *other financial investments;*
  - B. *working assets:*
    - I. *receivables from party branches,*
    - II. *amounts receivable under state-provided partial funding,*
    - III. *money holdings,*
    - IV. *other types of assets;*
  - C. *total of assets owned (sum of A and B);*
2. *accounts payable:*
  - A. *reserve funds:*
    - I. *reserves for pensions,*
    - II. *other reserves/provisions;*
  - B. *liabilities:*
    - I. *amounts owed to party branches,*
    - II. *repayment obligations with regard to state-provided partial funding,*
    - III. *amounts owed to credit institutions,*
    - IV. *amounts owed to other lenders,*
    - V. *other liabilities,*
    - VI. *out of no. I to V details on liabilities due*
      1. *more than 3 months,*
      2. *liabilities due more than 1 year;*
  - C. *total debits (sum of A and B);*
3. *net assets (positive or negative).*

(5) *An explanatory part shall be appended to the asset and liability statement which must cover the following items, in particular: [tbd].”*

## 5.4. Accountability for reporting

Without clear definition who is (at minimum) responsible for financial reports, there is no or little accountability. The German law for example defines exactly **who signs** the financial reports (Political parties: chairperson and board member responsible for finances = responsible person). [32]

### **Recommendation 10:**

The new Art. 9a LFPEEC (concerning all reporting) should include a para. 6 as follows:

*“(6) Financial reports and statements due under this law need to be signed by the chairperson and the responsible person (in case of political parties) or by the candidate and the responsible person (in case of candidates). The aforementioned persons shall, by their signature, affirm that the information in their statements of accounts has been given truthfully and to the best of their knowledge and belief.”*

[32] § 23 para. 1 sentence 2 German Law on Political Parties: “Their statements of accounts shall be signed by the chairperson and an Executive Committee member responsible for financial matters and elected by the party convention, or by an Executive Committee member elected by a body responsible, under the statutes, for the party’s financial matters. These Executive Committee members shall, by their signature, affirm that the information in their statements of accounts has been given truthfully and to the best of their knowledge and belief.” English translation: <https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

## 5.5. Media discounts

The **Council of Europe** Assessment notes:

“The LFPEEC should be amended to require entities which provide media advertising services to political entities must publish at the beginning of the election campaign and inform the APC [the Agency] their full price list for electoral advertising. [33]”

Currently, the circumvention with published price lists is reportedly the following: The lists contain openings allowing, for instance, negotiating discounts on services above 100,000 € directly with the political entity.

### **Recommendation 11:**

Art. 13 para. 3 LFPEEC should be amended by sentence 2-4 as follows:

*“The list must be exhaustive and enable an outsider to calculate the price of any advertising service based solely on the list. The list has to be submitted on the first day of the election campaign at the latest. Media services not having submitted their list or having submitted a list not complying with this article by this deadline are prohibited from providing media advertising services to political entities for the duration of that campaign.”*

## 5.6. Interim reports

Political entities can use the time between calling the election until submitting a list of candidates to effectively campaign already, without having to report on any of the income and expenditures during this period. This gap needs to be closed.

### **Recommendation 12:**

Art. 39 LFPEEC should be amended by a new para. 6 as follows:

*“A political entity shall prepare an interim report on the origin, the amount and structure of the funds from public and private sources received and expended during the period from the day of calling the election until the day it submits the electoral list to the electoral commission. Paragraphs 1-5 of this Article apply appropriately.”*

## 6 SANCTIONS

### 6.1. Additional offence: lack of cooperation

As noted above (section 3.2), the Agency lacks powers to enforce requests for data from private entities. A sanction in this regard would serve as an **incentive** to comply with requests by the Agency. It is common practice to support public bodies in this regard. For example, in Greece the Law punishes the “obstruction of the verification procedure including refusal to provide information” with imprisonment of up to 6 months. [34] The LFPEEC should close the current gap and introduce a similar provision. This is in line with **GRECO** calling for sanctions “relating to infringements of political financing rules [...] to cover all possible infringements of the law, as appropriate”. [35]

#### **Recommendation 13:**

Art. 45 LFPEEC should be amended by a new para. 8 as follows:

*“(8) Any person who fails to cooperate or fails to provide any information and documents required by the Agency within the set time limits, including in electronic form, shall be liable to a fine from 500 € to 2,000 €. An entrepreneur shall be fined by a fine from 200 € to 4,000 €.”*

### 6.2. Additional offence: lack of submitting internal documents

The new obligation in Art. 38 para. 3 (new) LFPEEC (see above section 5.2) needs a corresponding sanction. This is in line with **GRECO** calling for sanctions to sanctions “relating to infringements of political financing rules [...] to cover all possible infringements of the law, as appropriate”. [36]

#### **Recommendation 14:**

Art. 53 LFPEEC should be amended by a new para. 18a as follows:

*“(18a) fails to submit the documents referred to in paragraphs 1 and 2 of this Article to the Agency within seven days from their adoption (Art. 38 para. 1 and 2).”*

[34] Greek Law 3213/2003, no. 3B(6) regarding the supervision of financial statements by public officials. See also Art. 26 of the *Bosnia and Herzegovina* Law on Data Protection: “Whoever does not co-operate with the Data Protection Commission, refuses to provide it with requested information or refuses to let the Data Protection Commission enter its premises, shall be punished with a fine in the amount ranging from KM 1,000.00 to KM 10,000.00”; Art. 175 Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act *Bulgaria*: “(1) Any person who fails to cooperate or fails to provide any information and documents required by the Commission within the set time limits, including in electronic form, shall be liable to a fine of BGN 200 or exceeding this amount but not exceeding BGN 1,000. (2) A repeated commission of the violation under Paragraph (1) shall be punishable by a fine of BGN 500 or exceeding this amount but not exceeding BGN 2,000. (3) Any legal person, which fails to provide the information and documents required by the Commission within the set time limits, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 5,000.”

[35] Greco Eval III Rep (2010) 7E, Theme 2, recommendation viii (Montenegro), <https://www.coe.int/en/web/greco/evaluations>.

[36] Greco Eval III Rep (2010) 7E, Theme 2, recommendation viii (Montenegro), <https://www.coe.int/en/web/greco/evaluations>.

### 6.3. Statutes of limitations

Sanctions revolve mostly around administrative fines. However, the limitation period for initiating and conducting misdemeanour proceedings is extremely short: “Misdemeanour proceedings cannot be initiated if the **two years** elapsed from the day when the misdemeanour was committed” (Article 58 para. 1 LFPEEC). Political finance offences are typically detected only 2-3 years after their commission – at the earliest. [37] Often only a comparison of financial statements of one period with another period, or comparison of financial statements of a political party with financial documents from other sources and periods will provide the necessary triggers for a formal investigation. This aside, it is often former party functionaries who report on such violations, but they usually do so only after some time has passed and their reporting is safe. Most importantly, though, often only a **change of government** will bring the necessary **political will** to go forward with investigations. The Law on Misdemeanours would allow for up to 3 years of statutes of limitations, explicitly in the case of “*political party funding and fundraising for elections*” (Art. 59 para. 5). It is unclear why the legislator did not exhaust these 3 years; this could be perceived as political parties – insofar represented in Parliament – granting themselves the apparent benefit of shorter than necessary statutes of limitations. For comparison, it should be noted that political parties in Germany face the sanction of “triple confiscation” for a duration of up to ten years. [38]

#### **Recommendation 15:**

In Article 58 para. 1 LFPEEC “two years” should be replaced by “*four years*”, and in Article 58 para. 2 LFPEEC “*four years*” should be replaced by “*eight years*”.

Longer statutes of limitation only have an effect if political entities are **obliged to keep all records** and supporting documents such as invoices, receipts and banking statements for a time period longer than the statutes of limitation. However, the LFPEEC is silent on this issue. For a respective recommendation see above at section 5.1.

### 6.4. Criminal offences

Fines are obviously – still – too low. GRECO noted already in 2010: [39]

“*[T]he sanctions are low – they range from 5,500 to 11,000 EUR for political parties and 800 to 1,100 EUR for individual candidates, responsible persons, and donors – and the sanctions are only financial in nature. [...] Moreover, the maximum fine available [...] may be of little effect in penalising a significant benefit, for example an unlawful donation of a large amount. It could be more advantageous for a party to pay the fine and take the benefit of the illegal donation than to not take the benefit. The GET [GRECO evaluation team] is not convinced that the current level of sanctions provides for deterrents which adequately dissuade political parties and election candidates from breaching the rules regarding political funding. The experience of other countries in this area, i.e. through the application of a broader range of sanctions – e.g. loss of public funds, ineligibility, incremental fines and even imprisonment when severe breaches of the law occur – could be of relevance for Montenegro from both a preventive and repressive point of view.*”

However, the Montenegrin legislator has not improved the situation significantly: Under the LFPEEC, a maximum fine is only 20,000 €. First, doubling fines is **not sufficient** to address concerns by GRECO. For example, it is obvious that a party receiving 1 million € in illegal donations would hardly be deterred by a fine of 20,000 € (even if considered in addition to the confiscation of the illegal donation).

[37] For example, the multi-million political finance violations around the party of Chancellor Kohl in Germany were discovered in 1999, while they mostly took place in the late 1980s and early 1990s, [https://en.wikipedia.org/wiki/CDU\\_donations\\_scandal](https://en.wikipedia.org/wiki/CDU_donations_scandal); similarly: [https://en.wikipedia.org/wiki/Bettencourt\\_affair](https://en.wikipedia.org/wiki/Bettencourt_affair) (more than 3 years between violation and detection).

[38] § 31a para. 2, § 24 para. 2 Law on Political Parties; see in more detail below at section 6.5; English translation: <https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

[39] Greco Eval III Rep (2010) 7E, Theme 2, at no. 78 (Montenegro), <https://www.coe.int/en/web/greco/evaluations>.

Furthermore, the fine reviewed by GRECO in 2010 corresponds after annual inflation of 2% to a fine today of about 13,500 €. Thus, the **factor** of increase towards the maximum fine of 2010 is only 1.6 (and not even double such as appears without taking inflation into account).

One should note in this context that several of the violations described in the LFPEEC as administrative sanctions with rather small fines (up to 2,000 €) are in fact in other countries criminal offences with fines of up to 10 million €. [40] At the same time, the Montenegrin legislator has already reached the maximum of fines available (20,000 €) under the current version of the Law on Misdemeanours (Art. 24). [41] It would be an option to raise both the limits of the LFPEEC as well as of the Law on Misdemeanours. However, this option will be limited and not remedy the problem: for example, doubling the limit to 40,000 € is “nothing” compared to fines available in other countries. Therefore, it will be necessary to introduce a criminal offence.

This need becomes even more evident, if one looks at the leniency of sanctions for **political parties** under the LFPEEC as compared to sanctions citizens face for the offence of fraud:

Offender	Violation	Damage (example)	Maximum sanction
Citizen	Fraud	3,000 €	Imprisonment [42]
Political party	Receiving foreign funding	1,000,000 €	20,000 € fine [43]

It is a hardly tolerable privilege for political parties to face by and large only administrative sanctions, while similar offences by citizens are defined as criminal offences. Furthermore, according to the **Venice Commission** sanctions for political finance violations “*should include [...] criminal sanctions in cases of significant violations, imposed against the party members who are responsible for the violation*”. [44]

The only criminal offence so far, introduced in 2015, is Art. 193a Criminal Code covering **abuse of state resources**:

*“An official who uses or enables the use of the property of state bodies, public institutions, public enterprises and funds, local self/government units and enterprises partially owned by the state for the purpose of representation/advertising of the electoral slate (political entity) will be punished by a prison sentence of between 6 months and five years.”*

However, it is not clear, while only this violation shall be a criminal offence, while providing – for example – 1 million € in prohibited foreign funding to a political party is not (and if so, with a higher maximum sentence necessary for obvious reasons).

In addition, only criminal offences will allow for effective investigations including search and seizure, witness testimony, and **special investigative means**. The latter are available for corruption offences with a punishment of 8 years or more. [45]

[40] § 31d para. 1 German Law on Political Parties: “(1) Whosoever, with the intent of concealing the origin or the use of the party’s funds or assets or evading the obligation to render public account, 1. causes inaccurate data on the party’s income or assets to be included in a statement of accounts submitted to the President of the German Bundestag, or submits an inaccurate statement of accounts to the President of the German Bundestag; or 2. as a recipient, divides a donation into smaller amounts and enters them into the books or has them posted by others; or 3. in violation of Section 25 para. 1, 3rd sentence, does not remit a donation; shall be liable to imprisonment of up to three years or to a fine”; § 40 para. 1 and 2 German Penal Code: “(1) A fine shall be imposed in daily units. The minimum fine shall consist of five and, unless the law provides otherwise, the maximum shall consist of three hundred and sixty full daily units. [...] A daily unit shall not be set at less than one and not at more than thirty thousand euros”, English translation:

<https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

[41] English translation: <http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rid=258042>.

[42] Art. 244 para. 2 Criminal Code: “Where the offences under paras 1 and 2 [Fraud] above resulted in pecuniary gain or damage exceeding three thousand euros, the perpetrator shall be punished by a prison term from one to eight years.”

[43] Art. 53 no. 15 LFPEEC.

[44] OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (2010), in particular Chapter XII “Funding of Political Parties”, no. 225, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e) (emphasis by author).

[45] Art. 158 para. 3 Criminal Procedure Code, <http://sudovi.me/podaci/oszb/dokumenta/3533.pdf> (Montenegrin).

**Recommendation 16:**

For cases where significant amounts are concerned, the offences in Art. 53 and 56 LFPEEC need to be complemented by criminal sanctions. Thus, a new Art. 425 “*Illegal Political Financing*” should be inserted into the Criminal Code, reflecting the thresholds and sanctions in Art. 244 of the Criminal Code (“*Fraud*”) through the following two paragraphs (the exact wording would need to be adapted to Montenegrin standards of criminal legislation):

“(1) *Anyone, who in the course of political financing,*

- a. raises funds from private sources beyond the legal limit,*
- b. exceeds the costs of an election campaign beyond the legal limit,*
- c. provides or receives material and financial assistance and in-kind contributions from prohibited sources,*
- d. exerts pressure on legal entities, companies and natural persons in raising contributions or any other activity related to the election campaign or financing of political entities, or*
- e. fails to return the funds to the Budget of Montenegro in case private funding exceeds legal limits, and the funds or value exceed 3,000 €, shall be punished by a fine or a prison term up to three years.*

*(2) Where the funds or value exceed 30,000 €, the perpetrator shall be punished by a prison term from one to eight years.”*

**Recommendation 17:**

Art. 158 no. 3 Criminal Procedure Code (“*Criminal offenses for which secret surveillance measures can apply*”) should be amended after “abuse of office” with “illegal political financing”.

Anybody could commit political finance crimes, not only Montenegrin nationals and not only those residing on Montenegrin territory. Therefore, the Montenegrin legislator has added corruption offences (Art. 422, 422a, 423 and 424 Criminal Code) to the list of offences which apply also to **foreign nationals acting outside Montenegro** (Article 137 Criminal Code). Consequently, Art. 425 (new) Criminal Code should be added to this list.

**Recommendation 18:**

In Art. 137 para. 1 Criminal Code “425” should be added after “424”.

## 6.5. Reimbursement of public funds

The Council of Europe Assessment noted that the rules on suspension of public funds “exhibit [...] weaknesses.” [46] In particular, “*there is no provision for withholding or suspending funds [for ordinary activities] in the case of serious inaccuracies in the report.*” Furthermore, the Assessment favours a system where “*ordinary funding may be suspended in the case of serious election campaign finance violations.*” [47] In addition, according to the **Venice Commission**, sanctions for political finance violations “*should include [...] the forfeiture to the state treasury of financial support previously transferred to or accepted by a party.*” [48]

[46] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 40.

[47] Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 41.

[48] OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (2010), in particular Chapter XII “Funding of Political Parties”, no. 225, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e) (emphasis by author).

The current system in Montenegro focuses mostly on the *ex ante* suspension of funds. Reversal of already paid funds is only possible as confiscation. However, this means that confiscation depends on the finding of a misdemeanour, i.e. proving **intent** or **negligence** and doing so within short **statutes of limitations**.

By contrast, it is much easier to reclaim disbursed public funds. Instead of confiscation, it is the revocation of an **administrative act**. This can be done for a much longer period than sanctions can be administered. Furthermore, as an incentive against violations, the reclaiming can be **doubled** or **tripled** as in other jurisdictions. [49] The evident rationale behind such provisions is that if one only reclaims the exact amount disbursed earlier, it is more profitable for a political party to try violations and hope that they will not be detected. In other words, reclaiming a multiple of the disbursed public fund takes into account that behind any detected violation hide more undetected ones. One can illustrate the difference in deterrence by comparing court cases from **Germany** with the possible sanctions in the same case in **Montenegro**:

Actual sanction under DE laws	Maximum sanction under MNE law (if the same case had occurred in MNE)
3,463,149 € (triple the amount of illegally received funds, i.e. 1,154,383 €) [50]	1,156,383 € (1,154,383 € confiscated under Art. 49 LFPEEC plus 2,000 € fine, e.g. Art. 53 no. 2)
Up to 10 years after violation	Up to 2 years after violation

While the Ministry and local administration body disburse the funds, it should be the **Agency** reclaiming them if necessary. Otherwise, a third branch of oversight bodies would be created in addition to the Agency and State Audit Institution. [51]

### **Recommendation 19:**

Art. 11 LFPEEC should be amended by new para. 11 and 12 as follows:

*“(11) The Agency shall reclaim the payment of funds referred to in paragraph 4 of this Article to a political entity, if they detect inaccuracies in the statement of accounts. The reclaimed sum shall be twice the amount of the wrongly stated sum.*

*(12) A political entity which has accepted funding prohibited under the provisions of Chapter IV, shall be liable to pay three times the amount of the illegally obtained sum of money or value.*

*(13) The Agency shall, by an administrative act, determine the political entity’s liability to pay the respective amount to the budget from where it was disbursed. The administrative act must be adopted within ten years from the disbursement of funds.”*

For presidential **candidates**, there are no funds for regular operations. Therefore, the claim for reimbursement can only target election costs.

[49] § 31c para. 1 Law on Political Parties, Germany: “(1) A political party which, in contravention of Section 25 para. 2, has accepted donations and not remitted them to the President of the German Bundestag in accordance with Section 25 para. 4 shall be liable to pay three times the amount of the illegally obtained sum of money; donations already remitted shall be deducted from the payable amount. A party which fails to publish donations in its statement of accounts in accordance with the provisions of the present Act (Section 25 para. 3) shall be liable to pay twice the amount of the sum not disclosed as prescribed by the present Act [...]”, English translation: <https://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

[50] Case of illegal donations to Liberal Party, German Administrative Supreme Court, Judgment of 25 April 2013, 6 C 5/12, <https://www.bverwg.de/250413U6C5.12.0> (German).

[51] See already the critical remarks regarding the current division of tasks, Council of Europe Technical Paper “Assessment of the regulatory framework for political party and election campaign financing in Montenegro and of civil society organisations” (2017 – not available online), p. 34.

**Recommendation 20:**

Art. 20 LFPEEC should be amended by new para. 5-7 as follows:

*“(5) The Agency shall reclaim the payment of funds referred to in paragraph 3 of this Article to a candidate, if they detect inaccuracies in the statement of accounts. The reclaimed sum shall be the amount of the wrongly stated sum.*

*(6) A candidate which has accepted funding prohibited under the provisions of Chapter IV, shall be liable to pay three times the amount of the illegally obtained sum of money or value.*

*(7) The Agency shall, by an administrative act, determine the candidate’s liability to pay the respective amount to the budget from where it was disbursed. The administrative act must be adopted within ten years from the disbursement of funds. ”*

## 6.6. Additional offence: false accounting

The entire area of false accounting remains **without sanction** to a large extent under current legislation. The suggested reimbursement of public funds in cases of incorrect financial statements would remedy this gap to some extent. However, one also needs to deter the natural persons responsible for financial statements.

The criminal offence of fraud only applies where there is gain on the side of the offender to the detriment of a third party. This is sometimes the case with political finance, in particular where financial statements of parties are the basis for receiving public funding.

In this context, Art. 245 “Ill-Founded Grant and Use of Loans and Other Benefits” Criminal Code is the relevant provision. It reads as follows:

*“(1) Anyone who falsely represents or conceals facts to obtain for himself or another person a loan, subsidy or other benefit even though he does not meet the eligibility requirements shall be punished by a fine or a prison term up to three years.*

*(2) Anyone who uses the loan, subsidy or other benefit obtained for purposes other than the ones the loan, subsidy or other benefit was granted for shall be punished by a fine or a prison term up to two years.*”

It should be clarified that the disbursement of public funds based on incorrect financial statements falls under Art. 245 Criminal Code.

**Recommendation 21:**

Art. 245 para. 1 Criminal Code should be amended by adding “budget funds for financing election campaign costs” after “subsidy”.

However, many cases of false accounting in political finances are not related to the public budget, and are not about financial damage. By contrast, the damage is to the **fair political competition**, and thus goes to the heart of democracy. In this regard, the damage is by far worse than in case of financial/subsidy fraud.

**Recommendation 22:**

Art. 53 LFPEEC should be complemented with a new number 27 as follows:

*“[A fine shall be imposed on a political entity, if it] submits a statement of accounts and consolidated financial statement which do not reflect the income or expenditures of the political entity correctly, and the deviation amounts in total to more than 500 €” (the offence would apply to the responsible person as well, Art. 53 para. 2 LFPEEC).*



## 6.7. Whistleblower protection

### **Recommendation 23:**

The new Art. 425 “Illegal Political Financing” Criminal Code (see above at 6.4) should contain a para. 3 as follows:

*“(3) The responsible person in a political entity who submits a statement of accounts and consolidated financial statement which do not reflect the income or expenditures of the political entity correctly, and the deviation amounts in total to more than 3,000 € shall be punished by a fine or a prison term up to three years.*

*(4) Where the funds or value exceed 30,000 €, the perpetrator shall be punished by a prison term from one to eight years.”*

For detecting and investigating offences, whistleblower protection can be essential. [52] It is at least unclear if whistleblowers are protected under the Law on Prevention of Corruption (LPC), if their reporting concerns political financing. Art. 4 para. 2 LPC states:

*“Whistle-blower, within the meaning of this Law, shall refer to a natural or legal person filing a report on a threat to public interest that indicates the existence of corruption.”*

However, it is unclear whether the definition of corruption in Art. 2 LPC covers political finance violations:

*“Corruption is any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another.”*

It is not fully clear whether prohibited donations fall under this definition. Art. 4 para. 3 LPC seems to speak against such an interpretation, as it separates the issues of lobbying and political finance from the LPC:

*“The Agency shall carry out activities of control of lobbying and control of financing of political entities and election campaigns, in accordance with the special law.”*

### **Recommendation 24:**

Art. 2 LPC should be amended by adding “including violations of the Law on Financing of Political Entities and Election Campaigns”.

[52] G20, Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation (2012), p. 4: “Whistleblower protection is essential to encourage the reporting of misconduct, fraud and corruption. The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected”, <https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>.

## 6.8. Foreign funding

Foreign funding is only subject to administrative sanctions and targets **only** political parties as the **receiving side**:

*A fine from 10,000 euros to 20,000 euros shall be imposed for a misdemeanour on a **political entity** if it [...] **receives** material and financial assistance and in-kind contributions from: **other states**, companies and legal entities **outside** the **territory** of Montenegro, natural persons and entrepreneurs who do not have the right to vote in Montenegro [...] (Article 24 paragraph 1) (Article 53 no. 15 LFPEEC).*

However, as is the case with bribery, it is important to deter also the giving side, i.e. the donors of prohibited funds. It is obvious that an administrative sanction will not be enough for this. To this end, the recommended criminal offence of Art. 425 (new) Criminal Code (see above 6.4) targets also the giving side in para. 1 lit. b (“**gives or receives**”).

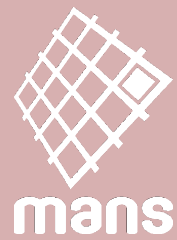
This aside, the giving-side of foreign funding is also missing in the **administrative sanctions** of the LFPEEC. Under Art. 9 of the Law on Misdemeanours, this future offence would apply for all actions “committed on the territory of Montenegro” regardless of the nationality. The following amendment is in line with **GRECO** calling for sanctions to sanctions “*relating to infringements of political financing rules [...] to cover all possible infringements of the law, as appropriate*”. [53]

### **Recommendation 25:**

Art. 57 LFPEEC should be amended by a new no. 2a as follows:

*“[A fine shall be imposed on a natural person, if s/he] **provides** material and financial assistance and in-kind contributions from: other states, companies and legal entities outside the territory of Montenegro, natural persons and entrepreneurs who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies with the share of state-owned capital, trade unions, religious communities and organizations, non-governmental organizations, casinos, bookmakers or other providers of games of chance (Article 24 paragraph 1)”.*





Podgorica 81000  
Dalmatinska 188



+382 20 266 326  
+382 20 266 327



+382 20 266 328



+382 69 446 094  
+382 67 262 724

[www.youtube.com/user/NVOmans](http://www.youtube.com/user/NVOmans)

[www.facebook.com/nvo.mans](http://www.facebook.com/nvo.mans)

[www.twitter.com/nvomans](http://www.twitter.com/nvomans)

[www.instagram.com/nvo.mans](http://www.instagram.com/nvo.mans)

---

[www.mans.co.me](http://www.mans.co.me)